

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 239/97 with MP 656/97.

Date of Decision: 17-03-98

Vinod Salunkhe & Ors.

.. Applicant

Shri V.B.Madhav

.. Advocate for
Applicant

-versus-

Union of India & Anr.

.. Respondent(s)

Shri V.D.Wadhavkar for Shri M.I.Sethna

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri M.R.Kolhatkar, Member(A).

The Hon'ble

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to
other Benches of the Tribunal ? X

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 239/1997
WITH
Miscellaneous Petition No. 656/1997.

Pronounced, this the 17th day of March 1998.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

Vinod Salunkhe & Ors,
Applicants 1 to 53 having
their office at Custom House,
Ballard Estate,
Mumbai and Applicants 54 to
81 having their office at
Airport, Mumbai.

... Applicants.

(By Advocate Shri V.B.Madhav)

V/s.

1. Union of India through
The Secretary,
Deptt. of Revenue,
Central Board of Excise & Custom,
New Delhi.
2. Personnel & Establishment Deptt.
(New Custom House, Ballard Estate,
Mumbai - 400 038.

... Respondents.

(By Advocate Shri V.D.Wadavkar for
Shri M.I.Sethna)

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

In this O.A. 81 Casual Workers of the Customs Department, Mumbai who have been working since 1989 have sought the relief of regularisation in terms of the scheme called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India 1993" which has come into force w.e.f. 1.9.1993. According to the applicants, the scheme provides that Casual Labourers in employment with the Ministries of the Government of India other than Railways, Department of Telecom and Posts and who are in employment on the date of issue of the O.M. and who have rendered a continuous service of at least one year, which means 240 days in the case of offices observing

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6 day week and 206 days in the case of offices observing would be conferred temporary status.
5 day week/ The conferment of temporary status would not involve any change in the duties and responsibilities, they are entitled to be brought on the permanent group 'D' establishment. After going through the process of regular selection they are entitled to various benefits as listed in the scheme which is to be seen at pages 32 to 34 of the O.A. The applicants have stated that they have made several representations, but the department has not taken any action. In one of the representations dt. 14.10.1994 at page 29 it is stated that Casual Workers engaged in Central Excise Collectorate have been given the benefit of the scheme by the Establishment Order No.99/94 ^{and} (at page 30)/there is therefore discrimination as between Excise Branch and the Customs Branch of the same department in extension of the 1993 scheme to the Casual Labourers.

2. The respondents have opposed the O.A. According to the respondents there is a complete ban on the engagement of Casual Labourers after 7.6.1988 vide the O.M. issued by the Board (O.M. No.49014/2/86-ESTT(C) dt. 7.6.1988. All the same, because of the enormity of task the Customs House at Bombay was required to engage Casual Labourers even after 7.6.1988. The present applicants are those who have been engaged inspite of the ban. The Respondents contend that according to the instructions dt. 30.3.1992 the services of Casual Workers recruited after 7.6.1988 have to be dispensed with forthwith. It is only the casual labourers recruited prior to 7.6.1988 who could be regularised in terms of the applicable scheme. However, the Custom House is taking into consideration the difficulty to be experienced in the wake of terminating the services of Casual workers recruited after 7.6.1988 decided to continue the services of Casual Labourers keeping in view the enormity of work

involved. According to the respondents there is no proposal to terminate the services of the applicants. In fact the proposal is to retain the Casual Labourers recruited after 7.6.1988 till the sanction of 186 posts of Hamal, Mali, Sweeper and Cleaner. However, this proposal has not been approved ^{by C B E C} in spite of reminders.

3. The learned counsel for the respondents brought to my attention some important judicial pronouncements which have a bearing on the issue. In A.Mohanan and Ors. V/s. SDOT, Palghat and Ors. ((1993) 25 ATC 421), ~~the~~ question was discussed at length in the context of P & T department. Although the Department is different ^{in the present O.A.} the observations made are equally valid. In the last para of the Judgment the conclusions have been summarised and so far as the present issue is concerned the relevant conclusions are contained in para 'b' & 'd' which reads as follows :

- "(b) In case of a casual employee, who was recruited for the first time after 7.6.1988 against the total ban on casual employment, whether through or otherwise through the Employment Exchange, no benefit of his casual service shall accrue to him in the matter of seniority, re-engagement and regularisation. A public notice shall be given in this regard.
- (d) The benefits of the Scheme of Temporary Status and Regularisation should be extended to those who are included in the aforesaid two lists in the order of their seniority."

4. According to the counsel for the respondents unless the ban on recruitment of the Casual Labourers imposed on 7.6.1988 is lifted, which is a policy matter, this Tribunal ~~will~~ not be in a position to grant any relief to the applicants.

5. So far as the 1993 scheme is concerned it was contended by the counsel for the respondents that the same was promulgated by the Government in terms of a Judgment of the Division Bench of the Tribunal in Shri Raj Kamal &

Ors. V/s. Union of India (1990(2)CAT SLJ 169). In this case, the relevant observations are as below :

"that we are, therefore, of the opinion that in order to solve the problem of casual labourers engaged in the Central Government offices in a fair and just manner, the proper course for the Government would be to prepare a scheme, somewhat like the one in operation for redeployment of surplus staff, vide Department of Personnel and A.R.'s O.M. No.3/27/65-CS-II dt. 25.2.1966 and amplified vide Department of Personnel and Training's O.M. No.1/8/87-CS-II dt. 30.4.1987, and the Department of Personnel and Training's O.M. No.1/14/88-CS-III dt. 30.3.1989 and 1/18/88-C.S. III dt. 1.4.1989, for all casual labourers engaged prior to 7.6.1988, but who had not been regularised by the authority concerned for want of regular vacancies or whose services has been dispensed with for want of regular vacancies. Since the Department of Personnel and Training is monitoring the implementation of the instructions issued vide O.M. dt. 7.6.1988, the Union of India through that Department, should undertake to prepare a suitable scheme for absorbing such casual labourers in various ministries/departments and subordinate and attached offices other than the Ministry of Railways and Ministry of Communications. Their absorption should be on the basis of the total number of days worked by the persons concerned."

The learned counsel for the respondents therefore submits that the scheme has been devised specifically to cover Casual Labourers recruited prior to 7.6.1988 as specifically laid down by the Tribunal in the above case.

6. It was further pointed out by the learned counsel for the respondents that the instructions of the DOP dt. 7.6.1988 followed the Supreme Court Judgment in Surinder Singh & Anr. V/s. The Engineer-in-Chief C.P.W.D. and Ors. (AIR 1986 SC 584).

7. I have considered the various Judgments cited before me. So far as the Judgment in Surinder Singh is concerned, it basically related to the principle of equal pay for equal work. So far as the regularisation is concerned, the Hon'ble Supreme Court made the

following observations :

"We hope that the Government will take appropriate action to regularise the services of all those who have been in continuous employment for more than six months."

No doubt, these latter observations of the Hon'ble Supreme Court were by way of obiter dictum.

8. The Division Bench Judgment in ^{the case of} Shri Raj Kamal & Ors. was delivered on 16.2.1990. The thrust of the Judgment was that just as the Central Government has a scheme of re-deployment of surplus staff, similarly the Central Government should have a common scheme relating to absorption of Casual Labourers in various Ministries/ Departments. It may be that the Judgment envisaged that the scheme should be for all Casual Labourers engaged prior to 7.6.1988, but so far as the scheme itself is concerned it does not say so in so many words that the scheme is not meant for Casual Labourers engaged after 7.6.1988. The scheme in terms state that it is meant for labourers who have rendered a continuous service of at least one year as on the date of enforcement of the scheme viz. 1.9.1993. No doubt, the preamble to the ^{also} scheme ~~states~~ states that ~~which~~ the existing guidelines contained in O.M. dt. 7.6.1988 may continue to be followed. This appears to apply only to the guidelines other than the guidelines imposing the ban on engagement of Casual Labourers. In para 10 of the scheme it is stated that "In future, the guidelines as contained in this Department's O.M. dt. 7.6.1988 should be followed strictly in the matter of engagement of casual employees in Central Government Offices." In other words, the promulgation of the scheme ^{the} has implicit effect of lifting the ban on engagement of

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Casual Labourers after 7.6.1988 because the operation of the guidelines regarding the engagement of Casual Labourers is made to be prospective (in future).

9. It is true that the Judgment in A.Mohanan's case appears not to grant any relief to Casual Labourers engaged prior to 7.6.1988. Here we must remember that this Judgment was pronounced on 8.4.1993 i.e. prior to the implementation of the 1993 scheme. Secondly, the Judgment is in relation to P & T Department rather than other departments. Thirdly, the Judgment envisages a public notice to be given, ^{that} but it is not clear ~~if~~ any such public notice as envisaged has actually been given by various departments. In this connection, reference may be made to the paragraph in the Judgment dealing with this aspect which reads as follows:

"In order to avoid further litigation and complications, it should be notified to the public that any appointment of fresh casual labour made otherwise than through the Employment Exchange after 7.6.1988 will not qualify for seniority, re-engagement or regularisation and in the unlikely event of such engagement having been made, those who are recruited through the Employment Exchange will rank en bloc senior to those who are recruited otherwise than through the Employment Exchange."

Fourthly, the Judgment in A.Mohanan's case appears to discuss at length the effect of engaging Casual Labourers other than through Employment Exchange, but the question of Casual Labourers engaged after 7.6.1988 in the face of the ban is left ~~ambiguous. ~~unambiguous~~~~ There is also an authority in the Judgment for the proposition that a relief in appropriate cases may be given because it is stated on page 433 as follows :

"There is no reason why the casual labour engaged after 30.3.1985 should be made to suffer for no fault of theirs."

So far as ~~Shri~~ Raj Kamal's case is concerned, apart from specific context of the Judgment, it is notable that the

Judgment noticed the decision of the Punjab & Haryana High Court in Piara Singh's case delivered on 26.9.1988, but for obvious reasons, it could not have referred to the Supreme Court Judgment itself in Piara Singh's case which was delivered on 12.8.1992. It is also significant to note that Piara Singh's Judgment has not been noticed in A.Mohanan's case.

10. The significance of Piara Singh's Judgment is that it is a Supreme Court Judgment of a Bench of three Judges in which a comprehensive set of guidelines has been given in relation to issue of regularisation of ad hoc/temporary employees in Government Service. In para 51 of the Judgment the Hon'ble Supreme Court has observed as below :

"51. So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell-say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job."

11. In my view, the Judgment in A.Mohanan, ~~Shri Raj Kamal and Surinder Singh~~ need to be read in the light of the weighty pronouncement of the Hon'ble Supreme Court in State of Haryana V/s. Piara Singh in which the Hon'ble Supreme Court has ~~taken a realistic~~ realistic approach and ~~it~~ have emphasised the need to adopt the positive approach coupled with empathy for the persons involved. In para 47 the Hon'ble Court has emphasised that even where ad hoc or temporary employment is necessitated on

account of the exigency of administration, he should ordinarily be drawn from the Employment Exchange.

In the present case, it is not disputed that all the Casual Labourers have been drawn from the Employment Exchange.

12. There is another aspect of the matter. The representation of the employees at page 23 and page 29 alleges that Casual Workers engaged in Central Excise Collectorate, Bombay after 7.6.1988 have been given temporary status and their names were considered for regularisation in Group 'D'. The respondents have not said anything about discrimination entailed by such action of the Department in one wing giving the Casual Labourers engaged after 7.6.1988 the benefit of regularisation under the 1993 scheme which benefit is denied to the casual labourers working in the other wing.

13. In the light of the above discussion, I am of the view, that the applicants are entitled to the relief of the direction to consider their case for regularisation according to the scheme promulgated on 23.9.1993 effective from 1.9.1993 which envisages that temporary status should^{be}/conferred from the date of issue of the O.M. to those Casual Labourers who have rendered continuous service of at least one year. The Respondents are directed to take action accordingly in relation to applicants. Action in this regard should be completed within a period of three months from the date of communication of the orders. There would be no orders as to costs.

Mr Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

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