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Order dated 9.2.2001

Heard Shri A.A.Das, learned counsel for the petitioner and Shri Ashok Mohanty, learned senior counsel appearing for the Respondents and perused the records.

In this O.A. the petitioner has prayed for direction to respondents to allow him to join the duties and also to pay his salary and wages from December/97 till the date of joining.

Respondents have filed their counter opposing the prayer of the applicant.

Applicant has not filed any rejoinder.

For the purpose of considering this Original Application it is not necessary to go into too many facts of this case. In any case the main facts for considering the prayers of the applicant are not in dispute. It is the admitted position that the applicant is a Casual Labourer with Temporary Status under Respondent No.1, viz. Director, Central Institute of Fresh Water Acquaculture. He has been conferred with Temporary Status in order dated 3.11.1996, w.e.f. 1.9.1993, i.e. from the date of coming into force of the Scheme for conferment of Temporary Status. It is the admitted position that the applicant absented himself from duty w.e.f. 30.11.1997. Applicant has stated and this has also been supported by the Respondents that he was arrested by the Police in two Criminal Cases under Sections 457/380 I.P.C. It is also the admitted position that Respondents vide letter dated 10.12.1997 asked for explanation from the applicant as to why he was absented himself from duties, in response to which he replied in his letter dated 22.12.1997 (Annexure-3) that he was arrested by Police in ^afalse case and that is why he was not able to attend his duties. It is submitted by Shri Das that the petitioner remained in custody till 12.12.1997. In his representation dated 22.12.1997 the applicant prayed that he should be allowed to rejoin his engagement as Temporary Status casual worker, but this having not been allowed the present Original Application has been filed with the prayers referred to earlier.

Respondents have stated that in the meantime

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it has been reported by the Police authority that investigation into the two criminal cases have since been completed and charge sheet has been submitted against the persons including the applicant. It has been submitted by Shri Mohanty that applicant is a casual labourer with Temporary Status and this position vis-a-vis the arrest cannot be better than that of a regular employee. A regular employee is required to be placed under suspension if he is detained in custody for more than 48 hours. But as a casual labourer with even with Temporary Status is not regarded as Govt. employees, there is no provision to keep him under suspension. But in view of pendency of criminal cases against him in which applicant has been chargedsheeted, respondents have decided ~~is~~ not to engage him. Learned counsel for the petitioner has cited a decision of the Hon'ble Supreme Court in the case Narasingh Pal vs. Union of India reported in 2001 LLJ 320, in which their Lordships of the Hon'ble Supreme Court held that casual labourers with Temporary Status cannot be dismissed from service without holding any departmental enquiry into the charges alleged against him. The decision cited by the applicant is with regard to dismissal. It is submitted by the learned senior counsel Shri Mohanty that in case the applicant gets acquitted in the criminal case filed against him, the Respondents will take him back to engagement as before.

We do not think that at this stage we should go into the legality **of the** action taken by the Respondents in not allowing the applicant to perform his duties on 22.12.1997. We note that in letter dated 10.12.1997, respondents called for explanation of the applicant with regard to his continued absence without intimation and the petitioner ~~has~~ already submitted his explanation in his letter dated 22.12.97 vide Annexure-3. It is the admitted position that this explanation of the applicant has been received by the Respondents, but Respondents have not passed any order on the explanation received by them, but have merely refused to give the work to the applicant. We hold that once the explanation of the applicant has been received by the Respondents, they are obliged to pass orders on such explanation and communicate the order to be passed by them thereon.

J. Jom.

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We accordingly direct that Respondents should consider the explanation/representation of the applicant and pass a speaking order and communicate the same to the applicant within a period of 15(Fifteen) days from the date of receipt of this order. We make it clear that in case the applicant is aggrieved in regard to orders to be passed by the Respondents on his explanation, he will be free to approach the Tribunal. The 1st prayer of the applicant is disposed of accordingly.

With regard to 2nd prayer applicant has asked for ~~Rs~~ his salary and wages from December/97 onwards. We hold that in view of our direction made above disposing of the 1st prayer, the second prayer at this stage is premature. This question will come up only after the applicant ~~has received~~ ^{the} speaking order to be passed by the respondents with regard to his explanation/representation. The 2nd prayer of the applicant is accordingly rejected, ~~as premature~~.

In the result, O.A. is disposed of in ~~terms~~ terms of observations and direction made above, but without any order as to costs.

MEMBER (JUDICIAL)

D. V. M.
9/10/2001
VICE CHAIRMAN

See copies of
General Order
H. 9.2.2001 given
to both sides.

12/12/01

S. (CJ)