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O.A.No. 753 of 2002

ORDER DATED : 10-03-2004.

This Original Application has been filed by six Applicants with the prayer to antedate/date back of their regularisation of service w.e.f. 1.4.73 and to pay the differential arrear salaries in terms of Annexure-2 at par with Respondent Nos. 7 to 10, who were similarly situated persons and they claimed that those Respondents were junior to them in service.

2. The admitted facts of this case are that the Applicants were regularised and confirmed against Construction Reserve post Gr. 'D' w.e.f. 1.4.1989. Although, they have not been able to produce their letter of appointment as Casual Labourers in the Deptt. they have stated that when the Respondents regularised the services of other persons w.e.f. 1.4.1973, their cases could not have been ignored. To *prove* their points to the hilt, they have also submitted an additional affidavit, wherein they have submitted that two individuals, namely, Banambar Jena and Sudarshan having date of birth as 5.2.52 and 15.11.52 respectively ~~were~~ regularised by antedating the date of their regular appointments to 1.4.1973. Applicants having been engaged as Casual Labourers (Shri Bishnu from 25.9.1967, Mahabir Kumar from 23.3.65, Mantu Das from 1964, Ghana from 23.3.67, Udayanath from 68 and Madaya from 10.9.66) their turn should have come before that of Banambar

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or Sudarsan, who could not have been engaged as Casual Labourers before 1970. To prove the point, they have also submitted M.A.No.43/2004 calling for producing of seniority list of casual labourers as on 1-1-1987.

3. Respondents, however, have thrown all the arguments of the applicants through the window. They have categorically submitted that none of them was eligi-ble/available for regularisation w.e.f. 1.4.73. In their counter, they have stated that Shri Bishnu being not on the rolls of construction Organisation with three years casual service as on 1.4.1973, Shri Mahabir although initially engaged as Casual Labourer from 23.3.1965, he was out of service for two years w.e.f. 23.6.1970 and was again reengaged w.e.f. 4.9.1972 and, therefore, he was not available in his turn for such regularisation w.e.f. 1.4.1973. Shri Udayanath was not on the rolls of construction organisation as on 1.4.1973, Shri Ghana not being on the rolls of the construction organisation as on 1.4.1973, Shri Madhayya having been engaged as casual labourer w.e.f. 8.12.75, and Shri Mantoo having not fulfilled the three stipulated conditions of Annexure-2, these cases could not be considered for ante-dating their regularisation as prayed for.

4. In the face of such categorical submissions about the history of service of the applicants, the applicants have endeavoured to rebut the allegations stating that all the documents relied upon by the applicants are still vavailable in the personal file; which

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will disprove the contentions made by the Respondents in their counter. They have also submitted Xerox copies of the Casual Card of Applicant No.3, Applicant No.6 and Xerox copies of register of free passes of Applicant No.1.

I have carefully considered the submissions made by learned counsel for both sides and perused the records placed before me.

5. Respondents have clearly spelt out the reasons why the Applicants are not entitled/could not be considered for regularisation prior to the date they have been regularised against PCR post. In reply although certain vague statements have been made by the Applicants by producing certain records describing as records of service, I do not appreciate those records to be genuine and, therefore, no reliance can be placed on those records to prove any point in their favour. On my repeated query, it was submitted on behalf of the Applicants that they do not have the copies of letters of appointment as Casual Labourers with them; nor do they have the xerox copies of record of service as Casual Labourers; which were supplied by the Department to such employees; nor do I find that the Applicants have made any application to the Authority seeking a copy of the records of service as Casual Labourer. However, as it is said where there is smoke there is fire.

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As it is being pointed out by the Applicants by filing an additional affidavit that two persons, namely, Shri B. Jena and Sudarshan having date of birth as 05.02.1952 and 15.11.1952 respectively could be regularised w.e.f. 01.04.1973, it is for the Respondents to explain why Shri Mahabir who was engaged as Casual Labourer from 23.3.1965 to 23.6.1970 and again from 4.9.1972 to till date could not be regularised in his turn. Similarly, they should also verify the records in respect of the Applicant namely, Shri Mantoo, as to how he does not fulfil the three conditions stipulated in Annexure-2. Except to the extent I have observed i.e. except in the cases of Mahabir and Mantoo, I do not see any substantiating reason to the grievance raised by the other Applicants and, therefore, no relief can be granted to them.

6. Before closing, I would like to observe that here the grievances of the Applicants could have been evaluated in a better way had the Applicants been able to submit the basic documents, like their letters of appointment as also copy of the seniority list of casual labourers on the strength of which they are claiming that they were senior to some persons who were given the date of regularisation prior to their date of regularisation. Be that as it may, having regard to the level of awareness of the Applicants and their position in hierarchy, I am refraining from imposing any cost but I hope in future, whenever they will be approaching the Court, they should be armed in much better way so that their grievances could be better dealt with.

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7. The Respondents to carry out the review in the cases of Mahabir and Mantoo within a period of 120 days from the date of receipt of a copy of this order.

8. This Original Application is accordingly disposed of. Nocosts.

m.b. 672/04 for
appr order. copy
served.


(B.N. SOM) 10/3/04
VICE-CHAIRMAN

by Bench
21/9/04