

RESERVED

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No. 384/2008

This, the 5th day of April, 2013

Hon'ble Mr. Navneet Kumar, Member (J)

Achal Singh, aged about 44 years, son of Shri Fakire Lal, Resident of C-42, Trimurti Gram, Kalyanpur, Ring Road, Lucknow.

Applicant

By Advocate: Sri S. K. Verma.

Versus

1. Union of India through Director General, Council of Scientific and Industrial Research, Rafi Marg, New Delhi-110001.
2. National Botanical Research Institute through its Director, Rana Pratap Marg, P.B. No. 436, Lucknow 226001.
3. Director, National Botanical Research Institute, Rana Pratap Marg, Lucknow.
4. Controller (Administration), National Botanical Research Institute, Lucknow.

Respondents

By Advocate Sri Pankaj Awasthi for Sri A. K. Chaturvedi.

**(Reserved On 1.4.13)
Order**

By Hon'ble Mr. Navneet Kumar, Member (J)

The present O.A. has been preferred by the applicant under Section 19 of the Central Administrative Tribunal Act, 1985 with the following reliefs:-

- (i) To issue an appropriate order to set aside the impugned order dated 10.9.2007 (Annexure No. 10) and 10.5.2008 (Annexure No. 12) passed by opposite party No. 4 with all consequential benefits.
- (ii) To issue an appropriate order or direction to opposite parties to consider the case of the applicant for regularization as Class -IV employee in the institute under the Scheme, 1995 with all consequential benefits.
- (iii) Any other order or direction, which this Hon'ble Tribunal may deem fit, just and proper, also be passed in favour of the applicant.
- (iv) Allow the application of the applicant with costs.

2. The brief facts of the case are that the applicant was engaged as casual employee on daily wages in the National Botanical Research Institute, Lucknow. The letter of engagement, which is contained in Annexure-4 to the O.A. is dated December, 14, 1993 and the said engagement order provides for sponsored Project/Scheme and the said engagement is on contract for a

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specific period up to February 1998. Through present original application, the applicant claiming for quashing of the order dated 10.9.2007 whereby the representation of the applicant was rejected for grant of absorption and the applicant has also claimed for regularization as Class IV under the Scheme of 1995.

3. The learned counsel appearing on behalf of the respondents filed their counter reply and through counter reply, it was categorically pointed out by the respondents that as per the Scheme of absorption of casual worker in CSIR, it is provided that to whom it is applicable and also the scope of the scheme. The learned counsel for the respondents has also pointed out that since, the applicant is not entitled for regularization, as such, case of the applicant was rejected and the applicant is not entitled for regularization or absorption in the respondents organization.

4. The learned counsel for the applicant has also filed rejoinder affidavit and through rejoinder affidavit, mostly averments made in the O.A. are reiterated and no new facts mentioned in the rejoinder affidavit.

5. Heard the learned counsel for the parties and perused the record.

6. The bare perusal of the O.A. and Annexure annexed with the O.A. is clear to the extent that the applicant was given an offer of engagement in a sponsored Project/Scheme vide order dated 14th December, 1993. It is mentioned that the in reference to his request dated 1.9.1993, it was intimated that the Director, National Botanical Research Institute, Lucknow, on behalf of the sponsor of the Project/Scheme namely, "Conservation of Phytodiversity (Flowering Plants) through in vitro Strategies" has been pleased to offer appointment on contract basis to work as Farm/Field Attendant. The said offer of engagement also provides that the applicant's engagement on contract is for a specific period up to February 1998. The said



offer of engagement also provides that the contract of engagement may be terminated by giving one months' notice in writing by either side. Apart from this, the scheme annexed along with the reply also provides that to whom it is applicable and the scope of the scheme. The said paragraphs reads as under:-

"3. To whom applicable:- the Scheme being a one time measure will be applicable to the workers engaged on casual basis and paid either on daily wage or monthly basis at CSIR Headquarters and its National Labs./Institutes and will also include casual workers engaged in a sponsored project/bilateral or any time bound project Scheme. Casual Workers will include contract workers directly engaged by the CSIR Labs./Institute and being paid their wages on monthly basis.

4. Scope of the Scheme: the Scheme will be applicable to Casual workers initially engaged through employment exchange or otherwise prior to 5.12.1988 but had not been regularized for want of regular vacancies or whose services have been dispensed with for want of regular vacancies and who had worked for 240 days/206 days including Sundays and Holidays (in the case of six days/five days a week, respectively) in a year prior to 5.12.88 will have priority over the others in regard to absorption. Those who have worked for lesser period, may be considered for absorption in accordance with the length of service put in by them.

7. Not only this, the absorption of the Hon'ble Apex court, in the case of Official Liquidator Vs. Dayanand and Others (2009) 1 SCC (L&S) 943, the Hon'ble Apex Court has been pleased to observe as under:-

65. In exercise of the power vested in it under Article 226 of the constitution of India, the High Court cannot issue a mandamus and compel the State and its instrumentalities/agencies to regularize the services of temporary/ad hoc/daily wagger /casual/contract employees and directions cannot be issued to the public employer to prescribe or give similar pay scales to employees appointed through different modes, with different conditions of service and different sources of payment."

The Hon'ble Apex Court once again in the case of State of Karnataka and Others Vs. M. L. Kesari and Others reported in (2010) 9 SCC 247 has been pleased to observe that the appointment may not against sanction post or appointment of

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unqualified persons are illegal appointment. It is further observed by the Hon'ble Apex Court that:


"7. It is evident from the above that there is an exception to the general principles against "regularization" enunciated in Umadevi (3), if the following conditions are fulfilled:

- a. The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.
- b. The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess, the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection such appointments are considered to be irregular."

8. In the resent case the applicant was appointed on contract basis in scheme and that too for a limited period i.e. up to 1998 and also not against any sanctioned post. The ground taken by the applicant that his juniors are retained and regularized also does not have any legs to stand.

9. Considering the averments made by the Hon'ble Apex Court and also on the basis of the facts mentioned in the present O.A., I am not inclined to interfere with the O.A. As such, the O.A is fit to be dismissed.

10. Accordingly, the O.A. is dismissed. No order as to costs.


(Navneet Kumar)
Member (J)

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