

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1329 OF 1999

ALLAHABAD, THIS THE 22nd DAY OF September 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Anil Kumar Singh
s/o Sri Ram Pyarey Singh,
resident of village visampur Sevapuri,
District-Varanasi.

.....Applicant

(By Adv. Shri Ajay Yadav)

V E R S U S

1. Union of India through the Secretary, Ministry of Agriculture, Krishi Bhawan, New Delhi.
2. Project Director of Vegetable, Research (P.D.V.R.) 1, Gandhi Nagar, Naria, Varanasi.
3. Administrative Officer, Office of the Project Director of Vegetable, Research (PDVR) 1, Gandhi Nagar, Naria, Varanasi.

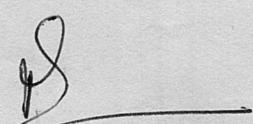
.....Respondents.

(By Adv. Shri N.P. Singh)

O R D E R

By this O.A. applicant has sought the following relief(s):-

- (i) to quash the impugned order dated 10.08.1999 (contained in Annexure No.1) passed by the respondent No.3 Administrative Officer, Office of the Project Director of Vegetable, research (PDVR), 1, Gandhi Naria, Varanasi.



....2/-

(ii) the Hon'ble Tribunal may be pleased to call upon the respondents to produce the termination order, if any, and on perusal thereof to quash the same and to treat the applicant in continuous service after 18.05.1999 and onwards with all consequential service benefits.

(iii) The Hon'ble Tribunal may be pleased to pass a suitable order directing the respondents to regularise the applicant's service on the post of Lab/Field Technician with all the consequential service benefits in view of the decision of the Hon'ble Apex Court as reported in AIR 1997 SC Pg.645 and Judgment Todya 1999 vol.II SC 435.

(iv) to pass such other and further order direction of suitable nature as this Hon'ble Court may deem fit and proper in the instant case."

2. It is submitted by the applicant that he was engaged as class IV employee under the Project Director of Vegetable Research (P.D.V.R.) Varanasi. He was made to work as Lab/field Technician w.e.f. 06.11.1992 without any break. His work was appreciated, which is evident from various certificates but he was paid as a class IV unskilled employee. He gave application on 23.06.1993 for increment in salary, which was forwarded by Administrative Officer but nothing was done. His attendance was marked in the register as well as log book.

3. From 01.07.1994 respondents changed the policy and got the work done through Contractor, therefore, applicant was shown to be working under the contractor. This was done to avoid labour laws. Applicant gave representation but of no avail.

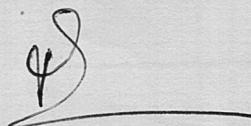
4. Respondents started appointing their own kith and kin e.g. Rajeev Kumar Singh and Hausla Prasad who are brother in law of respondent No.2 were appointed in 1990 and have been regularised also. Similarly Pankaj Kumar Singh is real brother in law of respondent No.2. He was appointed in



Jan 1997 yet has been regularised. Surendra Kumar Singh is father in law of brother in law of respondent No.2. He was appointed in 1996 but yet ^{has R} been regularised. Number of other names are given to show that respondent No.2 has regularised his own relatives even though they were appointed much after the applicant ignoring his claim. His grievance is that even though he has worked as Lab Technician for more than 6½ years, he has not been regularised, which shows respondent are working in an arbitrary manner by adopting ~~pick and choose~~. Pankaj Kumar has been regularised as Lab Technician even though he does not possess the qualifications. Applicant agitated this matter, The result is that from 18.05.1999 he has been asked orally not to come for the work.

5. It is submitted by applicant that his services could not have been terminated orally after taking work from him for 6½ years. He has further submitted that after terminating the services of applicant, respondents have engaged 2 more persons viz Narain Singh & Rajesh Kumar Rai who are still working which shows respondents are adopting the policy of hire and fire. He relied on 2000(3) UPLBEC 2757 and 1992 (2) UPLBEC 793. He has annexed Annexure RA-9 to show that a regular post of Technician lab/field is still available with them.

6. Respondents have opposed this O.A. on the ground that this is barred by limitation as they had engaged contractor in 1994 whereas the O.A. has been filed only in 1999. Moreover, applicant has not even given any representation therefore, O.A. is barred by Section 20 of the A.T. Act 1985. They have further stated that O.A. is barred by non-joinder of parties as well.



7. On merits counsel for the respondents invited our attention to Annexure RA-3 to show that Contractor had given in writing that the certificate, which has been annexed by the applicant is forged. In the affidavit dated 04.01.2000 Raja Ram who is Registered Contractor has stated that Annexure No.9 dated 05.05.1999 filed by Shri Anil Kumar in O.A. No. 1329/99 is a forged document and was never issued ^{him} by the ~~depot~~. They have further submitted that the labourers are employed by the contractor who are covered by the terms and conditions of the Labour Contract Award to M/s. Adarsh Bhutpurva Sainik Security Service, Varanasi vide letter dated 30.06.1994. Therefore, there is no relationship of employee and employer between the applicant the answering respondents. Therefore, it is wrong to suggest that respondents are adopting the policy of hire and fire. They have, further, explained that since it is a research project, there is any no perinial nature of work with the respondents and whatever perinial work is there, for that, institute already has regular staff working with him. Since applicant was never appointed by the institute against any post, therefore, he is not entitled to get any benefit as per the Judgment of Hon'ble Supreme Court in the case of STATE OF HARYANA VS. PIARA SINGH. They have further submitted that Contractor is duly registered from the office of Assistant Labour Commissioner (Central) Allahabad according to the provision prescribed in Contract Labour (Regulation and Abolition) Act 1970. Therefore, they have issued the contract after following the provisions of law. As far as the issuance of certificates are concerned, they have stated that competent authority for issuing certificate is director and if none of the certificates annexed by the applicant it has been ^{counter} signed by the Director. Therefore, those certificates of no value. They have impleaded only such of the persons who have been selected



after following rules and regulations framed by the ICAR.

It is wrong to suggest that respondent No.2 has given favour to his kith and kin in the appointment. The allegations made by the applicant are vague and are not supported by any documentary evidence. Therefore, these allegations have been made only to defame the respondent No.2. They have, thus, prayed that the O.A. may be dismissed.

8. We have heard both the counsel and perused the pleadings as well.

9. Perusal of the Annexure CA-I, CA-II shows that Assistant Labour Commissioner had granted Registration Certificate to the Project Director, Project Directorate of Veg. Research, Sunderpur, Varanasi. As per sub-section (2) of Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970 for employing more than 400 contract labour is enclosed. Similarly it is seen that both the parties who have been given the contract by the respondents are duly registered with the Assistant Labour Commissioner and Registering Officer, Allahabad. It is further seen that Assistant Labour Commissioner and Licensing Officer, Allahabad had issued license to M/s Adarsh Bhutpurva Sainik Security Services for Deployment of farm labourers at PDVR, Varanasi. Therefore, it is clear that the contract has been given by the respondents for deploying farm labourers after following due process of law. The work was entrusted to the contractors somewhere in 1994 and since then as per applicant's own case, he had been working with the contractor. Therefore, naturally it cannot be said that the

applicant was engaged by the respondents. As far as the contractor is concerned, he has given an affidavit on 04.01.2000 stating therein clearly that Annexure A-9 filed by Shri Anil Kumar Singh in O.A. 1329/99 is a forged document as it was not issued by the deponent, which makes it clear that the applicant has annexed with the petition a forged document, which would show that he has not come to the court within clean hands. Moreover, the other certificates, which have been annexed by the applicant are also not counter signed by the director, therefore, they also cannot be relied upon. Applicant has given number of names to show that they were regularised by respondent No.2 but as per applicant's own showing applicant was working as Lab Filed Technician but there is no such letter, which can suggest that applicant was appointed as Lab Field Technician with the respondents w.e.f. 06.11.1992. If he was working under the contractor and contractor has disengaged his services then he cannot have any grievance against the respondents because there was no relationship of master and servant between the applicant and the respondents. If for some time, applicant was engaged as a casual labourer, it would not give him a right to claim regularisation on the basis of Lab Field Technician, which is a class-III post and has ~~to~~ to be filled in accordance with the recruitment rules. Of-course, if respondents advertise the said post, applicant can always apply for same and in case he applied for the same, I am sure, respondents would consider his candidature as well. In the O.A. applicant has stated that he was being paid in Gr.'D', which itself negates his contention that he was engaged as a Field Lab Technician. He has stated that Pankaj Kumar was regularised even though he did not possess the qualifications but neither his appointment has been challenged nor he has been made a party in the O.A., therefore, his appointment cannot be ^{be} looked into.

10. Apart from all these facts, for the purposes of regularisation, it is necessary that there should be a post in existence, respondents have stated that all the regular post in the Directorate of Veg. Research are already filled up by regular hands. Therefore, in the absence of any regular vacancy, applicant cannot be considered for being appointed as Lab Technician. In the impugned order, respondents have specifically stated that since this organisation was being developed, for some time, registered contractor was engaged to utilize the services of casual labourer as per need basis but now that the infrastructure has already been completed, it is no more required to give regular appointment to the casual labourers. They have also stated that in future, whenever, there are any vacancies they would be filled in accordance with recruitment rules. Keeping in view the statement of the respondents, if a work has already been finished on casual basis, we cannot direct the respondents to still continue, applicant on non-existent post or to regularise his services as even if it would have to be filled in accordance with recruitment rules. Therefore, while I find no merit in the O.A., I am sure whenever vacancies arise, respondents shall advertise the same in accordance with the recruitment rules and in case applicant applies for the same, his candidature shall also be considered for the same.

11. With the above observations, this O.A. is disposed off with no order as to costs.


Member (J)

shukla/-