

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Civil Contempt Petition No. 01 of 2012

In re.

Original Application No. 451 of 1993

This the 02nd day of January, 2013

Hon'ble Mr. Justice Alok K Singh, Member-J
Hon'ble Mr. S.P. Singh, Member-A

Ram Deo, S/o Sri Ishwar Din, R/o C/o T.P. Trivedi, LD 14 H
R/Shed Colony, Alambagh Lucknow and 18 others.

.....Applicants

By Advocate : Sri Som Kartik.

Versus.

1. S.K. Budhalakoti, Working on the post of General Manager, N.R., Baroda House, New Delhi.
2. Jagdeep Rai, working on the post of DRM, NR. Hazratganj, Lucknow.

.....Respondents.

By Advocate : Sri S. Verma.

O R D E R (Open Court)

By Justice Alok K Singh, Member(J)

O.A. No. 451 of 1993 was decided by this Tribunal vide order dated 22.7.2011. This order was modified vide order dated 9.4.2012 passed by Hon'ble High Court in Writ petition no. 432 (S/B) of 2012. The order of Hon'ble High Court reads as under:-

"Heard Sri Anil Srivastava, learned counsel for the petitioners and Mr. Som Kartik, learned counsel for Opposite party nos. 1 to 30.

The only submission advanced by the counsel for the petitioners is that the Tribunal cannot issue a mandamus commanding them to regularize the services of the Opposite parties. He further submits that there are regularization rules and candidature of the employees for regularization should only be considered in accordance with the relevant rules, to which Mr. Som Kartik learned counsel appearing for the Opposite parties has no objection.

Admittedly, the Tribunal issued a direction to the petitioners to regularize the services of the Opposite parties. In the case of Secretary, State of Karnataka & Others Vs. Uma Devi & Others (2006 (4) SCC 1) has held

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that the Tribunals or Courts should not have made any directions for giving permanency in the service in regard to Casual Labour though they might have worked for long periods. If the aforesaid principle applies to the present case, such a direction cannot be issued to them. However, they may be directed for considering the case of the Opposite parties.

Accordingly, the impugned judgment and order dated 22.7.2011 passed on Original Application no. 451 of 1993 is modified to the extent that the case of the Opposite parties shall be considered, in accordance with the Indian Railway Establishment Manual as well as in accordance with law.

The Writ petition is disposed of finally in above terms."

2. From the side of the respondents, compliance report sworn by Sri Jagdeep Rai, the then DRM, Northern Railway, Lucknow has been filed enclosing therewith a copy of detailed order dated 29.6.2012 running into four pages . The relevant paragraphs of the order are extracted herein below:

"As per provision of Indian Railways Establishment Manual, Vol. II, Chapter XX in regard to Casual Labour on completion of 120 days of continuous employment, a casual labour becomes entitled for temporary status but with following conditions.

Before giving regular scale of pay or 1/30th of the minimum of the scale plus Dearness Allowance on completion of 120 days or 180 days continuous employment as the case may be, a preliminary verification in regard to age and completion of requisite number of days of continuous service should be done by the Assistant Officer and the person should also be got medically examined and only if found fit, he should be granted regular scales of pay. Meaning thereby, only after completion of aforesaid formality, one has to be granted temporary status and admittedly these formalities were never initiated in regard to these applicants. Apart from this, even if temporary status has been granted to a casual labour, he does not become automatically entitled for absorption. Para 2001 of the subject Manual defines the Casual Labour and grant of temporary status. Similarly, para 2002 lays down the Entitlements and privileges admissible to Casual Labour. Para 2003 defines Breaks in service. As per sub para (b) of para 2003, authorized absence not exceeding 20 days including 3 days unauthorized absence, for personal reasons as well as absence of a half a day should be reckoned as half a day only would not be treated as Break in service, but even if authorized absence exceeds 20 days then it would be counted Break in Service, while provision of sub para (d) is made applicable only from 2nd October, 1980. According to these provisions, there are large breaks in service of almost all of the applicants. In terms of para

2004, no notice is required for termination of service of casual labour. Their services will be deemed to have been terminated when they absent themselves or on the close of the days.

In terms of para 2005 (c) of the said Manual, "No temporary posts shall be created to accommodate such casual labour, who acquire temporary status" Similarly to sub para (d) of para 2005 of the said Manual provides that "Casual Labour who have acquired temporary status and have put in 3 years continuous service should be treated at par with temporary railway servants for purposes of festival advance, flood advance on the same conditions as are applicable to temporary railway servant for grant of such advance provided they furnish 2 sureties from permanent railway employees." Admittedly, none of casual labour in regular Group 'D' employment may be considered in accordance with instructions issued by the Railway Board from time to time. Such absorption is, however, not automatic, but is subject, *inter alia* to availability of vacancies and suitability and eligibility of individual casual labour and rules regarding seniority unit method of absorption etc. decided by the Railway administration.

The instructions as envisaged in paras 10 & 13 of Circular dt. 18.7.98, a casual labour loses his right of temporary status, if any, if there is gap/break of more than 20 days during his working period and thereafter unless he again works for another 120 days of continuous service, he would not be treated as 'Temporary Status' workman. Similarly, even after completing 120 days of continuous employment, formalities as stated in para 16, 20 & 21 of circular dt. 18.7.98 have to be completed and without which he cannot be treated as 'temporary status granted' casual labour.

In addition to above mentioned facts, rules thereupon and judicial proceedings read with relevant provisions of IREM Vol. II as quoted above, it is relevant to mention that otherwise also in terms of Uma Devi's Constitution Bench judgment of the Hon'ble Apex Court, the Tribunals or Courts should not have made any directions for giving permanency in the service in regard to Casual Labour though they might have worked for long periods. Besides the ratio laid down in Indra Pal Yadav's case has no applicability in respect of present applicants and ratio of the said judgment cannot be given effect or applied under the present circumstances in respect of these applicants as it has been over ruled by Uma Devi's constitution Bench judgment.

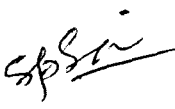
In view of the above mentioned facts, reasons and circumstances coupled with the fact of events and eventualities taken place in the matter the applicants are not entitled to be absorbed in Railway service being not eligible in terms of GM (P), N.Rlys P.S. No. 12190/2001 dt. 14.3.01. The orders of the Hon'ble High Court as passed

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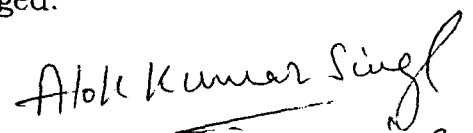
on 9.4.2012 in subject noted writ petition is complied with in its true spirit and manner."

3. As against this, a detailed objection has been filed. Learned counsel for the petitioners particularly refers to paras. 10 to 13 of the Objection which we have gone through. In the entire Objection, nothing has been said in respect of the relevant provisions contained in Indian Railway Establishment Manual Vol. II Chapter 20 and other provisions in the light of which the aforesaid compliance order dated 29.6.2012 has been passed in compliance of Hon'ble High Court order dated 9.4.2012 in which this Tribunal's order has merged. In the closing lines of the above compliance order, it is specifically mentioned that the order of Hon'ble High Court as passed on 9.4.2012 in above noted Writ petition has been complied with in its true spirit and manner. Concededly the petitioner has not filed any Contempt petition or any case against this order before Hon'ble High Court. Instead, they filed Contempt petition before this Tribunal.

4. In view of the above, we do not find any substance to proceed further in the matter. Finally, therefore, this Contempt petition is struck off. Notices stand discharged.


(S.P. Singh)
Member-A

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(Justice Alok K Singh) 2.1.13
Member-J