

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO. A. No.: 82 of 2006[Patna, this Wednesday, the 4th Day of April, 2007].C O R A M

HON'BLE SHRI JUSTICE P.K.SINHA, VICE-CHAIRMAN.

1. Babloo Kumar, son of Mahendra Prasad, resident of village – Narharbigha, P.O.: Ghostama, via – Silow, Distt.: Nalanda.
2. Shiv Shankar Kumar, son of Baikunth Singh, resident of village & P.O.: Bara, P.S.: Tekari, Distt. : Gaya.
3. Ravi Shankar, son of Shri Jugeshwar Prasad Yadav, resident of village & P.O.: Pasarhi, Via – Terma, Distt. : Nawada.
4. Vijay Kumar, son of Nageshwar Prasad, resident of village – Murlachak, P.O.: Warsaliganj, Distt.: Nawada.
5. Rita Devi, W/o Sanjay Shaw, resident of village – Jasat, P.O.: Dharara, Distt. -Nawada.

RESPONDENTS.

By Advocate :- Shri R.K.Choubey, ASC.

O R D E R [ORAL]

Justice P. K. Sinha, V.C.:- The separate application by the applicants to be allowed to prosecute this O.A. jointly, in the circumstance of the case, is allowed.

2. The admitted case of the applicants is that they have been working as part time casual labourer under SRM, 'C' Division, Gaya and in other offices at Gaya since years. It is submitted that earlier their services were directed to be terminated but soon after the termination, the authorities passed another order for maintaining status-quo thereby cancelling the order of termination [Annexures-A/3 & A/4]. It is further case of the applicants that an order issued from the office of the Chief Postmaster General, Bihar Circle,



Patna for termination of services of casual labourers, directing to employ them on coolie basis in order to avoid dislocation of most urgent works which was received by the Superintendent, RMS 'C' Division, Gaya, on the basis of which he issued termination order of the applicants vice Annexure-A/8, dated 16.01.2006. The applicants claim that the Superintendent, RMS 'C' Division, Gaya ordered, accordingly, for engagement of the applicants as Coolie instead of part time casual labourers. Interim relief for their continuation as part time casual labour was granted by order dated 10.02.2006, also noting that impugned order dated 16.01.2006 was not implemented.

3. It is submitted that even juniors to them who were working as casual labourers have been absorbed in the regular posts but not the applicants. The prayer in this application is to absorb the applicants in vacant Group 'D' posts, to quash the order at Annexure-A/8, and to direct the respondents to enhance the working hours of the applicants, to full eight hours.

4. In course of arguments learned counsel for the applicants submitted that rules were framed by the Department of Posts called 'Department of Post [Group 'D' Posts] Recruitment Rules, 2002' under proviso to Article 309 of the Constitution of India. Schedule 2 to the rules provided the methodology for appointment in the posts of Peon, letter-box peon, etc. in the subordinate offices stating therein that a test would be held to determine the working eligibility of the candidates holding the post specified against sl.no.2 but if suitable candidates were not found to fill up the posts in such test, 75% of the remaining posts would be filled up by Gramin Dak



Sevaks and 25% of vacancies would be filled up, by selection-cum-seniority, firstly by casual labourers with temporary status, then by full time casual labourers and then by part time casual labourers. Learned counsel submitted that the applicants continued to work as casual workers hence they are entitled to be considered for the Group 'D' posts in the Postal Department in accordance with the aforesaid rules.

5. A batch of cases were disposed of by this Tribunal vice order dated 11.10.2006 [OA 521 of 2000 & 32 other cases; Md. Hanif Vs. Union of India & Ors.] in which the questions of regularization/absorption in regular posts, grant of temporary status to the employees, recruitment to Group 'D' posts in the Postal Department by casual labourers, etc. were considered. Learned counsel for the applicants acknowledged that on discussing the order of the Apex Court in the case of Secretary, State of Karnataka Vs. Umadevi; 2006 [4] SCC 01 and in other cases, this Tribunal came to certain conclusions including that in such cases [as of casual labourers] their regularization or permanent absorption in regular posts could not be ordered. It was also acknowledged that this Tribunal also had held that the employer could not be directed to increase the working hours of a casual labourer since it was for the employer to decide as whom to engage as casual labourer, and for what period of working hours each day.

6. Since that order was passed on consideration of a number of decisions mainly of the Apex Court, the same decisions have to be taken in this case also in so far as the ⁹prayers of permanent absorption or for increasing the working hours of each day are concerned. These two prayers, therefore, are



rejected.

In so far as the recruitment of the applicants to a Group 'D' post under the Department of Posts [Group 'D' Posts] Recruitment Rules, 2002 is concerned, this Tribunal while discussing the cases in that regard had observed that it was not brought on record that the cases of those applicants had become ripe for consideration under the aforesaid rules keeping in view their seniority or because they had been bypassed from the consideration zone for such appointment to a Group 'D' post. Hence, there was no cause of action at the time the cases were filed in that regard.

7. If the applicants have continued, despite order at Annexure-A/8, as casual labourer and are continued as such in future also by the respondents, the authorities may consider their case when their turn comes to be so considered, in accordance with seniority, provided that the rules in the meantime are not changed or amended in view of the decision of the Apex Court in the case of Umadevi [supra].

In so far as the question of quashing of order at Annexure-A/9 is concerned, that also cannot be allowed because engagement as a casual labourer is a temporary engagement and on such engagement no right accrues to be continued as such indefinitely. This prayer, therefore, also has to be rejected.

8. This application, in the result, is dismissed save the observations as made in para 7 of this order. No costs.



[P.K. Sinha]/VC

skj.