

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.Nos. 393/97 & 593/97

Dated this the 3rd day of June 1999.

CORAM: Hon'ble Shri D.S.Bawej, Member (A)

OA.NO. 393/97

1. Dilip Kamble
2. Bharat Kanojia
3. Shikandar Mulla
4. Satyavan Kamble
5. Shashikant Kamble
6. Janaradhan Hatekar
7. Uttam Gawade
8. Ramesh Kamble
9. Avinash Koli
10. Arjun Kamble
11. Santhosh Shigvan
12. Devdatta Kadam
13. Ashok Waghmare

All are working as casual labourers with the Respondent No.2.

OA.NO. 593/97

1. Raja P. Ghutukade
2. Shashikant Krishan Gaikwad
3. Batale Mahendra Mahadeo

(Casual Labourers)

By Advocate Shri A.I.Bhatkar

... Applicants

v/s.

1. Union of India through the Director General Coast Guard, National Stadium Complex, New Delhi.
2. The Commander Coast Guard Regional Head Quarters (West), Golkadevi Temple Road, Prabhadevi, P.O. Mumbai.

By Advocate Shri V.S.Masurkar

... Respondents

ORDER

(Per: Shri D.S.Bawela, Member (A))

OA.NO.393/97 has been filed jointly by 12 applicants while OA.NO. 593/97 has been filed jointly by 3 applicants. Both the OAs. have been heard together and are being disposed of by a common order as the facts of these two cases are identical and the same question of law is involved.

2. The brief facts of the case cited by the applicants in both the OAs. are as follows :-
The applicants state that they have been engaged as casual labourers from various dates between 1989 to 1996 by the Commander, Coast Guard Regional Head Quarters (West) Mumbai. The details of the engagement have been furnished in Annexure- 'A-3' of both the OAs. The applicants claim that they have been working continuously since their engagement and they have completed more than 206 days in a calendar year. They are therefore entitled for the benefits of the grant of temporary status and regularisation in terms of the Scheme laid down as per O.M. dated 7.6.1988 and 10.9.1993 of Department of Personnel and Training. The applicants further state that they had been employed to do the cleaning and sweeping the area inside the Coast Guard HeadQuarter and also used for Night Watch keeping and are performing the same work as has been done by regular Group 'D' employees. The applicants have also contended that they are working for full month but they are being

paid salary only for 17 days in a month. The applicants are not allowed any weekly holiday and are also being paid daily wages and not 1/33th of the pay at the minimum of the relevant pay scale as admissible as per O.M. dated 7.6.1988 of the Department of Personnel and Training. The applicants claim that if the temporary status as admissible to them is granted, the applicants would enjoy the benefits of weekly holiday as well as other benefits of leave etc. The applicants have submitted representations through their recognised Unions but no action has been taken by the department for the benefit of scheme laid down by the Department of Personnel and Training. Feeling aggrieved the OA.No. 393/97 has been filed on 23.4.1997 and OA.NO. 593/97 has been filed on 23.6.1997.

3. The applicants have sought the following reliefs :- (a) to direct the respondents to grant temporary status w.e.f. the dates the applicants have completed 206 days of working and also grant the other benefits in terms of the scheme laid down as per the O.Ms. dated 7.6.1988 and 10.9.1993. The applicants have also prayed for interest of 18% p.a. on payment which becomes due on grant of temporary status as prayed for. (b) to direct the respondents to regularise the applicants in Group 'D' posts in the existing and future vacancies. (c) to direct the respondents not to induct fresh Group 'D' person by direct recruitment unless the applicants are regularised.

(d) Respondents be directed to pay the applicants strictly in accordance with the orders and instructions issued by the Department of Personnel and Training.

4. The respondents have filed the written statement in both the OAs. The respondents at the outset have submitted that the joint application in both the OAs. is not allowed as the applicants have not given any particulars as to qualification, age, date of their initial engagement, number of days they have worked and whether they had been registered with the Employment Exchange. The respondents further submit that due to various financial/fiscal constraints the growth of the establishments by way of additional manpower sanction is very tardy and therefore the existing manpower is provided with support of the civilians casual labourers are being engaged to help the uniformed personnel for doing communal duties, shifting of the stores and equipments etc. As per the respondents, the applicants have been engaged as casual employees for carrying out various jobs which are not of regular nature but seasonal in nature. Since the applicants are casual employees, the respondents plead that they have no right to revoke the jurisdiction of the Tribunal and therefore the grievance does not lie within the purview of the Tribunal. The respondents state that the applicants were engaged for the varying periods for 5 days a week in different spells without undergoing any regular recruitment process through the Employment Exchange. The respondents further contend that the applicants are ~~not~~ entitled for the benefits of

the scheme laid down by the Department of Personnel and Training as they do not fulfil the conditions laid down as per the scheme for granting the benefits of temporary status and regularisation. It is also stated that since the applicants are performing the work which is not of a regular nature, they are entitled for payment of minimum wages under the Minimum Wages Act. The applicants are also not entitled for weekly holidays as they are paid daily wages for the number of days they actually worked. The respondents also deny that there is any proposal for fresh casual labourers and in fact the need for engaging casual labourers is increasing and further reduction in the strength of the casual labourers may take place. The respondents also refute that any discrimination has been meted as no one granted temporary status. The respondents therefore plead that the applicants are ~~not~~ entitled for the reliefs prayed for.

5. The applicants had filed Misc. Application in both the OAs. making a prayer to direct the respondents to permit inspection of documents such as daily muster/ attendance roll, payment vouchers and sanctioned strength of the casual labourers. These applications were allowed and the respondents were directed to allow inspection of these documents, namely, daily attendance roll and payment vouchers. The inspection of the documents have been carried out by the applicants. The applicants have filed rejoinder reply to the written statement after carrying out the inspection of the documents. The applicants have stated that though the inspection of the documents was allowed by the respondents, but in

respect of some applicants, the records pertaining to the years 1989 to 1991, 1997 and 1998 were not made available even though these applicants had worked in the respective orders. Based on the inspection of the records, the applicants have submitted the details of the working in various years during which the applicants had been engaged. The applicants have contested the submissions of the respondents in the written statement. The applicants have denied that they were engaged for work which is seasonal in nature. The applicants have reiterated their ground that they have been engaged for carrying out the regular job and the work performed by them is not assigned to Members of the Armed Forces. The applicants also challenged the contention of the respondents that they cannot be regularised since they were not sponsored by Employment Exchange. The applicants contend that sponsoring by Employment Exchange is not necessary in their case. The applicants contend that they meet with the criterian for grant of temporary status and regularisation as per the scheme of Department of Personnel and Training.

6. The applicants have filed a separate affidavit also in both the OAs. bringing on record the documents with regard to the muster-roll and sanctioned strength of the staff. The applicants in this affidavit have reiterated their grounds taken in the original application.

7. The respondents have filed the written reply to the additional affidavits contesting the submissions of the applicants in the affidavit. The respondents have submitted that the documents submitted by the applicants with the affidavit have not been authenticated by any signatory of Respondent No. 2.

8. Heard the arguments of Shri A.I.Bhatkar, learned counsel for the applicants and Shri V.S. Masurkar, learned counsel for the respondents.

9. Before going into merits of the claim of relief made through these OAs., the technical objection raised by the respondents with regard to mis-joinder of the parties and the matter under challenge not falling within the jurisdiction of the Tribunal ^{will be taken up first.} As regards the first issue, from the material brought on record, it is noted that the applicants have given the dates of the engagement. The submissions made in the OA. clearly brings out that the applicants in both the OAs. belong to the category of casual labourer being engaged by Respondent No. 2. The relief claimed for is also the same by all the applicants. Keeping these facts in view, I am of the considered opinion that the applicants are similarly situated and their grievance is the same and therefore there is no mis-joinder of the parties as made out by the respondents. As regards the second objection that the matter under challenge is not within the jurisdiction of the Tribunal as the applicants are not holding any civil posts. Keeping in view the facts of ~~both~~ the OAs., I am unable to accept this contention of the respondents. The applicants are working as casual labourers in the department and the matter of casual labourers of the Government departments are being challenged before the Tribunal and it has been held in several orders/judgements that though casual labourers ~~not~~ holding civil posts come within the jurisdiction of the Tribunal.

10. Coming to the merits, the main issue involved is whether the applicants are entitled for grant of the benefits of the scheme laid down as per the O.Ms. dated 7.6.1988 and 10.9.1993. The main contention of the respondents is that the applicants had been engaged not for any permanent work but for a casual work which is seasonal in nature. The respondents have further added that the casual labourers are being engaged to support the uniformed manpower which is not sufficient as per the present sanction. The applicants, on the other hand, have contended that they are performing the same work as being performed by regular Group 'D' employees and therefore are entitled for the benefit of the scheme laid down by the Department of Personnel and Training. Considering the rival contentions, I am unable to support the stand taken by the respondents. There is no doubt that the applicants have been engaged as casual labourers for varying periods. Irrespective of the nature of work being performed, the applicants are to be governed by the scheme laid down by the Department of Personnel and Training as long as they are treated as casual labourers. There is no doubt from the facts brought out that the applicants are having the status of casual labourers who are being engaged from time to time. On going through O.Ms. dated 7.6.1988 and 10.9.1993, it is noted that letter dated 7.6.1988 lays down guidelines for recruitment of casual labourers daily wages and O.M. dated 10.9.1993 lays down the scheme for grant of temporary status and regularisation. It is noted that these OMs. are laid down in pursuance of the judgement of the Supreme Court and order of the

Tribunal. In the background of the observations made here, the reliefs prayed for by the applicants have now been considered.

11. The first relief claimed by the applicants is with regard to grant of temporary status. The applicants have not brought out any details with regard to their working in both the OAs. The applicants had made a prayer for directing the respondents to offer the inspection of the relevant records so that the details of the working could be collected by the applicants. This prayer was allowed available and the respondents were directed to make the necessary records for inspection. After the inspection of the records, the applicants have filed the rejoinder reply as well as additional affidavit bringing on the record applicants as the details of the working of the casual labourers as well as copies of the muster-rolls and pay rolls on record. The applicants have also submitted that full records in respect of all the applicants have not been made available and therefore in respect of some of the applicants full details could not be compiled. The respondents, on the other hand, have contested the claim of the applicants stating that all the relevant records were made available to the applicants for inspection. The respondents have also disputed the details of the working furnished by the applicants stating that the same had not been authenticated by any signatory of Respondent No. 2. Leaving aside this controversy at this stage, the main issue involved is whether the applicants have completed the required number of working days in a year to qualify for being granted temporary status in terms of the O.M. dated 10.9.1993. From the

details furnished by the applicants in both the OAs., it is noted that in number of cases the applicants have completed more than 206 days in several years even before the introduction of the scheme as per O.M. dated 10.9.1993. In some of the cases, however, the required number of days have not been completed. On going through the scheme dated 10.9.1993, it is noted that the only criterian for grant of temporary status is that the casual labourer should have completed 206 days ^{in a year} ~~in case~~ of offices which are observing 5 days a week and 240 days in case the offices observing 6 days a week. In the present case, it is noted that the applicants had been engaged on 5 days basis and therefore the criterian of working of 206 days will be applicable. Those of the applicants who have completed 206 days of working in a year and were ^{issue of} in the engagement on the date of O.M. dated 10.9.1993, they are certainly entitled for the grant of temporary status as per the scheme. In respect of further applicants, the question of entitlement of grant of temporary status would arise only when they complete working of 206 days in a year. Since the respondents have disputed the details of the working furnished by the applicants, it is considered appropriate to lay down direction that a joint inspection should be carried out by the respondents along with the applicants of the relevant records to authenticate the details of the working compiled by the applicants and brought on record. In case of the applicants where the working of 206 days is established, they will be entitled for grant of temporary status as per the O.M. dated 10.9.1993. In respect of the other candidates, who have not completed 206 days in any ^{one} year,

they will be suitably advised of the result of the joint inspection that they would be entitled to be considered for grant of temporary status only when they meet with the requirement of the O.M.

12. The second relief is with regard to regularisation of the applicants against the ~~existing~~ vacancies. The respondents have strongly contested this claim stating that the applicants were engaged in local basis and they have not undergone any recruitment process as per the extant rules. It is also further stated by the respondents that the applicants cannot be regularised as they cannot be absorbed against the posts which are to be filled by the uniformed personnel. As regards the availability of vacancies in Group 'D', the respondents have, however, changed their stand subsequently on filing of the affidavits by the applicants. In the additional affidavits, the applicants have brought out on record, the details of the ⁱⁿ vacancies available ~~in~~ Group 'D' in various posts against which they claim that they could be regularised. The ~~in~~ respondents in reply to this affidavit, while reacting to Para 4 have stated that the position with regard to vacancies indicated by the applicants is partly admitted. The respondents have further added that the applicants cannot claim regularisation against the existing vacancies as they have not fulfilled the prescribed recruitment rules. The respondents have also relied upon the judgement of the Hon'ble Supreme Court in the case of State of U.P. vs. Ajay Kumar, 1997(1) SC SLJ 481 and order of the Full Bench dated 24.10.1994 OA NO. 452/93 in case of

S.Ranganayakulu vs. Sub-Divisional Inspector (Postal). On going through the judgement of the Hon'ble Supreme Court in the case of State of U.P., it is noted that the ratio of the same is not applicable to the present case. In this case, the High Court has laid down the direction that the petitioners who were engaged on daily wages be continued till the vacancies arise against which they could be regularised. The Hon'ble Supreme Court did not uphold the judgement of the High Court observing that the daily wage appointment will obviously be in relation to contingent establishment in which there cannot exist any post and it continues so long as the work exists. In the present case, the claim of the applicant is not with regard to continuing to be engaged irrespective of the fact whether there is need for the work or not. The main issue is with regard to regularisation against the vacancies as and when arise in terms of the scheme laid down by the Department of Personnel and Training. It is for the respondents to decide depending upon the work available to continue them or to disengage them in case there is no work/as per the extant rules and re-engaged them as and when the work arises again. The order of the Full Bench in OA.NO. 452/93 also is not relevant to the issue involved here. The Full Bench in this order has considered the issue of appointment of Extra-Departmental Agent with reference to the recruitment rules laid down by the department. The Full Bench has held that the candidate appointed on provisional basis not sponsored by Employment Exchange has no right to be considered for regular appointment without being sponsored by Employment Exchange. It is noted that the Full Bench has examined

this issue keeping in view the instructions laid down by the department. In the present case, the issue involved is with regard to regularisation of the casual labourers in terms of the scheme laid down by the department. The learned counsel for the applicant has also cited an order of the Madras Bench in OA.NO. 354/95 dated 30.9.1997 wherein the issue has been dealt with, with regard to regularisation of casual labourers who had not been sponsored by Employment Exchange. In this order, the Bench has observed relying upon the latest judgement of the Hon'ble Supreme Court in the case of Excise Superintendent vs. K.B.N. Visweshwara Rao & Ors. 1996 SCC (L&S) 1420, wherein the Hon'ble Supreme Court has laid down that the recruitment cannot be restricted only to the candidates sponsored by the Employment Exchange. I am in respectful agreement with what is held in this order. The respondents cannot take a plea that since the applicants were initially engaged without being sponsored by Employment Exchange, they are not eligible for regularisation. The claim of the applicants for regularisation can be only considered against the vacancies as and when they arise as per the seniority as per the scheme laid down as per O.Ms. dated 10.9.1993 and 7.6.1988. Therefore for the claim of the applicants for regularisation, the only direction to the respondents could be to consider the claim of the applicants for regularisation against the existing or future vacancies and when it is decided by the department to fill up the same as per the extant rules laid down as per the O.Ms. referred to above.

13. The applicants have also prayed for a relief that the respondents be directed to pay the applicants strictly in accordance with the order of the Department of Personnel and Training. Since the claim of the applicants with regard to grant of temporary status has been accepted, the pay of such of the applicants would be governed as per the grant of temporary status. In respect of other applicants who are not yet due for grant of temporary status, the pay will have to be regulated as per the extant rules applicable.

14. The applicants have also claimed payment of the salary as become due on grant of temporary status with interest of 18%, and other benefits as due with casual labourers temporary status. As regards the payment of arrears on account of grant of temporary status, it is noted that the applicants have filed the present OA. only in 1997 and in my opinion, the applicants cannot be allowed the payment of arrears for the entire period from the date they become entitled for temporary status. However, I provide considering the facts and circumstances of the cases that the applicants shall be entitled for payment of arrears ^{as} ~~on~~ become due ~~on~~ grant of temporary status from the date of filing of the OAs. onwards in both the cases.

15. In the light of the above discussion, both the OAs. are disposed of with the following directions :-

(a) A joint inspection of the relevant records shall be carried out by the respondents associating the applicants to establish the details of the working [^] furnished by the

applicants after inspection and brought on the record. Those of the applicants who are found to have worked for 206 days in any one year, shall be granted temporary status from the due date in terms of the scheme laid down as per O.M. dated 10.9.1993. In respect of other applicants who are not found to have completed 206 days in a year, shall be given a reply indicating the details of working as found on joint inspection. The cases of such applicants shall be considered for grant of temporary status as per the O.M. dated 10.9.1993 as and when they meet with the requirements.

- (b) The applicants who ~~were~~ granted temporary status shall be entitled for various benefits as per the scheme. However, the payment of arrears, if any, that becomes due on grant of temporary status shall be restricted to the period from the dates of filing of the OAs. onwards.
- (c) The case of the applicants shall be considered for regularisation as per seniority against the existing and future vacancies when the respondents decide to fill up the vacancies as per the scheme laid down under O.Ms. dated 10.9.1993 and 7.6.1988.
- (d) No order as to costs.

(D.S.BAWEJA)
MEMBER (A)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

CONTEMPO PETITION No. 6/2000 in
ORIGINAL APPLICATION NO : 593/97

TUESDAY the 18th day of DECEMBER 20001

CORAM: Hon'ble Shri B.N. Bahadur, Member (A)

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

Raja P. Ghutukade and others ... Applicants

By Advocate Shri A.I. Bhatkar.

V/s

1. John D'silva
Director General Coast Guard
Coast Guard Headquarters
National Stadium Complex
New Delhi.

2. A.K. Mahajan
Deputy Inspector General,
Coast Guard Region
Headquarters (West)
Golfadevi Temple Road,
Worli Mumbai. ... Respondents.

By Advocate Shri V.S. Masurkar.

ORDER (ORAL)

{Per B.N. Bahadur, Member (A)}

We have heard counsel for the parties. Both the counsel state that this matter is indeed similar to C.P.5/2000 in OA 393/97. Shri Bhatkar further states that out of three applicants in this C.P. (6/2000) the position is now that applicant No.1 and 2 have already been granted temporary status, and Applicant No.3 Shri Batale Mahendra Mahadeo has permanently joined with the same organisation.

B.S.

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2. We have however examined the CP with the assistance of Shri V.S. Masurkar and being satisfied that the facts and circumstances are similar to the one we have discussed in the order made today in CP 5/2000, we hold that there is no wilful dis-obedience in the matter by the respondents. As such for the reasons as described in our order in CP 5/2000 no contempt can be said to have committed. We therefore dis-charge the notice and reject the C.P. No Costs.

S.L.Jain
(S.L.Jain)
Member(J)

B.N.Bahadur

(B.N.Bahadur)
Member(A)

NS

at 18/12/01
~~Case No/~~ *Case No/* ~~not~~ *not* ~~decided~~
No Application/ Respondent(s)
on 17/11/02

M