

In the Central Administrative Tribunal
Calcutta Bench

No. MA 511 of 2000
OA No. 904/97

dt. 7-2-2001

Present : Honble Mr.D.Purkayastha, Member(J)
Hon'ble Mr.S.Biswas, Member(A)

Information and Broadcasting
-Vs-
Amal Bikash Barua

Present for the applicant : Mr.S.K.Dutta
Mr.T.K.Biswas
Ms U.Sanyal
Mr.S.P.Kar

Heard on 7th February, 2001

ORDER

Mr.D.Purkayastha, Member(J)

The short question for decision in this case is whether the applicant being appointed as Casual Labour on Daily Wage basis with effect from 30-1-85 without being recruited through Employment Exchange is entitled to get benefit of temporary status in the service and for regularisation in accordance with the rules and scheme framed by the Government from time to time. According to the applicant, he was engaged initially as Chowkidar on daily wage basis with effect from 30-1-85. In the year of 1985 he worked for 284 days, in 1986 he worked for 287 days, in 1987 he worked for 242 days, in 1988 for 109 days, in 1989 for 101 days, in 1990 for 107 days, in 1991 for 41 days, in 1992 for 67 days, in 1993 for 89 days, in 1994 for 165 days, in 1995 for 160 days, in 1996 for 165 days and in 1997 for 110 days. So according to him he is entitled to get temporary status under the scheme since he worked for more than 240 days in 1985, 1986 and 1987 continuously. The respondents denied the facts stating inter alia on the ground the applicant was ^{not} recruited through the Employment Exchange and he did not work for more than 240 days continuously after 1989. Therefore he was not entitled to get any benefit of temporary status and regularisation in service as claimed by the applicant. We find that the question of regularisation of Casual Labourers was considered by the Apex Court in Union of India & Ors

v Dharma Pal & Ors reported in SCSR Vol.18 page 229, where it has been decided that the Casual Labourers who have completed the prescribed period of days, viz. 240 days against the existing vacancies applying the rules of reservation in the order of seniority in the respective categories mentioned in the scheme-- such regularised employees would be entitled to all the regular payment at the scale of pay prescribed to the Central Government employees - Those who could not be regularised are directed to be regularised in the order of seniority as and when vacancies arise. The applicant is a ST candidate. On the basis of the fact, the applicant rendered more than 240 days in the year of 1985,1986 and 1987, so the applicant acquired the right of getting temporary status under the scheme. After 1987, he was not given the work for more than 165 days in a year.

Ms Sanyal, the learned counsel submits that since the applicant was not sponsored through the Employment Exchange, thus he cannot be accommodated as a regular employee in accordance with the rules because as per rules/instruction the name of the casual labour not be sponsored by the Employment Exchange can not be regularised and we find that the applicant was engaged on 30-1-85 and instructions bearing No.DP&T OM No.49014/18/84-Estt.(C) had been issued on 7-5-1985 for regularising the service of casual workers not recruited through Employment Exchange before 7-5-85 in Group 'D' posts and that circular stated that the Casual Labour who were recruited prior to 7-5-85 and not sponsored by the Employment Exchange should be regularised by way of one time measure, though by that circular recruitment to the post of casual labour, after 7-5-85 has been totally banned. The said circular admittedly came into effect from 7-5-85. We find that as per decision contained in the said circular on Casual Labourers who were engaged/recruited not through Employment Exchange before the issue of instruction on 7-5-85 should have been regularised but the respondents did not do so though he acquired the right of temporary status in the year 1985, 1986 and 1987. There had been no impediment on the part of the Superintendent to regularise the service of the applicant as per circular dated 7-5-85 mentioned above. We have, carefully gone through the judgements of the Hon'ble Supreme Court reported in 2000 SCC(L&S) 1041 in Hindustan Machine Tools V M. Rangareddy where at SCC p.153 para 51, Hon'ble Apex Court held, so far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the

qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is irregular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In this behalf we do commend the orders of the Government of Haryana (contained in its letter dated 6-4-1990 referred to hereinbefore) both in relation to work-charged employees as casual labour". The question of regularisation of casual labour specifically came up for consideration before this Court in the case of Raj Narain Prasad V. State of UP in which this Court, referring to the case of State of Haryana v. Piara Singh made the following observations : (SCC pp.475-76, para 1)

"To put it differently, therefore, the State has prepared a regularisation scheme so far as work-charged employees are concerned but has expressed its inability to prepare any such scheme for daily-rated/muster-roll employees. We have carefully perused the proposed scheme in regard to work-charged employees and we felt that in clause 'D' which talks of regularisation as per vacancies arising in regular posts on the establishment, a modification is necessary, in that, there should be a review of the cadre strength from year to year and based on the past requirement and continuity of work-charged employees, the cadre strength should be increased by a certain percentage of the work-charged employees working over a period of time that may be fixed by the Government so that the pace of regularisation is accelerated and is not the same as obtaining in the past. For example, if 100 work-charged employees have been required throughout a period of time it could reasonably be estimated that even if shedding takes place, a certain percentage of those employees would certainly be retained and a part of them could be absorbed by increasing the cadre strength to that extent. An exercise of review in the cadre strength from year to year, thereafter, becomes necessary because while on the one side the financial difficulties of the State have to be kept in view, on the other side the welfare of the workmen who have served the State on

different projects has to be balanced. Concern is also to be shown for those who have worked for a number of years and have become ineligible for another employment anywhere, be that the private sector or the public sector. Therefore, a balance has to be struck between the two competing interests and that can be struck by a periodical revision of the cadre strength from year to year. We must also impress on the State Government that if work-charged employees have been on the establishment for a long periods, the State should be liberal in the matter of revision of the cadre strength so that the benefit of regularisation is available to a reasonably good number of work-charged employees who have been associated with the State Departments for long periods."

In view of the tested principles settled by the Hon'ble Supreme Court, we have no hesitation to say that the applicant had completed 240 days in 1985, 1986 & 1987. He could be granted temporary status though he was not recruited through the Employment Exchange. In view of the aforesaid discussions, we direct the respondents to consider the case of the applicant for granting temporary status and ^{for} regularisation within 2 months from the date of communication of the order and all consequential benefits should be given to him within 2 months from the date of order or granting temporary status in accordance with the rules if he is otherwise found eligible. The MA is disposed of accordingly. No order as to costs.

S. Biswas
(S. Biswas)
Member (A)

4/2/2021
(D. Purkayastha)
Member (J)