

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATIONS NO.247,248,249,250,251 & 252 OF 1995.

JODHPUR THE 17TH DAY OF OCTOBER, 1997.

1. Radha Kishan S/o Shri Ram Ji aged about 27 years, R/o Inside Sivanchi Gate, Tat Bazar, Jodhpur, at present employed on the post of Civilian Casual Labour in the Office of 57 FMSD 56 A.P.O. ... Applicant in OA No. 247/1995.

2. Manohar Lal S/o Shri Brij Lal aged about 29 years, R/o Dak Bangla (Bangla No.31), P.S. Sardar Pura, Residents Road, Jodhpur (Raj) at present employed on the post of civilian casual labour in the office of 57 FMSD C/o 56 A.P.O. ... Applicant in OA No. 248/1995.

3. Babu Lal Bishnoi S/o Shri Harlal aged about 26 years R/o Khajarli Kalan Via Luni, Dist. Jodhpur (Raj) at present employed on the post of Civilian Casual Labour in the office of 57 FMSD C/o 56 A.P.O. ... Applicant in OA No. 249/1995.

4. Ram Chander S/o Shri Mohanlal aged about 23 years, R/o Mahamandir, Juni Baggar, Jodhpur, House No.88, Jodhpur at present employed on the post of Civilian Casual Labour in the office of 57 FMSD C/o 56 A.P.O. ... Applicant in OA No. 250/1995.

5. Dhanna Ram Devra S/o Shri Rawat Ram Ji aged about 23 years R/o Chand Pol Ke Bahar, Post Vidya Shala P.S. Sur Sagar, Dist. Jodhpur at present employed on the post of Civilian Casual Labour in the office of 57 FMSD, C/o 56 A.P.O. ... Applicant in OA No. 251/1995.

6. Jagdish Chander S/o Shri Sawal Ji R/o Inside Sevanchi Gate, Tat Bazar, Jodhpur, at present employed on the post of Civilian Casual Labour in the Office of 57 F.M.S.D., C/o 56 A.P.O. ... Applicant in OA No. 252/1995.

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.

2. The D.D.M.S. Headquarter 12 Corps, C/o 56 A.P.O.

3. The Commanding Officer, 57 F.M.S.D. C/o 56 A.P.O.

..... RESPONDENTS.
(in all the OAs)

CORAM :

HONOURABLE MR.A.K.MISRA, JUDICIAL MEMBER.

For the Applicants

..... Mr.J.K.Kaushik

For the Respondents

..... Mr.Vineet Mathur.

3/11/

PER HONOURABLE MR.A.K.MISRA :

In all the above cases, the controversy in question and the relief sought against the respondents, are common therefore, all these Original Applications are disposed of by this single order.

2. All the above named petitioners have filed individual application against the respondents seeking the following relief :

"That the Impugned Orders dated the 17.10.1994, 22.8.1994, 17.1.1995 & 20.4.1995 (Annexs. A-1 to A-4) and Termination Orders dated 17.7.1995 (Annex.A-9) and dated 5.5.1995 (Annex.A-5, in OA No.249/95), may be declared illegal and the same be quashed and respondent No. 2 be directed to treat the applicants as appointed on regular basis against the clear regular vacancies and make payment of pay and allowances in the Pay Scale of Rs. 750-940 with all consequential benefits."

3. Notices of these O.As were issued to the respondents who have filed their reply in individual case. The respondents have raised a preliminary objection that applicants have not availed the alternative remedy of preferring an Appeal or Representation to the concerned authorities in respect of their termination order. Hence, the O.As are not maintainable. The respondents have further pleaded that the appointment of the applicants were on casual basis. They were never appointed as regular employees and were through-out paid as Daily wagers, their services were liable to be terminated without notice, therefore, they are not entitled to any relief against the termination order.

4. The applicants have filed rejoinder refuting the allegations of the respondents. Respondents have filed their sub-rejoinder, reiterating their stand in the reply.

5. I have heard the learned counsel for the parties

and gone through the records. The facts relating to the present controversy are briefly narrated here-in-below:-

6. The applicants have stated that they were registered with the Employment Exchange. In pursuance to the Notification of vacancies the names of the applicants were sponsored by the Employment Exchange and they appeared in the interview and medical examination. On being found medically fit, applicants were duly selected on the post of Mazdoors and were given Offer of Appointment vide letter dated 18.7.1994 (Annex.6), in which the pay was mentioned as Rs. 750 + Dearness Allowance and Other Allowances. It is alleged by the applicants that although all the formalities for regular appointment were undertaken, yet the applicants were offered to be appointed on casual basis for 89 days with the condition that their services could be terminated at any time without notice, if their performance is not found satisfactory. The applicants in pursuance to this Offer, joined the posts. Thereafter, the respondents paid to the applicants at the daily nerrick rate instead of regular pay scale of Rs. 750 + D.A. etc. The applicants were given extension from time to time. The respondents also gave artificial breaks to avoid the continuity of service of the applicants. It is alleged by the applicants that the Notification in response to which the names of the applicants were sponsored by the Employment Exchange, clearly mentions Rs. 750/- per month, as pay and allowances as admissible whereas the services of the applicants were utilised as daily wagers. The offer of appointment dated 18.7.1994 (Annex.A-6) also mentions Pay of Rs. 750/- per month + D.A. and other Allowances, as admissible under the existing rules. However, this condition was subsequently changed vide letter dated 22.8.1994 (Annex.A-2) in which it was mentioned that applicants would be employed on daily wages basis at the local nerrick rates as fixed by the Station Headquarters, Jodhpur. It is the contention of the applicants that condition of service cannot be altered

to the disadvantage of the applicants. Applicants were appointed on regular pay scale whereas they were subsequently paid on daily nerrick basis and their services were terminated treating them casual workers. For these reasons, the impugned orders are required to be quashed and applicants are entitled for the relief enumerated above.

7. In O.A. No. 249 of 1995, it is also alleged that the applicant was given extension for 89 days vide letter dated 20.4.1995 (Annex.A-4) but his services were terminated with effect from 4.5.1995 vide letter Annex.A-5 dated 3.5.1995. Hence, the termination order is bad in law and deserves to be quashed.

8. I have considered the preliminary objection raised by the learned counsel for respondents and related arguments addressed by both the learned counsels. No specific rule was placed on record or shown to me during the arguments which may go to show that under specific provisions, applicants were required to make representation to the concerned higher authorities against the termination order. If there is no specific provision for making representation or preferring appeal then in such matters, the respondents cannot argue that applicants have failed to avail the alternative remedy available to them under the law for making representation before the concerning authorities. Therefore, the preliminary objection of the learned counsel for respondents, is rejected.

9. So far as issuing the Notification to the Employment Exchange for sponsoring the names, selection of candidates, giving them offer of appointment, applicants joining, respondents issuing letters of extension from time to time or fresh letters of appointment from time to time and respondents issuing the termination orders from time to time with respect to the applicants, are not in dispute. Therefore, the only controversy which is required to be settled in the instant case is, whether the applicants were regularly

appointed candidates against the regular posts or they were appointed casual daily rated workers as casual Mazdoors. No doubt, in the Notification issued to the Employment Exchange, it is mentioned that pay would be Rs. 750/- per month and Allowances as admissible but in this Notification, no regular pay scale has been mentioned. Under the heading Type of Works required (Designation), it has been mentioned "Casual Labourer (Mazdoor)". In this Notification there is no mention of regular vacancies being filled-in, therefore, it cannot be said that the department notified regular vacancies for being filled-in. In the appointment offer letters, it has been mentioned that the applicants would be paid Rs. 750/- per month + D.A. and other allowances as admissible under the Rules but in this letter too, it has not been mentioned that they would be paid as regular employees in the regular pay scale. The Heading of this letter is "Appointment Offer Civilian Casual Labourers". There is no mention of regular appointment of the Labourers. The term of appointment was also for 89 days with a clear condition that if the performance was not found satisfactory, services could be terminated at any time without any notice. Therefore, it is difficult to hold that the applicants were appointed against the regular posts.

10. There is nothing on record to show that the applicants were ever paid at the stipulated rate of 750/- per month alongwith D.A. and other Allowances, as mentioned in the letter dated 18.7.1994 (Annex.A-6). When the Bills regarding payment, were sent to the concerned authority, the concerned authority sought certain clarifications from the respondents vide its letter dated 16.8.1994 (Annex.R-2) and thereafter, the respondents issued a Corrigendum vide its letter dated 22.8.1994 (Annex.A-2), amending the Clause (2) of the Appointment Offer letter dated 18.7.1994 (Annex.A-6). By the subsequent amendment, the applicants were to be paid as daily wagers at the stipulated daily nerrick rates. The applicants continued to work on this condition with the respondents and accepted the payment

as daily wagers. Subsequently, they were given appointments from time to time vide letters dated 17.10.1994 (Annex.A-2), 17.1.1995 (Annex.A-3) and 20.4.1995 (Annex.A-4). The applicants termed these letters as extension letters but in view of the termination orders, these letters cannot be termed as extension letters. In my opinion, the applicants were given fresh appointment from time to time. The applicants never raised any dispute at the initial stage when Annex.A-2 was issued stating that the applicants would be employed on daily wages basis at the local nerrick rates including of all allowances. They accepted the employment under this condition, therefore, in my opinion, they are now estopped from raising any such dispute.

11. The learned counsel for applicants has cited 1989 SCC (L&S) 246 - H.L.Trehan and Others Vs. Union of India and has argued that service conditions of an employee cannot be changed to his disadvantage without giving him a predecisional hearing. Therefore, the order dated 22.8.1994 altering the service condition is bad in law. I have gone through the ruling. In the instant case, the writ petitioners were ^{employees} ~~petitioners~~ of a limited company which was subsequently acquired by the Government of India and thereafter Board of Directors of the new company issued certain circulars altering the perks and prerequisites of the employees and it was in that context, it was held by Hon'ble Supreme Court that service conditions cannot be altered to the disadvantage of the writ petitioners. But, here in the case in hand, the applicants were never paid at the rate of Rs. 750/- per month as pay, therefore, they cannot be said to have acquired a right to claim the pay @ 750/- per month + allowances. The condition of pay was altered to that of payment @ daily nerrick rate soon after the mistake was discovered in the original appointment offer letter. Thus, it can not be said that the applicants acquired right to receive the payments at the rate of Rs. 750/- per month plus allowances and the condition of service was altered to

(B)

the disadvantage of the applicants. Vide Annex.R-1, nine labourers were authorised to be employed at the discretion of the Officer Commanding on casual basis for a short period not exceeding 89 days and consequently in the employment exchange notification also, vacancies of casual labourers (mazdoors) were notified. In the appointment offer letter (Annex.A-6), the applicants were offered posts of Casual Labour for 89 days and were subsequently paid at the daily nerrick rate. Simply because the applicants were medically examined and were sponsored by the employment exchange, they cannot say that they were employed on regular basis. The Authorities wanted to employ physically fit persons for handling heavy stores and for that reason if the applicants were medically examined, it cannot be said that they were appointed on regular basis. For regular appointment, there should be regular vacancies also.

12. In JT 1996 (2) SC 455 - State of Himachal Pradesh Versus Suresh Kumar Verma and Others, it was held by Hon'ble Supreme Court that appointment on daily wage basis, is not an appointment to a post according to the rules. It was further held that in such matters of termination, the Court cannot give any direction to reengage the applicants in any other work or appoint them in the existing vacancies. In the instant case, the authorisation to appoint casual labourers was to the effect that casual labourers were to be employed for short period not exceeding 89 days when work-load so warrants. Therefore, termination order would necessarily mean that work-load has ceased to exist. In the appointment letters also, it is mentioned that the services are liable to be terminated without any notice, therefore, such termination of services of the applicants is not subject to any interference.

13. With reference to termination order dated 5.5.1995, Annex.A-5 in O.A. No. 249/1995, it was argued by the learned advocate for the applicant that the applicant was granted extension for 89 days vide letter dated 20.4.1995 Annex.A-4, therefore, the services of the applicant could ^{not} be terminated by order dated 5.5.1995, Annex.A-5, before completion of 89 days of extended term. I have considered this aspect seriously.

✓

In my opinion, the applicant was not given any extension relating to his service as argued by the learned counsel for the applicant. By letter dated 20.4.1995, Annex.A-4, the applicant was appointed for a term of 89 days with a clear stipulation that "if performance is not found satisfactory at any time, services will be terminated without any notice". Therefore, the services of the applicant could be dispensed with at any time during this period by way of termination order. Hence, the argument of the learned counsel for the applicants fails.

14. The learned counsel for applicants has also argued that applicants were repeatedly engaged by the respondents because there was work-load. There is still work-load for handling Stores etc. and other casual labourers are being employed by the respondents from time to time. There is no good reason for not employing the applicants as they were initially appointed after observing the procedural formalities and thus, the respondents are involved in an unfair labour practice. The termination order is liable to be quashed on this ground also.

15. I have considered this argument. The applicants were employed as casual labourers as per the requirements for handling Stores etc. and they were paid at daily nerrick rate. In 1997 (2) SLR 570 - Himanshu Kumar Vidhayarthi Versus State of Bihar, it was held by Hon'ble Supreme Court that temporary employees working on daily wages, have no right to hold the post. Their dis-engagement from service cannot be construed to be retrenchment under the Industrial Disputes Act. In 1997 (1) ATJ 339 - Rokkam Sreenu Versus Union of India and Others, it has been held by Hyderabad Bench of C.A.T. that Casual Labour - Daily Wagers - Appointment - No direction can be issued for re-engagement or regularisation of a labourer who has worked on daily wages basis. Thus, in the instant case, the applicants are not entitled to any such relief which may relate to their re-engagement. So far as the rights relating to Labour Law is concerned, the applicants were free to approach to the Labour Court, if they had so chosen, therefore, this argument is of no help to the applicants.

16. From the above discussion, I come to the conclusion that the applicants were employed as Casual Labourers on Daily Wages therefore, the termination orders dated 17.7.1995 Annex.A-9 and dated 5.5.1995 Annex.A-5 (In OA No. 249/1995), are in accordance with the conditions of appointment. The applicants

3nw

12

are ~~are~~ not entitled to any relief. The Original Applications, therefore, deserve to be dismissed and are hereby dismissed.

17. No order as to costs.

3/31/1977
(A.K.MISRA)
Member (J)

.....
mehta*

Copy 88 and 89
sent to Pet. counsel for
Pet & counsel for Resp
by Regd P.D. vicle
No 200 to 201
27-10-97
att ml
24/10/97