

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.631/2000, 685/2000 & 686/2000

Dated this the 29th day of August 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

1. Ramesh Desale
2. Babli Kumbhar (Applicants in OA.631/2000)
1. T.M.Dhaigude (- do - OA.685/2000)
1. R.R.Shekhar (- do - OA.686/2000)

All are Casual Labourers
in the Civil Construction Wing,
All India Radio & DD, Mumbai.

...Applicants

By Advocate Shri P.A.Prabhakaran

vs.

1. Union of India through
The Secretary,
Ministry of Information
and Broadcasting, Shastri Bhavan,
New Delhi.
2. The Director General,
AIR & DD Unit,
Akashwani Bhawan,
New Delhi.
3. The Chief Engineer (West Zone),
AIR & TV, Old CGO Building,
3rd Floor, 101, M.K.Road,
Mumbai.
4. The Supdtg.Engineer (Civil),
Civil Construction Wing, AIR,
Film Division Complex,
24, Dr.G.Deshmukh Marg,
Mumbai.
5. Asstt.Engineer (Civil),
Civil Construction Wing,
Film Division Complex,
Dr.G.D.Marg, Mumbai.
6. Asstt. Engineer (Civil),
Civil Construction Wing,
AIR Campus, L.T.Marg,
Borivali (W), Mumbai.

...Respondents

By Advocate Shri P.M.Pradhan

O R D E R

{Per : Shri S.L.Jain, Member (J)}

These three OAs. (OA.Nos.631/2000, 685/2000 & 686/2000) are being decided by the common order as the question of law involves is one and the same.

2. The relief claimed in OA.NO.631/2000 is that respondents may be directed to grant the applicants temporary status on completion of one year as casual labourers and all consequential benefits in terms of O.M.No.51016/2/90-Estt.(C) dated 10.9.1993 and regularise the services of the applicants in Group 'D' w.e.f. the initial date of engagement of casual labourers or the date on which the regular posts fell vacant in the establishment of Respondents No. 5 or 6 as the case may be with consequential benefits.

3. In OA.No.685/2000 and OA.No.686/2000 the relief sought is direction to the respondents to regularise the services of the applicant as Motor Vehicle Driver from the date the applicant commenced the services under the respondents with consequential benefits.

4. The brief facts in OA.NO.631/2000 are that the applicants were working as casual labourer since 1993-94. Since, June, 1994 the services of the applicants were termed as "Contract Service".

Contracts for the periods 1 to 3 months were executed periodically covering the period June, 1994 onwards till February, 1998, the details of which are mentioned in para 4.4. of the OA. The respondents discontinued the said practice of executing the labour contracts but continued to engage the applicants as casual labourers. The applicants continued to be in the employment as casual contract labourers till 15.7.2000/31.3.2000 and thereafter discontinued. The Respondent No. 1 had chosen to discontinue the engagement of the applicants even as casual labourers w.e.f. 16.7.2000/31.3.2000.

5. The facts in OA.NO.685/2000 are that the applicant has been working under the respondents since 1995 as a Staff Car Driver. The appointment was described as on contract basis for 3 months periods each time. The copies of the contract dated 11.10.1995 to 1.1.1996, 11.1.1996 to 20.4.1996, 11.3.1996 to 10.6.1996 are placed on record as Exhibits-'A-2', 'A-3' & 'A-4' respectively. The services of the applicant were certified by the Respondent No.3 in view of Exhibit-'A-5'. In the year 1997-98, the respondents discontinued the creation of the contract documents in the name of the applicant, used varied names and the salary of the applicant used to be paid to the 3rd party contractors. They in turn paid the applicant his salary indeed without any loss.

6. The facts in OA.No.686/2000 are that the applicant has been working under the respondents since 1989 as a casual labourer on record but actually as a Motor Vehicle Driver/Staff Car Driver for which the applicant does not have any documents. Since 1992 the services of the applicant were on contract basis for the periods ranging from one to three months in each contract. Later on the name of the contractor was changed even to certain Tourist Car Operators. However, the applicant was in service uninterruptedly since 1992 and was paid the monthly rate applicable to the pay scale of Staff Car Driver along with increment and other usual benefits other than the pay revision. Service contracts are at Exhibit-'A-1' to 'A-5'.

7. In OA.NOs.631/2000, 686/2000 and 686/2000 it is pleaded by the applicants that Circular No.24/28/97-SVI dated 27.5.1998 issued by Respondent No.2 quashing the practice of engaging labourers on casual basis as also on contract basis resulting in a number of Court cases pending in CAT. The Respondent No. 2 by a letter No.A-33022/1/97-CW-IV dated 11.3.1999 directed the authorities below to submit the information regarding Motor Driver engaged on casual basis against work-charge post to afford opportunity for regularisation of their services, the details regarding their engagement regarding procedure adopted in their engagement, the date of their engagement, qualification, etc. were called for. The Respondent No.2 finally decided on 21.9.1999 that if they were not in employment prior to 7.6.1988, their cases for regularisation cannot be considered.

Immediately, thereafter Respondent No.2 on 28.9.1999 issued another Circular letter to all Superintending Engineers calling for the details of the casual workers employed on contract basis for the perusal of the Chief Engineer. The intention of the Respondent No. 2 to regularise the employees as casual labourers/contract labourers is reflected. In letter issued by Respondent No. 2 dated 22.12.1999 (Exhibit-'A-11') grant of temporary status after 3 years of continuous service by the work-charged staff was emphasised. Hence, these OAs. for the above said reliefs.

8. The respondents resisted the claim and raised the plea regarding jurisdiction of the Tribunal to decide the reliefs sought by the applicants.

9. The learned counsel for the respondents argued that the cases relates to regularisation of the services of the contract labourer, the Tribunal no the jurisdiction to decide the matter in question.

10. 2000(3) A.I. SLJ 388, Jaspal Singh & Ors. vs. Commercial Officer/G.M., Airports Authority of India & Ors. decided by Hon'ble Delhi High Court on 30.9.1999 has held as under :-

"In case the contract workers claim that a particular contract in any process, operation or other work in the establishment is sham, and they have become direct employees of the principal employer then the remedy is to raise industrial dispute."

11. 2000 (2) A.I. SLJ 412, Amit Yadav & Ors. vs. Delhi Vidyut Board through its Chairman decided on 28.1.2000, it has been held that the persons appointed on contract basis, seeking regularisation will amount to backdoor entry in service.

12. In view of 2001 (2) A.I. SLJ 142 in case of Jeetmal vs. Union of India & Ors. decided on 27.6.2000 in case of contract basis/work order, there exists no Master and Servant relationship and had to work as per work order and requirements of post, as such no relief of regularisation can be claimed. After termination of the contract as no contract subsist, there can be no employment. The contract service is not an appointment, hence, there can be no termination of service.

13. 2000 (2) CAT A.I. SLJ 485, C.Puttaswamy & Ors. vs. Executive Engineer, BCD-I, CPWD & Ors., CAT, Bangalore Bench has held that after knowing the terms of contract, had drawn payments as such, had never objected to their status earlier cannot now suddenly take a turn that their services were on not contract. In case of contract employees, only rules and natural justice for termination of their services are to be followed and as and when scheme for regularisation is finalised, they can be regularised.

14. In view of the proposition of law discussed above, the employees who worked on contract basis are estopped to challenge the same, if their case is that it was a sham transaction then

the remedy is to raise industrial dispute, as such the Tribunal has no jurisdiction. They are only entitled to principles of natural justice being observed in case the contract subsists, if their services are terminated or contract is terminated.

15. As the facts of all the OAs. narrated above, none of the applicants' contract subsists. Hence, question of observing of principle of natural justice before terminating their services do not arise. Regarding the regularisation, until and unless some scheme is framed for them, the Tribunal enjoys no jurisdiction to consider the same. In case of their allegations of their contract being sham, they are free to agitate the industrial dispute as the Tribunal has no jurisdiction.

16. In the result, I do not find that the Tribunal has jurisdiction to decide the OAs. Hence, the OAs. are liable to be dismissed for want of jurisdiction and are dismissed accordingly with no order as to costs.

(S.L.JAIN)

MEMBER (J)

mrj.