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Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No.19 of 1988

Canteen Stores Department
Employees Union & 9 others ... Applicants.

Vs.

Maj.Gen.V.K.Chaudhary,
Chairman and others ... Respondents.

Hon.G.S.Sharma, JM
Hon.K.J.Raman, AM

(By Hon.G.S.Sharma, JM)

In this Original Application (hereinafter referred to as the petition) filed u/s.19 of the Administrative Tribunals Act the Applicants have prayed that the respondents be directed to allow the Applicant nos. 2 to 8 to continue in service without giving effect to the impugned order dated 25.11.1987 terminating their services and after quashing the said impugned order, the Applicants be allowed the benefit of regular employees from the dates of their initial appointment in service.

2. The Applicant no.1 is the registered trade Union of the employees of the Canteen Stores Department (for short CSD) Lucknow and Applicant Nos. 2 to 8 are its members. It is alleged that the Applicant Nos. 2 to 8 were appointed as Lower Division Clerk on daily wages on different dates commencing from 29.1.1982 to 27.7.1984 and by 25.11.1987 when their services were terminated they had already completed their service of more than 240 days with certain breaks and in view of the provisions of Industrial Disputes Act (for short ID Act) they acquired a right to continue in service and their services could not be dispensed with by the respondents arbitrarily otherwise than in accordance with law. There are still vacancies of LDCs in the CSD at Lucknow and elsewhere in the country and in case the

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Applicants could not be absorbed at Lucknow, they could be transferred to other places. It is also alleged that the Applicants are entitled to be absorbed in the CSD as regular employees with all benefits attached to their service.

3. In the reply filed on behalf of the respondents by the Manager CSD Depot, Lucknow, it was admitted that the Applicants had put in 240 days service in a calender year before termination of their services but the rights claimed by the Applicants on this basis were denied and it was stated that the CSD employees are governed by F.R.&S.R. as per Govt of India's letter no.B.O.C.C.S/00866/Q/CAN/201/S/D (Mov) dated 9.3.1981 and the ID Act has no application to them. As the Applicants were appointed in short term or temporary vacancies on daily wages and they are not entitled to be absorbed in service without their selection by Staff Selection Commission, they have no right to file this petition. The candidates sponsored by the Regional Employment Exchange alone are eligible to appear in the selection held by the Staff Selection Commission and without being selected by the said Commission, the Applicants cannot claim their absorption in regular service. The Applicants having been allowed to work on daily wages in short term temporary vacancies, they had no right to continue in service indefinitely and there has been no infringement of their rights or the provisions of constitution in their case and their petition is liable to be dismissed.

4. In the rejoinder, it has been alleged by the Applicants that the O.M. dated 12.11.1986 issued by the Central Govt. making the provisions for appointment of the staff of CSD through Staff Selection Commission had come into force from 1.8.86 and as it had no

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retrospective effect, the Applicants who were appointed between 1982-84 and were already in service, cannot be asked to appear in the selection held by the Staff Selection Commission and as the names of the Applicants were registered in the local Employment Exchange at the time of their initial appointment, they are entitled to be absorbed in service without any examination and in view of the principle of promissory estoppel, the respondents cannot be allowed to change the side and ask the Applicants to appear in the test and there has been a discrimination against the Applicants and infringement of Articles 14 and 16 of the Constitution of India,
^{and}
~~in their case~~, they are entitled to the reliefs claimed.

5. The Applicants have not produced any letter or order of their appointment in service and it appears that they had started working on daily wages only under oral orders. The Applicants have also not furnished any other material to show the terms and conditions of their appointment and merely because they had completed the service of 240 days on daily wages, they felt that they have acquired a right to continue in service. With their petition, the Applicants did not file any relevant document to support their case. The only document filed by them is the order dated 25.11.1987 of the Govt. of India, Ministry of Defence, Canteen Stores Department reviewing the establishment of XXIX Area Depot of CSD by S.I.U. They, however, filed certain documents with their rejoinder and according to them, ^{are}
~~their services~~ to be government by the said documents. Annexure RA-1 is the copy of a statement of the Manager,

CSD Lucknow about the daily rated LDC employees engaged in January 1988. This shows that Applicant nos. 2 to 8 were in employment as daily rated workers in January 1988 and their names were registered with the Employment/D.S.S and Board. Annexure A2 is again the letter dated 16.11.1984 of the Govt. of India, CSD regarding the recruitment of staff and it provides that the direct recruitment should be made only from the candidates sponsored by the Employment Exchange. This letter further provides that the daily rated staff already working in the Depots irrespective of the fact whether they have been sponsored by the Employment Exchange or not, will, however, be considered along with other candidates for inclusion in the local panels and will continue to be engaged on daily wages against the temporary vacancies. The Depot Managers were authorised to engage clerical staff on daily wages against the temporary posts only through the Employment Exchange. This letter simply prescribes the mode of the appointment of the staff on daily wages and does not lay down any other terms and conditions of their employment. Annexures R-3 dated 21.6.84 by the same department specifically governs the engagement of daily rated staff and provides that the daily rated staff should only be engaged from amongst the candidates sponsored by the local Employment Exchange/DSS and A. Board etc. This letter too does not lay down any terms and conditions of the daily rated staff engaged by the CSD Depots. The annexures 2 and 3 do not make any provision for the permanent absorption of the daily rated staff in the department and in the absence of such provision, it has to be deemed that they simply permitted the appointment of the staff on daily wages for short term from the candidates sponsored by certain agencies. It is, therefore, incorrect on

the part of the Applicants to contend that they had acquired any rights on the basis of these letters/orders.

6. The Applicants admit that by issuing O.M. No.6/14/86-CS (II) dated 12.11.1985 the staff, even for the CSD Depots, has to be appointed through Staff Selection Commission. There is no question of retrospective operation of this O.M. and it should apply to all those who want to be selected as Clerk for any department covered under this O.M. and it will not make any difference if any body is already working in some department on purely adhoc basis or on daily wages. We do not agree with the contention of the Applicants that this O.M. does not apply to them and they had acquired a right to continue in service on the basis of their past service for more than 240 days. In our opinion, this case is fully covered by the decision of the Jabalpur Bench of the Tribunal in O.A.No.322 of 1987 Canteen Stores Department Employees Union and others Vs. Union of India and others decided on 28.7.1988. In that case as well, the Applicants had claimed the benefit of their working for more than 240 days on daily wages in the CSD Depots as LDCs and had claimed the benefit of provisions of S.25-B of the ID Act. Some of them had appeared in the examination held by the Staff Selection Commission but had failed. In a well considered judgment, the Jabalpur Bench had held that the Applicants being daily wagers did not hold any civil post and as they were being paid from the contingency fund and are

not the holders of the civil posts, they ~~can~~ ^{could} not approach the Tribunal for redressal of their grievance. In case the ID Act applies to the Applicants, their remedy is to approach the Industrial Tribunal first and their remedy did not lie before this Tribunal. It was also held that as most of the Applicants had failed to successfully go through and pass the prescribed procedure of the Staff Selection Commission, they could not be expected to be regularised until they do so. We see no ground to differ with the view taken by the Jabalpur Bench and we are of the view that the Applicants cannot claim permanent absorption or regularisation in service without undergoing the formality of selection through the Staff Selection Commission and they are not entitled to any relief.

7. Reliance has been placed on behalf of the Applicants on certain case laws in support of their case. Though the same are not applicable to their case, we will like to cite them here. In Surya Narain Yadav Vs. Bihar State Electricity Board (A.I.R.1985 S.C.-941), applying the principle of equitable doctrine, the Hon'ble Supreme Court had directed the Bihar State Electricity Board to regularise the services of the trainee engineers on the ground that some of them were getting age barred and when the Board was reeling under a strike of its employees, these trainee engineers had stood by the Board to keep up the generation and distribution of the electricity and the Board had decided to absorb them on permanent basis but initially on a probation of 2 years without conducting any further examination and the trainee engineers had continued in service since then. In our opinion, the position of the trainee engin-

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eers was altogether different than that of the Applicants before us and as they are not similarly situated, they are not entitled to the benefit of the principle ~~of~~ adopted in that case.

8. In Randhir Singh Vs. Union of India (A.I.R. 1982 S.C.-879) applying the principle of equal pay for equal work the Hon'ble Supreme Court had directed that the Drivers/Constables of the Delhi Police Force be treated on par with the Drivers of the Railway Protection Force in the matter of pay. The question before us is not of equal pay for equal work.

9. In U.P. Income Tax Department Vs. Union of India (A.I.R. 1988 S.C.-517, the daily wages employees of the Income Tax Department working for nearly 8 years or more were ordered to be paid at the rate equivalent to minimum pay in pay scale of the regularly employed workers in the corresponding cadres and the Govt. was directed to prepare a scheme for absorbing such employees. The Applicants have not worked as daily wagers for such a long time and when they were offered the opportunity to appear in the selection held by the Staff Selection Commission for their absorption, they refused to avail the same and as such, their complaint regarding non-absorption is not correct. In Jaipal Vs. State of Haryana (A.I.R.1988 S.C.-1504) again the doctrine of equal pay for equal work was applied by the Hon'ble Supreme Court in the case of the Instructors working in Adult and Non Functional Educational Scheme in Haryana. Even the principles laid down in this case are not applicable to the case before us. The question of promissory estoppel raised by the Applicants in this case is also not avail-

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able to them as in our opinion, there is no such estoppel in this case. Having thus carefully considered the entire case, we are of the view that the Applicants have failed to establish their case for the reliefs claimed and their petition has no merit.

10. The petition is accordingly dismissed without any order as to costs.

John

MEMBER (A)

Sub-arms

MEMBER (J)

Dated: May 18, 1989

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