

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

Allahabad this the ¹⁵ 28 day of NOV:97.
O.A No. 590/94

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

HON. MR. D.S. BAWEJA, MEMBER(A)

1. Rishi Pal son of Lekha
2. Vishram son of Bachu Lal
3. Shiv Kumar son of Laloo Prasad
4. Munesh son of Balbir.
5. Mohit son of Shiv Prasad
6. Asha Deen son of Daya Shankar.
7. Ram Shankar son of SukhLal
8. Shyam Mohan son of Ram Swarup
9. Shyam Lal son of Devta Deen
10. Rakesh son of Sunder Lal,
11. Rajendra Kumar son of Ram Lal
12. Chandra Bhan son of Heera Lal
13. Amar Jeet son of Bahadur.
14. Kishan Pal son of Ranjeet Singh
15. Balbir son of Kishan Lal
16. Babulal son of Mohan Lal
17. Umrao son of Doongar Singh.
18. Laxami son of Surju.
19. Sri Ram son of Jagroo.
20. Bhajan Lal son of Bihari Lal.
21. Vinod son of Khushi Ram.
22. Harbeer son of Amrat Singh.
23. Ganga Ram son of Prag,
24. Bhal Chand son of Abhilash
25. Rajendra Kumar son of Bhogal.
26. Subhash son of Poojan.
27. Chatur Bhuj son of Lala Ram,
28. Shyam Lal son of Jagan Nath.
29. Rajesh son of Hans Raj.
30. Chandra Kiran son of Ghasi Ram.
31. Mange son of Bhagwat.

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32. Nanak son of Tota Ram.
33. Dassa Ram son of Badri Prasad.
34. Fakira son of Ganga Sahai.
35. Chanderkesh son of Radhey Shyam
36. Om Prakash Yadav son of Ayodhya Prasad Yadav.
Residents of c/o Rajeev Kumar, 270 New Mohanpuri, Meerut.
Applicants.

By Advocate Shri S.D. Sharma

versus

1. Union of India through Dy. Director General, Military Farms, QMG's Branch, Army Head Qrs. West Block No. III, R.K. Puram, New Delhi.
2. Dy. Director Military Farms and Director Frieswal Project, C/o Mily Farm School and Research Centre, Meerut Cantt.
3. Officer-inCharge, Military Dairy Farm, East Cultivation No. 2, Meerut.

Respondents.

By Advocate Km. Sadhna Srivastava.

O R D E R (RESERVED)

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

We have heard the learned counsel for the applicant and have been taken through the pleadings on record.

2. The applicants' case is that they were engaged as Casual Farm Hands (Civilian) and were working under respondent No. 3. The applicants have claimed a relief of a direction to be issued to the respondents to regularise them as Farm Hands and to settle their back wages at par with regular Farm Hands by paying difference of wages for the past years in which the applicants have already worked.

3. The respondents have filed a Counter Affidavit and have indicated that the applicants were engaged as Seasonal Agricultural Cultivation Mazdoor Working on cultivation operations like irrigation of crops/fields and cleaning of irrigation Kaccha channels etc. on daily wages and they were paid the minimum wages as prescribed in the Minimum Wages

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Act. The respondents case is that the selection of casual labour for regularisation is subject to availability conditions prescribed in the recruitment rules for the post of Farm Hands. Their further case is that Seasonal Cultivation Mazdoors are engaged as per sanction granted monthly by the competent authority as per the need and are engaged on I.A.F. (Farms-105 Muster roll) maintainable for a period of five years only. They have further pleaded that the nature of duties of Farm Hands who are regular employees, are different and distinguished to the nature of work done by seasonal cultivation Mazdoors. They cannot therefore, claim parity in the matter of scale of pay with the regular Farm Hand.

4. The respondents have also indicated that the applicants No. 3, 17, 18, 27 and 28 had given an affidavit to the respondents that they have been made petitioners without their consent. The learned counsel for the applicant stated before us that this being so, the names of these applicants be deleted from the array of applicants. The case of the respondents in the Counter Affidavit is that the Government of India, Ministry of Defence has closed down 24 units of Military Farm Department. The staff and other moveable assets have become surplus on account of closure of the above units had to be adjusted. Thus, the availability of regular vacancies has gone down. They have further pleaded that as per order contained in Special Army Order 8/S/76, regular vacancies are first to be filled up by posting surplus staff by Adjutant General Branch Army Headquarters under the adjustment of surplus/deficient Scheme. They have further indicated that there has been complete ban in filling up vacancies arising after 31.12.87 by direct recruitment. The respondents have further indicated that the applicants have filed another case before the Dy. Labour Commissioner U.P. at Meerut in the name of Rajendra Kumar and 46 others registered as No. TCA-8/94 now

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PWA 64/95 in case No. 192/93 in the name of Sadhuram and 48 others have also been filed and is pending before the Dy. Labour Commissioner. The respondents have therefore, pleaded that the applicants are guilty of suppression of this material fact. They have also pleaded that the applicants cannot be permitted to prosecute this O.A. as also the aforesaid two cases for the same relief. The respondents have indicated that except for petitioners 3,17,18,27 and 28 they have not been recruited through the Employment Exchange and thus they are not eligible even for grant of temporary status. The aforesaid applicants have been granted temporary status and it has been indicated that they would be considered for regularisation on availability of regular vacancies as per rules.

5. The applicants have filed Rejoinder Affidavit and have filed a copy of the scheme called Casual Labour(Grant of Temporary Status and Regularisation) Scheme of Govt. of India, 1993. The learned counsel for the applicant, when his attention was drawn to the said scheme filed alongwith rejoinder affidavit and to indicate which of the applicants can be said to be in employment on the date the said scheme was notified, drew our attention to the averment made in para 4(2) and Annexure -1 to the application. The said Annexure only indicates the date of joining of the applicants, throws no light on the question whether which of the applicants were in employment on the date of the coming into force of the said scheme. The said scheme indicates that it came into force on 1.9.93. We find that Annexure R.1 has been filed alongwith Rejoinder Affidavit and it indicates the date from which some of the applicants have not been working. The applicants have appended a note to Annexure RA-1 not disputing that the said applicants against whose names it has been indicated that they were not working, since dates bearing January to June, 94, services have been dispensed with since they took active part in this litigation.

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6. In the state of pleadings on record it is difficult for us to come to a definite conclusion as to which of the applicants were in employment on the date the scheme came into effect i.e. 1.1.93 and which of the applicants are not continuing in service. The O.A. has not been amended to challenge the action of the respondents in discontinuing the services of some of the applicants. We, therefore, only provide that such of the applicants who were in employment on the date the scheme came into force i.e. 1.1.93 and who became eligible for conferment of temporary status as per the provisions of the same scheme shall be considered if they fulfil other eligibility criteria provided in the said scheme.

7. We also wish to make it clear that since disengagement of such of the applicants whose names were indicated in Annexure R-1 as having worked only in the period ranging January to June, 94 would not be entitled to the benefit of the said scheme, since the action of the respondents in disengaging them has not been questioned before us. Our order shall also not cover the 4 applicants who have already been conferred the temporary status.

8. The learned counsel for the applicant in reply to the plea on behalf of the respondents that casual labourers ~~who have~~ ~~were~~ not being employed through the Employment Exchange will not be entitled to the benefit of grant of temporary status and regularisation, cited a decision of Kerala High Court reported in 1996 LLR 651 James Jesudas vs. Malabar Cement Limited. This decision is wholly unhelpful since it considered the effect of section 4 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959. The plea of the respondents is not based on the provisions of the said act, but on Ministry of Defence Office Memo dated 14.10.93. Since the respondents have succeeded in full that because of the said office memorandum except for the 4 applicants whose numbers have been indicated hereinabove, others have not been recruited through Employment Exchange

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and thus they are not eligible for temporary status or for regularisation. There is no merit in the O.A. It accordingly fails and is dismissed. This order will not govern applicants Nos. 3,17,18, 27 and 28.

Shakeel
MEMBER(A)

Allahabad Dated: 28.11.97.

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VICE CHAIRMAN