IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

Date of order : 27.6.2000

1. O.A. No. 257/1998

Jeetmal son of Shri Mahaveer Prasad aged 36 years, Temporary Driver in the office of Assistant Engineer (Electric), C.P.W.D., B.S.F. Gate No.6, Sagar Road, Bikaner, resident of Lakshmi-Nath-Ji-Ki-Ghati, Bikaner.

...Applicant.

versus

1. Union of India through the Secretary, Central Public Works Department, New Delhi.
2. The Superintending Engineer (Electric), Jaipur Central Electricity Circle, C.P.W.D., Nirman Bhawan, Vidhya Nagar, Sector-10, Jaipur.
3. Executive Engineer (Electric), Jodhpur Central Electricity Circle, C.P.W.D., 3, West Patel Nagar, Circuit House, Jodhpur.
4. Assistant Engineer (Electric), C.P.W.D., B.S.F. Gate No.6, Bikaner.

... Respondents.

2. O.A. No. 258/1998

Prakash Chandra Bhargava son of Shri Puran Mal, aged 28 years, Temporary Group 'D' employee in the office of Assistant Engineer (Electric), C.P.W.D., B.S.F. Gate No.6, Sagar Road, Bikaner, resident of Kuchilpura, Opposite Mahila Mandal, Bikaner.

... Applicant.

versus

1. Union of India throught the Secretary, Central Public Works Department, New Delhi.
2. The Superintending Engineer (Electric), Jaipur Central Electricity Circle, C.P.W.D., Nirman Bhawan, Vidhya Nagar, Sector-10, Jaipuir.
3. Executive Engineer (Electric), Jaipur Central Electricity Circle, C.P.W.D., 3, West Patel Nagar, Circuit House Road, Jodhpur.
4. Assistant Engineer (Electric), Central Public Works Department, B.S.F. Gate No. 6, Sagar Road, Bikaner.
5. Radhey Shyam, Temporary Group 'D' Employee, in the office of Assistant Engineer (Electric), C.P.W.D., B.S.F. Gate No.6, Sagar Road, Bikaner.

... Respondents.

Mr. R.S. Saluja, Counsel for the applicants.
Mr. Vinit Mathur, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.
Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :
(Per Hon'ble Mr. A.K. Misra)

In both of these cases, the controversy involved and relief claimed by the applicants being common, both these applications are disposed of by this common order.

2. In both these cases, the contention of the applicants is that under the work order, the applicants were being utilised as Contractors, but in fact, they were rendering their services to the department in the capacity of workman and the employment of applicants on the basis of work order was only a pretext to avoid granting temporary status and regularisation of the applicants in the department. This contention of the applicants is repelled by the respondents by their detailed reply. In order to appreciate the controversy involved, it would be better to briefly narrate each of the cases. The reply of the respondents being common will be described accordingly.

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3. It is alleged by the applicant that he was initially appointed as a casual labourer (Jeep Driver) by the respondents vide order dated 24.12.89 on a fixed monthly wages at Rs. 950/- and the appointment continued through the work order. With effect from 1.6.93, applicant was given pay scale of Driver, i.e. Rs. 950/- plus D.A., H.R.A. and C.C.A. as per rules. With effect from 31.1.95, the emoluments of the applicant were revised and he was given the fixed pay of Rs. 2300/- per month. It is further alleged by the applicant that vide order dated

27.04.98, the applicant was appointed to continue on the post of Driver till 31.12.98. In the meantime, Scheme for grant of temporary status came in force. The applicant submitted an application before the Conciliation Officer raising industrial dispute in respect of his status etc., consequent to which the services of the applicant were dispensed with, with effect from 31.7.98 vide order dated 23.7.98.

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4. In this case, the applicant has alleged that in the first instance, he was appointed on 6.11.89 as casual workman and was being paid a fixed monthly wages of Rs. 250/-. Thereafter, mode of appointment was changed and the work order used to be issued to the applicant as a mode of appointment. With effect from 1.12.1991, the applciant was appointed on a pay of Rs. 800/- per month. This arrangement was continued till 31.12.1994. With effect from 1.1.1995, the applicant was appointed on a pay of Rs. 700/- per month plus D.A. as per rules. This arrangement again continued upto 30.11.97 and with effect from 1.12.1997, the applicant was appointed on a fixed pay of Rs. 2000/- per month. It is alleged by the applicant that his services were utilised on the basis of work orders which were issued from time to time, as stated above. Lastly, the appointment of the applicant was made upto 31.12.98 in the like manner. It is further alleged by the applicant that in the year 1993, a Scheme relating to grant of temporary status came in force, accordingly, the applicant raised a question before the Conciliation Officer, Bikaner, under the Industrial Disputes Act, 1958. Consequent to the applicant's such action, appointment of the applicant was terminated with effect from 31.7.98 by an order dated 23.7.98.

5. In both these OAs, the actions of the respondents have been challenged by the applicants on the ground that the services of the applicants are being utilised by the respondents since almost 9 years, but the applicants have not been granted either temporary status or

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their services have been regularised. The applicants are denied their legitimate dues on account of work orders which were in fact, issued circumventing the provisions of employment of casual labourer. The respondents are adopting unfair practice in taking work from the applicants on the basis of work orders, whereas the requirement of department is of perennial nature and the services of the applicants can be utilised against the regular requirement of the department. The department has, after dispensing with the services of the applicants, employed two persons in place of the respective applicants, which further goes to establish the regular necessity and need of regular appointment.

6. In both these OAs, the applicants have prayed in substance that the order dated 23.7.98 dispensing with the services of the applicants be quashed, the appointment of persons in place of the applicants be declared illegal, services of the applicants be considered for regularisation in terms of memorandum issued in the year 1993, firstly by granting temporary status to the applicants and then regularising their services on the posts in question. It has also been prayed by the applicants that the respondents be directed to pay the difference of pay of the posts as per the conferment of temporary status and regularisation of their services. They have also prayed that the intervening period of unemployment in terms of the impugned order dated 23.7.98, ~~the order~~ be ignored with all consequential benefits to the applicants.

7. Notices of the OAs were given to the respondents who have filed their reply raising preliminary objections and replying on the factual aspects of the each case. Relating to the claim of the applicants, defence being common in both the cases on law points and on factual aspects, therefore, general reply of the respondents is described below.

8. It is stated by the respondents that the applicants were given work orders and there was no relation of master and servant between the applicant and the respondents, therefore, the O.A. is not maintainable. The applicants had agreed to perform the job as per the work order, therefore, in terms of the conditions of the work order, the dispute between the parties is required to be adjudicated upon by the Arbitrator and thus, the Tribunal has no jurisdiction. In one of the OAs, the applicant has not made the newly appointed person as party-respondent, whose right may suffer in case the OA is accepted. Therefore, the OA No. 257/98 is suffering from the defect of non-joinder of necessary party. In both these OAs, the applicants have prayed for regularisation of their services, but regular appointment can only be given as per the rules and, therefore, the applicants are not entitled to seek any direction for regularisation of their services. It is alleged by the respondents that as per requirement, the services of the applicants were utilised on work order basis. The work orders were renewed from time to time and as per the quotations offered by the applicants in respect of the respective posts, the order for discharging the work as per their specification was given to the applicants. Therefore, the applicants cannot claim to be considered on the footing of casual labourer in terms of the Scheme of 1993. The applicants are not entitled to grant of temporary status or regularisation. The applicants were not employed through any Contractor, they were not being given the minimum wages as per rules, and the amount offered to the applicants for rendering services as per the work order is not based on daily wage rate, therefore, the applicants cannot claim themselves to be casual labourers or daily wagers. For the purpose of granting temporary status etc., both the OAs are devoid of any merit and deserve to be dismissed.

9. The applicants have filed rejoinder alleging that the work order was sham contract. Hiring of contract labour has long been held illegal and in view of this, the applicants cannot be termed otherwise than the casual labourers and are entitled to the reliefs as claimed in the OAs.

10. We have heard the learned counsel for the parties and have gone through the case file. Both the learned counsel for the parties had developed their arguments on the basis of the pleadings. Learned counsel for the applicants has cited few rulings in support of his contention , which will be discussed at appropriate place.

11. From the pleadings as mentioned above, it is clear that there is no appointment letter in favour of the applicants either as a daily wagers or as casual labourers. Thus, the case has got to be discussed on the basis of admitted position as mentioned by the parties. The admitted position is this that the respondents have been issuing in favour of the applicants work orders from time to time, mentioning therein the jobs to be rendered by the applicants and the consolidated amount which they will get for discharging the contractual duties during the term of contracts.

12. The applicants alleged that these work orders are nothing but unfair labour practice and amount to circumventing the provisions of law relating to employment. On the other hand, it is contended by the respondents that regular appointments can be made only on the basis of availability of regular posts. Casual labourers, daily wagers and the persons employed on the basis of work orders are paid from contingencies and, therefore, as per the requirement such arrangements are made for the smooth running of the office / Store establishment etc. Keeping in view the above controversy, we have examined the work orders. It is to be noted that the work orders were not given to an agency for providing labourers for discharging the requirements. These work orders are in the name of the applicants themselves and all-through both the applicants were discharging their respective duties as per the work orders on the amount mentioned in the work orders. As the amount mentioned in the work order is not based on daily rates as per the minimum wages, therefore, the applicants cannot claim

themselves to be casual labourers for granting temporary status or regularisation of their services in terms of the Scheme of 1993. The rulings cited by the learned counsel for the applicants are distinguishable on facts and the rules propounded therein will not be helpful to them relating to the controversy in hand. In 1999 SCC (L&S) 765, Secretary, H.S.E.B. vs. Suresh & Ors., it was held by Hon'ble the Supreme Court that for keeping plants and stations clean, the Board awarded contracts to Contractors. Under such a contract, one of the Contractors was required to engage a certain minimum number of Safai Karmacharis for cleaning the Main Plant Building at Panipat for a period of one year, and in that case, it was found by Hon'ble the Supreme Court that the Contractor was only a name lender and, therefore, Safai Karmacharis were held entitled to be reinstated. It was also held that the work at such plant was of a perennial nature and not of seasonal requirement. Likewise, in 1998 SCC (L&S) 1358, Union of India & Ors. vs. Subir Mukharji and Ors., it was held by Hon'ble the Supreme Court that casual labourer engaged through a Contractor (a Co-operative Society in the present case) are held entitled to be absorbed as regular Group 'D' employees or such of them who may be required to do the quantum of work which may be available on a perennial basis....." In that case, Union of India had admitted that the work was of a perennial nature and in view of this, the direction given by the Central Administrative Tribunal was upheld. Similarly, in AIR 1987 SC 777, Catering Cleaners of Southern Railway vs. Union of India & Others and other connected cases, it was held by Hon'ble the Supreme Court that employment of catering cleaners by Southern Railway through Contractors was not fair in view of the perennial requirement of work (necessary and incidental to the industry or business of the Southern Railway. But at the same time, it was ordered that the Southern Railway should be restrained from employing contract labour.

13. If the principles laid down in these rulings are examined in the context of the facts of the case, we may conclude that in the

instant case, services of the applicants were not taken through any Contractor. They themselves had agreed to render their services on the given amount as per the work order. There is also no such pleadings that there is perennial requirement of a Jeep Driver or a Store Attendant, i.e. Group 'D'. For the purpose of holding applicants' entitlement for regularisation, the requirement should be of a perennial nature and the applicants should fulfil all the conditions for regularisation as casual labourers in terms of the Scheme, 1993. Unfortunately, in the instant case, none of the requirements could be satisfied by the applicants in seeking directions in their favour.

14. There is yet another aspect. In order to prove the relation of master and servant between the respondents and the applicants, there is nothing on record to show that the applicants can be forced to work on the given posts if he/they had chosen not to work. The test to decide the term 'employment' necessarily means that workman could be compelled to work and failure to comply may result into disciplinary action. But this parameter cannot be made applicable in the instant case as the applicants were given work order individually for rendering services as per the requirement of the posts. Therefore, the applicants cannot be permitted to argue that they, in fact, were casual labourers, and work orders were only a pretext to deprive them of their rights. Such work orders are issued, as were issued in the instant case, when the concerned person agrees to render the services as per the terms. He may prefer to render or he may refuse to render his services. In the first case, the contract goes through successfully and in the second case, it will fail at the initial stage. In other words, the department cannot force the applicants to work as per their contract orders because there is no compelling authority with the department in this regard, except to refuse the contractual amount. Thus, the applicants cannot claim advantage in this regard, stating it to be an unfair labour practice.

15. In 1995 SCC (L&S) 1420, All India General Mazdoor Trade Union (Regd.) vs. Delhi Administration and Others, it was held by hon'ble Supreme Court that in such matters the labourers should approach the Government through Union for taking appropriate decision in the matter if the work was of a perennial nature, therefore, no direction can be issued. If in the meantime, the services are terminated due to contract being for a limited period, the grievances of the applicant would become redundant. Thus, in the instant case also, the applicant cannot take advantage of the rules propounded therein. Their contracts having come to an end, therefore, their rights also come to an end. We may repeat here that the applicants are not covered by the definition of casual labourers or daily wagers, hence, as per the contractual terms, their rights too are limited. Few other rulings cited by the learned counsel for the applicants are distinguishable on facts, therefore, the rules propounded therein do not help the applicant.

16. In this case, another question posed is whether the termination of contract before expiry of its term amounts to termination of the services of the applicant. In our opinion, when there is a contract, it can be terminated at the will of either of the parties. If the respondents have preferred to terminate the contract earlier than its term, then this cannot amount to termination of the services of the applicant as there has to be necessarily a relation of master and servant between the two, i.e., respondents and the applicants. This ingredient is missing in the instant case. Therefore, termination of contract regarding work orders cannot be termed as termination of service and in view of this, the applicants cannot claim to be reinstated on the respective posts they were working on.

17. In view of the above, we are of the opinion that the applicants have not been able to establish their claim, therefore, the OAs are liable to be dismissed.

18. Both the OAs are, therefore, dismissed. Parties are left to bear their own costs.

(GOPAL SINGH)
Adm. Member

27.6.2000
(A.K. MISRA)
Judl. Member

cvr.

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K.S. Gill
4-7-2000
for V.K. Mathur

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for R.S. Sahni
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