

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 25th DAY OF April 1996

HON.MR. JUSTICE B.C. SAKSENA

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

Original Application No. 865 of 1994

Ramji Vishwakarma, son of Gulab Das
aged about 25 years, Resident of
Bene Babu-ke-Gali, Wellesalyganj,
District Mirzapur.

BY ADVOCATE SHRI O.P. GUPTA

.... Petitioner

Versus

1. The Income Tax Officer Mirzapur,
Putlighar, District Mirzapur
2. The Commissioner of Income Tax,
Allahabad, 38 M.G. Marg, Civil
Lines, Allahabad.
3. Union of India through Secretary
Ministry of Personnel, Public
Grievances and Pensions (Department
of Personnel & Training) Govt.
of India, New Delhi.

... Respondents

BY ADVOCATE SHRI AMIT STHALEKAR

O R D E R (Reserved)

JUSTICE B.C. SAKSENA, V.C.

The applicant through this O.A prayed for a direction to the respondents not to terminate the services in of the applicant and to treat him as continuing service. He also sought suitable directions to be issued to the respondents to grant temporary status to the the applicant with other consequential benefits to which he was entitled under a scheme called, "Casual Labours Grant of Temporary Status and Regularisation" 1993". Subsequently through an amendment the applicant added the following relief 'Oral termination of the applicant from the service may

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beset aside and applicant should be reinstated in service with all consequential benefits.'

2. The brief facts as stated in the OA are that the applicant on coming to know that some Group 'D' posts have fallen vacant under the control of Income Tax Officer, Mirzapur, submitted an application on 30.3.93. The applicant was accordingly appointed as a Group D daily rated casual labour. The applicant in Para 4(ii) states that he received payment regularly w.e.f. 20.4.93 to ~~29x~~ 19.9.94. Evidently there is typographical error. It should be 1993. The petition was filed on 23.5.94 and thus an averment that he was paid upto September 1994 is incorrect.

3. In the counter affidavit it has been averred that the petitioner had already been discharged from service w.e.f. 3.5.94. In the Rejoinder affidavit ~~XXXX~~ the applicant has ^{not} specifically denied the said averment made in the counter affidavit. The applicant claims that he is entitled to grant of temporary status alongwith other consequential benefits pursuant to a 1993 Scheme called Casual Labours Grant of Temporary Status and Regularisation 1993. The said scheme came into force on 1.9.1993. As per the said scheme temporary status was to be conferred on all those Casual labours who were in employment on the date of issue of the said circular i.e. to say 1.9.93 and who had rendered a continuous service of atleast one year and had worked atleast for 206 days as on 1.9.93. The respondents therefore pleaded that since the applicant has started working as a casual labour w.e.f. 20.4.93 and had not completed one year's

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/service on the date of coming into force of the scheme nor had worked for 206 days as on 1.9.93, he is not entitled for the grant of temporary status. The said circular it is pleaded by the respondents no where stipulates that as and when any casual labour completes one year's continuous service and had worked 206 days he would be granted temporary status. We find force in the plea taken by the respondents and hold that the applicant does not fulfill the requisite conditions laid down in the said circular for being granted temporary status.

4. The learned counsel for the applicant submitted that the averment made in Para 9 of the counter affidavit wherein it has been stated that "the petitioner was discharged from service w.e.f. 3.5.94 since his work was found unsatisfactory and he was in the habit of interfering in the work of other staff members instead of doing the work assigned to him". The learned counsel submitted that this averment ^{shows} that the applicant's services were dispensed with as a measure of punishment. The averments in para 9 are in reply to the averments made in para 4(v) and (vi) of the OA wherein the applicants alleged displeasure and annoyance on the part of respondent no.1 for the reason that the applicant had claimed regularisation under the provisions of regularisation scheme 1993. The other averment in para 10 of the counter affidavit is that though the applicant was discharged from service w.e.f. 3.5.94 with a view to make out that he is continuing in service the applicant on 29.6.94 fraudulently made entries in the return receipt register behind back of the concerned clerk. It has also been averred that the applicant only been engaged for

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supplying drinking water to the members of the staff and assessee attending the office and cleaning of furniture of the office for 5 days in a week only. He was not given the work of making entries of the return receipt register. It is in the nature of a technical work and would not be given to the applicant. The law which ^{is} fairly well settled that any averments made in the counter to meet the allegations of malafides or termination having been passed arbitrarily and for no good reasons, the averments in the counter affidavit would not lend colour to the order of termination simpliciter and on the basis of the said averments it cannot be held that the order of termination simpliciter has been passed by way of punishment (see 1996 SCC (L&S) 220 State of Orissa Vs. Reeti Ranjan Kar).

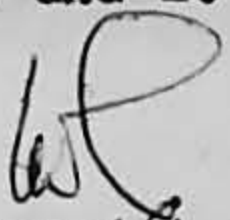
5. The learned counsel for the applicant next submitted that the applicant has been discharged from service while a few persons junior to him have been retained 4 names had been indicated in this behalf.

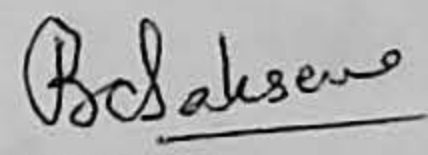
- (1) Dinesh Narain Tiwari working as casual labour since 20.8.93 in the office of the Asstt. Commissioner Income Tax, Alld (Administration)
- (2) Jai Prakash working since 1.12.93 in the same Office.
- (3) Raj Kumar Srivastava working since January 1995 in the Office of the Income Tax Officer, Mirzapur where the applicant had been working and the fourth name indicated is Ram Abhilash working since April 1993 in the bungalow of Deputy Commissioner Income Tax, Allahabad renage. Out of the said four only one viz Raj Kumar Srivastava on the applicant's own showing has been working in the office of the Income Tax Officer Mirzapur. The other names are wholly irrelevant ~~and~~

since it has not been averred that the working period of a casual labour in an office other than where the applicant had been working would be relevant for the discharge of a casual labour. A casual labour does not have any seniority. In the event of retrenchment he may claim some preference in reengagement on the basis of total working days put in by him in a particular office. For re-engagement in this matter a comparison has not been made among casual labours working in any office of the Income Tax Officer falling within the range.

6. Even otherwise an order of discharge simpliciter cannot be questioned on the ground of violation of Art. 16 on the basis that some persons of lesser number of working days have been retained.

7. In view of the above there is no merit in the OA and it is accordingly dismissed. Cost easy.


MEMBER (A)


VICE CHAIRMAN

Dated: 25/4/1996

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