

RESERVED

CENTRAL ADMINISTRATIVE TRIUBNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 6th day of May 2005.

Original Application No. 1371 of 1999.

Hon'ble Mr. D.R. Tiwari, Member (A)
Hon'ble Mr. K.B.S. Rajan, Member (J)

1. Sohan Pal, S/o Sri Sunde Singh,
R/o Vill Panwari, P.O. Daurala,
Distt : Meerut.
2. Mani Ram, S/o Sukhvir Singh,
R/o Vill Panwari P.O. Daurala,
Distt : Meerut.
3. Omi S/o Kaloo Singh,
R/o Vill Pavarasa, Post Office Papli,
Meerut.
4. Sri Om Sharma,
S/o Sri R.C. Sharma,
R/o LB-59 Pallav Puram Phase II,
Modipuram,
Meerut.
5. Ansuiya Prasad, S/o Sri Shyam Lal,
R/o P-329 Pallav Puram Phase II,
Modipuram,
Meerut.
6. Anil Prasad, S/o Shyam Lal,
R/o P-329 Pallav Puram Phase II,
Modipuram,
Meerut.

.....Applicants

By Adv: Sri V.K. Goel

V E R S U S

1. Union of India, through Secretary,
Agricultural Krishi Bhawan,
NEW DELHI.
2. Indian Council of Agricultural Research,
Krishi Bhawan through its Director,
Library Avenue,
NEW DELHI.
3. Central Potato Research Institute,
Simla Himanchal Pradesh through its Director.
4. Central Potato Research Station,

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Modipuram Meerut through its Scientist,
Incharge.

5. Jagat Pal Singh, Joint Director/Incharge,
Central Potato Research Station,
Modipuram, Meerut.

...Respondents

By Adv: Sri B.B. Sirohi.

O R D E R

By K.B.S. Rajan, MEMBER-J

The short question that arises for consideration is whether the applicants in the OA fulfill the conditions for being granted temporary status, in accordance with the provisions contained in the Govt. of India, Ministry of Personnel O.M. dated 10th September, 1993. The said order states -

"temporary status.- 'temporary' status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days' week)."

2. While the first condition that the casual labourer should be in employment on the date of issue of the OM is admittedly fulfilled, the dispute is only in respect of the other condition i.e. whether the applicants "have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days' week). The stipulation is that at least in any one of the years upto 1993 the individuals must

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have put in 240 days of work and this condition together with the other condition that they should be in the employ on the date of issue of the order i.e. 10th September, 1993 makes them entitled to the temporary status. The Applicants contend that they do fulfill the second condition also, while the Respondents deny the same.

3. The days of employment in various years as stated by the applicants and as stated by the respondents are contained in the tabular column given below:-

As contended by the Applicants

Name	1993	1992	1991	1990	1989	1988	1987	1986	Remarks
Sohan Pal Applicant No. 1	215	203	228	226	218	165	140		Excludin g Saturday s & Sundays.
Mani Ram Applicant No. 2	193	212	232	209	160	215	165		
Omi Applicant No. 3	221	198	150	87					
Om Sharma Applicant No. 4	215	240	215	75					
Ansuiya Prasad Applicant No. 5	202	230	129						
Anil Prasad Applicant No. 6	140	230	235						

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As contended by the Respondents

Name	1993	1992	1991	1990	1989	1988	1987	1986	Remarks
Sohan Pal Applicant No. 1	204	207	224	193	152	128	92		Initial Emp't 1985
Mani Ram Applicant No. 2	206	198	204	204	204	136	139	159	Initial Emp't 1982
Omi Applicant No. 3	189 + 25*	184 + 27*	171 + 16*	87. 5+ 5*					Initial Emp't 1990
Om Sharma Applicant No. 4	196 + 24*	156 + 15*	48+ 5*						Initial Emp't 1991
Ansuiya Prasad Applicant No. 5	193 + 22*	001							Initial Emp't 1992
Anil Prasad Applicant No. 6	197 + 23*	130 + 14*							Initial Emp't 1992

* Off days

4. In so far as Applicants No. 1 and 2 are concerned, the respondents have fairly conceded that they have put in the requisite number of days of service in a year as per the stipulation and as such there is no difficulty in granting them the temporary status. (Paragraph 21 of the Supplementary Affidavit of Shri Kadirvelu, Asst. Administrative Officer of the resp. No. 4 refers). And as such, they have been granted the temporary status. Thus in so far as applicants 1 and 2 are concerned, the grievance no longer survives and this fact has been reflected in para 32 of the amended O.A. However, in so far as the other applicants are concerned, the respondents have contended that even after adding the off days, they do not fulfill the requisite days of service in a



year and as such, they are not entitled to the temporary status. These applicants contend that it would be seen from the details furnished by the respondents themselves that even applicants No. 1 and 2 had not put in 240 days of service and the grant of temporary status to them confirms that the intervening Sundays and holidays have also been taken into account in their case and if the same treatment is given to the other applicants, they too would be fulfilling the requisite period of 240 days of service in a year. Hence, the applicants have denied the contention that applicants No. 3 to 6 do not fulfill the conditions of total period of service rendered in a year. They have claimed that since there are 52 Sundays in any year, if the same be added to the total number of working days, it would be clear that every one had completed the minimum of 240 days. Para 4 of the Rejoinder filed by Applicant No. 5 to the Supplementary Affidavit filed by the respondent refers.

5. Arguments were heard and the documents perused. Admittedly the respondents have six working days a week. Hence, 240 days of work in a year is the minimum period of service to be rendered for deriving the benefit of temporary status as per order dated 10th September, 1993. The question is whether the period of 240 days in a year should mean including the 52 Sundays and 3 National Holidays.

In the case of Shakuntla Devi vs Secy. Department of

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Food (1991) 18 ATC 142 (Delhi) it has been held that Sundays and holidays will also have to be counted while calculating number of working days. This leads to the next question as to how many Sundays and holidays should be added to the working days of the applicant. If the records are available, the same could be worked out. In the absence of the records, only proportionate number of Sundays and Holidays should be worked out and added to the actual number of working days. The workable way is to add one Sunday for every 6 working days and since approximately there are about 12 holidays in a year, one holiday for each month could be added. In addition, the benefit of three National Holidays would be available to the applicants. This would result in the following:-

1993	Applicant No. 3	Applicant No. 4	Applicant No. 5	Applicant No. 6
(a) No. of working days	189	196	193	197
(b) Add 1/6 towards Sundays	31	33	32	33
(a) + (b) Total	220	229	225	230
Add 1/30 towards holidays.	7	8	8	8
Add: National Holidays	3	3	3	3
Total:	230	240	236	241

(As the number of working days in the preceding years is less than the days of work in 1993, drill for calculation of number of working days has not been undertaken.

6. Applying the same yardstick upon Applicant No. 1 and 2, it could be seen that applicant No. 1 having put in 204, 207 and 224 days respectively in 1993, 1992 and 1991, incrementing the same by proportionate number of Sundays and holidays, in all these years applicant No. 1 had worked for more than

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240 days. So is the case with Applicant No. 206, 198 and 204 days during the years 1993, 1992 and 1991. Thus, in the case of Applicants 1 and 2, their completion of 240 days of work in a year is not by adding all the 52 Sundays and other holidays, but adding proportionate Sundays and holidays as worked out above.

7. Thus, in so far as applicants Nos. 4 and 6 are concerned, they having put in at least 240 days in a year (this need not be in the year 1993 but could be in any year) and admittedly they having been in the employ on the date of issue of the order dated 10th September, 1993, they are covered under the said order. Thus, they are entitled to the temporary status as claimed by them. The relief available to them is as per the penultimate paragraph of this order.

8. Now the question is whether the applicants Nos. 3 and 5 are covered under the provisions of the letter dated 10th September, 1993 which have been adopted by the Respondents to their organization, vide order dated 23rd November, 1994. In this regard, it is appropriate to refer to the judgment of the Apex Court in the case of **Union Of India v. Mohan Pal, (2002) 4 SCC 573**, wherein the Apex Court has held as under:-

"2. In all these appeals, common questions of law arise for consideration and hence they are being disposed of by a common judgment. ...

... The matter relates to the grant of

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"temporary" status to the casual workers in some of the departments of the appellants. The Department of Personnel and Training of the Government of India formulated a scheme for the grant of "temporary" status and regularisation of the services of casual labourers working in the various departments under the Government of India. The Scheme came into effect from 1-9-1993. Clause 3 of the Scheme stated that it would apply to all casual labourers in employment of the ministries/departments of the Government of India and their attached and subordinating offices, and that this Scheme may not apply to the Railways and Telecommunications Departments. The Scheme envisaged conferring of "temporary" status on all casual labourers who had worked for at least 240 days in a year (206 days in the case of offices observing 5 days a week). The main features of the Scheme are as follows:

1. Conferment of "temporary" status on casual labourers would not involve any change in their duties and responsibilities and the engagement will be on daily rates of pay on need basis.
2. The casual labourers who acquire "temporary" status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.
3. The wages and wage rate will be fixed at the minimum of the pay scale for a corresponding regular Group 'D' official including DA, HRA and any other welfare measures.
4. Benefits of increments at the same rate applicable to a Group 'D' employee would be taken into account for calculating pro rata basis and the leave entitlement would also be on a pro rata basis viz. one day for every 10 days of work.
5. Maternity leave to lady casual labourers would be permissible on a par with Group 'D' employees.

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6. It is also made clear that 50% of the service rendered under the "temporary" status would be counted for the purpose of retirement benefits after regularization.

7. After rendering three years' continuous service after conferment of "temporary" status, the casual labourers would be treated on a par with temporary Group 'D' employees for the purpose of contribution to general provident fund, and they would also be eligible for the grant of festival advance, flood advance on the same conditions as are applicable to temporary Group 'D' employees.

8. They would be entitled to productivity-linked bonus/ad hoc bonus only at the rates applicable to casual labourers.

3. Clause 7 specifically states that despite the conferment of "temporary" status, the services of a casual labourer may be dispensed with by giving a notice of one month in writing While filling up the vacancies in Group 'D' posts, some preference is given to the casual labourers who have been conferred "temporary" status. Two out of every three vacancies in Group 'D' cadres in respective offices where the casual labourers have been working would be filled up as per extant Recruitment Rules and in accordance with the instructions issued by the Department of Personnel and Training, from amongst casual workers with "temporary" status.

4. In these appeals, the question that arises for consideration is whether the conferment of "temporary" status is a one-time programme as per the Scheme or this is an ongoing scheme to be followed by the Department and whether the casual labourers are to be given "temporary" status as and when they complete 240 days of work in a year (206 days for the offices observing 5 days a week). Another question that came up for consideration is

5. The first question is to be decided on the basis of the interpretation of clause

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4 of the Scheme. As already noticed, the Scheme came into effect from 1-9-1993. Clause 4(1) of the Scheme reads as follows:

"temporary status.-(1) 'temporary' status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days' week)."

(emphasis supplied)

6. Clause 4 of the Scheme is very clear that the conferment of "temporary" status is to be given to the casual labourers who were in employment as on the date of commencement of the Scheme. Some of the Central Administrative Tribunals took the view that this is an ongoing scheme and as and when casual labourers complete 240 days of work in a year or 206 days (in case of offices observing 5 days a week), they are entitled to get "temporary" status. We do not think that clause 4 of the Scheme envisages it as an ongoing scheme. In order to acquire "temporary" status, the casual labourer should have been in employment as on the date of commencement of the Scheme and he should have also rendered a continuous service of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. (Underlining supplied) From clause 4 of the Scheme, it does not appear to be a general guideline to be applied for the purpose of giving "temporary" status to all the casual workers, as and when they complete one year's continuous service. **Of course, it is up to the Union Government to formulate any scheme as and when it is found necessary that the casual labourers are to be given "temporary" status and later they are to be absorbed in Group 'D' posts.**

11,However, we make it clear that the Scheme of 1-9-1993 is not an ongoing scheme and the "temporary" status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in clause 4 of the Scheme, namely, they should have been casual labourers in employment as on the date of the commencement of the Scheme and

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they should have rendered continuous service of at least one year i.e. at least 240 days in a year or 206 days (in case of offices having 5 days a week). We also make it clear that those who have already been given "temporary" status on the assumption that it is an ongoing scheme shall not be stripped of the "temporary" status pursuant to our decision. (Emphasis supplied)"

9. The O.A. succeeds in so far as applicants No. 4 and 6 are concerned. They are entitled to the temporary status from 01-09-1993 and all the consequential benefits, as mentioned hereunder shall also be available to them. The same are as per the provisions of order dated 10th September 1993, which are as under:-

(a) The wages and wage rate will be fixed at the minimum of the pay scale for a corresponding regular Group 'D' official including DA, HRA and any other welfare measures. Arrears arising out of the same w.e.f. 01-09-1993 shall also be payable to the applicant.

(b) Benefits of increments at the same rate applicable to a Group 'D' employee would be taken into account for calculating pro rata basis with retrospective effect from 01-09-1993 and the leave entitlement would also be on a pro rata basis viz. one day for every 10 days of work.

(c) 50% of the service rendered under the "temporary" status would be counted for the purpose of

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retirement benefits after regularization.

(d) After rendering three years' continuous service after conferment of "temporary" status, the applicants would be treated on a par with temporary Group 'D' employees for the purpose of contribution to general provident fund, and they would also be eligible for the grant of festival advance, flood advance on the same conditions as are applicable to temporary Group 'D' employees. This benefit would be available in the case of the applicants 4 and 6 from now.

(e). They would be entitled to productivity-linked bonus/ad hoc bonus only at the rates applicable to casual labourers. The applicants are entitled to the arrears in respect of productivity linked bonus/ad hoc bonus right from 01-09-1993.

10. In so far as applicants Nos. 3 and 5 are concerned, admittedly they have, in fact served for years beyond 1993 and as such, it was also argued by the counsel for the applicants that in case any of the applicants did not complete 240 days during the period 1993 or earlier, they would be entitled to the regularization in any of the subsequent years when they had completed 240 days,

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in accordance with the provisions of order dated 10th September, 1993. We are afraid, the same could not be possible as the scheme envisaged in the order dated 10th September, 1993 has been held to be only a one time affair, vide the judgment of the Apex Court in the case of Mohan Pal (supra), vide the underlined portion (para 6) and the highlighted portion of the judgment (para 11). They not being eligible for temporary status in terms of order dated 10-09-1993, their claim for the same is rejected. However, in view of their long years of service the respondents shall not disengage them and they shall be continuing to work as casual labourers in terms of the order dated 07-06-1988 referred to in the order dated 10th September, 1993 and as observed in the judgment of the Apex Court that "it is up to the Union Government to formulate any scheme as and when it is found necessary that the casual labourers are to be given "temporary" status and later they are to be absorbed in Group 'D' posts", should the Government formulate any such scheme (or has already formulated in the recent past), Applicant No 3 & 5 should be considered for the benefit of such scheme. We make no order as to cost.



MEMBER-J



MEMBER-A

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