IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR.

OA No.225/99 Date of order : 18.5.2001

1. Lal Chand s/o Shri Gulab Chand aged 29 years Temp. Status Mazdoor, 375 COY ASC (Supply) Type B, Bikaner r/o Vinoba Basti, Bikaner.

2. Budhu Pahan s/o Shri Robe Phahan aged 26 years Temp. Status Mazdoor 375 COY ASC (Supply) Type B Bikaner r/o Patel Nagar, Bikaner.

....APPLICANTS

VERSUS

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

2. Commanding Officer, 375 COY ASC (Supply) Type B Bikaner.

....RESPONDENTS

Mr. Vijay Mehta, counsel for the applicant.

Mr. Vineet Mathur, counsel for the respondents.

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Hon'ble Mr. A.K. Misra, Judicial Member.

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

ORDER

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

The applicants are serving casual labour, who were granted temporary status vide order dated 10.9.96, under the scheme called "Casual Labour (grant of temporary status and regulations) scheme, 1993." It appears that after

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grant of temporary status, the applicants have been paid their wages corresponding to pay scale of regular group-D scale. Their grievances is that, they have not been paid wages for the months of June and July, 1999, even though they performed duty. Their apprehension is that the department proposes to pay wages at daily rates as applicable to the casual labour and they have filed this application with the prayer that the respondents be directed to make payment of the wages as temporary status employees for the months of June and July, 1999 and to continue payment month by month as temporary status employees.

2. The respondents have raised a preliminary objection on the ground that the applicants have not exhausted departmental remedy available to them, so as to meet the requirements of Section 20(1) of the Administrative Tribunals Act, 1985. Section 20(1) of the Act mandates the Tribunal not to ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant services rules as to redressal of grievances. The respondents have not placed on record or brought to our notice, any service rules which provide for a departmental remedy which the applicants could avail of against non-payment of correct wages. In any case the respondents appeared to have controvered this contention themselves by making a statement in para 4.3 of the reply, that the muster rolls have been audited and applicants paid wages at casual labour rates w.e.f. June,99 tp December, 99. This confirms the apprehension of the applicants and the objection raised by the respondents deserves to be rejected for this reason. The respondents have raised further objection by filing an additional affidavit that the respondents are an "Army Unit" and not an industry and ambit of the Industrial Dispute Act, 1947

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cannot be applied to the respondents. We do not see the purpose of this objection as the applicants have not made any claim under the Industrial Dispute Act, but are claiming under the scheme of the department for grant of temporary status.

3. By their written statement controverting opposing the stand of the applicants, the ground taken by the respondents is that, the action of granting temporary status to the applicants was an irregular action as the scheme of 1993 for grant of temporary status was a one time scheme and it closed with the confirment of temporary status to the casual labour who satisfied necessary conditions, at the relevant time. They have further taken a plea that the names of the applicants were not sponsored by the employment exchange and as per the clarifications issued by the Department of Personnel and Training vide letter dated 12.7.1994, they are not entitled to the benefit of temporary status. While the respondents admit that within the department steps have been taken to seek sanction of the competent authority to regularise the services of the applicants, they also maintain that the applicants are not entitled to any relief because of their having been engaged initially de hors the rules. An objection has been taken by the concerned Audit Officer on the ground that the appointment of the applicants is irregular and they are not eligible for grant of temporary status and to be paid at the rates applicable to temporary status employees.

4. Heard, the learned counsel for the parties and perused all the relevant documents relating to this scheme of grant of temporary status to casual labour and their regularisation, as brought on record.

5. Learned counsel for the applicants submitted that the respondents cannot challenge the temporary status as already assigned to the applicants by calling it as an irregular action. The fact remains, he stated, the temporary status has been granted and the respondents are under duty to pay correct wages to the applicants at the rates applicable to temporary status employees.

6. While discussing the claims of the applicants for conferment of temporary status or for regularisation, the scheme as developed by the Central Government for adoption by various Ministries/Departments of the Government and issued vide OA dated 10.9.93 provides the basis. Understanding of the scheme by the respondents as projected before us by the learned counsel for the respondents, is that this applies to only such of the casual labour, who were engaged prior to introduction of the scheme and were in service on the date of issue of the orders, provided they fulfil certain conditions as laid down in para 4 of the Scheme, While the respondents admit that the applicants in the OA have been conferred temporary status but the learned counsel for the respondents stated that the department realised that this action of granting temporary status to the applicants was not a correct as it was conforming to the conditions stipulated in the scheme. He contended that the applicants had been engaged de hors the rules as their names had not been sponsored by the employment exchange. To support this contention, he referred to the clarifications issued by DOPT vide letter dated 12.7.94 on various points raised by various departments. It has been stated against S.No.1 that those not sponsored by the employment exchange are not entitled to be granted temporary status. Learned counsel, though, went on to add that while the department has made mistake by granting temporary status to the applicants, it

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has now recommended their cases for approval of the competent authority.

7. To resolve this controversy, it is necessary in our view to analyse the related provisions of the scheme, as interpreted by the learned counsel for the respondents in support of the action of the department. Learned counsel for the applicants however stressed that the question was limited to only paying correct wages, as he opined that the factum of temporary status is settled, Once the same has been granted already by the department. We would have agreed with this view of the learned counsel for the applicants but for the vary basic issues raised by the learned counsel for the respondents and putting a question mark on the validity of the temporary status, already granted. We have given our anxious consideration to the rival contentions and we consider it necessary to address ourselves to the interpretation putforth by the learned counsel for the respondents in order to resolve the controversy comprehensively with a fair and just understanding of the scheme of granting temporary status to the casual labour and their regularisation.

8. The first vital issue is that the scheme applies only to those of the casual labours, who were enged prior to 1.9.93 and were in service on 10.9.93. This has been stated to emphasis that those, who are engaged after this date are not covered by the scheme and consequently cannot claim any relief under it. Respondents also contend that this is one time measure. We think this is not a correct understanding of the scheme for the reasons as we discuss hereafter. Any rules, powers and administrative instructions

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have to be read and understood so as to give a harmonious construction with the objective proposed to be achieved. Over emphasis on dates, which by themselves do not serve a definite purpose, can lead to erroneous interpretations. Background of this scheme of granting temporary status to casual labour and to further regulate their absorption against regular vacancies is the result of frequent grievance made by casual labour, who were employed over long years by the departments, but had no certain future. Even after serving for many years, they would remain de- entitled to any career advancement and to any pensionary dues, once their employment ceased. So long as departmental rules did not provide for their absorption, the courts could hardly help them. In such a scenario and under directions from the Principal Bench of this Tribunal. The Central Government evolved this scheme so that employment of casual labour does not continue to remain exploitative.Of course, some departments of the government like the Railways, Postal and Telecom had already introduced such schemes much earlier. This scheme was introduced in the year 1993 and all departments of the Government except Railway & Postal and Telecom, who already had their own schemes, were asked to adopt the same.

9. The respondents have also brought on record a brochure on casual labour has issued by the DOPT. A perusal of this brochure reveals that even though a complete ban had been imposed by the Government on engaging staff on daily wages vide OM dated 30.8.1974, reiterated again on 27.5.77 various Ministries/Departments have continued to engage casual labour for different reasons. It would appear that the departments have continued to engage casual labour even after such instructions if any prior sanction of any

competent authority or Ministry of Finance is required, it is for the departmental authorities to take necessary steps towards that. If for any reasons the casual labour have been engaged after coming into force of the scheme and have been continued in employment for more than 240 days in a year (or 206 days in admn. office). They cannot be stated to be ineligible for the grant of temporary status on the ground that the scheme was a one time measure. Referring to the OM of 1993 itself, it nowhere states that this scheme shall be called, "casual labour (grant of temporary status and regulations) scheme, 1993". This scheme will come into force w.e.f. 1.9.1993. Simple meaning of this is that this scheme has come into force on 1.9.93 and continues to be in force after that date. It is a totally misplaced interpretation being given by the respondents that it was a one time measure.

10. In our considered view, this would be rather a perverse understanding of the scheme. After having introduced a well intentioned scheme, can its fruits be denied to those who are brought in employment after 1.9.93. Are they once again expected to remain in limbo for years and wait for the Government to develop yet another scheme for them. This certainly cannot be the case and the benefit under the scheme already in force should, in our view, get automatically extended to them once they fulfil necessary conditions except of course the condition that they should have been engaged prior to 1.9.93 and should have been in service on 10.9.93. The import of this condition has to appreciate and understood in the context of the period when the scheme was first introduced. No more significance can be attached to these dates to deprive those of the casual labour who are engaged after introduction of the scheme and who are allowed to continue for 240 days in a

year. In the instant case, the learned counsel for the applicants stated that the applicants were engaged prior to 1.9.93. But in view of what we have stated above and the applicants' acceptance of grant of temporary status i.e. 10.9.1996, we do not consider it necessary to go into that aspect of the matter.

11. The next plea of the learned counsel for the respondents was that the applicants were engaged de hors the rules as their names were not sponsored by the employment exchange, which is a necessary condition as per clarifications provided vide letter dated 12.7.94. We are unable to accept this plea for the two important reasons. The scheme itself does not provide for any condition to suggest that it is essential for the candidates to have been sponsored by the employment exchange. What is not envisaged in the scheme cannot be transported by any clarification & deserves to be rejected without further arguments. The second reason is that the Apex Court has very emphatically declared that right of employment cannot be restricted only to those who are sponsored by the employment exchange but all those who offer themselves for employment have to be considered alongwith the candidates sponsored by the employment exchange. In this view of the matter, we reject outright the contention of the respondents that appointment of the applicants was de hors the rules.

12. The learned counsel for the respondents had mentioned before us that the department has laready undertaken investigation to identify the functionaries who engaged the applicants without proper sanction, as he contended that after introduction of the scheme, the casual labour could not be engaged/continued without proper sanction. It is very much a desirable course of action for department to take whatever steps it considers proper to bring discipline

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amongst such functionaries who tend to exercise authority which is actually not vested in them. But then we hasten to add that such an action for internal corrective measures can have no bearing on the workers like the applicants, who came to be engaged by the department. It is not for then to know whether they were engaged with competent sanction or not. On this issue, we would like to refer to the decision of the Full Bench of the Tribunal in the case of Mahabir & Ors. Vs. U.O.I. & Ors.(2000(3)ATJ 1) decided on 10.5.2000, in the Principal Bench. In that case the respondent department had taken a plea that those of the casual labour, who had been engaged without prior approval of the General Manager of the Railway could not claim for being re-engaged as their initial appointment was without the approval of the competent authority. It was observed by the Tribunal in that case:-

> "Casual labour have no means of knowing whether they were appointed with the prior approval of the General Manager or not and they have not been put to notice in respect of circular dated 3.1.1981..... It would be unjust & in any event unquitable to join the said circular on them."

> "32. For the foregoing reasons, we hold that respondents cannot take a plea that casual labour who have been engaged without obtaining the prior approval of the General Manager as laid down in the relevant Railway Board circular disentitles them from claiming (a) above."

13. The respondents have submitted that they have paid the wages to the applicants from June, 1999 to December, 1999 on the daily rates as applicable to casual labour, in view of the dispute in regard to their being temporary status employees. As we have discussed above, the factum of their having acquired temporary status is beyond dispute.

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The scheme under para 5(i) provides for wages at daily rates with reference to the minimum of the pay scale for a corresponding regular group-D official including DA, HRA and CCA. We do not find any justification for the applications to be paid at the daily rates of casual labour and their prayer for being paid at the rates as applicable to temporary status employees is liable to be accepted.

14. In view of the discussions as aforesaid, we allow this OA and direct the respondents to treat the applicants as temporary status employees and to pay them wages accordingly as per para 5(i) of the scheme for the period from June 99 onwards till they are in employment as temporary status employees. Under the circumstances of this case, the parties are left to bear their own costs.

(A.P. Nagrath)
Admn. Member

(A.K. Misra)
Judl. Member