

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

ORIGINAL APPLICATION NO.905 of 2002.

Allahabad this the 25th day of March 2003.

Hon'ble Mr.Justice R.R.K. Trivedi, V.C.

Sri G.P. Yadav
aged about 38 years
son of Shri Kishori Prasad Yadav,
R/o Village & Post- Gharahhe Chaura,
(Thakurpur), District Deoria (U.P.)

.....Petitioner.

(By Advocate: Sri Rakesh Verma)

Versus.

1. Union of India
through the Director General,
Central Public Works Department,
Department of Central Public Works,
New Delhi.
2. Superintending Engineer,
Samanvaya Parimandal (Civil),
Central Public Works Department,
New Delhi.
3. Executive Engineer,
Central Public Works Department,
Allahabad Division, 76, Lukarganj,
Allahabad.

.....Respondents.

(By Advocate: Sri R.C. Joshi)

O_R_D_E_R

By this O.A., filed under section 19 of Administrative Tribunals Act 1985, the applicant has challenged order dated 27.07.2002 by which the claim of the applicant for grant of temporary status has been rejected and he has also been terminated from service.

2. The facts of the case are that the applicant was engaged as part-time Farris by order dated 27.03.1989. copy of the order has been filed as Annexure-2. The engagement was for the period of three months and on payment of Rs.200/- per month. It appears that this



amount was further enhanced to Rs. 400/- per month. In 1991, applicant made an application ^{and} requested that he should be appointed on Daily Wages as it is difficult to maintain the family on Rs. 400/-. This application was registered in the office as application No. 857 of 6.3.91. On this application a note was put by the Lower Divisional Clerk for consideration of Head Clerk, it was accepted that the applicant is working as full time employee. Recommendation ^{pay him as} was made to ^{the} Head Clerk on ^{his} turn made a note to the following effect:

"श्री धरह प्रसाद यादव कार्यालय में प्रातः 9.30 बजे से सायं 6 बजे तक निरन्तर कार्यरत रहते हैं। इनकी कार्यकुलाता सन्तुष्टिनिधि को देखते हुए इनके 400/- प्रतिमाह बहुत ही कम है। अतः इनके फरशा कम मेसन्जर के रूप जो कार्य कर रहे हैं उसी के अनुसार रु. 27.92 पैसे प्रतिदिन की दर से दिनांक 1.4.91 से पूर्णकालिक बेजेज देने की संस्तुति की जाती है।

स्वीकृत हेतु प्रस्तुत"

3. On the aforesaid noting of the Head Clerk, Competent Authority ^{the} approved ^{the} proposal by his order dated 23.03.1991, ~~it is also written full time.~~ Thus, this order was clear indication that from 1.4.1991, applicant was taken to be on Daily Wages and wages fixed ^{W.e.f.} at the rate of 27.92 paise. The Government of India issued a scheme on 10.09.93 for granting temporary status to the Daily wages for their regularisation. When the case of the applicant was not considered under the aforesaid scheme, he raised objection. On his objection letter was written by Executive Engineer on 17.05.93. (~~Head Clerk~~). In this letter also the fact was accepted that though initially applicant

was engaged as part time but work has been taken from him as full time employee. Even after this letter, the claim of the applicant was not considered then he approached this Tribunal by filing O.A. No.1297/94 which was disposed of finally on 11.04.2002 by following direction:

"With the above observations and directions the O.A. is disposed of with the direction to the respondents to consider the case of the applicant for granting temporary status to the applicant in terms of the scheme dated 10.9.1993 and pass a speaking and reasoned order within a period of three months from the date of receipt of a copy of this order. With the above direction the O.A. is disposed of with no order as to costs".

In pursuance of the direction of this Tribunal, the respondent No.3 has passed the impugned order dated 27.07.2002.

4. Respondents have filed counter affidavit. Learned counsel for the applicant has submitted that the order passed by respondent No.3 is factually incorrect and it has been wrongly observed that certificate filed by the applicant is based on wrong fact. It has also been wrongly mentioned that applicant got signature on the order. Learned counsel for the applicant has also submitted that the applicant's engagement was converted from part time to full time by conscious order.

After ~~noting~~ were given by Lower Clerk and then by Head Clerk. The applicant specifically asserted ~~the~~ this fact in para 4 (3) of the original application, which has been denied vaguely, in para 10 of the counter affidavit. Learned counsel for the ~~respondents~~ ^{Applicant} has submitted that on 1.9.93 the applicant was actually ⁱⁿ



employment, he was full time Daily wage worker and was fully entitled for temporary status which has been illegally denied to the applicant. It is also submitted that applicant no where accepted that he continued as part-time employee even on 1.9.93. It is specifically mentioned that though he was initially engaged as part time employee, ^{it was} converted into full time engagement.

Learned counsel for the applicant has also submitted that it was not necessary for conferring the temporary status that there should have been ~~any party~~ against which such benefit ^{could} be granted, and ^{approach of} respondent No. 3 is a contrary to the Government of India order dated 10.09.93. Learned counsel for the applicant has further submitted that respondent No. 3 acting wholly in arbitrary manner ^{terminated} the engagement of the applicant though he was engaged in March 1989, ~~only~~ to avoid the benefit to the applicant. The order of termination ^{had} been passed without giving any opportunity of notice.

The procedure adopted is a clear case of arbitrariness.

It is also submitted that the applicant is entitled ^{on the} post with back wages.

5. Learned counsel for the respondents, on the other hand, submitted that the applicant was engaged as part time employee and he could ^{rightly} not be granted temporary status in terms of order dated 10.09.93. This position was not denied by the applicant and order dated 27.07.2002 does not suffer from any illegality.

6. I have carefully considered the submissions of learned counsel for the parties and also perused the records.

7. First question which has to be determined in this case is as to whether, the applicant was part-time employee or full time daily wage~~s~~ employee on 1.9.93. The document filed as Annexure 4 is crucial for this purpose. The order has been passed on the application of the applicant which was moved on 06.03.1991, it was registered in the office, there is a clear noting to this effect. On his application a note was submitted to the Head Clerk by the Lower Staff, accepting his position that he is rendering his service as full time worker. Head Clerk on his turn made a recommendation in his favour ^{✓ A.M.u} accepting the fact that he comes at 9.30~~/~~ and works up to 6.30 P.M. He also proposed ^{✓ that u} his engagement may be converted into full time worker. He may be designated as Farris/Messenger. He also recommended this a ^{✓ Change u} ~~is~~ from 1.4.1991, The Competent Authority approved this proposal by order dated 23.3.91. About this document respondent No.3 has observed in his order that the certificate was based on wrong fact. It is difficult appreciate this observation of respondent No.3 in the order. In para 10 of the counter affidavit para 4(3) of the O.A., has been replied which reads as under:

"That in reply to the contents of para 4(iii) is partially admitted but so far as these recommendation are concerned they were without the report of the office and all payment were made only according to appointment letter".

The counter does not say about the noting made by ^{✓ and u} Clerk and Head Clerk what the respondents mean ~~✓ by u~~ report of office is not clear.



8. In the circumstances, the order passed by respondent No.3 is not correct and the fact that applicant ~~was initially~~ ^{was initially} engaged ~~which was converted~~ ^{from} part-time to full time w.e.f. 01.04.1991. It has been wrongly ignored. It is undisputed fact that after this order, the applicant was being paid Rs. 800/- per month, ~~which is not disputed~~. In the circumstances there is no doubt that the applicant's engagement on 1.9.93 was a full time daily wage ^{employee}, the same ~~thing~~ was repeated in Annexure 7 and he was accepted as Full-time worker. In the circumstances, the finding recorded by respondent No.3 that the applicant was part time employee is not correct.

9. Another objection taken is that there was no post. From perusal of the scheme dated 10.9.93, it is clear that existence of post or creation of post was not necessary for conferring the benefit of order. Sub Clause 2 of para 4 which contains provisions for conferring temporary status provides that such conferment of temporary status could be ~~in~~ without reference to the creation of availability of group 'D' posts. Thus the view taken by the respondent No.3 that there was no post of Farrash was also irrelevant consideration for ~~not~~ granting temporary status to the applicant. The applicant became entitled for temporary status w.e.f. 1.9.93. Respondent No.3 further committed serious illegality in terminating the engagement of the applicant. By this order the respondent No.3 was considering the claim of the applicant for grant of temporary status, ^{In pursuance of the order of} this Tribunal, he should have confined his consideration to the claim of the applicant. However, he acted in most arbitrary manner and passed ^{the impugned order} terminating the applicant ~~from~~ engagement. If the question of temporary status would have been decided ^{correctly}, the respondents would have ^{been} ~~not~~ under obligation to terminate the applicant's engagement without giving show cause notice. In the

circumstances, the order of termination can also not be sustained. For the reasons stated above, the applicant is entitled for the relief claimed.

10. For the reasons stated above, the O.A. is allowed. The impugned order dated 27.07.2002 (Annexure 1) is quashed, the applicant shall be reinstated with all back wages and shall also be conferred temporary status w.e.f 01.09.1993. This order shall be implemented within a month from the date of copy of this order is filed.

11. There shall be no order as to costs.



Vice-Chairman.

Manish/-