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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration D.A. No.645 of 1988

Vinod Mai Sairaha ..... Applicant

Versus

Divisional Engineer (Telephones)  
Sultanpur & Others ..... Respondents

Hon.Mr.Justice K.Nath, V.C.

Hon.Miss Usha Savera, A.M.

(By Hon.Mr.Justice K.Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for a direction to respondents to put the applicant to work and also to <sup>pay</sup> the wages to the applicant by implementing the judgement dated 27.10.87 of the Hon'ble Supreme Court in the case of Daily Rated Casual Labours in P&T Department Versus Union of India & Others reported in 1988(1) ATJ 99.

2. The applicant was initially engaged as a Casual Labour in the P & T under Junior Engineer(Telephones) <sup>is</sup> at Fatehpur who/under the control of Sub Divisional Officer Telegraphs at Allahabad, respondent No.3. The period of engagement commenced from October, 1981 but there were several broken periods, the last date of his working was 6.5.1988. The duration of working of the applicant as Casual Labour as apparent from the application and the counter is as follows :-

- From October, 1981 to September, 1982, he worked for 334 days in broken period without any continuous period of 120 days or more.
  - Between October, 1985 to January, 1986 he worked for 120 days in broken periods
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- From April, 1986 to March, 1987 he worked for 295 days in broken periods which included one continuous period of 184 days from August, 1986 to January, 1987.
- Between April, 1987 and 6.5.88, when he was ceased, he worked for 390 days in broken periods with one continuous period of 306 days from April, 1987 to February, 1988.

3. The applicant's case is that he was orally ceased from work from 7.5.88 without any justification. He filed this application before this Tribunal on 24.5.1988. The respondents' case is that the applicant absconded of his own accord from 7.5.1988.

4. It is next urged by the respondents that on 23.9.1988 a general notice was issued calling upon those Casual Labours to report for duty who had ceased after 6.5.1988 but the applicant did not turn up. The applicant's case is that he had no knowledge of any such notice and that he had already filed this case on 24.5.1988.

5. We have heard Km.Sadhna Srivastava for the applicant and Shri Ashok Mohiley for the respondents and have been taken through the record. We are unable to accept the respondents' case that the applicant had absconded from 7.5.1988. Apparently there is no reason for the applicant to have absconded when he had worked for a very large number of days split over almost several years; some of the periods included continuous periods of working for 184 days (from August, 1986 to January, 1987) and 306 days (from April, 1987 to February, 1988). Indeed, the institution of this case on 24.5.1988 leaves no manner of doubt that the applicant did not abscond from engagement.

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6. It is quite likely that since the applicant was ceased to work since after 6.5.1988, he was not aware of the general notice dated 23.9.88 inviting the ceased Casual Labours to report for duty. Moreover, the rights of the parties are to be determined on the date of the institution of the case i.e. 24.5.1988. The issue of general notice on 23.9.1988, if at all, indicates an intention of the Department to re-engage those Casual Labours who had ceased from 6.5.1988; obviously, it includes the applicant. It may be said therefore that the respondents are agreeable to re-engage the applicant. Moreover, we do not think that in the circumstances of the present case, the applicant should be deprived of his continued engagement after 6.5.1988. The applicant therefore certainly deserves to be reinstated.

7. The next question concerns absorption of the applicant in the service of the Department. According to the respondents, the Casual Labours who have been ceased would be absorbed as far as possible depending upon vacancies and seniority. It is pointed out that since the applicant has been absconding he was losing his seniority every now and then. Be that as it may, the claim of the applicant for absorption cannot be ignored not only because the Department is agreeable to consider the ceased employee's re-engagement and absorption but also because the Supreme Court had specifically directed, in the case of Daily Rated Casual Labours in P&T Department (supra), that the Department

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must prepare within eight months a scheme on rational basis for absorbing, as far as possible, the Casual Labours who had been continuously working for more than one year in the P & T Department. The decision of the Supreme Court was rendered on 27.10.1987. It was expected therefore that by June, 1988 the Department could have prepared a scheme of absorption. The applicant is certainly entitled to be considered for absorption in accordance with the said scheme subject of course to his seniority and the vacancy position. The scheme has not been produced before us and the question of seniority as well as the availability of vacancy is to be determined by the Department itself. All that we can say at this stage is that the respondents must consider the applicant's case of absorption in accordance with the scheme. The next grievance of the applicant is regarding the quantum of wages. The applicant has urged that he ought to be paid wages at the rate of the minimum pay in the pay scale given to regular employees <sup>doing</sup> <sub>or</sub> similar job in the Postal Department. This is the direction of the Supreme Court contained in the above mentioned case of Daily Rated Casual Labours in the P & T Department. Indeed, it is admitted in the Counter Affidavit that wages were being paid at the rate of minimum pay in the relevant pay scale of regular employees; it was added that arrears ~~urged to~~ have been paid with effect from 5.2.86. This being the situation, we should direct the respondents to pay the appropriate arrears for the period from the last continuous appointment of the applicant i.e. from

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April, 1987 till termination on 6.5.1988 on the basis indicated above.

8.            The applicant has also claimed benefit of Section 29-F of the Industrial Disputes Act on the basis that the applicant had worked for 295 days in broken periods between April, 1986 and March, 1987 and again for 390 days in broken periods between April, 1987 and April, 1988 which have been more than 240 days in each of the two years between April, 1986 and April, 1988. It is not the respondents' case that the Industrial Disputes Act does not apply to the applicant; the pleaded case is that the applicant cannot get the benefit of Section 25-F of the Industrial Disputes Act because he had absconded from work. We have already held that the applicant did not abscond, but had been wrongly disengaged. We must hold therefore that within the limited controversy in this case on the subject, the applicant must get the benefit of Section 25-F of the Industrial Disputes Act from the date when he was ceased to work.

9.            These are all the points in this case which must be decided in the light of our findings.

10.           The petition is allowed and the respondents are directed to reinstate the applicant as soon as he reports for duty; the applicant shall be deemed to have continued in service despite the impugned cessation and shall be paid back wages for the period since cessation. The respondents shall also pay the arrears of the period since April, 1987 at the

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rate in accordance with the directions of the Supreme Court in the case of Daily Rated Casual Labours in P & T Department (supra) and shall also consider the case of the applicant for absorption in accordance with the scheme that may have been framed in compliance of the orders of the Supreme Court in the aforesaid decision. The respondents shall pay the applicant's arrears of wages within a period of two months from the date of receipt of the copy of the judgement and shall also consider the case of absorption as early as possible in the light of the scheme. Parties shall bear their costs.

*L. Lawrence*  
Member (A)

*GR*  
Vice Chairman

Dated the 11<sup>th</sup> January, 1991

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