

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

THIS THE 8TH DAY OF August, 2011

HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (I)

ORIGINAL APPLICATION NO. 523 OF 2003

(U/S 19, Administrative Tribunal Act, 1985)

1. Vijay Shanker son of Shri Devi Prasad, working as Watchman.
2. Kripa Shanker son of Shri Kamta Prasad, Working as Messenger.
3. Harsh Nath Singh son of Shri Mani Ram Singh, Working as Watchman.
4. Prem Shanker son of Shri Chhotey Lal, Working as Beldar.
5. Gajendra Singh son of Shri Daya Singh, Working as Beldar.
6. Sadaram Gupta son of Shri Fallu, Working as Beldar.
7. Ram Sanwarey, son of Shri Jaggu, Working as Beldar.
8. Ashok Kumar Singh son of Shri Dwarika Singh, Working as Beldar.
9. Siddha Kumar Yadav, son of Shri Bhagwati Prasad, Working as Beldar.
10. Kamal Singh son of Shri Atar Singh, Working as Beldar.
11. Kripa Shanker Tewari son of Shri Gorakh Nath Tewari, Working as Beldar.
12. Ayodhya Prasad Dwivedi son of Shri Ram Shanker, Working as Beldar.

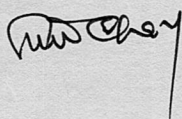
All applicant are working in Group-'D' Posts under the Project Director,
Cropping System Research, Modi Puram, Meerut.

.....Applicants

V E R S U S

1. Union of India through Secretary, Ministry of Agriculture Government of India, Krishi Bhawan, New Delhi.
2. The Secretary, Indian Council of Agriculture Research, New Delhi.
3. The Project Director, Cropping System Research Pallavpuram, Modinagar, Meerut.

.....Respondents



Present for the Applicant: Sri Vikas Budhwar

Present for the Respondents: Sri N. P. Singh

ORDER

Delivered By HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (I)

Instant O.A. has been instituted for the following relief/s:-

"i. to issue an order commanding the respondents to consider the application regularization on the Group-D posts.

ii. to issue an order commanding the respondents to grant all consequential benefits to the applicants after considering the case of the applicants for regularization and in case the applicants are found suitable then to grant all consequential benefits attached thereto."

2. The pleadings of the parties may be summarized as follows:-

It has been alleged that Indian Council of Agriculture Research (hereinafter referred to as I.C.A.R.) is a society registered under the Societies Registration Act, 1860. The Cropping System Research, Modipuram, Meerut is one of the numerous unit which undertakes research act analysis in food, agriculture and allied activities. The Project Director who is authorized to conduct and manage the said affairs and the Indian Council^{id} of Agriculture Research is wholly and fully controlled by the Central Government. That the applicant Nos. 01 and 03 were initially engaged as Daily Rated Casual Labour and posted as Watchman between the period

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21st April, 1989 to 06th August, 1990, applicant No.2 was also initially engaged as Daily Rated Labour and posted as Messenger vide order dated 27th April, 1989 and whereas, the applicant Nos. 04 to 12 were also engaged as Daily Rated Labour and posted as Beldar during the period from 21st April, 1989 to 20th December, 1990. The applicants since the initial appointments are discharging their duties on their respective Group-'D' posts, as neither at any point of time, there was any break. The requisition was sent by the respondents to the employment exchange in order to forward the list of suitable candidates registered with the employment exchange for the post of Labour /Belder/ Watchman and the list was submitted of the applicants and others and the result of the ²section ₁ by the selection committee was declared on 30th November, 1990 and on the basis of the selection the applicants had been engaged w.e.f. 01st December, 1990. That the applicants are still engaged in the respondents organization and working without any break and without any deficiency of services. The Cropping System Research involved work throughout the year and the rules framed by the I.C.A.R. provides that the labours who ^{are 2}₁ engaged for work for more then 246 days will be retained on continuous basis and further provides that for the purpose of counting experience and seniority and providing

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age benefit at the time of their permanent absorption in the organization will also be considered. I.C.A.R. formulate rules and laid down that once daily wages casual labour is discontinued from Muster roll, their past work experience, seniority and age benefit can not be counted [✓] towards their permanent absorption. Seniority lists were maintained by the respondents for Watchman/ Casual Labour and Beldars separately. The list includes the name of the applicant in the respective list and the applicants are entitled for regular employment. Representations were submitted and ultimately an O.A. No. 1091 of 1993 was also filed and the O.A. was decided on 18th April, 2001 and a direction was given to the respondents to consider the case of the applicant regarding regularization. A scheme was also formulated as per direction of the DOPT for granting temporary status and regularization on 10th September, 1993 and in view of the scheme the case of the applicants ought to have been considered and the applicants are also entitled for the benefit of the scheme. In partial compliance of the order dated 18th April, 2001 in O.A. No. 1091 of 1993 the temporary status was granted to the applicants, but the case of the applicants was not considered for regularization. Representations were filed and ultimately the O.A. is filed that the act of the respondents is violative

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of Article 14 and 16 of the Constitution of India that the applicants are holding the temporary status post in the Group 'D' posts and they are entitled to be considered for regularization.

3. Respondents contested the case and filed the Counter Affidavit and denied from the allegations of the O.A.. It has further been alleged that the applicants are working as Casual Labour in the Directorate since 1989. The applicants were conferred the temporary status w.e.f. 01st September, 1993 as per the provisions of the DOPT Casual Labours grant of Temproary Status and regularization scheme 1993. This scheme itself provides for regularization of the Casual Labours who have been granted temporary status. That the case of the applicant was under consideration but due imposition of ban for filling up the post falling under Direct recruitment quota, their cases for regularization was referred to the higher authorities of the ICAR, Headquarter, hence the O.A. has been filed without rhyme and reasons and liable to be dismissed. The applicants were engaged as Daily Rated Casual Labour and they were assigned duties at farm section of this Directorate and different duties related to farm were allotted to him. That the applicants were engaged as Casual Labour with Temproary

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Status and they are governed as per Temproary Status scheme. The temporary status scheme provides for regularization of Casual Labours provided that sufficient numbers of the posts are available in an organization, but there is ban imposed by the higher authorities for direct recruitment quota. That the case of the applicants has been considered, but for want of ban imposed could not be regularized. That the O.A. lacks merits and liable to be dismissed.

4. Certain documents have also been filed along-with Counter Affidavit. Supplementary Counter Affidavit has also been filed by the respondents and it has been alleged that the posts are ^{not} lying vacant. That the posts are required in order to regularize the services of the Temproary Status holder Casual Labours at PDCSR Modipur, ICAR issued notification on dated 26th June, 2004 that the ^{has} EFC ^{is} not agree^d to any new posts.

5. In response to the Counter Affidavit of the respondents applicant, also filed Rejoinder Affidavit as well as Supplementary Rejoinder Affidavit and in the Rejoinder Affidavit the applicant denied from the allegations of the Counter Affidavit and reiterated the allegations which have been made in the O.A.

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6. I have heard Sri Dharmendra Tiwari, Advocate holding brief of Sri Vikas Budhwar, Advocate for the applicant and Sri N. P. Singh, Advocate for the respondents and perused the entire facts of the case.

7. Written Statements were also filed on behalf of the applicant by Sri Vikas Budhwar, Advocate and from the perusal of the pleadings of the parties it is an admitted fact that the applicants were engaged on different dates as Daily Rated Casual Labours for the different types of work in PDCSR, Modipur, Meerut and it is an organization of ICAR. It is also undisputed fact that in pursuance of the direction of the Tribunal in O.A. No. 1091 of 1993 on dated 18th April, 2001 the services of the applicants have not been regularized, but temporary status was conferred on the applicants. Whereas, the O.A. was filed by the applicants for regularization and the O.A. was disposed of by the Tribunal by giving a direction to the respondents that they may pass ^{an} necessary orders regarding grant of temporary status in the light of the scheme mentioned above within a period of four months from the date of the order. As there was no direction of the Tribunal for regularization of the services of the applicant hence, this direction of the Tribunal was complied with and an order was

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passed on 14th/16th August, 2001 (Annexure-6) and it has been alleged in this order Annexure-6 *"that the respondents have provided and granted temporary status in the light of the scheme issued vide O.M. No.51016/02/90-Estt-C dated 10th September, 1993 within a period of four months and accordingly temporary status was granted."* Now the instant O.A. has been instituted for regularization of the services of the applicants.

8. The respondents in the Counter Affidavit alleged that the applicants were engaged with the temporary status and they were governed as per the temporary status scheme. The temporary status scheme itself has a provision for regularization of the casual labour provided they were put in sufficient numbers of posts ~~are~~ available in the organization. It has further been alleged that the case for regularization of the applicants is under consideration, but the same could not be finalized⁸ due to imposition of ban for filling up direct recruitment quota and non-availability of sufficient vacancies under group 'D' posts to accommodate them. Annexure-CA-2 is the scheme dated 10th September, 1993. And there is a provision for conferment of temporary status on the Daily Rated Casual Labour

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and for regularization of their services. Para 8 of the scheme is reproduced as under:-

"8. Procedure for filling up of Group 'D' posts

i) Two out of every three vacancies in Gr. Cadres in respective offices where the labourers have been working would be ~~finalised~~^{finalised} as per extent requirement rules and in with the instructions issued by Department of Personnel and Training from amongst casual with temporary status. However, regular staff rendered surplus for any reason ^{lateness, &} w^π prior claim for absorption against existing future vacancies. Incase of illiterate labourers on those who fail to fulfill the qualification prescribed for the post, regular^{tion} will be considered only against those posts in respect of which literacy or lack of qualification will not be a requisite qualification. They would be allowed age relaxation equiva² period for which have worked continued casual labourer."

9. Hence, undisputedly, there is a scheme which also provides for regularization of the temporary status casual labours.

10. It has been alleged by the respondents that they have considered the case of the applicants for regularization and

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recommended to the I.C.A.R. higher authorities of the respondents, but the higher authorities have not agreed and a ban was imposed. Annexure SCA-1 of the Supplementary Counter Affidavit is an O.M. dated 05th august, 1993 issued by the DPOT and it has been provided in this O.M. that till review is completed no vacant post shall be filed² except with approval of the Ministry of Finance Department of Expenditure. And it has been argued by the learned counsel for the respondents that as there was a ban hence the matter of regularization was not finalized.

11. Learned counsel for the applicant argued that applicants had been working for the last more than 20 years even a temporary status is also conferred on them and they have got a right to be regularized. The learned counsel for the applicant cited a judgment of the Hon'ble High Court of Allahabad reported in (2000) 1 UPLBEC 129 Awdhesh Kumar Yadav Vs. Divisional Forest Officer (D.F.O.), Social Forest Division, Mainpuri and others in this judgment the Hon'ble High Court held as under:-

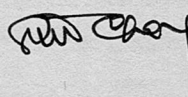
"The State Government cannot act arbitrarily in the matters relating to temporary or daily wage employee. No doubt there is a principle in service law that temporary

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employee has not right to the post, but this principle has to be considered along-with other legal principle that the State cannot act arbitrarily. In our opinion to keep a person on daily wage basis for 18 years is wholly arbitrary. Hence on the facts and circumstances of the case, we direct that the petitioner be regularized within a month from the date of production of the certified copy of this order and he shall be paid regular salary thereafter."

Hence, the Hon'ble High Court held that although there is no doubt that there is a principle in service law that temporary employee has no right to the post, but this principle has to be considered along-with other legal principle that the State cannot act arbitrarily. And that to keep a person on daily wage basis for 18 years is wholly arbitrary. The Hon'ble High Court also held that that the matter of regularization is to be considered along-with other rules and regularization of the organization. Learned counsel for the applicant also produced a notification of the concerned ministry and in that scheme it has been provided as under:-

"After tendering three years continuous services after conferment of temporary status, the casual labourers would ^{be} treated on par with temporary Group-'D' employees for the purpose of contribution to the General Provident Fund, and would also further be eligible for the grant



of Festival Advance/Flood Advance on the same conditions as are applicable to temporary Group-'D' employee, provided they furnish two securities from permanent Govt. Servants of their Department.

In view of this notification it has only been provided that will ^{there} be right and privileges of the temporary status employees, but where it has been provided that he is to be considered for regularization after put in so many years in service. Certain other provisions as well as Swami's establishment has also been produced.

12. The learned counsel for the respondents argued that the matter of regularization of a Casual Labour has been settled by C.A.T., Allahabad Bench in the judgment of Munna Lal and Ors. Vs. Union of India and Ors. reported in ESC 1995 (II) 42 the reliance has been placed by the learned counsel for the respondents on para 63 of this judgment which is as under:-

"63. The opp. Parties have indicated that they are implementing the Office Memorandum and circular, letters contained in Annexure-CA-1 and C.A.-2. the position with regard to the Office Memorandum dated 10th September, 1993 issued in pursuance of the Principal Bench in Raj Kamal v. Union of India and Ors, our observations in paragraphs 45 and 46 shall

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apply. However, if the said Office memorandum has been endorsed to the Indian council of Agriculture Research and they are required to follow the provisions of the said Office Memorandum, nothing in our order may be construed as preventing or obstructing the respondents from giving effect to the said Office Memorandum. For the present, we, are satisfied about the stand of the respondents that they are required to follow and are following the guide-lines contained in Office Memorandum and circular letters filed as Annexure CA-1 and CA-2 to the counter affidavit. We further hold that on the basis of the circumstances none of the applicants qualify for regularization under the provisions of the said documents since they have not completed more than 240 days of continuous service in two consecutive years is not sufficient to hold that the provisions in the said two documents is in any manner arbitrary or violative of Article 14 and 21 of the Constitution."

13. I have perused the judgment of Munna Lal (Supra) and it has been held by the C.A.T., Allahabad Bench that on the basis of the circumstances none of the applicants qualify for regularization under the provisions of the said documents since they have not completed more than 240 days of continuous service in two consecutive years

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and it is not sufficient to hold that the provisions in the said two documents is in ^{any} ~~no~~ manner arbitrary or violative of Article 14 and 21 of the Constitution. It is further provided in this judgment that if on the basis of Interim Order the applicants have been allowed to continue will have no right to continue. Learned counsel for the applicant argued that the same principle has also been followed in O.A. 384 of 1994 along-with bunch of cases decided on 16th December, 1994 by the C.A.T., Allahabad Bench and it is held as under:-

"33. Reference to the above decision is relevant and meets the plea taken on behalf of the respondents that on completion of 240 days the applicants are entitled to regularization. The respondents have very clearly indicated that the applicants were engaged as seasonal casual labourers on completion of their work for which they were engaged, their services automatically came to an end. The respondents have also denied that the applicants can be termed as workmen under the provisions of the Industrial Disputes Act. Since no sanctioned post is in existence, we think that it would not be advisable to direct regularization of the applicants against regular posts. More so, since admittedly, the applicants² on the basis of their number of days of working do not fulfill the eligibility for regularization lays down in

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Annexure CA-1 and CA-2 to the Counter Affidavit."

14. Hence in view of this judgment also it is evident that the applicants on completion of 240 days are not entitled for regularization. That the applicants were engaged as seasonal Casual Labour on completion of their work for which they were engaged, their services automatically came to an end. That putting some numbers of working days will not authorize a person for regularization. Learned counsel for the applicant also placed reliance on a judgment of the Hon'ble Supreme Court reported in (2006) 4 SCC Secretary State of Karnataka and Ors. Vs. Umadevi (3) and Ors. it is a judgment of the constitution bench of the Hon'ble Apex Court, the Hon'ble Apex Court has held as follows:-

"Persons who get employes, without the following of a regular procedure or even through the backdoor or on daily wages, have been approaching the courts, seeking directions to make them permanent in their posts and to prevent regular to the posts concerned. The Courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called "litigious employment", has risen like a phoenix seriously impairing the constitutional scheme. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed

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by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. Such an argument fails when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution. Merely because a temporary employee or casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employee whose period of employment has come to an end or of ad-hoc employee who by the very nature of their appointment, do not acquire any right."

The Hon'ble Apex Court also held as under:-

"45. While directing that appointments, temporary or casual, be regularized or made permanent, the Courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain – not at arm's length – since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently."

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15. Hence from perusal of the judgment of the Constitution Bench of the Hon'ble Apex Court that if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arm's length – when an employee searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, such an employee will not be entitled in the scheme for employment. And the Hon'ble Apex Court clearly provides that the Courts cannot interfere in the matters of regularization beyond scheme. And a person who opted for temporary status or casual labour employee, he cannot be regularized. Learned counsel for the ^{respondent - D}~~applicant~~ on the basis of the ^{judgment} argued that as in the earlier judgment mentioned above the C.A.T., Allahabad Bench decided that casual cannot be regularized as a matter of right and the Hon'ble Apex Court also in the case of Umadevi (Supra) held that a casual employee ^{not - 12} ~~is~~ ^{is} entitled to be regularized as a matter of right and there is no violation of the article of the Constitution.

16. Hence, in view of the provisions of law settled by the Hon'ble Apex Court in the matter of Umadevi (Supra) and C.A.T., Allahabad Bench in the case of Munna Lal (Supra) the Casual Labour employee or Temporary Status Casual Labour employee

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has got no vested right for regularization and the Court cannot interfere in the matter of regularization beyond the scheme and in the present case there is scheme 'Temporary Status and regularization scheme'. And this scheme itself provides for regularization of the Group - 'D' employees. And the respondents considered the case of the applicants and recommended to the higher authorities, but as there is a ban imposed by the respondents, and hence the respondents have not regularized the services of the applicants, and as the O.M. of the respondents provides that no post will be regularized without approval of the Ministry of Finance.

Although, it has been argued by the learned counsel for the ^{applicants'} ~~respondents~~ that in the present case new posts are not be created, hence the O.M. is not applicable in the present case. But the applicants were of temporary status employees and the new posts are required for their regularization, and as the respondents authorities imposed a restriction for creation of new posts and for regularization ~~and~~ the Hon'ble Apex Court also held that the Courts cannot interfere in the matters of regularization beyond the scheme and hence in view of the settled law the O.A. deserves to be dismissed.

17. O.A. is dismissed. However, it is provided that the matter of regularization of the applicants will remain open with the

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respondents and as and when permission is granted by the higher authorities then their services may also be considered for regularization. No order as to costs.

Michael Henry Sherry
Member-J

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