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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW~~ BOMBAY BENCH

O.A. No. 524/87 & 212/88

198

~~XXXXXX~~

DATE OF DECISION 20.6.87

Gen. Sec. Naval Employees' Union Petitioner
Bombay & Ors.

Shri D.V. Gangal Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent

Mr. A.I. Bhatkar for Mr. M.I. Sethna Advocate for the Respondent (s)

CORAM

The Hon'ble Ms. Usha Savara, Member (A)

The Hon'ble Mr. S.F. Razvi, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

1. Favorable
20.6.87

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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OA.NO. 524/87

General Secreyary,
Naval Employees' Union,
Bombay & Ors.

... Applicant

V/S.

Vice-Admiral S.Jain,
Flag Officer Commanding-in-Chief,
Western Naval Command, Bombay.

... Respondents

OA.NO. 212/88

Naval Employees Union,
Bombay & Ors.

... Applicant

V/S.

The Flag Officer,
Commanding-in-Chief,
Western Naval Command,
Fort, Bombay & Ors.

... Respondents

CORAM: Hon'ble Member (A) Ms.Usha Savara
Hon'ble Member (J) Shri S.F.Razvi

Appearance

Mr.D.V.Gangal
Advocate
for the Applicant

Mr.A.I.Bhatkar
for Mr.M.I.Sethna
Advocate
for the Respondents

JUDGEMENT

Dated: 20.9.92

(PER: Ms.Usha Savara, Member (A))

These two applications which are filed seeking the same reliefs and wherein the same contentions are put forth are being disposed of by this common order.

2. The application is filed by Naval Employees' Union, a trade Union regd. under the Trade Unions Act & 7 other workers, who were employed by the Naval Transport Pool, Colaba, Bombay, and were members of the Union. The applicants were engaged as casual labourers in 1985/86, and given appointment for specified periods of time, on

monthly wages. Their services were extended from time to time after giving short breaks in between so that they may be deprived of continuity of service. In May, 1987 their services were terminated without any written orders, notice or a month's pay in lieu of notice. It is the applicants' case that under Section 2(a)(i) of Section 25-B of the Industrial Disputes Act, 1947, it is laid down that a workman, who works for 240 days, notwithstanding the breaks, during the period of 12 calendar months preceding the date of his discharge, has to be treated as if he has worked for one year continuously. This condition has been fulfilled by all the applicants. Therefore, they should have been paid the notice pay in lieu of notice together with the retrenchment compensation as per Section 25-F of the I.D. Act. Since this was not done, the termination of services of the applicants was bad in law. It is also the case of the applicants that they are classified as Industrial employees, and are, therefore, entitled to the benefits of the I.D. Act.

3. Shri D.V. Gangal, learned counsel for the applicants submitted that the work, which the applicants were performing was of a continuous nature. The post against which they worked was also permanent. The fact that they have worked for more than one year on the posts is a clear indication of this fact. The respondents' plea that there was a ban on appointment has to be rejected, as the applicants were appointed and have discharged the work of a regular nature. In view of the judgments rendered by Supreme Court in various cases, the respondents should be directed to reinstate all the workmen who have completed 240 days and they be treated as on duty from the date of their removal till the date they are taken back on duty and full wages be paid for the period they were kept out of service.

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4. The final prayer is for making the workmen regular and permanent. Denial of permanency to the casual worker is violative of articles 14 & 16 of the Constitution as he is doing the same type of work, which any regular incumbent is doing, but is denied equal opportunity of service in regular or permanent post. The fact that they have not been sponsored by the Employment Exchange should not be held against them, and the respondents should be directed to grant the reliefs prayed for.

5. The respondents have vehemently contested the claims of the applicants. Mr. M. I. Sethna, learned Counsel for the respondents submitted that there was a ban on recruitment as well as creation of new posts at the time, when the applicants were appointed on daily wage basis for a specified period to complete particular jobs. The applicants were aware of the temporary nature of the jobs, and this fact was reduced in writing in the appointment letters wherein the conditions were specifically stipulated. The Deptt. needed manual labourers to help the employees in the Base Victualling Yard, but no additional employment was permissible in view of the ban, in fact, even the vacancies caused by retirement, promotion or death could not be filled up. So casual labourers had to be employed but they were informed about the situation prior to their employment. It is also pointed out that because of the casual nature of work, the applicants were appointed, though they were not sponsored by the employment exchange. In normal circumstances, even temporary workers have to be recruited through the Employment Exchange.

6. It is submitted by the learned counsel that on 12.6.86 the ban was relaxed, and vacancies in respect of regular sanctioned strength caused by retirement, promotion or death

were allowed to be filled up. The same could only be filled up through the Employment Exchange in accordance with the rules. So far as the applicants were concerned, the particular jobs for which they were employed had been completed and/or regular vacancies had been filled up, so their extension was not given. There was no question of termination of their services, as they were engaged for specified periods, and the period had lapsed. Since the applicants were engaged for a specific period on the basis of written orders the provisions of I.D.Act were not applicable to them. It is further clarified that as the applicants were engaged for a specific period, they were not entitled to retrenchment compensation or one month notice as they were not covered by the I.D.Act. They were engaged to complete certain job and not against any regular vacancy. It is also denied that some other persons were employed in their place, as there were no regular vacancies, but persons were engaged for a specific period to complete certain job. After the work was completed, there was no question of taking them in service after the expiry of the stipulated period. Lastly, it is argued that though the applicants were asked to work for 8 hours per day, they were not classified as Industrial employees, as they were not regular employees, and had been engaged only to complete certain job within a specified period. The learned counsel relied upon the judgments of Hon'ble Madras Bench & Hon'ble Ernakulam Bench in support of his contentions.

7. We have gone through the records of the case carefully and have considered the rival contentions. The reliefs sought by the applicants are reinstatement of the applicants No. 2 to 11, regularisation of all workmen who have completed 240 days during the period of 12 calendar months, and to be treated on duty from the date of their removal till the date

they are taken back on duty as regular employees with full back wages for that period. Though the applicants have referred to the protection under the I.D.Act in the grounds set out in the application, no relief has been sought in terms of the said enactment. They have also alleged violation of Articles 14 & 16 of the Constitution. Therefore, in our opinion it is not necessary to decide whether the applicants are covered by the I.D.Act for the purposes of disposing of the present application. This view gains support from the judgement of the case of Shri Shiv Prakash Tyagi & Ors. decided on 22.11.1991 by Principal Bench, New Delhi.

8. It is an undisputed fact that the applicants were engaged for specified periods of time. It is nobody's case that they continued to work after the specified period lapsed. The total period of service is only one year. They have not worked against clear and regular vacancies, and as held by the Hon'ble Supreme Court in Dhirendra Chamoli's case (1986) 1 SCC 637, such casual workers could not be regularized in the absence of sanctioned posts. In the recent judgment of the Supreme Court in the case of Delhi Development Horticulture Employees' Union vs. Delhi Administration, Delhi & Ors. (JT 1992 (1) S.C. 394), the apex Court has held thus :- "For regularization, there must be regular and permanent posts or it must be established that although the work is of regular and permanent nature, the device of appointing and keeping the workers on ad hoc or temporary basis has been resorted to, to deny them the legitimate benefits of permanent employment." In the case before us, there is no scope for regularization since there are no sanctioned posts or the sanctioned strength of workers. The availability of posts of continuous nature has been denied specifically by the respondents. It has been clarified that since regular posts

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were not in existence in Navy, therefore the petitioners were employed on nerrick rates of pay - (daily wages) for a specific period for a specified job. The question of reinstatement also cannot arise, when there are no posts against which the applicants are to be reinstated. In any case, there can be no deviation from the principle that the essential requirement prescribed in statutory rules, i.e. educational qualifications, suitability for the job etc. have to be met. Casual employees would have to go through the process of screening/selection to determine their suitability for Government service.

9. In the circumstances, in our view, the respondents should allow the applicants to work in their establishment if there is requirement for such workers, in preference to others. As and when a vacancy arises, the applicants should be considered for regular appointment to Group 'D' in accordance with law. The applications are disposed of with the above directions. There will be no order as to costs.

Syafar
30/4/92
(S.F. RAZVI)
MEMBER (J)

b. Savara
30/4/92
(MS. USHA SAVARA)
MEMBER (A)