

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 188/2006

Date of Order: 21.11.2008

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER**

Chattar Singh son of Shri Kumbh Singh, aged 40 years, R/o 549, Subhash Nagar-II, Jodhpur; Permanent Mazdoor in the Central Arid Zone Research Institute, Jodhpur.

...Applicant.

Mr. Vijay Mehta, counsel for applicant.

VERSUS

1. Indian Council of Agricultural Research, through its Secretary, Krashi Bhawan, New Delhi.
2. Director, Central Arid Zone Research Institute, Jodhpur.
3. Senior Farm Superintendent, Central Arid Zone Research Institute, Jodhpur.
4. Aaharan Aym Vitran Adhikari (Administration-III), Central Arid Zone Research Institute, Jodhpur.

...Respondents.

Mr. V.S. Gurjar, counsel for respondents.

ORDER

[Per Mr. George Paracken, Judicial Member]

The applicant has filed this Original Application aggrieved by the non-reimbursement of the medical claims submitted by him to the 3rd Respondent, namely, Senior Farm Superintendent, Central Arid Zone Research Institute, Jodhpur vide his Annexure A/1 letter dated 07.08.2006. The department returned the said letter to the Applicant through his immediate Supervisor in original



itself with the remarks that "in future such type of Medical Claim may be examined by the F.S. as per rule applicable for T.S. C/L and then forward to Adm. for needful." He has, therefore, sought the following relief in this O.A.:

"That from the facts and grounds mentioned hereinabove the applicant prays that the respondents be directed to make the payment of medial reimbursement of the claim made by him vide ANN A1 and Ann A2 and be further directed to not to reject such applications submitted in future for medical reimbursement on the ground that he is a temporary status casual labour. The respondents may kindly be directed to treat the applicant as a regularized permanent employee. Any other order giving relief may also be passed. Costs may also be awarded to the applicant."

2. The question to be considered in this O.A. is whether the applicant is a temporary status casual labour or a regular employee. The applicant was beneficiary of the Award dated 29.04.1989 passed by the Industrial Dispute Tribunal and Labour Court, Jodhpur in Labour Dispute No. 16/1986. In the aforesaid dispute, there were 268 employees of the Respondent-Institute including the applicant. The Labour Court has directed the respondent no. 2, namely, Director, Central Arid Zone Research Institute, Jodhpur to regularize the services of all those casual labours who were appointed from 1965 to 1983 and had completed two years of service. There was also a direction to it to absorb such labours by creating new posts, if necessary. They were also to be given retirement benefits by counting their



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entire service period. The respondents were given six months time to frame a scheme in this regard. The time granted by the Labour Court expired on 29.10.1989. Admittedly, respondents have not framed any scheme so far.

3. The Respondent-Institute challenged the aforesaid Award by filing S.B. Civil Writ Petition No. 1420/1992 before the Hon'ble High Court of Rajasthan and the same was dismissed vide judgment dated 13.05.1997. Thereafter, they have filed a DB Civil Special Appeal No. DR(J) 382/2000 before the High Court and the same was also dismissed vide judgment dated 17.04.2000 (Annex. A/5). They have again challenged the aforesaid judgment of the High Court by filing SLP No. 11953/2000 and the same was dismissed vide order dated 18.08.2004. Thus, the aforesaid Award of the Tribunal has attained its finality.

4. Thereafter, the number of employees and dependents of the deceased employees have approached this Tribunal for redressal of their various grievances like non-payment family pension and other terminal benefits, etc. O.A. No. 161/2005 and 162/2005 were filed by the dependents of two deceased employees of the Institute when they were denied the family pension



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on the ground that the employees concerned were only temporary status and pension/family pension was not admissible to them. However, this Bench of the Tribunal allowed these OAs vide order dated 27.01.2006 (Annexure A/8). For the sake of convenience, para 9 and 10 of the aforesaid order are reproduced as follows:

“9. Looking the controversy from another angle, I find that there is force in the contention of the learned counsel for the applicant that the deceased government servants ought to have been deemed to be a regular employee as if the award issued in their favour was implemented. The respondents have not given the clear picture and it would be safe to infer that they have not been fair in the matter. I am unable to concur the action of the respondents that they could get rid of by remaining inactive or justify their action by granting certain benefits in accordance with subsequent scheme ignoring the scheme in force at the relevant time. While I am not concerned here with implementation of the award, but I consider it expedient and judicious to treat the deceased employees in particular and other similarly situated eligible employees in general, as regular from 29.10.1989 in terms of the ibid award (Annexure A/6) passed in their favour. It is also otherwise justified for the reason that the employees should not be penalized for the fault and inaction of the authorities in power. If that were so, the applicants would be entitled for family pension and other terminal benefits.

10. In view of what has been said and discussed above, I find ample force in these OAs and the same stand allowed accordingly. The respondents are directed to grant family pension and other retiral benefits to the applicants from the due date and they shall also be entitled to all consequential benefits including arrears thereof along with interest @ 8% p.a. from the due date till the date of payment. This order shall be complied with within a period of three months from the date of receipt of a copy of the same. No costs.”

(Signature)



5. Later on, this Tribunal has considered the same issue vide order dated 27.01.2006 in O.A. No. 261/2005 –

Rana Ram vs. Indian Council of Agricultural Research through its Director General and Anr.

The issue raised in the said case was whether the deceased employee was eligible for pension and other terminal benefits or not. The Tribunal vide order dated 27.01.2006 held that in terms of the award dated 29.10.1989 (supra), the deceased employee has become a regular employee and accordingly the dependent of the deceased employee was eligible for family pension and other retiral benefits, etc. The relevant paras 9 and 10 of the aforesaid order of the

Tribunal are as under:

"9. Looking the controversy from another angle, I find that there is force in the contention of the learned counsel for the applicant that the applicant's wife in particular and other similarly situated persons in general ought to have been deemed to be a regular employee as if the award issued in their favour was implemented. The respondents have not given the clear picture and it would be safe to infer that they have not been fair in the matter. I am unable to concur the action of the respondents that they could get rid of by remaining inactive or justify their action by granting certain benefits in accordance with subsequent scheme ignoring the scheme in force at the relevant time. While I am not concerned here with implementation of the award, but I consider it expedient and judicious to treat the applicant's wife in particular and other similarly situated eligible employees in general, as regular from 29.10.89 in terms of the ibid award (Annexure A/6) passed in their favour. It is also otherwise justified for the reason that the employees should not be penalized for the fault and inaction of the authorities in power. If that were so, the applicant's wife would be entitled for pension and other terminal



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benefits and consequently the applicant shall be also entitled for family pension from 24.11.2000 i.e. date of death of his wife.

10. In view of what has been said and discussed above, I find ample force in this OA and the same stands allowed accordingly. The respondents are directed to grant pension and other retiral benefits to the applicant's wife from May 2000 and family pension w.e.f. 24.11.2000 to the applicant with all consequential benefits. The applicant shall be paid the due arrears thereof along with interest @ 8% p.a. from the due date till the actual date of payment. This order shall be complied with within a period of three months from the date of receipt of a copy of the same. No costs."

6. In another O.A. No. 71/2005 - **Aird Zone Employees Union through its Secretary and Anr. vs. Indian Council of Agricultural Research through its Secretary & Anr.**, this Tribunal on 15.09.2006 again had the opportunity to consider the question of the deductions towards GPF from the salaries of similar persons. The present applicant was also one of the applicants in that O.A. The relevant paras 7 and 8 of the aforesaid order dated 15.09.2006 (Annex. A/9) of the Tribunal are as under:

"7. We have considered the rival submissions put forth on behalf of both the parties. As far as the factual aspect of the matter is concerned the position is as noticed above. It is a fact that the respondents have not passed any specific order in implementation of the aforesaid award or in pursuance with the Scheme of 1993. However, elaborate discussions have been held in regard to the status of the members of the applicant union in particular and other similarly situated persons in general, in the case of **Rana Ram** (supra). It has been categorically held in para 9 of the same that the applicant therein in particular and other similarly situated persons in general would be treated as



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regular from 29.10.89 in terms of the award of the Labour Court. Therefore the applicants are admittedly regular employees from a much earlier date than 01.01.2004 and the deductions towards GPF shall have to be continued. In other words, Annex. A/1, A/9, A/10 and A/11 have got no application to their case and therefore the O.A. deserves to be accepted on this ground alone. Nevertheless, looking into the matter from yet another angle, we find that the deductions towards GPF were being made in respect of the applicants from a much earlier date than the cut off date of 01.01.2004. The applicants are not definitely appointed on or after 01.01.2004. The judgment in case of **Chandra Mohan Singh**, supra cited on behalf of applicant relate to an enactment from retrospective date, which is not the case here. All the impugned orders are from a prospective date only; hence the same does not apply to the controversy involved here.

8. The upshot of the aforesaid discussion is we reach to an inescapable conclusion that there is ample force in this O.A. and the same deserves to be accepted and stands allowed. Accordingly, the respondents are directed to continue to make the deductions towards GPF from the salaries of the members of the applicant union in particular and other similarly situated employees in general as was being done earlier to the issuance of Annex. A letter/order dated 21.02.2005. The rule issued earlier is made absolute. However, the parties are directed to bear their own costs."

7. In another case of **Shri Ram vs. Indian Council of Agricultural Research through its Secretary and Anr.** (OA No. 123/2005), this Bench of the Tribunal on 15.09.2006 also had the opportunity to examine whether or not the applicant therein was a regular employee and if so, whether he was entitled for payment of salary at par with other employees and whether to extend the benefits of leave encashment, casual leave, medical reimbursement, medical leave,



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uniforms, holidays of second Saturdays etc. which are being given to other regular employees. For the sake of convenience, relevant paras 11 and 12 are reproduced as under: -

"11. It is a fact that the respondents have not passed any specific order in implementation of the aforesaid award or in pursuance with the Scheme of 1993, in respect of any of the employee. However, elaborate discussions have been held in regard to the status of the members of the applicant union in particular and other similarly situated persons in general, in the case of **Rana Ram** (supra). It has been categorically held in para 9 of the same that the applicant therein in particular and other similarly situated persons in general would be treated as regular from 29.10.89 in terms of the award of the Labour Court. Therefore the applicant is admittedly a regular employee and the OA deserves to be accepted on this count alone.

12. The upshot of the aforesaid discussion is we reach to an inescapable conclusion that there is ample force in this O.A. and the same deserves to be accepted and stands allowed. Accordingly, the respondents are directed to grant all the due benefits as per the award dated 29.4.89 and the decision in **Rana Ram's** case (supra) within a period of three months from the date of receipt of a copy of this order. However, the actual monetary benefits shall be admissible from 19.4.2002 i.e. three years prior to the date of filing of this OA. Both the parties are directed to bear their own costs."

8. The aforesaid order of the Tribunal dated 15.09.2006 in the case of **Shri Ram** (supra) was challenged by the respondent-institute before the Hon'ble High Court of Rajasthan at Jodhpur by filing a D.B. Civil Writ Petition No. 2631/2007 but the same was dismissed vide judgment dated 09.08.2007. The relevant paras of the aforesaid judgment of the High Court are as under:

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"The effect of award is that petitioner has to be treated in continuation service since the date of his appointment in 1982 throughout the period until he is reinstated as a result of his retrenchment was held to be invalid. Legal effect of this is that the petitioner was de jure in service award dated 24.8.1989 had been made. Once this is accepted, and is to be accepted, this is to further dispute that respondent workmen fulfilled all the conditions of the award and the scheme framed by the present petitioner is giving effect to the award.

Independent of all controversies and litigation, the respondent workman has been in employment since 02.01.1982 and had completed two years continuous service on 02.01.1984. Thereafter, he has continued in service at least and until 01.01.1985 when his services were orally terminated by considering him to be a casual employee. But in terms of the Award dated 24.8.1989 the respondent workman gets the status of work charged employee on 02.01.1984 itself. Viewed in that light even his termination order thereafter could not have affected this position. Be that as it may we have no doubt in our mind that once respondent workman was reinstated by finding his retrenchment to be invalid with continuity of service, the legal affect of Award was that his services never came to an end and he has to be treated as in continuous service. The period of service was never broken since his first appointment.

That being the position, the consequences become clear. He became entitled to be considered and given a status in terms of award and was also required to be absorbed on regular post w.e.f. the date any person appointed on or after 02.01.1982 was given that status, in terms of the Award dated 29.04.1989. That being an adjudicated matter by an Award of the Labour Court in terms of Section 18 [3] [d] binding the employer qua all workmen who were employed in establishment or part of the establishment as the case may be to which the dispute relates on the date of dispute as well as all persons who subsequently become employed in that establishment or part thereof. By dint Award dated 10.03.1997, the respondent workman was a person employed in CAZRI, since 1982 the establishment to which dispute relates, and he was employed on the date of the dispute, therefore, the Award binds the establishment CAZRI, as well as the workman under Clause [d] of sub-section [3] of Section 18 of the



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Act. He became entitled to be admitted to benefit of Award dated 24.08.1989 in terms of Section 18 of sub-section [3] [d] of the Act of 1947.

It may not be out of place to mention that so far as the raising of industrial dispute and its adjudication is concerned, the grant of semi-permanent or permanent status and regular status to a casual, or temporary employee for long duration is part of statutory scheme framed by the Parliament.

Under Section 2[k] of the Industrial Disputes Act, 1947, Industrial Dispute has been defined to mean any dispute or difference between employees and employer or between employer and workman or between workman and workman which is connected with employment or non-employment or terms of employment or with the conditions of labour of any person.

The Act of 1947 also defines unfair labour practices under Section 2(ra) to mean any of the practices specified in the Schedule V attached to the Act. Amongst others, unfair labour practices enumerated in schedule V of the Act and is included items No. 10 that to employ workman as casual or daily rated or badli and to continue them as such with the intention of depriving them of the status of permanent or semi-permanent workmen to amounts unfair labour practice.

Amongst others, unfair labour practices enumerated in schedule V of the Act and is included workmen have a right to raise an industrial dispute about practicing such unfair practice and get its adjudication and relief through reference u/s 10 of the Act. This was exactly resorted to by the workmen of CAZRI by raising an Industrial Disputes through their trade Union by raising a grievance in that regard and the same grievance was found to be justified and relief was granted as per aforesaid award. Hence the grant of relief by the labour court was not de hors the statutory provision. Such an adjudication is not in conflict with the decisions of Supreme Court noticed above. The Apex Court has not laid down the ratio that even if an adjudication of an industrial dispute the labour court or industrial Tribunal finds existence of a prevalent unfair labour practice as defined under item 10 of V schedule to the Act, it cannot grant appropriate relief through making an award.



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Once a valid award in terms of statutory scheme has come into existence it must be giving its effect to.

Therefore under the mechanism of the Industrial Dispute Act there is inherent provision for raising dispute about unfair labour practice of employer keeping the workmen for long period without status, which may result in depriving of benefit of a permanent employment which he is entitled to and grant of appropriate benefit through industrial adjudication. This has actually happened in the present case. Charter of demand has been raised by the workers Union in respect of continuous, status of larger number of workers as casual labour for long period and accepting it to be so the industrial adjudication was made by directing the employer to remove the prevalent unfair labour practice in the manner noticed by us vide Award dated 28.4.1989. Therefore, even otherwise the Award of the Labour Court cannot be said to be de hors to the provisions of law.

Therefore, the contentions of the learned counsel for the petitioner cannot be sustained and the petition must fail.

Accordingly, the petition is dismissed. No orders as to costs."

9. The aforesaid order dated 09.08.2007 of the Hon'ble High Court of Rajasthan was challenged by the respondent-institute before the Hon'ble Supreme Court by filing a Special Leave to Appeal (Civil) No. CC 5713/2008 but the same was also dismissed vide order dated 21.04.2008.

10. In view of the aforesaid Award of the Labour Court, various orders of this Bench of the Tribunal, the judgments of the Hon'ble High Court of Rajasthan as

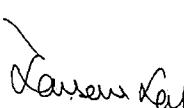


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well as Hon'ble Supreme Court, we have no doubt in our mind that the applicant is a permanent employee of the respondent-institute from 29.10.1989 onwards.

We, therefore, declare that the applicant is entitled to get the benefits of medical reimbursement of the claims, etc. etc., which are being given to other regular employees. Accordingly, we allow this Original Application and direct the Respondents to treat the applicant as a permanent / regular employee for all purposes including reimbursement of medical expenses.

The respondents are, therefore, directed to make the payment of medical reimbursement of the claim made by the applicant vide Annexure A/1 in accordance with rules as applicable for the regular employees within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.



[TARSEM LAL]
ADMINISTRATIVE MEMBER



[GEORGE PARACKEN]
JUDICIAL MEMBER



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Rock
your
style

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~~for U.S. security~~ \$1,000

Part II and III destroyed
in my presence on 19/11/2014
under the supervision of
section officer (J) as per
order dated 19/11/2014

~~Section officer (Record)~~