

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.497 OF 2005

THRUSDAY, THIS THE 8TH DAY OF MARCH, 2007

HON'BLE MR. P. K. CHATTERJI, MEMBER-A

Chandra Prakash Tiwari,
S/o Late MathuraPrasad tiwari,
R/o Village Niensar, Post: Teghara,
(Peppe Ganj), District-Gorakhpur.

..... .Applicant

By Advocate : Shri S. K. Om

Versus

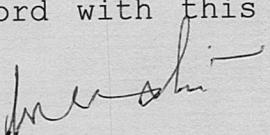
1. Union of India through Secretary,
Ministry of Finance, Government of India,
New Delhi.
2. The Additional Director,
Directorate of Revenue Intelligence,
D-Block, IP Bhavan (7th Floor),
I.P. Estate, New Delhi.
3. Deputy Director,
Directorate of Revenue Intelligence,
2/31, Vihsal Khand, Gomti Nagar,
Lucknow.
4. Intelligence Officer,
Directorate of Revenue Intelligence,
Intelligence Cell, Gorakhpur.

..... .Respondents

By Advocate : Shri Tej Prakash

O R D E R

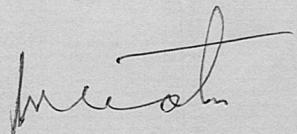
The applicant on this OA has approached this Tribunal for quashing the decision of the respondents to terminate his job as a Casual Labour (Peon). It has been stated by the applicant that he was engaged on a continuous basis as a Casual Employee (Farrash) at the office of respondent no.4 since 1992. The applicant has attached different record with this OA



to substantiate that the respondents acknowledge his good service on many occasions. This happened not once but several times.

2. The applicant was hoping that due to such long and continuous engagement as Casual Labour he would be considered for temporary status and subsequent regularization as per the rules. There were several other persons who were being engaged as Casual Labour by the same respondents. The applicant has attached a letter dated 02.02.2005 by the Deputy Director, Directorate of Revenue Intelligence in which the applicant has been engaged from January 2005 to April 2005 along with some other persons namely Vimal Kumar, Uchit Sav and Babu Lal Paswan. The applicant has further brought to my notice that all these three persons filed one OA in Patna Tribunal and the case was decided in their favour. The relevant portion of the judgment of Patna Bench reads as under:-

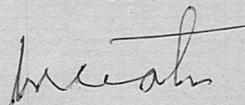
"Resultantly, the respondents are hereby directed to confer/grant temporary status to the applicants from the date when they became eligible for the said purpose as per Scheme of 1993. Thereafter extended from time to time and thereafter to consider their cases for their regularization against the available vacant posts while passing appropriate reasoned and speaking order within a period of four months from the date of receipt/production of a copy of this order. However, it is made clear that while conferring temporary status to the applicants from the due date, the applicants would not be entitled for back wages to be paid to such casual labourers who attains temporary status on the principle of 'No work No Pay' till the date of passing of the order by the respondents."



3. The respondents filed a writ petition to the Hon'ble High court of Patna Bench. However, the writ petition was dismissed by the Hon'ble High Court in its order dated 21.09.2005 in which it has been observed inter alia by the Hon'ble High Court.

"The Hon'ble Apex Court as well as this Court on several occasions have deprecated employment of temporary or casual workers for the post/works of permanent nature as would be apparent from the decisions in the cases of Bhagwati Prasad(supra), Jacob M. Puthusparambi 1(supra) and State of Haryana and Others etc. (supra) and for that the scheme of 1993 was provided, but disregarding the same the authorities concerned appointed the said respondents no.2 to 4 on the post/works of permanent nature as would be apparent from their continuous and uninterrupted service for 8-10 years. Hence in the aforesaid circumstances even if the Scheme of 1993 was not applicable in the instant case, it was the duty of the authorities concerned to take positive steps in the case of said respondents in accordance with the guiding principles laid down by the Hon'ble Apex Court in the case of State of Haryana and Others etc. (supra)."

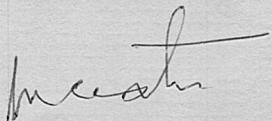
4. The learned counsel for the applicant further stated that after the writ petition was dismissed by the Hon'ble High court one SLP was filed by the respondents which was also dismissed by the Hon'ble Supreme Court on 04.07.2006. By placing these facts the learned counsel for the applicant argues that in number of cases the Apex Court has pronounced that when a court has given a favorable decision in respect of certain applicants, the benefit of the same should be accorded to all persons similarly placed by the appropriate authority without waiting for all such people to approach the Tribunal/Courts separately in the matter. Learned counsel for the applicant,



therefore, says that on their own motion the respondents should have extended the benefit of the judgment of Patna Tribunal to the applicant.

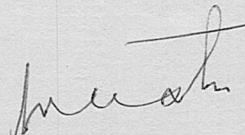
5. However, instead of doing this, the respondents decided to terminate the engagement of the applicant for a very trifling reason. The applicant says that there was no written order and merely for his absence from work on a day i.e. 17.02.2005 for unavoidable reasons the respondents decided to terminate his engagement. This point, however, has been replied to by the respondents in the CA in which they have annexed the letter dated 24.02.2005. In the said letter it has been stated that the applicant absented himself from work from 15.02.2005 and when an enquiry was made on telephone regarding his absence the applicant behaved in a rude manner. As his job was merely contractual in nature, and moreover, the work of office suffered due to the absence, the respondents decided to engage another labour in his place on 18.02.2005.

6. The respondents further contradicted the points made by the applicant and said that the engagement of the applicant was on a contractual basis and, therefore, it was not covered under the circular of the DOPT dated 10.09.1993. They have also contradicted the claim of the applicant that he was engaged continuously from 1992 and stated that he was engaged from 01.04.1997 (Para 5 and 15 of the CA). However, the learned counsel for the respondents have admitted that



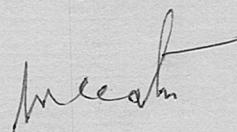
his engagement from 01.04.1997 till the date of his termination has been more or less continuous barring a few broken spells. The learned counsel for the respondents, however, was not very sure whether the three other persons named in the above paragraphs Shri Vimal Kumar and others were similarly situated as the applicant in the present OA or not when it was pointed out to him that if they are similarly placed vis-à-vis the applicant the benefit of the judgment of Patna Tribunal subsequently upheld by the Apex Court, would obviously be extended to the applicant. It is also a material point in this OA that the termination of the engagement of the applicant from his service took place much after the decision of the Tribunal at Patna came out. For that reason it can reasonably be presumed that if the present applicant is similarly placed as three other persons named above, the right of the applicant for grant of temporary status and subsequent regularization had also accrued to him by virtue of the same decision, before his job was terminated for a short absence.

7. The learned counsel for the applicant however, contends that it would be necessary to quash the oral order of termination, as it was illegal and arbitrary. He has also cited the decision of this Tribunal in OA No. 771/01 and O.A. No. 09/01 passed on 22.11.2004 and 16.05.2006 respectively. In both these decisions the Tribunal quashed the order of termination passed without any written order.



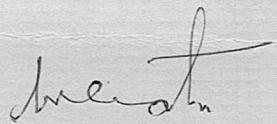
8. The learned counsel for the applicant has further pleaded that allegation for absence without notice was mere eyewash as the respondents merely wanted to get rid of him for the simple reason that he would thereafter press for temporary status and regularization etc. on the basis of his long and continuous engagement. After his short absence he waited for his call but it was never done. Therefore, the applicant has requested the Tribunal not only to quash the order of oral termination but also to consider grant of his temporary status and subsequent regularization.

10. The learned counsel for the respondents, however, stated that this was not an oral termination as would be evident from Annexure-2 of the CA. I have taken a look at the same. However, it appears that no order of termination was served on the applicant who was engaged, though as a casual labour, by a formal letter of engagement. I am, therefore, of the view that the decision of this Tribunal in the two OA's referred to above should also extended to the applicant. More important in my view is that fact that right to be considered for temporary status was presumably acquired by the applicant before the termination through the judgment of Tribunal at Patna. Whether the applicant deserves to be given the benefit of the judgment, being similarly situated, needs to be examined urgently.



11. Having considered the matter and after applying my mind to the full facts of the case and the relevant records I am of the view that there is merit in the OA which deserves to be allowed. The respondents are directed to reinstate the applicant in the place where he was being engaged. The applicant, however, will not be entitled to any allowances during the period of break i.e. the date from which he was terminated to the date of his re engagement. The respondents will further consider the case of the applicant for temporary status in the light of the decision given by the Patna Tribunal. If the facts and circumstances of the present applicant is found to be similar to that of Shri Vinod Kumar, Uchit Sav and Shri Babu Lal Paswan then the case for temporary status and regularization should also be considered on the same footing.

12. With these observations, the OA is disposed of. This may be done within a period of four months from the date of receipt of a copy of this order. No Costs.



Member-A

/ns/