

I/12

May 11/2002
8/7
14/7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR ~~JAIPOUR~~ BENCH, ~~JAIPOUR~~ JODHPUR.

O.A. No.
T.A. No.

199

OAs 172/2001 & 56/2002

DATE OF DECISION _____

Kasimudin & Ors. (in OA 172/2001)
Nishant Gaur (in OA 56/2002) _____ Petitioner

Mr.S.K.Malik & Mr.S.N.Bonra _____ Advocate for the Petitioner (s)

Versus

Union of India & Ors. _____ Respondent

Mr.Vinit Mathur _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman

The Hon'ble Mr. G.C.Srivastava, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(G.C.Srivastava)
Member (A)

(G.L.Gupta)
Vice Chairman

I/13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

* * *

Date of Decision: 06.08.03

1. OA 172/2001

1. Kasimudin, Attendant Processing, Indian Institute of Handloom Technology, Jodhpur.
2. Rajesh, Sweeper, Indian Institute of Handloom Technology, Jodhpur.
3. Mukesh Kumar, Sweeper, Indian Institute of Handloom Technology, Jodhpur.
4. Arjun Lal Bunkar, Attendant, Indian Institute of Handloom Technology, Jodhpur.
5. Karan Singh, Cook Helper, Indian Institute of Handloom Technology, Jodhpur.
6. Deep Singh, Cook Helper, Indian Institute of Handloom Technology, Jodhpur.
7. Roop Singh, Cook Helper, Indian Institute of Handloom Technology, Jodhpur.
8. Pep Singh, Hostel Helper, Indian Institute of Handloom Technology, Jodhpur.
9. Laxman Singh s/o Shri Hukam Singh, Indian Institute of Handloom Technology, Jodhpur.
10. Inder Singh Solanki, Attendant-Spinning/Texture Testing, Indian Institute of Handloom Technology, Jodhpur.
11. Chaina Ram, Ex Serviceman - Chowkidar, Indian Institute of Handloom Technology, Jodhpur.
12. Hari Ram, Attendant Weaving, Indian Institute of Handloom Technology, Jodhpur.

... Applicants

Versus

1. Union of India through Secretary to the Ministry of Textiles, Udyog Bhawan, New Delhi.
2. Joint Development Commissioner (Handloom), Ministry of Textiles, Udyog Bhawan, New Delhi.
3. Director (Institute), Indian Institute of Handloom Technology, Village Chokna, Choupasni Road, Jodhpur.

... Respondent

For the Applicants

... Mr.S.K.Malik & Mr.S.N.Bonra

For the Respondents

... Mr.Vinit Mathur



I/14

2. OA 56/2002

Nishant Gaur, Attendant Weaving, Indian Institute of Handloom Technology, Village Chokna, Jodhpur.

... Applicant

Versus

1. Union of India through Secretary to the Ministry of Textiles, Udyog Bhawan, New Delhi.
2. Joint Development Commissioner (Handloom), Ministry of Textiles, Udyog Bhawan, New Delhi.
3. Director (Institute), Indian Institute of Handloom Technology (Govt. of India), Village Chokna, Chopasni Road, Jodhpur.

... Respondents

For the Applicant ... Mr.S.K.Malik & Mr.S.N.Bonra

For the Respondents ... Mr.Vinit Mathur

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.G.C. SRIVASTAVA, MEMBER (A)

O R D E R

PER MR.JUSTICE G.L.GUPTA

Identical controversy is involved in both the above mentioned matters and, therefore, they have been heard together and are being disposed of by this common order.

2. The applicants, who are 12 in number in OA 172/2001, were initially appointed for 89 days on contract basis from different dates. Their wages was fixed as 1/30th of Rs.750/- plus pro-rata (DA+IR) i.e. Rs.2200/2300 per month. On the implementation of Fifth Pay Commission report, the applicants started getting Rs.2550/- plus pro-rata (DA+IR) i.e. Rs.3647/- per month. Their period of engagement was extended time to time and by the time the OA was filed, all the applicants had completed more than 2 years service.

2.1 The case for the applicants in OA No.172/2001 is that all of them

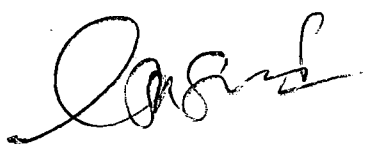


2/15

had acquired the status of quasi-permanent on completion of six months service and acquired the status of permanent employees after completion of two years of service yet the respondent Institute has asked the Collector, Jodhpur, to provide new recruits for the Institute. It is alleged that the applicants are entitled to regularisation in service. It is further stated that in April, 2001 respondent No.3 obtained affidavits from the applicants stating that they would not seek remedy through court of law. Apprehending termination of their services, the applicants have filed this OA praying for a direction to the respondents not to give effect to the condition stated in the affidavits of the applicants (Ann.A/1 to Ann.A/12) and for a further direction that the applicants be considered for regularisation.

2.2 In OA 56/2002, the case for the applicant (Nishant Gaur) is that he was engaged on contract basis for 90 days on daily wages and that he worked from 9.8.2000 to 8.8.2001 to the satisfaction of the respondents, yet the respondents have terminated his services by a verbal order w.e.f. 8.8.2001. It is averred that the applicant was entitled to be considered for absorption/regularisation and his termination is illegal and ab-initio.

3. In the reply filed in OA 172/2001, the respondents have come out with the case that the applicants were engaged on contract basis for a period of 89 days and their engagement was extended from time to time which continued till 31.3.2001, but thereafter the sanction was not received hence the term of engagement could not be extended beyond 31.3.2001. It is further stated that the applicants of their own accord had filed affidavits for getting continuous engagement on contract basis but there are no regular posts in the department and, therefore, the applicant cannot be regularised. It is stated that the engagement on contract basis does not confer a right of regularisation on the applicants. It is denied that the applicants had acquired the status of



quasi-permanent or the permanent employees, rather their engagement was only on contract basis. It is the case for the respondents that the engagement of the applicants was governed by the terms and conditions agreed upon by both the parties in the memorandum of appointment and once the applicants had accepted the terms and conditions of the engagement, it is not open for them to challenge the same and ask for regularisation.

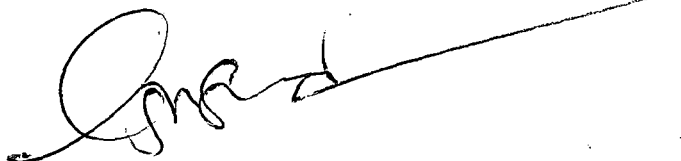
3.1 In the reply to OA 56/2002 also, the respondents have taken identical stand that the applicant does not have a right of regularisation and that there is no sanction of the competent authority for engagement of contractual staff beyond March, 2001.

4. In the rejoinder the applicants have stated that they have worked for more than 2 years and, therefore, on the principle of equity they should be considered for regularisation.

5. In the additional reply the respondents have averred that the applicants have been disengaged as per the terms and conditions agreed upon by both the parties and the Tribunal cannot be justified in going into the details of the contractual engagement. It is also stated that no contractual worker was ever regularised in the respondent department.

6. We have heard the learned counsel for the parties and perused the documents placed on record.

7. The contention of Mr. Bonra and Mr. Malik, learned counsel for the applicants, was that the applicants having served the respondent office for more than two years are entitled to be considered for regularisation. It was urged that though the applicants were engaged on contract basis yet the ~~same~~ work which was taken from them was the same as was done by the permanent employees. Relying on the cases of V.M.Chandra v. Union of India - 1999 (5) SRJ 37, Hindustan Machine Tools & Ors. v. M.Rangareddy &



Ors. - 2000 (9) SRJ 238, Vikramaditya Pandey v. Industrial Tribunal & Anr.
 - 2001 (2) SRJ 269, Gujarat Agricultural University v. Rathod Labnu Beonar
& Ors. - 2001 (2) SRJ 325, and Kalu Ram Balai v. Union of India & Ors. -
 OA 449/98 of Jaipur Bench of the Tribunal, decided on 19.9.1996. the
 learned counsel for the applicants canvassed that the applicants are
 entitled to regularisation.

8. On the other hand, Mr. Mathur, learned counsel for the respondents, vehemently contended that the engagement of the applicants was purely on contract basis and as such they are not entitled to regularisation even though they have put in more than two years service. Relying on the case of Director, Institute of Management Development, U.P. v. Smt. Pushpa Srivastava - AIR 1992 SC 2070, he canvassed that the applicants do not have any case in their favour.

9. We have given the matter our anxious consideration. The applicants were engaged to work as Sweeper/Lab. Assistant/Cook/Helper/Peon/Attendant/Chowkidar by separate orders. The terms and conditions in the orders are almost the same. ~~and~~ We reproduce one of such engagement order (Ann.A/15) hereunder :

"MEMORANDUM

With reference to his interview for the post of Contractual Sweeper, Shri Mukesh Kumar s/o Shri Jagdish Prasad is hereby informed that he has been selected for the appointment of in Indian Institute of Handloom Technology, Jodhpur on purely temporary/contracted wages basis. His appointment is further subject to the following terms and conditions :

1. He would be paid contract wages @ 1/30th of Rs.750/- B.P. plus pro-rata D.A. + I.R.
2. His appointment is purely on contract wages basis and does not confer any right on him for regular appointment.
3. The contract wage appointment is purely for a short period of 89 days and he would stand terminated on 90th day from the date of his joining.
4. The payment to the contract wager would be restricted only for the days on which he actually performs duty or as per extent rules of Govt. of India as amended from time to time.



I/18

Sd/-

(Y.M.SONKUSALEY)
DIRECTOR"

10. A reading of the engagement order shows that the applicants were engaged on contract basis and contract wages was fixed @ 1/30th of the minimum of regular pay scale plus DA & IR. It was specifically mentioned in the engagement order that the engagement did not confer any right on the worker for regular appointment and that on the expiry of 89 days the engagement would stand terminated.

11. It is not disputed that the applicants had worked for more than two years when the OA was filed. The question for consideration is whether the engagement on contract basis for more than two years confers a right of regularisation on the applicants ?

12. The identical controversy arose before the Hon'ble Supreme Court in the case of Smt. Pusnpa Srivastava (supra). In that case, the incumbent had been appointed in the Institute on a consolidated fixed compensation on contract basis and had worked for about three years. The terms of the engagement were that the appointment was on contractual basis and the post carried the consolidated pay of Rs.2400/- per month and the duration of appointment was six months from the date of joining service. Their Lordships observed that where there is no rule for regularisation of the persons appointed, on contractual basis, for a limited period, the right to remain on the post comes to an end on expiry of the said period. It will be profitable to read the observations made by their Lordships at para-20 of the report hereunder :

"To our mind, it is clear that where the appointment is contractual and by efflux of time, the appointment comes to an end, the respondent could have no right to continue in the post."



12.1 The decision in the case of Smt. Pushpa Srivastava (supra) was followed in the case of C.S.I.R. & Ors. v. Dr. Ajay Kumar Jain, 2000 SCC (L&S) 456.

12.2 In view of the aforesaid decision of the Hon'ble Supreme Court, which was rendered by a three Judges Bench, it has to be held that the engagement of the applicants for more than two years on contract basis did not confer a right of regularisation on them.

13. The cases relied on by the learned counsel for the applicants are distinguishable on facts. In none of the cases the writ petitioners had been engaged on contract basis. They were daily wagers.

13.1 In the matter of V.M. Chandra (supra) the applicant had been declared to have attained the temporary status. In other words, the applicant therein had been accepted to be in government service.

13.2 So also, in the case of Hindustan Machine Tools (supra) the applicants had been engaged as casual labourers and they had continued for fairly long spell. On the fact that there were regular need of their services, it was held to be obligatory for the concerned authority to examine the feasibility of regularisation. The High Court had directed to frame a scheme for regularisation of the employees, which was upheld by the Apex Court.

13.3 The case of Vikramaditya Pandey (supra) had arisen out of termination. Industrial dispute had been raised. The ruling hardly helps the applicants in the instant case.

13.4 In the matter of Gujarat Agricultural University (supra) also, Industrial dispute had been raised. The petitioners were daily rated labourers and had put in 10 years of service. On the direction of the



High Court a scheme of regularisation had been prepared, which was approved by the Hon'ble Supreme Court. The applicants do not get any assistance from the said ruling.

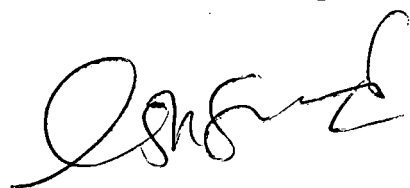
13.5 In the case of Kalu Ram Balai (supra), it was not the stand of the employer that the applicant was engaged on contract basis.

14. In sum, none of the rulings cited by the learned counsel for the applicants applies to the instant case. The case of Smt. Pushpa Srivastava (supra) is on all fours to the instant case. The applicants cannot succeed in seeking regularisation of their services and the applications are liable to be dismissed.

15. The applicants have averred that they had acquired temporary status and thereafter permanent status. No document showing the conferment of temporary status has been filed. As a matter of fact, when the applicants were engaged on contract basis there was no occasion of conferment of temporary status on them.

16. Before parting with the case, it may be observed that even on assuming that the applicants had filed the affidavits (Ann.A/1 to Ann.A/12) of their own accord stating that they would not approach the court for regularisation, the applicants cannot be non suited. The right to seek remedy through court of law cannot be curtailed by filing or obtaining affidavits. Be that as it may, we have held that the applicants do not have any case in their favour and the applications are liable to be dismissed.

17. It is seen that while hearing the matter on 11.12.2002 the court had directed the parties to advance arguments on the point whether the matter was entertainable by the Tribunal. Both the learned counsel stated before us that the respondent Institute is an office of the Ministry of Textiles



and is a unit of the Government of India. Various orders and letters were shown to us to satisfy that the respondent office is nothing but a unit of the Government of India. We have no hesitation in saying that the matter is entertainable by this Tribunal even though in the notification issued under Section 14 of the Administrative Tribunals Act, 1985 the name of the Institute is not mentioned.

18. Consequently, we find no merit in these OAs and dismiss them. No order as to costs.


(G.C.SRIVASTAVA)

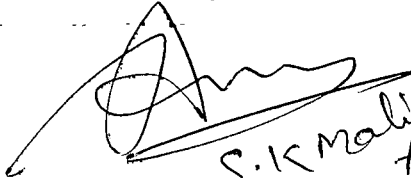
MEMBER (A)



(G.L.GUPTA)

VICE CHAIRMAN

Rec Two copies of order.
dt 6/8/03.


S.K. Malik
Adv.
7/8/03