

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

ORIGINAL APPLICATION NO. 919 OF 2004

THIS THE 28th DAY OF MARCH, 2005.

HON'BLE MR. V.K. Majotra VICE CHAIRMAN

Hon'ble Mr. K.B.S. Rajan, Member-J

Narendra Nair,
S/o Sri Mohan Kumar Nair,
R/o L-39 Sanjai Nagar,
Sector 23,
Ghaziabad..Applicant.

By Advocate: Sri M.K. Srivastava.

Versus

1. The Regional Provident Fund Commissioner Employee Provident Fund Organisation Sub Regional Office, IIInd Floor, Vikas Bhawan, Civil Lines, Meerut. U.P.
2. Enforcement Officer, Office of the Employees' Providing Fund Organisation 'Seven Kendra', 6-A Malibada, Ghaziabad. U.P.

.....Respondents

By Advocate: Sri N.P. Singh

O R D E R (ORAL)

K.B.S. RAJAN, MEMBER-J

The grievance of the applicant in this case is that even though he had worked beyond May, 2001, the authorities had declined to continue him in the engagement and further that they have refused to pay him wages for the period beyond May, 2001. He has, therefore, prayed for the following main reliefs:-



"b. The respondents may be directed to allow the applicant to work in the office and also pay the salary to the applicant regularly.

c. The respondents may be directed to pay the salary to the applicant from June 2001 to February, 2002 which has not been paid to the applicant till date."

2. In fact this is a second round of litigation. In the earlier round, vide order dated 30.1.2004 in O.A. No. 119 of 2003, this Tribunal had passed the following order :-

"However, in paragraph 8 of the C.A., it has been stated that applicant had signed and made attendance at Service Centre, Ghaziabad even after May, 2001. This according to the averments made in the C.A. was done without the knowledge of the Headquarters at Meerut. In the facts situation of the case, therefore, the O.A. is disposed of with direction to the respondents that incase the applicant files a representation annexing thereto proof, if any, in support of his case, the competent authority shall look into the grievance of the applicant and take appropriate decision on the representation by passing a reasoned and speaking order within a period of three months from the date of receipt of the copy of the representation along with this order."

3. Notice was issued in this case on 10.2.2005 calling for Counter Affidavit from the respondents.

4. Today, the Counsel for the respondents has submitted that he does not propose to file any Counter Affidavit and would like to argue the matter as the impugned order is comprehensive and

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he would support his case from the very impugned order itself.

5. Parties' counsel have been heard.

6. The counsel for the applicant has reiterated his submission that the respondents are wrong in holding that no authorization was ever granted to the applicant for continuing as casual labour beyond May 2001. After referring to paragraph (g) at page 17 of the O.A. and subsequent paragraph wherein it is stated that " office was not extended period beyond May, 2001 as the signing of attendance beyond this period without any authority is illegal and invalid." The applicant's counsel invited attention of this Tribunal to Annexure nos. 7 and 8 wherein E.O., Circle I, Ghaziabad had authenticated the work performed by the applicant during the period of October to December, 2001. The contention of the applicant's counsel is that if the applicant could serve during 2001 continuously, he becomes eligible for continuance in employment after completing 240 days of service.

7. The counsel for the respondents raised the following Preliminary objections:

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(a) O.A. is not maintainable in view of non-joinder of necessary parties inasmuch as Union of India has not been arrayed as one of the respondents. The O.A. is also barred by limitation inasmuch as the applicant seeks redressal of his grievance which pertains to the period of 2001.

(b) Order dated 18.5.2004 (impugned) is only in compliance with the directions of this Tribunal passed in earlier O.A. no. 119 of 2003 and the same cannot elongate the limitation period.

8. As regards main merits of the case, the counsel for the respondents has taken through the entire impugned order (Annexure-1) with particular reference to para (g) as well as penalty made paragraph wherein it was stated that the applicant in connivance with some other officials/officers had created records for which inquiry has been set up to take the disciplinary action against these arraying officials/officers. He is, therefore, contended that O.A. is liable to be dismissed.

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9. In the course of arguments, a specific question was put to the counsel for the applicant as to under what rules and regulations, he seeks the reliefs. The applicant's counsel, however, was unable to make this question as he has only stated that his is the case of continuance of the applicant in employment and payment of salary to the past period.

10. We have considered the entire case and perused the pleadings.

11. As regards the preliminary objections made by the counsel for the respondents, they are to be outrightly rejected on account of following:-

(a) Impleading Union of India is not a sine quanon to file the O.A. as in this case no relief has been claimed from the Secretary, Government of India for the purposes of dealing with this case. The two respondent namely the Regional Provident Fund Commissioner (respondent no.1) and Enforcement Officer (respondent no.2) are adequate.

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(b) As regards limitation, even though the matter pertains to the year 2001, a fresh cause of action having arisen by virtue of the impugned order dated 18.5.2004, the bar of limitation does not come in the way of the applicant.

12. As regards main merits of the matter, however, the case has to be rejected in view of the clear statement made by the respondents vide impugned order. The applicant could produce the written order for two spells of 89 days each and subsequently no order had been produced. This confirms the fact that there are no subsequent sanction from the Headquarters for continuance of the applicant as daily wages labourer. Though Annexure nos. 7 & 8 could come to the rescue of the applicant to some extent, the same cannot render of assistance to support the case of the applicant for continuance in employment inasmuch the authority competent to proof the engagement of a casual labourer had been his approval. In fact the respondents have already stated in the impugned order that the documents produced by the applicant having been found to be 'created', the action is contemplated against the arraying official/officers. As such the applicant cannot

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be allowed to take any advantage of Annexure nos. 7 & 8 for the purposes of continuance in the employment.

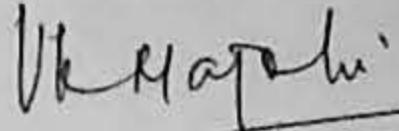
13. At the same time, if the applicant had worked during the period beyond May, 2001 as stated in Annexure nos. 7 & 8 , it becomes necessary to consider his case for payment of salary during this period as if he had actually worked. The attendance register does reflect that the applicant had worked, though without sanction of the competent authority. However, the applicant had performed the duties on the orders of the authority of his immediately superior namely E.O. Circle I, Ghaziabad. As such, it is made clear that he is entitled to wages for the number of days actually he had worked irrespective of whether there was any approval from the competent authority. His main relief namely continuance in the employment is, however, liable to be rejected as the applicant could ^{cite} neither ~~side~~ any rules or regulations under which he seeks relief nor can ^{be} he stated to have worked for 240 days or more (206 days in 5 days week) in the year 2001.

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14. With the above reasons, the O.A. fails and is accordingly dismissed. No costs.



MEMBER-J

VICE CHAIRMAN 28.3.03

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