

प्राप्ति. (प्राप्ति) नियमावली के नियम 22 के अन्तर्गत विषय 11

DA FILE

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR.

1. DA No. 403/96

Date of orders - 19.4.2001

✓ 2. DA No. 10/98

Sushil Kumar Bohra s/o Shri Sardarmal, aged 29 years
resident of Ghas Mandi, Jodhpur.

...APPLICANT

V E R S U S

1. Union of India, through the Secretary to the
Government, Ministry of Water Resources,
New Delhi.

2. Director (Adm.) Central Groundwater Board, N.H.
IV, Faridabad (Haryana)

3. Officer In Charge, Central Ground Water Board,
State Unit Office 64, Polo 1st, Paota, Jodhpur.

...RESPONDENTS



Mr. Vijay Mehta, counsel for the applicant.

Mr. Kuldeep Mathur, Adv. Briefholder for

Mr. Ravi Bhansali, counsel for the respondents.

CORAM

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. A.P. Nagrath, Administrative Member.

ORDER

(as per Hon'ble Mr. A.P. Nagrath)

These two applications have been filed by Sushil Kumar and as is the relief prayed for in DA No.403/96 and DA No.10/98 are interlinked, both the applications were taken up together, even though DA 403/96 had been admitted on 17.10.97 and DA 10/98 was still at the stage

of admission. Since, the relief in OA 403/96 was dependent on the outcome of OA 10/98 the latter was taken up first for hearing for final disposal at the stage of admission.

2. In OA 10/98 the applicant has challenged the order at Annexure A/1 by which his services have been terminated w.e.f. 10.12.96. The applicant has prayed that impugned order Annexure A/1 may be quashed and set aside and the respondents be directed to reinstate the applicant with all consequential benefits.

3. Case of the applicant is that he was engaged as a daily rated worker on 3.6.87 and he continued to work till 31.7.91, when his services were terminated by a verbal order, he challenged his termination before this Tribunal by filing OA 501/91. Vide order dated 2.9.93, this Tribunal quashed the termination orders. The respondents filed special leave petition before Hon'ble the Supreme Court which was dismissed and consequentially the applicant was taken on duty w.e.f. 8.6.95. The applicant claims that though he was working as full time casual labour yet he was treated as a part time worker. It has been stated that there is work available but the applicant's services have been terminated and this he attributes to his having filed OA 403/96 seeking regularisation of his services which provoked respondents to discharge him. By filing a Misc. Application No.71/2000 the applicant has brought on record, that after discharging him a number of persons have been appointed on ad hoc basis by the respondents to discharge the work of Chowkidar/Peon etc., which was being done by the applicant by the applicant before his services were terminated. He has challenged the basis taken by the respondents in the

impugned order that he was engaged to look after the garden only and in the new building no garden exist. Names of such persons have been listed by the applicant to establish that they were engaged after terminating his services for the same work. The period for which these six persons were engaged has also been indicated. Plea of the applicant is that termination of his service is violative of the scheme of grant of temporary status and regularisation (and that he had been duly selected as full time casual labour). This termination has been termed as violative of Articles 14, 16 and 21 of the Constitution of India.

4. The respondents in reply have contested the claim of the applicant by stating that he was only engaged as a part time worker on daily rated wages and paid wages accordingly. The respondents justified termination of service of the applicant on the ground that the work for which he was engaged is no more available and they maintain that while terminating his service the provisions as envisaged in Section 25 F of the Industrial Disputes Act were duly complied with. The daily workers are engaged to carry out extra work required occassionally as and when the actual incumbent of a regular post proceeds on leave or absents himself. It has been denied that the provisions of the scheme as per dated 10.9.93 are applicable in the case of the applicant as he is only a part time daily wage worker. The respondents claim to have engaged the applicant as a part time gardner by verbal order on 16.4.86 and since in the present building of the department no garden exist so service of the applicant are consequently not required. It has been denied that any fresh persons were engaged from the market after the services of the applicant

terminated. The names given by the applicant are stated to be of the Home-guards whose services were taken against short term vacancies from time to time, from the Commandant, Homeguards, Jodhpur. The respondents contend that the applicant has no case at all and the application deserves to be dismissed.

5. Heard, the learned counsel for the parties and perused the written statements on either side.

6. Learned counsel for the applicant argued that the respondent department has terminated the services of the applicant even though work was available. He laid emphasis on the fact that a number of persons had been engaged for the same work for which the applicant had been engaged, after the applicant's services were terminated. His contention was that the applicant had the first right to be engaged whenever the need arose. He disputed the plea of the respondents that the applicant was engaged to look after the work of garden only and submitted that services of the applicant were utilised as a peon or chowkidar.

7. Learned counsel for the respondents on the other hand, submitted that the persons engaged as stated by the opposite side, were the Home-guards whose services were utilised for some periods against absentism of the regular incumbents of the posts of chowkidar. It was emphatically denied by him that the respondents ever engaged anyone from the market after the services of the applicant were terminated. The learned counsel referred to the of 1997 SCC (L&S) 1079 Himanshu Kumar Vidhyarthi and Ors. Vs. State of Bihar and Ors. wherein Hon'ble the Supreme Court had held that daily wage workers were not appointed according to rules against the posts. They were engaged as and when need arose and they have no



right to a post. The learned counsel also referred to the case of Hari Narayan Bharti Vs. U.O.I. in OA No.394/94 decided on 18.3.98 by Jaipur Bench of the Tribunal. A copy of that order is also annexed as R-2 wherein the prayer of the applicant, who was a casual labour to the re-engaged by the respondents after the project for which he was engaged had been shifted, was dismissed as having no merits. Learned counsel stated that these rulings clearly establish that a casual labour, much less a part time daily wager can have a vested right to be re-engaged.

8. We have carefully perused these judgments referred to by the learned counsel for the respondents. It has been held by Hon'ble the Supreme Court in the case of Himanshu Kumar Vidhyarthi that casual labour are not appointed in accordance with the rules but they were engaged as per the needs of the work, they have no right to the posts and the action to disengage them is not arbitrary. In OA 395/94 Hari Narayan Vs. U.O.D. Jaipur Bench of this Tribunal has also held that a casual labour cannot claim as of right to be re-engaged when the work for which he was engaged has come to an end at that place.

9. It is obvious when the department has no requirement no direction can be given for engaging a casual labour. The tenure of a casual labour and more so of a part time casual labour is precarious and is totally dependent on the availability of work. If the work, for which he was engaged comes to an end, the department is not under any obligation to continue the worker. Appointment of a casual labour is not an appointment under the rules and does not confer any right in the person to continue

19

indefinitely. We see from the records that the Homeguards were engaged by the respondent department only for some short spells from time to time but after January 2000, this practice has also been given up. In view of this background the applicant can have no claim to be re-engaged. The application has no merits and is liable to be dismissed.

10. In OA 403/96, the applicant, who at the time of filing that application was still in service, has prayed for directions to the respondents to grant him temporary status and to regularise him. In view of the conclusion arrived at by us, that the applicant has no claim to be re-engaged even as a part time casual labour, the question of grant of temporary status or regularisation as prayed for in OA No. 403/96 does not arise. This OA has thus become infructuous.

11. In view of the facts and circumstances as aforesaid we order as follows:

12. "Prayer of the applicant in OA 10/98 is devoid of any merits and is dismissed. As a consequence, OA 403/96 has become infructuous and is disposed of as infructuous. Parties are left to bear their own costs."

Sd/-
(A. P. NAGARATH)
Adm. Member

Sd/-
(JUSTICE B S RAIKOTE)
Vice Chairman

प्राप्ति सही प्रतिलिपि
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प्रमुख अधिकारी (न्यायिक)
न्यायिक प्रशासनिक अधिकारी
लोकार्थ

Part II and IV destroyed
in my presence on 19/12/2002
under the supervision of
Section Officer (I) as per
order dated 19/12/2002

Section Officer (Record)

My
Copy
Received
25/12/2002