CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.OA 1202 of 97

Present : Hon'ble Mr.A.S.Sanghvi, Judicial Member

MAHESH THAKUR & ORS.

VS

UNION OF INDIA & ORS.

For the applicants : Mr.S.N.Roy, counsel

For the respondents: Ms.K.Banerjee, counsel

Heard on : 16.3.2005 Order on : 24/3/05

O R D E R

The applicants in all 17 in number working as casual labourers under the respondent No.5 apprehending the termination of their services and also being aggrieved by their non-regularisation have approached this Tribunal under Section 19 of the A.T.Act, 1985 seeking following reliefs :

a) direction upon the respondents concerned and each one of them more particularly, the Commanding Officer, the respondent No.5 herein not to terminate the services of the applciants with effect from 18.10.97 or before or thereafter pending disposal of the instant application.

b) direction upon the respondents concerned and each one of them more particularly the Commanding Officer, the rspondent No.5 herein to consider the representation of the applicants for their regularisation by passing a reasonable speaking order pending disposal of the instant application.

c) direction upon the respondents concerned and each one of them more particularly the Commanding Officer to allow the applicants to work on all working days and to record their attendance properly and also to pay at least the minimum wages as prescribed by the Central Govt. pending disposal of the instant application.

d) leave be granted to move this application jointly under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987.

e) any further order or further orders, direction as Your Lordship may deem fit and proper in the interest of justice.

2. Their case, briefly stated is that they have been working as casual labourers since 1992-93 and most of them have completed more than 240 days working in a calender year. Though they have been

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continuously working and attempt was made by the respondent No.5 to terminate their services and they were asked orally not to come to work. They had earlier made representations through Union for regularisation of their services but instead of considering the request for regularisation they were asked to cease to work. They have therefore moved this OA seeking protection of their service and also seeking direction against the respondent No.5 to consider their representation for regularisation by passing a reasonable speaking order.

3. The respondents in their written counter have contended that the applicants were employed as daily rated casual labourers due to the urgency of the work and were offered the work as and when the work was available. Accordingly some of the applicants were engaged in 1992 while 2 of them were engaged in 1993 and other 2 were engaged in 1995. Since they are not engaged through the Employment Exchange and no scheme of regularisation applies to them they could not be regularised in the service. They have also denied that the applicants have completed more than 240 days working in a calender year and have contended that they are not fullfiling the terms and conditions given in the letter dated 31.1.91. They were being employed only when the work was available and are given work purely on daily rate basis. They have denied that the respondent NO.5 had orally terminated the services of the applicants and asked them not to come to work. According to them when the work was over they were asked not to come to the work as their services were not required. Since the applicants are daily rated employees the question of their regular services does not arise at all.They are given the work as and when the work is available and they cannot claim regularisation of their services by way of a right. They have therefore prayed for dismissal of the application with costs.

4. I have heard the ld.counsel for both the parties and duly considered the rival contentions. It is an undisputed position that the applicants are casual labourers. The respondents have admitted

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that they were engaged as daily rated casual labourers and were paid for the work carried out by them on daily basis. They have however, pointed out that none of the applicants have completed more than 200 days of working in a calender year and as such is not entitled to regularisation. It is ~~pertaining~~ pertinent to note that the applicants have prayed for relief against the termination of the services and have also prayed for a direction to the respondent No.5 to consider their representations for their regularisation by passing a reasonable speaking order. The applicants do not dispute their working as casual workers, being paid on daily rate basis. Under the circumstances though it is contended by the respondents that they were not sponsored by the Employment Exchange and as such cannot be considered for regularisation or continuation in service, I am of the considered opinion that the fact of non-sponsorship of the applicants by the Employment Exchange cannot be a disqualification for considering the service of the applicants for regularisation. If the case of the applicants falls within one of the schemes formulated for awarding of ~~te~~ temporary status and regularisation ~~of~~ of the casual labourers then they are required to be considered for regularisation and extending the benefits of the scheme. Since it appears that the applicants have been allowed to work right from 1992 till 1997 and thereafter in view of the interim order of this Tribunal continued to work till today, there would be a legitimate expectation of continuance in service on their part. In any case their service could not have been terminated by the respondents without affording an opportunity of being heard to them and in utter violation of the principles of natural justice. The fact remains that they have been allowed to work for a considerable long period even on casual basis and this ~~it is the~~ by itself is sufficient ground for necessity of a notice prior to termination of service. I am fortified by the view taken in the case of Sainudheen -vsSr.Divisional Engineer, S.Rly., Trivandrum in OA 1984/87 by the Ernakulum Bench of this Tribunal as reported in 1989 (11) ATC 740, where in a similar case of a casual labourer ~~they have~~ terminated without a notice, the

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Tribunal held that without show cause notice the termination was illegal. Furthermore in the case of Excise Supdt. -vs- K.B.N.V.Rao, reported in 1996(6) SCC 216, the Supreme Court while dealing with the case of selection only to the candidates sponsored by the Employment Exchange has held that it will not be proper to restrict the selection only from the candidates sponsored by the Employment Exchange. Ld.counsel for the applicant has submitted that this decision of the Supreme Court clearly suggest that non-sponsored candidates from the Employment Exchange cannot be a disqualification for regularisation in the service. I entirely agree that merely because the applicants were not sponsored through Employment Exchange cannot be a ground for refusal to regularise them in the service if other conditions are being fullfilled.

5. Since the relief prayed for by the applicants in this OA concern only with the protection of their service from being terminated without notice and also with the direction to the respondent No.5 to consider their representation for regularisation, I partly allow this OA and direct the respondent No.5, not to terminate the services of the applciants without first giving them a show cause notice in this regard. I also direct the respondent No.5 to consider and decide the pending representations of the applciants for regularisation in the service considering the extant rules and regulations and also consider the long service as casual labourers put up by them. This exercise shall be completed within 4 months from the date of receipt of the copy of this order.

6. With this direction the OA stands disposed of. No order as to costs..

MEMBER(J)

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