

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 8th day of August, 2001.

Original Application No. 173 of 1999.

CORAM :-

Hon'ble Mr. SKI Naqvi, J.M.

Rajdhari Son of Lahuri Ram,
R/o Village Bibipur Post Guljarganj,
District Jaunpur.

(Sri SK Srivastava, Advocate)

..... Applicant

Versus

1. Union of India through Secretary
Department of Revenue, Ministry of Finance
Lok Nayak Bhawan, Khan Market, New Delhi.
2. Chief Commissioner Income Tax ,
Ashok Marg, Lucknow.
3. Commissioner of Income Tax, Varanasi,
4. Joint Commissioner Income Tax, Varanasi Range,
Varanasi.
5. Mangru Ram,
Casual Labour through Commissioner,
Income Tax, Varanasi.
6. Sanjay Kumar Tripathi,
Through Commissioner Income Tax,
Varanasi.

(Sri Amit Sthalekar, Advocate)

..... Respondents

O R D E R (O_r_a_l)

By Hon'ble Mr. SKI Naqvi, J.M.

Sri Rajdhari has come up seeking relief to the
following effect :-

" (a) to direct the respondent no.4 to continue
his services in pursuance of the provisions
and direction of the Scheme dt. 12-9-93 and
Circular dated 12th October, 1993 as well as
in pursuance of the judgement and order of
this Hon'ble Tribunal and as well as Hon'ble
Supreme Court as mentioned in the Circular
dated 12th October, 1993;

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(b) to direct the respondents to treat the temporary status of the applicant after completion of the 206 days in the year and regularise the services of the applicant according to the provisions of law as well as the aforesaid scheme and in pursuance of the order of this Hon'ble Court as well as the order of this Hon'ble Supreme Court."

2. As per the case of the applicant, he joined as casual worker in ^{The effect of} Joint Commissioner, Income Tax, Varanasi Range, Varanasi in the month of December, 1997 and continued to work there as such till December, 1998 having completed 245 days and also 2 days during holiday making a total of 247 days and thereby he became entitled to temporary status for which he advanced his request to regularise his services. He was responded by dis-engagement and, therefore, he has come up seeking the above relief on the strength of provisions and direction of the scheme dated 1-9-1993 and Circular dated 12-10-1993, a copy of which has been annexed as Annexure-A-12 to the OA. He also seeks strength from the verdict in the OA No.1226/1994 decided on 11-8-1997.

3. The respondents have contested the case, filed counter reply with the mention that the applicant was not working with the respondents on 1-9-1993. Therefore, the provisions contained in the Circular dated 1-9-1993 are not applicable to this case. It has further been clarified that the applicant is only a daily paid worker and his engagement is purely on the basis of the working availability of work in the office. He was neither entitled for one month's notice nor confirmation of temporary status because of his being only a daily paid worker. He was engaged on availability of work in the office and when there was no work, he was disengaged. It has been specifically denied that his services were dispensed with to create/ vacancy to absorb any other

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person. It has further been clarified with the mention that nobody has been engaged in his place.

4. Heard Sri SK Srivastava, counsel for the applicant, and Sri Amit Sthalekar, counsel for the respondents.

5. The applicant has mainly based his relief on the Office Memo dated 1-9-1993, which has been issued on, "Casual Labours (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993, wherein it has been provided that temporary status would be ^{conferred} confirmed on all casual labours who are in the employment on the date of issue of this O.M. and who have rendered a continuous service of atleast one year, which means that they must have been engaged for a period of atleast 240 days (206 days in case where the office observes 5 days work). This OM has been further clarified by the letter dated 12-10-1993. Keeping in view the provisions contained in this Office Memo and also the verdict given by the Hon'ble Supreme Court, the Principle Bench of the Tribunal and this Bench of the Tribunal in OA No. 1226/1994 dated 11-8-1997, the facts and the legal position involved in the present matter was examined, and it is found that the applicant cannot get benefit of OM dated 1-9-1993 in view of the provisions in this very memo that, "this scheme is applicable to casual labours in employment of the Ministries/Departments of the Government of India and their attached and subordinate offices on the date of issue of this order (emphasis provided). It is not in dispute that the applicant was first engaged in the respondents' establishment only in the month of December, 1997 and it is not his case that he was on the roll on the specific date i.e. on 1-9-1993 and, therefore, the relief sought on the basis of this position cannot be granted.

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6. In para 4.20 of the OA, the applicant has brought on record that juniors to the applicant, namely, Sri Mangru Ram, and Sri Basant Ram engaged in 1997, Sri Sanjay Kumar Tripathi engaged from 15-7-1998, Sri Samar Sheel engaged in October, 1998, Sri Manish Kumar engaged in March, 1998, Sri Anjani Kumar engaged in August, 1998 are working in the respondents establishment but the applicant, having better seniority and more number of days to his credit, has been disengaged. The reply to this para 4.20 of the OA, the respondents have covered it in para 15 of the counter affidavit with the simple mention that it is absolutely incorrect and also that the question of juniority or seniority is not applicable in the case of daily paid workers.

7. Whatever the position and the practice may be there but the principles of natural justice demand that if one has put in more days unblemished work, he deserves a preference over fresh faces and whenever any vacancy arises and daily labour is to be engaged, due weightage be given to the applicant in view of his previous services in the respondents' establishment.

8. The OA is decided accordingly with the above observation with no order as to costs.

Seema
Member (J)

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