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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH,JODHPUR

.....

Date of Order : 17.8.2001.

1. O.A.No. 354/1996

1. Umed Singh S/o Sh. Mangal Singh aged 26 years
2. Hari Singh S/o Sh. Bhopal Singh aged 20 years
3. Chain Singh S/o Sh.Durg Singh aged 26 years
4. Mewa Ramn S/o Shri Moti Lal aged 28 years.
5. Pokar Ram S/o Sh. Mala Ram aged 27 years

All Casual Labours in 5 FBSU, Air Force, Uttarlai District Barmer, All residents of Laliyon Ki Dhani, Barmer Agore, Barmer.

2. O.A.No. 254/1997

1. Hari Singh S/o Sh. Bhool Singh aged 21 years
2. Umed Singh S/o Sh. Mangal Singh aged 28 years
3. Chain Singh S/o Sh. Durg Singh aged 27 years
4. Mewa Ram S/o Sh. Moti Ram aged 19 years
5. Pokar Ram S/o Sh. Mala Ram aged 28 years.

All Ex.Casual Labours in 5 FBSU, Air Force, Uttarlai, District Barmer and residents of Laliyon Ki Dhani, Barmer Agore, Barmer.

.....Applicants.

VERSUS

1. Union of India through the Secretary to the Government, Ministry of Defence, New Delhi.
2. Base Commandar, 5 FBSU, Air Force, Uttarlai, District Barmer.

.....Respondents.

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Mr. Vijay Mehta, Counsel for the applicants.
Mr.Vineet Mathur, Counsel for the respondents.

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CORAM :

Hon'ble Mr.A.K.Misra, Judicial Member
Hon'ble Mr.A.P.Nagrath, Administrative Member

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ORDER

(Per Hon'ble Mr.A.K.Misra,Judicial Member)

------ Both these cases related to the present applicants. The earlier O.A. was filed by the applicants for regularisation and the second O.A. was filed by them for quashing the verbal termination orders passed by the respondents in respect of the applicants. Since the controversy involved in both these cases is common and relates to the scheme for regularisation of the year 1993, therefore, both these applications are disposed of by this common order.

2. In O.A.No. 354/1996, the applicants have prayed as follows :-

"That the respondents be directed to grant temporary status/ regularise the services of the appliants. The respondents be further directed to pay salary in regular pay scale of Gr. 'D' services."

In O.A.No. 254/1997, the applicants have prayed as follows :-

"That the verbal order of termination may kindly be quashed. The respondents may kindly be directed to continue the applicants in service. The applicants may kindly be reinstated with full back wages and consequential benefits."

3. Notice of both the O.As were given to the respondents who have filed their reply in each of the cases to which applicants have filed rejoinder supported by documents.

4. We have heard the learned counsel for the parties and have gone through the case file. It would be useful to narrate the facts as pleaded by the applicants in brief and the defence taken by the respondents.

5. It is stated by the applicants that they were appointed on daily wages after due selection and were registered in the employment exchange.

The applicant No. 2 was appointed w.e.f. 2.6.1990, applicant No. 3 was appointed on 1.7.1991, applicants No. 1 and 4 were appointed w.e.f. 1.1.1993 while the applicant No. 5 was appointed on 1.1.1994. Since then applicants have been discharging their duties regularly and have completed 240 days. In the year 1984, respondents issued instructions that the casual labours serving for more than six months continuously should be accorded status of regular employees in terms of Para 10 of the Model Standing Orders which was made applicable in the Ministry of Defence also. In the year 1993, the Government of India framed a Scheme for casual labours known as 'Casual Labour (Grant of Temporary Status and Regulation), Scheme, 1993, which came in force w.e.f. 1.9.1993. According to this scheme, temporary status was to be conferred on all the casual labours who had rendered continuous service for 240 days. Since the applicants had completed continuous service of more than 240 days, they shall be deemed to have attained temporary status. Their services cannot be terminated otherwise than a notice of one month in writing. The respondents did not grant the temporary status or regularise the services of the applicants, therefore, the first O.A. was filed for getting a direction for regularising the services.

6. While the first O.A. was pending the services of the applicants were terminated by verbal orders by the respondents and, therefore, the applicants have filed another O.A. challenging the action of the respondents alleging contravention of the provisions of the Model Standing Orders, violation of Section 25 F and 25G of the Industrial Disputes Act, 1947 and the rules thereunder and have sought the relief of re-instatement in service with all consequential benefits.

7. The stand of the respondents in both these O.As is that the applicants had not completed 240 days of continuous service. The provisions of the Industrial Disputes Act, are not applicable in the instant case because the applicants are not workmen as mentioned in the Industrial Disputes Act; the Air Force is not an inustry, therefore, the Standing Order does not apply. The applicants were engaged on casual

basis to meet-out the contingency and their services have been dispensed with on account of non availability of work. Therefore, the applicants are not entitled to any relief either of regularisation or of re-instatement. Both the O.As deserve to be dismissed.

8. We have considered the rival contentions and the arguments advanced by the learned advocates for the parties.

9. Although, it is disputed in the instant case that the applicants had completed 240 days of continuous service but assuming that the applicants have completed 240 days service and have consequently acquired a temporary status as mentioned in the Scheme of 1993 even then, the services of the applicants could be dispensed with by giving one month's notice in writing which in the instant case seems not to have been given to the applicants. However, the admitted position is that the applicants have been dis-engaged. The importance of giving a notice is that the casual employee should know as to from which date his services have been terminated or going to be terminated. A written notice has no more importance than this. As per the admitted position applicants were dis-engaged w.e.f. 1.1.1997 because of non availability of work, much after the Scheme of 1993 came in force. There is nothing on record to show that in terms of the said scheme one month's notice or one month's notice pay, was given to the applicants, therefore, all what the applicants are entitled to is, one months salary in lieu of notice period from the respondents. In this regard they can make a representation to the concerned authorities for such notice pay.

10. The learned counsel for the applicants had further argued that the respondents have violated the provisions of the Industrial Disputes Act, by terminating the services of the applicants without any compensation or notice etc., as provided in the Industrial Disputes Act and, therefore, the applicants are required to be re- instated in service with back wages. On consideration of these arguments, we are of the

opinion that applicants cannot claim any relief in this Tribunal on the basis of Industrial Disputes Act and provisions thereunder for the impugned action of the respondents. For implementing the labour laws, appropriate forums are available where the applicants can raise their grievance, if they are so advised. From time to time, Hon'ble the Supreme Court has held that Administrative Tribunals cannot grant any relief to applicants solely on the basis of Industrial Disputes Act or under the Labour Laws,therefore, the applicants are not entitled to claim applicability of the Model Standing Orders, which have applicability on the industrial establishments. Assuming that the Air Force is an industrial establishment then the applicants have to invoke the jurisdiction of the Labour Court or the Tribunal for implementing the provisions of Standing Orders etc. This is not an appropriate forum for claiming relief under the labour laws, therefore, the arguments of the learned counsel for the applicants are rejected.

11. The Scheme of 1993 for grant of temporary status etc. as mentioned above, can apply to the working casual labours. Casual Labours or the daily wagers have got no right to claim regularisation and this has been held from time to time in many cases by Hon'ble the Supreme Court. Hon'ble the Supreme Court has also held that a casual labour can be regularised only against a permanent post and against a regular vacancy. The applicants have not been able to show that there are sanctioned regular posts of Luskar etc. in the respondents establishment for claiming the relief of regularisation etc. In view of this when the services of the applicants have been terminated on the basis of non-availability of work, the applicants can neither claim their reinstatement nor regularisation as they were only daily wagers casual labourers.

12. In our opinion, both the applications have no merit and deserve to be dismissed.

13. Both the applications are, therefore, dismissed. The parties are left to bear their own cost.

17/8/2001

(A.P.Nagrath)
Adm.Member

(A.K.Misra)
Judl.Member

Mehta