

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No.271/2010

Date of decision: 13-5-2011

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.

Heera Lal S/o Shri Bhagu Ram, aged about 44 years, resident of C/o Superintendent of Post Offices, Divisional Office, Srigananagar, at present employed on the post of Gardner in the office of Superintendent of Post Offices, Divisional Office, Srigananagar.

: Applicant.

For Applicant: Mr. J.K. Mishra, Advocate.

Versus

1. Union of India through Secretary to the Government of India, Ministry of Communication & Info Technology, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Director Postal Services, O/o PMG, Rajasthan Western Region, Jodhpur.
3. The Superintendent of Post Offices, Srigananagar Division, Srigananagar-335001 (Raj.).

: Respondents.

For Respondents : Mr. M.S. Godara, proxy counsel for
Mr. Vinit Mathur, Advocate.

ORDER

Per Justice S.M.M. Alam, Judicial Member.

Applicant Heera Lal, who is presently working on the post of Gardner in the office of Superintendent of Post Offices, Divisional Office, Srigananagar, has preferred this O.A. for grant of following reliefs:-

Signature

- "(i) That impugned order dated 15.09.2010 (Annexure-A/1), passed by the 2nd respondent, ordering withdrawal of the temporary status granted to him vide order dated 02.03.2009, may be declared illegal and the same may be quashed. The respondents may be directed to grant all the consequential benefits including grant of temporary status from due date as per the verdict of Full Bench of this Hon'ble Tribunal in case of Smt. Sakkubai (Annexure-A/6), supra.

(ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iii) That the costs of this application may be awarded."

2. The brief facts of the case are as follows:-

The applicant was initially engaged as part time casual mali (Gardner) in the office of Superintendent of Post Offices, Divisional Office, Sriganganagar in the year 1988. In 1991, he was assigned the work of Pump Driver on part time basis. Vide letter dated 16.01.2004, he was made full time casual labour and employed to perform eight hours duty w.e.f. 01.11.2003. Thereafter, vide order dated 02.03.2009, the applicant was granted temporary status w.e.f. 03.03.2009. This temporary status was granted in view of the scheme known as Casual Labourers (Grant of Temporary Status and Regularisation) Scheme. Thereafter on 20.07.2010, the respondents No.2 issued a show cause notice (Annexure-A/4) to the applicant whereby he proposed to withdraw the temporary status granted to the applicant. In compliance of the said show cause notice, the applicant filed reply on 16.08.2010, vide Annexure-A/5, and thereafter the respondent No.2 vide order dated 15.09.2010 (Annexure-A/1) passed an order whereby he withdrew the temporary status granted to the applicant. The applicant being aggrieved by the said order has preferred this O.A.

3. On filing of the O.A, notices were issued to the respondents and in response to the notices the respondents appeared before this Tribunal through lawyer and filed reply to the O.A. As per the

reply of the respondents, the applicant was wrongly granted temporary status vide order dated 02.03.2009 in contravention of the provisions of the scheme known as Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, and in violation of various circulars and instructions and when this fact came to the knowledge of the higher authorities, the same was withdrawn. It has been further stated that since no illegality has been committed by the respondents in withdrawing the grant of temporary status to the applicant as such this O.A. deserves to be dismissed. It has been further stated that if some one has been previously benefited by any wrong order, this does not mean that the authority will be permitted to commit such mistake again-and-again and so if some other persons who were benefited by some wrong order then that cannot be a ground for giving same benefit to the applicant.

4. Shri J.K. Mishra, Advocate, appeared on behalf of the applicant whereas on behalf of the respondents Shri M.S. Godara, proxy counsel for Mr. Vinit Mathur, appeared and argued the case.

5. Shri J.K. Mishra appearing for the applicant argued that this case is fully covered under the Full Bench decision of Central Administrative Tribunal, Hyderabad Bench, passed in O.A. Nos.912 and 961 of 1992 in the case of **Smt. Sakkubai and Anr. Vs. The Secretary, Ministry of Communications, New Delhi & Ors.** He submitted that he has annexed the photocopy of the said decision as Annexure-A/6 of the O.A., in which the scheme known as Casual Labourers (Grant of Temporary Status and Regularisation) Scheme was under consideration before the Tribunal and by going through

the entire aspect of the scheme, the Tribunal at para 13 of its decision has held that the benefit of Scheme so far it relates to grant of temporary status and further absorption in Group 'D' posts is equally applicable to part time casual labourers. He further argued that on the basis of the law laid down in the above decision, the applicant may be granted the same benefit.

6. Shri M.S. Godara, proxy counsel for Mr. Vinit Mathur, counsel for respondents submitted that as per the provisions of above mentioned rule/scheme [Casual Labourers (Grant of Temporary Status and Regularisation) Scheme], the provisions of grant of temporary status was applicable only to full time casual labour who was in employment as on 29.11.1989 which period was extended to 01.09.1993. He submitted that since the applicant was not declared full time casual labour either on 29.11.1989 or till the extended period ending on 01.09.1993, as such the applicant was not entitled for grant of temporary status and so the order of grant of temporary status was rightly withdrawn by the authorities.

7. I have heard the arguments of both the sides and also gone through the Scheme formulated by the department known as Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, which has been annexed by the applicant as Annexure-A/2. Para 1 and 2 of the Scheme which contain the conditions for grant of temporary status to a casual labour are being incorporated below:-

- (1) 'Temporary Status' would be conferred on the casual labourers in employment as on 29.11.1989 (extended period upto

01.09.1993) and who continue to be currently employed and have rendered continuous service of at least one year; during the year they must have been engaged for a period of 240 days (206 days in the case of offices observing- five days week).

(2) Such casual workers engaged for full working hours, viz., 8 hours including ½ hour's lunch time will be paid at daily rates on the basis of the minimum of the pay scale for a regular Group 'D' official including DA, HRA & CCA.

My interpretation of the paragraphs referred above is that the Scheme simply refers to casual labourers without specifying that it would only apply to full time casual labourers and not to the part time casual labourers rather it includes both. My view also finds support from Full Bench decision of Hyderabad Bench of Central Administrative Tribunal given in the case of Smt. Sakkubai & Ors. (Annexure-A/6). At para 12 of the decision the Bench has noted down that the principle stated by the Ernakulam Bench is based on interpretation that the Scheme only refers to casual labourers without specifying whether it covers only full time casual labourers or part time casual labourers and thus at para 13 of the decision the Full Bench held that the benefit of the Scheme is equally applicable to part time casual labourers also. For the purpose of clarify para 13 of the decision is being incorporated below:-

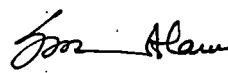
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"13. Having regard to the aforesaid circumstances, we do not feel persuaded to reconsider the consistent views taken by the Ernakulam Bench of this Tribunal that the benefit of "Casual Labourer (Grant of Temporary Status and Regularisation) Scheme" in so far as it pertains to the grant of temporary status and further absorption in Group-D posts is equally applicable to part-time casual labourers like the applicants also. Hence it follows that the applicants herein are also entitled to have the same relief as granted in similar cases by the Ernakulam Bench."



8. Thus, the perusal of the decision of the Full Bench of Central Administrative Tribunal, Hyderabad Bench also establishes that the provisions of the scheme for grant of temporary status is equally applicable to the part time casual labourers also. Thus, I have no hesitation in holding that the order of respondent No.2 dated 15.09.2010 (Annexure-A/1) whereby he has passed order to withdraw the temporary status granted to the applicant vide S.P.O's Sriganganagar order dated 02.03.2009 is illegal, unjust and based on misinterpretation of the provisions of the Scheme. Therefore, I hold that the applicant is entitled to the reliefs claimed.

9. In the result, I find merit in this case and as such this O.A. is allowed. Accordingly the order dated 15.09.2010 (Annexure-A/1) whereby the respondent No.2 has passed order for withdrawal of temporary status granted to the applicant vide order dated 02.03.2009 is hereby quashed and set aside, and the order for grant of temporary status to the applicant dated 02.03.2009 is hereby restored. Since the applicant who is low paid employee has been unnecessarily harassed by the impugned order passed by respondent No.2, as such the respondent No.2 in his personal capacity has been imposed a cost of Rs.10,000/- only payable to the applicant or his lawyer within one month from the date of this order.


 [Justice S.M.M. Alam]
 Judicial Member