

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 509 of 1994

THIS THE...15th DAY OF March 1995

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

HON. MR. S. DAS GUPTA, MEMBER(A)

Govind Das, s/o Shri Bansi Lal,
r/o House No. 103, Orcha Gate Bahar,
Jhansi

.... Applicant

Versus

1. The Director General
Archaeological Survey of India,
Janpath, New Delhi- 11, Under the
Ministry of Tourism, Govt. of
India, New Delhi.
2. The Superintending Archaeologist
Archaeological Survey of India,
Beli Guard Cottage, Gopalganj,
Lucknow.
3. Sanrakchan Sahayak,
Archaeological Survey of India,
Sub-Division Jhansi
Rani Luxmi Bai Mahal, Jhansi

.... Respondents

Alongwith

Original Application No. 510 of 1994

Akhilesh Kumar s/o Shri Raghubar Dayal
r/o village and Post Virgawa, District
Jhansi.

.... Applicant

Versus

1. The Director General,
Archaeological Survey of India,
Janpath, New Delhi-11, Under the
Ministry of Tourism, Govt. of India
New Delhi.
2. The Superintending Archaeologist
Archaeological Survey of India
Beli Guard Cottage, Gopalganj
Lucknow.

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3. Sanrakchan Sahayak, Archaeological Survey of India, Sub-Division Jhansi Rani Laxmi Bai Mahal, Jhansi.

..... Respondents

(3) Original Application No. 511 of 1994

Ramesh Chandra Yadav, s/o Shri Manohar Singh, r/o House No. 103 Orcha Gate Bahar, District Jhansi. Applicant

Versus

1. The Director General, Archaeological Survey of India, Janpath, New Delhi- 11, Under the Ministry of Tourism, Govt. of India, New Delhi.
2. The Superintending Archaeologist, Archaeological Survey of India, Beli Guard Cottage, Gopalganj, Lucknow.
3. Sanrakchan Sahayak, Archaeological Survey of India, Sub Division Jhansi Rani- Laxmi Bai Mahal, Jhansi.

..... Respondents

(4) Original Application No. 512 of 1994

Ashok Kumar, s/o Sri Ram Prasad, r/o House No. 103, Orcha Gate Bahar, District Jhansi.

..... Applicant

Versus

1. The Director General, Archaeological Survey of India, Janpath New Delhi- 11, Under the Ministry of Tourism, Govt. of India, New Delhi.
2. The Superintending Archaeologist Archaeological Survey of India, Beli Guard Cottage, Gopalganj, Lucknow
3. Sanrakchan Sahayak, Archaeological Survey of India, Sub-Division Jhansi, Rani Laxmi-Bai Mahal, Jhansi.

..... Respondents

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(5) Original Application No.513 of 1994

Karan Singh, s/o S/o Sri Bati Lal, r/o
village Mustafa Bara Gaon, Gate Bahar
District Jhansi.

..... Applicant

BY ADVOCATE SHRI SATISH DWIVEDI

Versus

1. The Director General,
Archaeological Survey of India,
Janpath, New Delhi- 11, Under the
Ministry of Tourism, Govt. of India,
New Delhi.
2. The Superintending Archaeologist,
Archaeological Survey of India, Beli
Guard Cottage, Gopalganj, Lucknow.
3. Sanrakchan Sahayak,
Archaeological Survey of India,
Sub-Division Jhansi,
Rani Laxmi-Bai Mahal, Jhansi.

..... Respondents

BY ADVOCATE SHRI AMIT STHALEKAR

O R D E R (Reserved)

JUSTICE B.C. SAKSENA, V.C.

All these Five O.As involved almost identical facts and questions of law. They are, therefore being decided through a common judgment.

2. The applicants were employed as daily-rated casual workers under the Respondent No.3. The applicants allege that they have since the date of their initial engagement ~~and~~ continuously worked as casual worker. They also claim of having become eligible to be considered for regularisation of their services under the provisions of circular dated 26.10.1985 issued by the Government of India

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Ministry of Home Affairs, Department of Personnel and Administrative Reforms, copy of the said circular has been annexed as Annexure 3 to the main O.A and as also been filed alongwith the other O.As. The said circular in effect provides that all casual workers who have put in more than 2 years service with 240 days or more of service during each year in organization observing six days week or casual workers who have put in service with 206 days service in each year in organizations where five days work in a week is observed may be considered for regularization of their services. It is alleged that the applicants submitted a joint representation requesting for regularization of their services. This annoyed the respondent no.3 and an order for terminating their services w.e.f. 7.4.94 was passed.

3. The applicants therefore, besides seeking quashing the order of termination have also sought a relief of a direction to the respondents to regularise their services and absorb them in regular vacancy of class IV employees.

4. A counter affidavit and rejoinder affidavit have been filed.

5. We have heard the learned counsel for the parties.

6. The applicants case is that their work and conduct has been satisfactory and they have not given any chance of complaint to any person or authority.

7. In the Counter-affidavit, this assertion has been denied and it has been alleged that each of the applicant was found indulging in guiding the visitors, wantonly obtaining false complaints from visitors against regular staff. It has also been alleged that they have misbehaved

with the women visitors also and the order for disengagement/termination was passed after a proper inquiry conducted by a competent authority. It has also been stated in the counter-affidavit that each of the applicant had tendered an unconditional written apology on 25.3.94. Copies of the so called written apology and inquiry report dated 7.3.94 have been annexed as Annexures CA-1 and CA-2 to the main O.A as also to the other O.As. Annexure CA-2 is the report of Shri B.S. Raman working as Superintending Archaeologist and he has passed the order of termination of the applicants services.

8. The applicants are daily-rated casual workers. They have put in long period of service in that capacity. The question, therefore that arises is whether the order for disengagement/termination of their services is a valid order.

9. As noted hereinabove, the applicants have alleged that their work and conduct have been satisfactory. The respondents have, however, taken the plea that the orders for disengagement of the applicants was passed after proper inquiry. Copy of the inquiry report has been annexed which is by way of preliminary inquiry.

10. The applicants admittedly were daily rated casual workers and they can be disengaged without assigning any reasons. On the basis of the temporary inquiry the authorities on being satisfied have passed the order for termination/disengagement of the applicants. The order for termination is a simplicitor order and is not stigmatic. It is well settled on the basis of several judicial decisions that the defence indicated in the counter affidavit to meet an allegation of arbitrariness in passing the order for termination will not lend colour to the

order of termination simplicitor.

11. The Hon'ble Supreme Court in recent decision 1993 Supreme Court Cases (L&S) 1 GOVERNING COUNCIL OF KIDWAI MEMORIAL INSTITUTE OF ONCOLOGY, BANGALORE Vs DR. PANDURANG GODWALKAR AND ANOTHER and had laid down that when ever the services of an employee is terminated while his appointment is on temporary basis, by an order of termination simplicitor after some preliminary inquiry that it cannot be held that as some inquiry had been made against him before the issuance of order of termination it really amounted to his removal from service on a charge as such penal in nature. In the said decision reliance has been placed on a few earlier ^{Supreme Court} decisions.

12. In view of the law laid down in the aforesaid decisions the order of termination simplicitor of the services of the applicant calls for no interference at our hands. A temporary employee would be entitled to the provisions of Art. 311 while daily rated casual workess cannot invoke the provisions of Art. 311 of the Constitution.

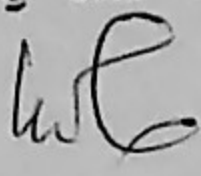
13. Before parting with the case we however, wish to make it clearx that nothing in this order shall preclude the respondents from considering the applicants for reengagement on the basis of the period of service rendered by them. We are indicating this since the respondents in their counter affidavit have annexed copy of a representation stated to have been given by each of the applicants expressing regret and also extending an assurance of good conduct. Since the order for termination/

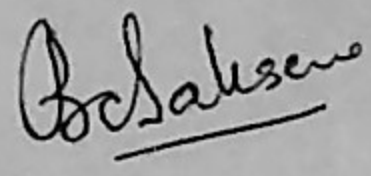
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disengagement is not being set aside and the applicants are not continuing in service, the relief for being considered for regularization cannot be granted. The question of regularization can only arise if the applicants are re-engaged in service and fulfill the eligibility for regularization.

14. These detailed reasons have been indicated to support the order passed on 16.11.94 dismissing the O.As and vacating the interim orders.


Member (A)


Vice Chairman

Dated: March..15th.. 1995

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