

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 273/2006

Date of order: 9.4.2016

CORAM:

HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

Bhoora Ram son of Shri Budha Ram, aged 40 years, r/o village Banwali, District Shri Ganganagar; Ex-Casual labour, 486 COY ASC (Supply) Type B, Shri Ganganagar.

...Applicant.

Mr. Vijay Mehta, counsel for applicant.

VERSUS

1. Union of India through the Secretary, Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commanding Officer 486 COY ASC (Supply) Type B, Shri Ganganagar.

... Respondents.

Mr. Kuldeep Mathur, counsel for respondents.

ORDER

Per Hon'ble Dr. K.S. Sugathan, Administrative Member

The applicant was working as a Casual Labourer in the Army Service Corps (ASC) Supply, Sriganganagar. He was engaged as a casual labourer in the month of March 2001. He has attached certain entry passes issued by the respondents in support of his claim that he was engaged as a casual labourer (Annex. A/1 to A/4). There is no formal appointment letter. It is contended by the applicant that he was orally terminated in the month of September 2006. Aggrieved by the oral termination of his engagement as casual labourer, he has filed this Original Application and sought the following relief:

"The applicant prays that the order of verbal termination may kindly be quashed and set aside and the respondents may

kindly be directed to reinstate the applicant with continuity of service and with all consequential benefits and be further directed to regularize the services of the applicant from the date of his appointment or from any other date as deemed fit by this Hon'ble Tribunal with all consequential benefits. In alternative the applicant prays that the respondents be directed to accord temporary status to the applicant with effect from his date of appointment or from any other date, as deemed fit by this Hon'ble Tribunal with all consequential benefits. It is also prayed that the respondents may kindly be directed to make payment of his wages for the months of August 2006 and September 2006. Any other order, giving relief to the applicants may also be awarded to the applicants with costs."

2. It is contended by the applicant that as per Model Standing Orders adopted by the Ministry of Defence, he has become entitled to be regularized since he has completed more than six months' continuous service. It is also contended by him that since he has completed 240 days of service in each year, he is also entitled to be given temporary status. He has relied on two orders of this Bench of the Tribunal in OA No. 314/1992 and OA No. 205/1996 (Annex. A/10 & A/11).

3. The respondents have filed a reply. It is stated in the reply that the applicant was engaged as casual labourer on need basis and not on regular basis. No letter of appointment has been issued to the applicant. The entry passes were issued to the applicant to facilitate entry into the defence areas. As per the Scheme for granting temporary status introduced by the Government of India vide OM dated 10th September, 1993, casual labourers who have rendered service for 240 days in a year prior to 01st September, 1993 are to be granted temporary status. However, the applicant was employed as a casual labourer from 05th November, 2001 to 21st August, 2006. He is,

27

therefore, not eligible for grant of temporary status under the said Scheme. The respondent-department namely 486 COY ASC (Supply) is not an Industrial Establishment and the matter should not be considered as an Industrial Dispute. The applicant was not retrenched but he stopped coming for work on his own. The Hon'ble Supreme Court in the case of **Secretary, State of Karnataka vs. Uma Devi** [2006 (4) SCC Vol.-I] has deprecated the practice of regularizing services of daily wagers even if they had been continued in job for many years, if they had entered in services without following due process of selection.

4. I have heard the learned counsel for the applicant Shri Vijay Mehta and the learned counsel for the respondents Shri Kuldeep Mathur. I have also perused the documents on record.

The learned counsel for the applicant has relied on the following cases/citations/judgments:



"(1). [2010 (124) FLR 700] – Harjinder Singh vs. Punjab State Warehousing Corporation.
 (2). 2008 (6) WLC (Raj.) 572 – Mohammed Ali vs. State of Raj. & Anr.
 (3). WLR 1991 (S) Raj 180 – Director Central State Farm, Suratgarh vs. Judge, Labour Court, Bikaner.
 (4). 1999 LAB. I.C. 619 – M.C.D. vs. Praveen Kumar Jain and others.
 5. 1987 (55) (Bombay High Court) F.L.R. page 689 (WP No. 2904 of 1983) – Gaurishanker Vishwakarma vs. Eagle Spring Industries Pvt. Ltd. and another.
 6. Madan Singh vs. The Judge, Labour Court, Rajasthan, Jaipur & Anr. – D.B. Civil Writ Petition No. 129/1987 - (Rajasthan High Court at Jaipur Bench) – Order dated 22.04.1987.
 (7). [(1990) 1 SCC 361] – Bhagwati Prasad vs. Delhi State Mineral Development Corporation – with - Bhagwati Devi and others vs. Delhi State Mineral Development Corporation.
 (8). Radha Raman Samanta vs. Bank of India and others – Civil Appeal No. 2063/2000 - (Supreme Court) – Judgment dated 19th December, 2003.

(9). 2004 (4) SCT 127 - B.S. Bharti vs. I.B.P. Company Limited.
(10). 2006 (2) SCT 586 - Ceat Ltd. vs. Murphy India Employees Union."

6. The issue for consideration in this O.A. is whether the applicant is entitled for grant of temporary status under the Scheme of Government of India or for regularization under the Model Standing Orders issued by the Ministry of Labour. I shall first deal with the issue of grant of temporary status. The Govt. of India introduced the scheme for grant of temporary status to Casual Labourers in September 1993. The scheme of 1993 for grant of temporary status is applicable to those casual labourers who were in service on 01st September 1993. The relevant clause of the Scheme reads as follows:

**"SCHEME FOR GRANT OF TEMPORARY STATUS AND
REGULARIZATION OF CASUAL WORKERS**

10. "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993" has been brought into force from 1-9-1993. A gist of the Scheme is given below.

1. **Applicability.**- The Scheme is applicable to Casual Labourers in Government of India Departments/Offices who are in employment on 1-9-1993. Casual workers in Railways, Department of Telecommunication and Department of Posts are not covered by this Scheme."

(Source-Swamy's Master Manual for DDOs and Heads of Offices, Part-II – Establishment – page 129).

It is clear from the aforesaid extract of the Scheme of 1993 that the Scheme is applicable only those Casual Labourers who were in employment on 01.09.1993. The present applicant was engaged as a Casual Labourer in the year 2001, therefore, the claim of the applicant for grant of temporary status cannot be sustained.

7. The next issue is regularization as per the Model Standing Orders issued by the Ministry of Labour. The applicant has referred to O.A. Nos. 173/2005, 174/2005, 175/2005 & 32/2006 filed by similarly placed casual labourers who were engaged by the same respondents. These Original Applications were pending at the time of filing of the present O.A. But they have since been dismissed by this Bench of the Tribunal by order dated 27.07.2007. The relevant extract of the order dated 27.07.2007 is reproduced below:

"17. From the above following emerged: -

(i) In all the seven O.As, the applicants have been engaged as Casual Labour. In case of Shri Prem Bahadur, Narain Das and Girendra Singh, their initial engagement was in the year 1991/1992 while for Shri Udal Singh and Shri Narain Singh, their engagement was in 1996, for Shri Bhanu Pratap, his initial engagement was in 1998 and in respect of rest of the applicants, their initial engagement were in 2004.

(ii) All these persons were engaged as Casual Labour in different Units of Army without issue of any formal appointment letter. They were on daily wages and continued to work till they were discontinued. Their discontinuation was perhaps communicated verbally and once dis-continued, none of these applicants were re-engaged.

(iii) In the case of Bhanu Pratap, the learned counsel for the applicants mentioned that he continues in service even now, I am not convinced by this statement after seeing the details submitted by the learned counsel for the respondents giving month by month employment of Shri Bhanu Pratap, this is being taken on record. This statement dated 29.8.2004, is signed by one Shri D.V. Bhaskar, Major, 2IC For C.O. which clearly brings out that Bhanu Pratap was not employed from February 2004 onwards.

In all other cases, learned counsel for the applicants himself admits that they are not on roll now having been discontinued earlier.

(iv) The three applicants viz. S/Shri Prem Bahadur, Narain Das and Girendra Singh, were engaged prior to 1993, they could have been regularized as per the one time scheme for Grant of Temporary Status and Regularisation for Casual Workers issued in the year 1993, provided they fulfilled all other conditions at that point of time. Since, this is not a issue in any of the O.As, I am not discussing further on the matter

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of applicability of the Scheme of 1993 for these three applicants.

(v) It is quite clear from all the records that all these applicants were engaged without following the procedure for recruitment of a regular employee.

(vi) In all these OAs, applicants are looking forward for a direction of reinstatement followed by regularisation.

18. The Constitution Bench decision of Apex Court in **Secretary, State of Karnataka and Others Vs. Uma Devi and Others**, had given guidelines on the matter of absorption regularisation, or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees appointed / recruited and continued for long in public employment dehors the constitutional scheme of public employment.

19. The Apex Court's guidelines are quite clear. A person who gets employed, without the following of a regular procedure or even through the backdoor or on daily wages, and merely because he is continued for a long time, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance.

It is also brought out by the Apex Court that the person who accepts an engagement either temporary or casual in nature, is aware of the nature of his employment. He accepts the employment with open eyes.

20. In all these O.As, the applicants were engaged as Casual Labour without following the rules for regular employment and later discontinued. In their cases, the relief sought is first reinstatement followed by regularisation in some way or other.

21. In the light of the decision of the Apex Court in **Uma Devi's** case (supra) no direction can be issued for reinstatement / regularisation of the applicants in these O.As. The O.As are accordingly dismissed.

22. However, before parting with the judgement, it is directed that in case nature of work which the applicants' were performing at the time of their dis-engagement, continues to remain available with the respondent-department, then, their reengagement as per rules and regularisation in force could be considered by the respondents.

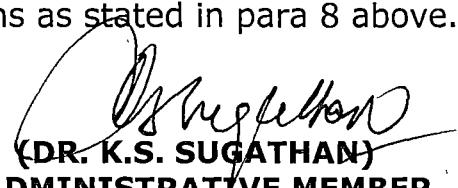
23. All these OAs stand dismissed with the above order. No costs."

8. The facts and circumstances of the present case are identical to those in O.A. Nos. 173/2005, 174/2005 and 175/2005 and I am in agreement with the findings of the

Tribunal in those cases, as reproduced supra. Accordingly, I consider it appropriate to dispose of this O.A. with a direction to the respondents that in case the type of work the applicant was doing is still available in the respondent's Department, the re-engagement of the applicant shall be considered by the respondents.



For the reasons stated above, this Original Application is disposed of along with the directions as stated in para 8 above.


(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER

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