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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 60 OF 2005  
Date of decision: This the 30<sup>th</sup> day of May 2006

**CORAM:  
HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER**

Kapil Dev S/o Shri Hari Ram aged 26 years caste Harijan resident of Near Roadways Workshop, Harijan Basti, Naya Nagar, Bhadwasia, Jodhpur (Presently working as Sweeper at N.C.B. Zonal Office, Ratanada, Jodhpur).

.....Applicant

Mr. S.P. Sharma, Advocate, for applicant.

Vs.

1. Union of India through Secretary, Ministry of Finance  
Department of Revenue, Government of India,  
North Block, New Delhi.
2. The Director General,  
Narcotics Control Bureau,  
West Block No. 1, Wing No. 5, R.K. Puram, New Delhi.
3. The Assistant Director,  
Narcotics Control Bureau, Jodhpur Zonal Unit,  
Jojawar House, Near Sabji Mandi, Ratanada, Jodhpur.

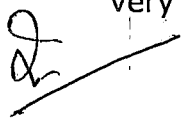
.....Respondents.

Mr. K.S. Nahar, Advocate, for the respondents.

**ORDER**

Shri Kapil Dev has assailed the order-dated 14.3.2005 through which his claim for appointment against a regular post has been declined. He has sought for quashing of the said order in addition to grant of minimum pay in regular pay scale meant for the post of Safaiwala (Sic Sweeper) and also regularisation of his services.

2. With the consent of learned counsel for both the parties, this case was taken up for final disposal at the stage of admission since a very short controversy was involved. I have accordingly heard the





arguments advanced at the bar and have carefully perused the pleadings as well as records of this case.

3. The indubitable facts as are borne out from pleadings of the parties and considered necessary for resolving the controversy in this case are that the applicant hails from Scheduled Caste community and has passed VIII standard. He came to know that a post of Sweeper was lying vacant in the office of respondent No. 3. He applied for the same and was engaged on casual basis as a part time Safaiwala on 1.8.1997. He is continuing to work as part time Safaiwala, uninterruptedly. At present he is being paid at the rate of Rs. 73/- per day as wages. He made a representation to the competent authority for regularisation as well as grant of regular pay scale as admissible on the post of Safaiwala but, the same has been turned down through the impugned order on the ground that applicant is employed as a part time casual labour and there is no provision under which his services could be regularised.

4. As regard the variances in facts, it has been stated that the applicant is discharging the duties of Safaiwala like a regular employee and still being paid on daily wages basis. As per the policy framed by the department the part time casual labours can be brought on the strength of the temporary employee in regular pay sale and there are catena of judgements of the Hon'ble High Court and Apex Court in this respect. In rejoinder it has been indicated that after issuance of the notice to the respondents his pay has been reduced to Rs. 37/- per day only. Certain new pleas have been introduced. New prayers regarding converting the status of applicant from part time to full time casual labour, has been added. From the side of the respondents, it has been averred that the applicant is only a part time casual labour

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and there is no vacant post for group D Safaiwala in the office of respondent No. 3. The applicant is being paid the daily wages as per the rates prescribed by the Government of India. He has no legal right of regularisation of his services in absence of any scheme framed by the Government of India.

5. The learned counsel for both the parties have reiterated the facts and grounds enumerated in their respective pleadings as noticed above. The learned counsel for the applicant has made me to traverse through the Casual Labours Grant of Temporary Status and Regularisation Scheme of Government of India, 1993 (for brevity 'the Scheme') and has tried to demonstrate that applicant's case ought to have been considered in accordance with the said scheme and granted the due benefits. He has also submitted that the scheme applies to all the casual labours including the part-time casual labours. But, the applicant has neither been granted the due temporary status nor considered for regularisation for grant of regular pay scale. He is deployed against a regular nature of work. The applicant is surviving under below subsistence level. He has also submitted that if there is no scheme to regulate the case of applicant, the respondents should be directed to frame a scheme for regularization. He has quoted following authorities in support of his contentions: -

- i. Khem Chand Sharma V. State of Rajasthan & ors RLR 2001(3) 723.
- ii. Raju V. Union of India & ors OA No. 184/2004 dt. 9.8.2005 CAT Jodhpur Bench.
- iii. Vijesh Kumar Vs. Union of India & ors OA No. 125/2005 dt. 15.2.2006 CAT Jodhpur Bench.
- iv. Smt Radha Devi Vs. State of Rajasthan & Anr 2005(3) CDR 2031 (Raj).
- v. Dayalal Vs. State of Rajasthan & Ors RLW 2003 (4) Raj page 2680.
- vi. Union of India & Ors Vs. Ganesh Lal & Anr 2005 (2) CDR 933 (Raj) (DB).

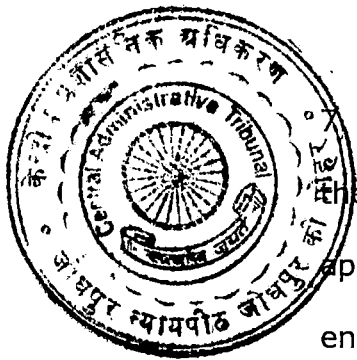
6. Per contra, the learned counsel for the respondents has submitted that as regards the reduction in the salary of the applicant is concerned Annex. A/13 makes a mention that applicant is employed for four yours a day and is being paid proportionately as per the



22

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minimum wages. There was an audit objection of overpayment to the applicant and the same has been set at rest. He has submitted the scheme is one time policy and applicant does not fulfil any of the two conditions for grant of temporary status, namely in employment on the date of issue of the scheme (i.e. 10.9.1993) and completion of 240/206 days, as the case may be, on that date. He has also contended that the scheme also does not cover the cases of part time casual labour. Hence, this is a misconceived application and deserved to be dismissed. As regards the converting the status of the applicant from part time to full is concerned, it has been submitted that applicant has never claimed for such relief and there is no pleading to this effect in the main OA. Therefore, nothing could be said on feasibility of the same.



I have considered the rival contentions raised on behalf of both the parties. As far as the factual aspect of the case is concerned, the applicant is admittedly a part time casual labour and came to be engaged on 1.8.1997 i.e. much later than date (10.9.1993) when the scheme came to be issued. He has been in the employment uninterruptedly and paid at the rate on minimum wages as prescribed by the Government of India from time to time. The applicant has tried to improve his case by making certain new pleadings regarding changing over to full time casual labour. No cognisance to the same can be taken of the same since the respondents cannot be taken by surprise.

8. The claims of the applicant are based on the scheme and certain authorities of the court of law. To appreciate the controversy, I

2/

consider it expedient to refer to some of the relevant provisions from the scheme as under:

**Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993**

4. *Temporary status.*-(i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).

5. Temporary status would entitle the casual labourers to the following benefits: -

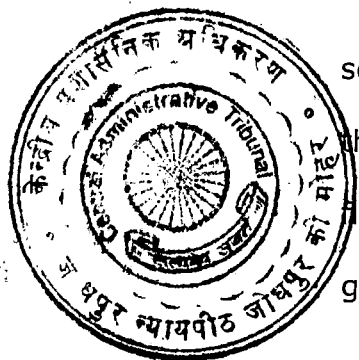
Wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group 'D' official including DA, HRA and CCA [Special Compensatory Allowance or Compensatory (City) Allowance or Composite Hill Compensatory Allowance, etc., i.e. only one of the compensatory allowance, more beneficial to them, can be taken into account for the purpose of calculating their wages. - O.M. No. 3(2)/95-E.II (B), dated the 15<sup>th</sup> January, 1996.]

8. *Procedure for filling up of Group 'D' posts.* - (i) Two out of every three vacancies in Group 'D' cadres in respective offices where the casual labourers have been working would be filled up as per extant Recruitment Rules and in accordance with the instructions issued by Department of Personnel and Training from amongst casual workers with temporary status. Xxx"

The bare perusal of the aforesaid provision would reveal that the

scheme provides for grant of temporary status in the first instance and the further rights e.g. payment in regular pay scale, regularisation etc flow from the same. Thus for grant of the reliefs, prayed in this case, grant of temporary status is sine qua non.

9. Skipping the plea of applicability or otherwise of the scheme to part time casual labour for time being, the main controversy boils down to grant of temporary status to the applicant. If the applicant were eligible for grant of temporary status under the scheme, he would swim and enjoy a favourable order from this court; otherwise he would sink. Admittedly the applicant does not fulfil the requisite condition for grant of temporary status since neither he was in the employment nor completed 240/206 of service on the date of issue of the scheme i.e. 10.9.1993; applicant having been appointed on 1.8.1997. The scheme is a one time measure and does not cover the



22

cases of casual labour engaged after its date of issue. The issued has already been settled by the Apex court in catena of judgement and does not remain res integra. The relevant portion from **Union of India Vs. Gagan Kumar** reported in 2005 SCC (L&S) 803 , is extracted as under:

"5. The controversy can be resolved on the basis of the interpretation of clause of the Scheme. As already noticed, the Scheme came into effect from 1.9.1993. Clause 4(1) of the Scheme reads as follows :

"4. Temporary status.-(1) 'temporary' status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days' week)."

6. Clause 4 of the Scheme is very clear that the conferment of "temporary" status is to be given to the casual labourers who were in employment as on the date of commencement of the Scheme. The Tribunal has taken the view that this is an ongoing scheme and as and when casual labourers complete 240 days of work in a year or 206 days (in case of offices observing 5 days a week), they are entitled to get "temporary" status. We do not think that clause 4 of the Scheme envisages it as an ongoing scheme. In order to acquire "temporary" status, the casual labourer should have been in employment as on the date of commencement of the Scheme and he should have also rendered continuous service of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. From clause 4 of the Scheme, it does not appear to be a general guideline to be applied for the purpose of giving "temporary" status to all the casual workers, as and when they complete one year's continuous service. Of course, it is up to the Union Government to formulate any scheme as and when it is found necessary that the casual labourers are to be given "temporary" status and later they are to be absorbed in Group 'D' posts."



The aforesaid proposition of law covers the controversy involves in this case on all fours. The applicant is bound to sink on this ground alone and none of the reliefs claimed by his can be granted as per the above proposition.

10. The defence stand of the respondents that the scheme does not cover up the cases of part time casual labour needs no examination in the instant case since applicant is not entitled for grant of any relief even as a full time casual under the scheme. However, this issue has also been set at rest by this bench of the Tribunal in cases of **Raju and Vijesh Kumar** supra being relied upon by the applicant itself.

Basing on the verdict of Apex Court in case of **Secretary, Min Of**

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**Com. & Ors. Vs. Sakku Bai and Anr.** 1998 SCC (L&S) 119, it has been held that the scheme does not apply to the cases of part time workers. Hence, the plea of the respondents is well founded and has to be countenanced.

11. The decisions relied upon by the learned counsel for the applicant were rendered in different factual background. A decision is an authority for what it decides and not for what could be inferred from the conclusion. As regards the giving of direction to the respondents to frame the appropriate scheme for covering up the cases of part time casual labour is concerned, the last sentence of the judgement quoted in para <sup>10</sup> above is a complete answer. Admittedly, the applicant has never asked for converting to full time casual labour and no pleading to this effect has been made in the main O.A., therefore, no adjudication on the same is feasible in the instant case. Nevertheless, the applicant is free to agitate it before appropriate forum, as may be felt advised.



12. The upshot of the aforesaid discussion leads to an irresistible conclusion that this O.A. sans merits or substance and the stands dismissed accordingly but without any order as to costs.

*J.K. Kaushik*  
(J.K. KAUSHIK)  
JUDICIAL MEMBER

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