

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Lucknow this the 15th day of Oct 1996.

O.A. No. 246/91

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. V.K. SETH, MEMBER(A)

Harishankar, aged about 22 years, son of Sri Khushi Ram, resident of village Achhepur, Post Jharsawan, Tehsil Fatehpur, District Barabanki.

Applicant.

By Advocate Shri H.B. Singh.
versus

1. Union of India through Secretary, Ministry of Science and Technology, Central Sachivalaya, New Delhi.

2. Director Geneal, C.S.I.R. Anusandhan Bhawan, Rafi marg, New Delhi.

3. Director, C.D.R.I. Lucknow.

4. Head, Division of Biopolymers, C.D.R.I. Lucknow.

Respondents.

By Advocate Shri H.H. Saran.

O R D E R

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Through this O.A. the applicant challenges a verbal order communicated to him on 31st August, 1990, terminating the applicant's services. Besides challenging the said order of termination the applicant has prayed that a declaration be issued that he is working on a regular post of Attendant since 1.9.90 and entitled to seniority accordingly and arrears of salary and other service benefits. He also claims pay equal to group D employees from the date of his appointment i.e. 13.6.88 till he continued in service.

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2. The respondents have filed Counter Affidavit and the learned counsel for the respondents also showed us office record. The applicant in his rejoinder affidavit raised a grievance that his services have not been regularised, though a scheme for regularisation of casual workers has been framed by the respondents. In the Supplementary Rejoinder Affidavit reference has been made to the letter dated 6.12.85 issued by the C.S.I.R., New Delhi providing a scheme for absorption of casual labourers in the C.S.I.R. and its laboratories/institutions. It was to meet this averment in the Supplementary Rejoinder that the learned counsel for the respondents placed before us office record. The office record goes to show that the applicant's case was considered by the committee constituted to adjudge suitability of grant of temporary status to daily/casual workers engaged in the C.D.R.I. Lucknow. The applicant's case was ^{name} ~~was~~ considered but his/does not figure in the list of such daily/casual workers who have been found suitable to be conferred temporary status.

3. The applicant has not amended the relief clause in the O.A. nor amended the O.A. The plea taken in the Supplementary Affidavit as ^{met} ~~made~~ by the learned counsel for the respondents by showing the record. After perusal of the record we are satisfied that the applicant's case was considered for absorption but he was not found suitable.

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4. Coming to the reliefs claimed for in the O.A., from the pleadings of the parties, it is evident that the applicant had been engaged in casual employment on consolidated wages of Rs 450/- per month initially which was enhanced with effect from 1.8.89. The engagement for the period of three months and repeated engagements were issued for three months every time and last extension was to come to an end on 31.8.90. Since no further extension was granted, the respondents pleaded that the engagement automatically stood terminated at the end of the period. The respondents have also pleaded that the applicant was neither engaged as a group 'D' or group 'C' employee. He was employed on consolidated wages of Rs 450/- per month. The applicant's claim for pay scale of Rs 750-940 plus other allowances which was the pay scale for Group D post, accordingly does not appear to be tenable. He was neither appointed as Group D employee, but on a consolidated wages which was paid from the contingency. Since the applicant's engagement was as a contingent daily wager on consolidated wages, after the expiry of the last period the applicant's services automatically came to an end. Violation of any statutory provision has not been pleaded.

5. In the grounds the applicant has pleaded that the termination/retrenchment of the applicant retaining juniors in service is violative of Articles 14 and 16, but neither the names of any such juniors have been shown, nor specified in the pleading, by the applicant. The applicant had been engaged on consolidated wages, there is no question of seniority.

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6. In the Counter Affidavit it has been stated that the applicant did not show improvement in his work and the Head of the Division did not grant extension beyond 31.8.90. It has further been stated that the applicant has been asked many times to be careful and punctual but he did not pay any heed to the advice. ~~The~~ This averment in the counter affidavit has been made in reply to the averment made in the O.A. that the termination has been made malafide. The averment in the Counter by way of defence to meet the averments in the O.A. would not lend colour to the termination order and it cannot be held to be punitive in nature. No good ground has been raised in support of the relief for a direction treating the applicant as continuing in service has been raised in the O.A. Relief therefore, cannot be granted.

7. The learned counsel for the applicant nevertheless cited the following decisions in support of his submission for regularisation of the applicant's services.

1. 1996 SCC(2) 293 Chief Conservator of Forests and another vs. Jagannath Maruti Kondhare and others.
2. 1996 SCC (4), 195 Union of India and others vs. Dharampal and others.
3. 1991 SCC(1) page 28 Jacob M. Puthuparambil and others vs. Keral Water Authority and others
4. 1994 LCD Vol. II, SC page 1 C.A. Shankar Prasad and others versus Karnataka State Adult Education Council and others.
5. 1991(9) LCD, 358 Tejbai and others vs. Director of Education U.P. Allahabad and others.
6. 1995(13) LCD, 1000 Satya Deo Misra versus state of U.P. and another.

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7. As noted hereinabove, the scheme for absorption has been prepared in 1995. Office record placed for our consideration indicated that the applicant's case was considered but he was found unfit for absorption. That scheme was prepared in 1995 but since the applicant by reason of his having continued in service beyond 1988 was eligible to be considered and the respondents have considered his candidature.

8. It is not necessary to analyse in detail any of the decisions cited by the learned counsel for the applicant. The applicant ^{is} ~~has~~ no longer continued ^{any} ~~in~~ in service. In view of the above also ~~we~~ not ^{find} ~~found~~ any good ground to direct the respondents to continue the applicant in service. That being so, the question of regularisation does not arise.

8. The learned counsel for the applicant submitted that he had completed 240 days of work. In reply, the learned counsel for the respondents have invited our attention to Hon. Supreme Court decision reported in A.I.R. 1994, S.C. 1638 Madhyamik Shiksha Parishad U.P. vs. Anil Kumar Mishra and others. In the first place, it needs to be noted that the applicant has not put forth any case for treating C.S.I.R. as an Industry. The Hon'ble Supreme Court in the aforesaid case has also held that the completion of 240 days of work even in respect of workmen, on the analogy of provisions of Industrial Disputes Act, does not under that law import the right to regularisation. It merely imposes certain obligations on the employer at the time of termination of the service. The Hon'ble Supreme Court also held in the said case that it

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is not appropriate to import and apply that analogy in an extended or enlarged form. Further, the said decision supports the plea taken by the respondents that since the applicant was working as a contingent daily wager and the C.D.R.I. not being an Industry, no right for regularisation merely on the basis of completion of 240 days of work arises. The said submission is ~~is~~ clearly supported by the Hon. Supreme Court decision afore mentioned.

9. In the light of the discussions made hereinabove, no ground for grant of any of the reliefs is made out. The O.A. lacks merit and is hereby dismissed. Costs easy.

L. K.

MEMBER(A)

Lucknow; Dated; 15-10-96

Shakeel/

B. S. Saksena

VICE CHAIRMAN