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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 2nd DAY OF MARCH, 1995

Original Application No. 395 of 1994

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. S. DAYAL, MEMBER(A)

Pawan Dixit, r/o 7/35, Tilak
Nagar, Kanpur.

.... Applicant

BY ADVOCATE SHRI O.P. GUPTA

Versus

1. Executive Engineer (Valuation) Income Tax
Department, 7/35 Tilaknagar, Kanpur.
2. Commissioner Income Tax, Kanpur, Aaykar
Bhawan, 10/69 Civil Lines Kanpur- 208001
3. The Central Board Direct Taxes, Government
of India, New Delhi.
4. Union of India through Secretary, Ministry
of Personnel, Public Grievances and Pensions
(Department of Personnel & Training) Government
of India, New Delhi.

.... Respondents

BY ADVOCATE SHRI AMIT STHALEKAR

O R D E R (Reserved)

JUSTICE B.C. SAKSENA, V.C.

Through this O.A. the applicant challenges an order dated 25.2.94 passed by the respondent no.2 through which respondent no.1 was directed to remove the applicant from service. The other relief sought is a direction to the respondents to grant the applicant temporary status w.e.f. 10.11.93 alongwith all consequential benefits and also to pay the applicant minimum pay scale which is prescribed for regular group 'D' staff.

2. The facts in short are that the applicant was engaged as a casual labour w.e.f. 25.1.1993. He had completed 385

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days service continuously and in the light of the circular dated 27.10.93 he claims that he became eligible for grant of temporary status and regularisation through which a

Scheme of "Casual Labour (Grant of Temporary status and regularisation) scheme" Govt. of India 1993 was formulated by the Department of Personnel and Training by their Office Memorandum dated 10.9.1993.

3. In the counter-affidavit, it has been indicated that the applicant was engaged as casual labour by the Executive Engineer (Valuation), Income Tax Department which is alleged to be wholly contrary to the Rules. The said engagement which was alleged was without prior permission of the Head of the department namely Commissioner of Income Tax, Kanpur. It has been denied that the applicant's engagement was through the local Employment Exchange. It has further been averred that no formal appointment letter has been issued to the petitioner. It has further been averred in the counter-affidavit that under the said scheme, those casual labours who had completed one year service as on 1.9.93 and also having been engaged for atleast 206 days were entitled for grant of temporary status. It is alleged that the applicant although has worked for 206 days but has not completed one year of service as on 1.9.1993 because his engagement is shown to be only on 25.1.93. It has also been indicated that the Executive Engineer had no power to engage the casual labours and it was beyond his powers as Head of Office delegated to him by the Head of Department (Commissioner of Income Tax) under rule 14 of Delegation

of Financial Power, 1978. Since no formal approval had been taken from the Commissioner of Income Tax, Kanpur to engage the petitioner and also since the Commissioner of Income Tax, Kanpur during his visit in the month of September, 1993 and on coming to know of this serious lapse/ departure from Rules by the Executive Engineer issued oral directions to discontinue the petitioner as casual labour.

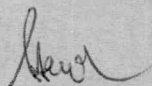
4. No rejoinder affidavit has been filed by the applicant. The learned counsel for the applicant, however, strenuously urged that the illegality/irregularity in the engagement of the applicant was not on account of any reason on his part. He urged that the applicant's services have been terminated on the basis of some illegality found @@@@ by the Commissioner of Income Tax. The applicant cannot be made to suffer for the lapse on the part of the Executive Engineer.

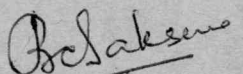
5. The learned counsel for the applicant was unable to indicate anything contrary to the defence set up in the counter-affidavit as far as want of jurisdiction and power of the Executive Engineer to engage the applicant as casual labour is concerned.

6. The learned counsel for the applicant referred to a decision of the Principal Bench in 'Raj Kamal Vs. Union of India and Ors 1990(13) ATC 478. That decision only required a scheme to be prepared for counting temporary status and regularisation. Evidently, the Office Memorandum dated 10.9.93 was issued & pursuant to the direction given in the said decision.

7. The learned counsel for the applicant also cited a decision reported in 1993 SCC(L&S) 730 'D.K. Yadav Vs. J&K Industries. The said decision is also unhelpful.

8. In the facts of the present case in the first place the engagement of the applicant as casual labour by the Executive Engineer had been shown to our satisfaction to have been irregular. Even otherwise, since the applicant had not completed one year of service as on 1.9.93, his case does not fall within the eligibility criterion for regularisation as provided in the scheme. On a pointed question put to the learned counsel for the applicant whether the Office Memorandum on which the claim for regularisation is based, provides for consideration for regularisation on completion of one year period subsequent to 1.9.93. The counsel for the applicant conceded that there is no such provision. The claim for regularisation based on the Memorandum is thus wholly misconceived. There is no merit in the O.A. It is accordingly dismissed. No orders as to costs.


Member (A)


Vice Chairman

Dated: March...^{2nd} 1995

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