

I/O

CENTRAL ADMINISTRATIVE TRIBUNAL

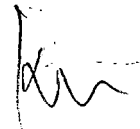
JODHPUR BENCH.

O.A.No.71/2004

December 10, 2004.

CORAM: HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN.

1. Kishore Kumar S/o Sh.Khayali Ramji, Aged about 30 years, R/o Qtr. No.P-38/12, MES Colony, Suratgarh, Distt. Sriganganagar (Rajasthan).
2. Raj Narayan Yadav S/o Sh.Chandrika Yadav, Aged about 38-1/2 Years, R/o Ganesh Kiryana Store, Ward No.3, Suratgarh, Distt. Sriganganagar (Rajasthan).
3. Guddu Lal S/o Sh.Ram Lal Ji, Aged about 29 years, R/o Manaksar, Purani Chungi, Tell Mohalla, Ward No.2, Suratgarh, Distt. Sriganganagar, (Rajasthan).
4. Raj Kumar S/o Sh. Chandrama Yadav, Aged about 26 years, R/o Ganesh Kiryana Store, Ward No.3, Suratgarh, Distt. Sriganganagar (Rajasthan).
5. Krishan Kumar S/o Sh. Ram Bachan, Aged about 29-1/2 years, R/o Ward No.1, Near Modern Public School, Suratgarh, Distt. Sriganganagar, (Rajasthan).
6. Arjun Ram S/o Sh.Bhulai Ram, Aged about 31 years, R/o Bhagwansar, Ward No.4, Suratgarh, Distt. Sriganganagar (Rajasthan).
7. Shambhu Shah S/o Sh.Jiwant Shah, Aged about 30 years, R/o 32 PBN, Ward No.7, Suratgarh, Distt. Sriganganagar (Rajasthan).
8. Babu Lal S/o Sh.Subedar, Aged about 31 years, R/o: CSF Farm Colony No.2, Suratgarh, Distt. Sriganganagar, (Rajasthan).
9. Dilip Kumar S/o Sh.Gurbachan, Aged about 28 years, R/o 20 PBN, Ward No.7, Suratgarh, Distt. Sriganganagar (Rajasthan).
10. Mool Chand S/o Sh.Ram Sumer aged about 29 years, R/o 32 PBN, Ward No.7, Suratgarh, Distt. Sriganganagar (Rajasthan).



I/10

11. Banarsi Ram S/o Sh.Sarju Ram, Aged about 36 years, R/o Bhagwansar, Ward No.4, Suratgarh, Distt. Sriganganagar (Rajasthan).
12. Harindra Singh S/o Sh.Dharam Raj Singh aged about 24-1/2 years, R/o C/o Maneshar, Bhagwansar, Suratgarh, Distt. Sriganganagar (Rajasthan).
13. Ghura Yadav S/o Sh.Vasudev Yadav, Aged about 28 years, R/o Ward No.3, Near Gurudwara, Suratgarh, Distt. Sriganganagar (Rajasthan).
14. Jagdish Ram S/o Sh.Bhuni Ram, Aged about 32 years, R/o 32 PBN, Bhagwansar, Suratgarh, Distt. Sriganganagar (Rajasthan).
15. Haripal Singh S/o Sh.Gyandeen Aged about 28 years, R/o 32 PBN, Bhagwansar, Suratgarh, Distt. Sriganganagar (Rajasthan).
16. Bikram S/o Sh.Shiv Bachan, Aged about 28 years, R/o 32 PBN, Bhagwansar, Suratgarh, Distt. Sriganganagar (Rajasthan).

Presently all are working as Casual Labourers in the office of Commanding Officer, 494, Coy. ASC (Supply) Type-E, Suratgarh Cantt C/o 56 APO.

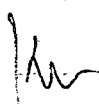
Applicants

By : Mr. S. K. Malik, Advocate.

Versus

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Chief of Army Staff, Army Headquarters, New Delhi.
3. Commanding Officer, 484, Coy. ASC (Supply) Type-E, Suratgarh Cantt C/o 56 APO.

By : Mr. S. K. Vyas, Advocate.



119
11

ORDER (oral)

KULDIP SINGH, VC

This is a joint Original Application filed by 16 applicants who are working as casual labourers from various dates appearing between 1994 to 2002 as mentioned in para 4 (1) of the Original Application. They have prayed for the following reliefs :-

- (a) "By an appropriate order, writ or directions, if the Services of the applicants are terminated by any verbal or written order, the same may be declared illegal and be quashed and set-aside.
- (b) By an appropriate order, writ or directions, respondents may be directed to review/frame their policy of engagement, disengagement, Grant of Temp. Status and Regularization of Casual Labourers like that of continuous Scheme issued by Ministry of Railway and P&T.
- (c) By an appropriate order, writ or directions, respondents may further be directed to continue the applicants in service as casual labourers on the regular vacancies on the post of Group-D and also extend the benefits of Temp. Status and regularization from the time they have completed 120 days in a year or after completion of 240 days (206 days in the case of offices observing 5 days week) in their department with all consequential benefits and as and when vacancies arises be regularized on the post w.e.f. The date their juniors have been regularized.
- (d) By an appropriate order, writ or directions, respondents may further be directed not to induct fresh recruits as casual labourers through Employment Exchange or otherwise, overlooking the preferential claims of the applicants".

2. Notice was issued to the respondents but they have failed to file reply despite various opportunities having been given to them for the purpose, so we proceeded to hear the case of the applicants on merits.

3. The case of the applicants is that they had been working as casual worker and they have worked for more than 240 days so they are entitled to be regularised. They are

h

also stated to have made a representation but no order has been passed on the same. It is further stated that Government of India, Department of Personnel & Training, had issued an O.M. dated 6.6.1988 in which the ^{scheme} claim for regularisation of casual labourers has been framed and instructions have been issued to regularise the casual labourers. The learned counsel for the applicant has also referred to various judgements and submitted that in view of these judgements, the applicants are also entitled to be regularised.

4. One such judgement is by Punjab & Haryana High Court in the case of Nirpinder Singh & Others Vs. The State of Punjab & Others, reported in 2004 (1) ATJ, Page 610 wherein the petitioners were working on daily wage basis as Pump Operators and they had completed for more than 10 years and salary was being paid to them at the end of the month and availability of work was also not denied but regularisation was not made. Respondents denied regularisation on the ground that department had not obtained sanctioned for the additional posts. Such stand was held to be not justified. A direction was given to the respondents to consider the petitioners therein for regularisation. As far as this judgement is concerned, from its reading, it is clear that the Court has specifically referred to a judgement of the Hon'ble Supreme Court of India in the case of State of Orissa Vs. Balram Sahu,

ka

2002 (4) SCT, 902 and another judgement in the case of State of Haryana Vs. Jasmer Singh, 1997(2) SCT, 151. The claim for grant of pay scale had been rejected relying upon these judgements but a direction was given to the respondents to consider the claim of the applicants for regularisation of their services within a period of three months. The applicant has referred to another judgement of the Hon'ble Supreme Court of India in the case of Railway Parcel & Goods Handling Mazdoor Union & Others, 2004 SCC (L&S) Page 114. In that case the petitioner were working as Porters on various Railway Stations and directions were given that all those porters / workers who had been initially engaged through Co-operative Societies but have been continuously working in the Railways for more than 10 years or more on different assignments shall be regularised and absorbed by the railways subject to being found medically fit and being below the age of superannuation.

5. Counsel for the applicant has further referred to another judgement of the Rajasthan High Court in the case of State of Rajasthan & Another Vs. Suresh Chandra & Another, 2003 (3) Western Law Cases, Page 1. The head note being relevant is reproduced as under :

"Rajasthan Subordinate Offices Ministerial Staff rules, 1957, R.10 (As amended by Notification of 12.10.1992)- Scope- Regularisation of service - Petitioners appointed LDCs on ad hoc or daily wage basis during 1.1.1985 to 31.3.1990 and still working as such -No mention in appointment letter as to appointment being on contract basis - Subsequent contract if any must be held to be

ka

sham or camouflage – Point of appointment on contract basis not even raised before Single Judge – Petitioners continuing in employment for last more than 12 years – 15 vacancies available – Case of petitioners fully covered by amended Rules – Petitioner's rightly held entitled to status of regular employees **subject to conditions of amended Rule."**

6. On the contrary, learned counsel for the respondents submitted that there is no case for regularisation of the applicants' services as the work available with the respondents is that of casual nature and cannot be said to be of perennial nature. Besides, there is no scheme or service rules under which the services of the applicants can be regularised. The applicants themselves have relied upon OM dated 6th June 1988, para (x) of which being relevant is reproduced as under: -

"(x) The regularisation of the services of the casual workers will continue to be governed by the instructions issued by this Department in this regard. While considering such regularisation, a casual worker may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age limit for the relevant post".

7. I have considered the rival contentions raised on behalf of both the sides and gone through the documents on record.

8. In this regard I may say that the judgements cited by the learned counsel for the applicant cannot be applied to the present facts of the case because in the case of Nirpinder Singh & Others (supra) , the respondents therein were directed to consider the claim of the petitioners for regularisation but that consideration had to be done in accordance with the rules or under some scheme. If there is no scheme or rules for

ka

regularisation of services of the casual labourers, as is the position obtaining in this O.A., the department cannot be forced to regularise the services of the casual labourers. In that very case the applicants had claimed minimum of the pay scale as per the Scheme dated 10.1.1993 of the DOPT but since it had already been held that Scheme was one time and not continuous one, the Hon'ble High Court of Punjab & Haryana rejected the claim. The Scheme of 10.1.1993 further envisages as to how, after the grant of temporary status, the casual labourers are to be regularised. But since the Temporary status and regularisation scheme was only one time, benefit of it cannot be extended to the applicants who were appointed much after the cut off date fixed in the Scheme making the same inapplicable to the applicants. In so far as para 10 of the Scheme dated 6.6.1988 (Annexure A-1) is concerned, this also postulates that while considering the claim of regularisation, the casual workers may be given relaxation in upper age limit only. Otherwise, the regularisation is to be done as per the existing scheme and instructions or under the recruitment rules and not otherwise. As regards the Railway Parcel & Goods Handling Mazdoor Union & Others (supra) is concerned, the Railways have their own scheme to regularise the casual employees whereas in the department in which the applicants are working, no such scheme has been brought to our notice nor it is shown that any such scheme is in operation in the department. So, that

pa

judgement also does not help the applicants. As regards the judgement in the case of Suresh Chandra & Another (supra) in that case the Court itself had found that case of the employees therein was found to be fully covered by the amended rules and it was held that the petitioners were entitled to the status of the regular employees subject to the fulfilment of the amended rules of that department but no such rules which may be available and applicable in the department of the present respondents have been shown to us under which the present applicants can claim regularisation of their services. The other judgement cited by the counsel for the applicant is R. K. Panda & Others Vs. Steel Authority of India & Others, (1994) SCC, 304 wherein the applicant had approached the court under the Labour Laws and under the provisions of the Industrial Disputes Act of 1947, the pay scale was claimed whereas no such law can be invoked in the case of the applicants as the dispute is not covered under the Industrial Disputes Act. Same is the position of judgement in the case of Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, (1990) 1 SCC, 361. In that case also the claim was lodged and adjudicated upon under the Labour Laws. The last judgement cited by the applicant is in the case of Jacob M. Puthuparambil & Others Vs. Kerala Water authority & Others, (1991) 1 SCC, Page 28, wherein directions were given to the Kerala Water Authority that the services of the workers employed between the April 1, 1984 being the date of

ka

establishment of Kerala Water and Waste Water authority and August 4, 1986, be regularised with immediate effect if they possess the requisite qualifications. The services of the workers appointed after August 1986 and who possess the requisite qualifications, should be regulated in accordance of the Act of 1970 provided they have put in more than one years service etc. Therein also the services of the applicants were directed to be regularised under a particular statutes. So the ratio of this judgement makes it clear that this Court can direct regularisation of services of casual employees only under some existing scheme for regularisation or under the recruitment rules or under a particular statutes which gives a right to such like employees for their services being considered for regularisation. In this case the learned counsel for the applicant was unable to show any scheme which may be applicable to the applicants under which they may have a right of consideration of regularisation of their services or any recruitment rules or statutory provision under which the applicants have a right to regularisation of their services. So, I find that the applicants have no case for regularisation of their services merely because they have been working as casual employees for quite long time ~~as~~ their regularisation cannot be done unless there is a scheme, rule or instruction for the purpose. In view of the above discussions, the O.A. is found to be devoid of any merits and is liable to be dismissed. Accordingly, I dismiss the O.A. However,

78
2/18

before parting with the judgement I further direct that in case the nature of the work, which the applicants are performing, continuous to remain available with the respondents then their services shall not be terminated. O.A. stands dismissed, but with the above observations. No costs.



(KULDIP SINGH)
Vice Chairman

December 10, 2004.

HC*

2020
Sun

Rec
~~Dr~~
S. K. Malhotra
20/2/04

