

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

Registration O.A. No. 477 of 1993

Prakash ... .. Applicant.

Versus

Union of India  
and others ... .. Respondents.

...

Hon. Mr. S. Das Gupta, Member(A)  
Hon. Mr. T.L. Verma, Member(J)

( By Hon. Mr. S. Das Gupta, Member(A) )

The reliefs prayed for by the applicant in this O.A. No. 477 of 1993 filed under Sec. 19 of the Administrative Tribunals Act ~~are~~ that the orders dated 15.2.1993 (Annexures- A 1 & A 2) by which the services of the applicant were sought to be brought to an end w.e.f. 31.3.1993 ~~be quashed and~~ the respondents be directed to allow the applicant to continue in service and regularised his services in the grade of Rs. 750-940/-.

2. Since the pleadings of this case were complete and the counter affidavit and rejoinder affidavit exchanged, with the consent of the counsel of both the parties, it was decided to ~~hear~~ the application finally and dispose of the same.

3. The brief facts of the case are that the applicant was appointed as work-charged Safaiwala in the All India Radio project at Jhansi. The applicant was selected ~~for~~ this post after being sponsored by the Employment Exchange and a communication was issued to the applicant by the respondents under their letter dated 12.9.1990 (Annexure- A 3) in which it was

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proposed to appoint the applicant in the pay scale of Rs. 750-940 for a specific period. It was also mentioned therein that such proposed appointment would be fully temporary and under no circumstances, any right will accrue to the appointee for regular appointment. The applicant accepted the offer and reported for duty on 25.9.1990.

4. The appointment of the applicant which was initially made for specified period was extended from time to time, the last extension being given upto 31.3.1993 <sup>by</sup> the impugned letters dated 15.2.1993 (Annexures-A 1 & A 2). The petitioner had been working since 25.9.1990 uninterruptedly without any break till 31.3.1993. The applicant has approached this Tribunal seeking relief against the order of the respondents terminating his services.

5. The substantive grounds on which the petitioner has assailed the impugned orders are;

(i) that he has worked for more than 240 days and is thus fully entitled to be regularised;

(ii) that Safaiwala's post is not going to be abolished. On the contrary, the number of posts is going to be increased;

(iii) the impugned orders are violative of Articles 14 & 16 of the Constitution;

(iv) the provisions of Section 25(n) of the Industrial Disputes Act have not been followed before discharging the applicant.

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6. In the counter affidavit, the respondents have resisted the claim of the applicant for regularisation in service on the ground that he was appointed as work-charged Safaiwala against the labour provisions made in the detailed technical estimates in the Execution of the All India Radio Project at Jhansi. The terms of his appointment were clearly specified in the offer letter dated 12.9.1990 (Annexure- A 5) and the petitioner had joined his duties after accepting these conditions. The project was for specified period and since the same has been completed, there is no work left for the applicant; the order terminating his services were issued on the basis of the terms and conditions of his appointment. They have further stated that there is no regularly sanctioned post in the project, the execution thereof being a one-time exercise. The project having been completed, it is not possible to consider the regularisation of the applicant's services in the absence of any regular sanctioned post. The respondents have also averred that the applicant was sanctioned a retrenchment compensation of Rs. 2229/- which has not been specifically denied by the applicant in his rejoinder affidavit.

7. We have heard the learned counsel for both the parties at some length and carefully perused the records.

8. There is no dispute about the fact that

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the appointment of the applicant was for a project initially for a specified period which was extended from time to time and that the project has come to an end by the completion of its execution. The point which is to be considered is whether the applicant has acquired any right for regular appointment. Under these circumstances, The learned counsel for the applicant, during the course of argument, sought reliance on the decision of the Supreme Court in the case of State of Haryana and others Vs. Piara Singh and others, 1992 SCC (L&S) 825 . The learned counsel urged that the judgment of Piara Singh's case clearly establishes the right of even a work-charged employee to be regularised in service.

9. We have carefully perused the judgment of the Supreme Court in Piara Singh's case. We find that in this case, the Supreme Court held that the High court had acted rather hastily in directing wholesale regularisation of all persons who have put in one year service and that too ~~on~~ conditionally. Specifically with regard to the members of the work-charged establishment, <sup>the Judgment quoted</sup> the pronouncement by the Supreme Court in the case of Jaswant Singh Vs. Union of India <sup>which</sup> reads as follows;

"A work-charged establishment broadly means an establishment of which the expenses, including the wages and allowances of employees are borne on

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the staff, are chargeable to 'works'. The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the work.

The entire strength of labour employed for the purposes of the Beas Project was work charged. The work charged employees are engaged on a temporary basis and their appointments are made for the execution of a specific work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. They do not get any relief under the payment of Gratuity Act nor do they receive any retrenchment benefits or any benefits under the Employees State Insurance Schemes.

But though the work-charged employees are denied these benefits, they are industrial workers and are entitled to the benefits of the provisions contained in the Industrial Disputes Act. Their rights flow from that special enactment under which even contracts of employment are open to adjustment and modification. The work-charged employees, therefore, are in a better position than temporary servants like the other petitioners who are liable to be thrown out of employment without any kind of compensatory benefits."

The Supreme Court in Piara Singh's case, however, did not consider <sup>any further</sup> ~~one~~ month the rights of the work-charged employees for regularisation in view of certain orders which had been issued by the State

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Government concerned stipulating interalia therein certain conditions regarding regularisation of the work-charged employees.

10. It will, therefore, be seen that the decision Piara Singh's case does not come to the support of the contention of the learned counsel for the applicant that the work-charged employees acquire a right for being regularised in service. On the other hand, the respondents have referred to the decision of the Supreme Court in the case of Director Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, AIR 1992SC 2070. The Supreme Court in this case interalia held;

" Where the appointment is purely on adhoc basis and is contractual and by efflux of time, the appointment comes to an end, the person holding such post can have no right to continue in the post. This is so even if the person is continued from time to time on 'ad hoc' basis for more than a year. He cannot claim regularisation in service on basis that he was appointed on adhoc basis for more than a year. The management was directed to consider sympathetically if regularisation in service is possible."

11. In the instant case also, the applicant's services were for specified period and the same was extended from time to time. By efflux of time, the appointment came to an end. Although Smt. Pushpa Srivastava's case can be distinguished from the present application, the ratio in Pushpa Srivastava's

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case would appear to be applicable to the present applicant, since admittedly, the project for which the applicant was appointed has come to an end within <sup>4</sup>the requirement of the services of the applicant.

12. We are, therefore, of the view that the applicant did not acquire any vested right for regularisation merely because his services were extended from time to time and he actually worked for <sup>more</sup> ~~really~~ two and half years. In this view of the matter, the termination of service of the applicant cannot be taken as an arbitrary or colourable exercise of the powers by the respondents and, therefore, cannot be held to be violative of Articles 14 & 16 of the Constitution of India.

13. As regards of applicability of Section 25(n) of the Industrial Disputes Act, 1947, the said section is contained in Chapter-V-B of the Act which is applicable only to <sup>Industrial</sup> ~~casual~~ establishment (not being the establishment of a seasonal character or in which the work is performed only intermitently), in which not less than 100 workmen were employed on average per working pay in the preceding 12 months. In the present case, the applicant has not furnished sufficient data regarding the establishment in which he was working to bring it within the ambit of Chapter-V-B of the Industrial Disputes Act, 1947,

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In the absence of the relevant data, we can only presume that at best the provisions of Section 25(f) of the said Act shall be applicable in this case. In terms of this Section, no workman employed in any industry who has been in continuous service for not less than 1 year<sup>s</sup> shall be retrenched~~ed~~ only <sup>if</sup> <sup>the</sup> <sup>establishment</sup> <sup>has</sup> <sup>been</sup> <sup>given</sup> <sup>one</sup> <sup>month's</sup> <sup>notice</sup> or in lieu paid wages for the notice period and until<sup>x</sup> he has <sup>been</sup> paid compensation equivalent to 15 days' average pay for every completed year of continuous service or any period thereof in excess of 6 months.

14. We find that the respondents had given the applicant more than one month's notice by the impugned letter dated 15.2.1993 (Annexure- A 1) and they have also paid Rs.2229 /- as compensation. We assume that the compensation has been correctly worked out in terms of the relevant provisions of the Industrial Disputes Act, 1947 since the quantum thereof has not been disputed, by the applicant. We are, therefore, of the view that there has been no violation of statutory provisions before discharging the applicant.

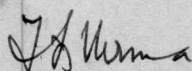
15. We lastly come to the point raised by the applicant that the post of Safaiwala is not going to be abolished and on the contrary the number of posts are going to be increased. In support of this contention, he has annexed a copy of the

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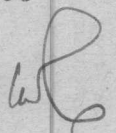


advertisement at Annexure- A 9. It would appear that on completion of the project there is <sup>now</sup> neither a regular establishment of All India Radio, Jhansi which will require Safaiwalas to clean its premises and for this purpose, they want to engage Safaiwalas on contract basis. It is for the concerned authorities to decide how the ~~number~~<sup>of</sup> work should be got done and we are not inclined to give a direction that they must create regular permanent post for this purpose. We cannot, however, but observe, as was done by the Supreme Court in Pushpa Srivastava's case that it would be open to the respondents to consider regularisation of the services of the applicant, if they so desire. This should not be difficult in view of the fact that the applicant has clearly stated in his petition, <sup>that he</sup> is prepared to work in any post, in any of the establishment under the Respondents. While, it would be just and fair on the part of the respondents to do so, we make it clear that it is not to be understood that we have directed the regularisation.

16. With the above observations, the petition is disposed of. There will be no order as to Costs.



Member(A)



Member(A)

Dated: 10 February, 1994.

(n.u.)