

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH ::
AT HYDERABAD.

O.A.No. 20/89.

Date of Decision: 16.6.92

Between:

1. B. Appala Naidu
2. M. Ramu
3. M. Appa Rao
4. T. Yellayya Applicants

Vs.

The Flag Officer,
Commanding-in-Chief,
Head Quarters, Eastern Naval
Command, Naval Base,
Visakapatham.

.. Respondents

For the applicants : Sri B.Nageswara Rao, Advocate.
For the respondents : Sri Naram Bhaskara Rao, Addl.
Standing Counsel for Central
Government.

CORAM:

THE HON'BLE SRI R. BALASUBRAMANIAN, MEMBER (ADMN.)

THE HON'BLE SRI C.J.ROY, MEMBER (JUDL.)

(JUDGMENT OF THE BENCH AS PER HON'BLE SRI C.J.ROY, MEMBER(J) X

.....

This application is filed under sec. 19 of the Administrative Tribunals Act, 1985 by the applicant seeking direction against the respondent, to declare his action in not regularising the services of the applicants from the date of their initial appointment and denying the equal pay for equal work as illegal, arbitrary and against the judgments delivered by the Hon'ble Supreme Court of India and the Hon'ble High Court and consequently to direct the respondent to pay equal pay for equal work from the date of their appointment and further direct him to regularise the services of the applicants from the date of their initial appointment and award all consequential benefits and for passing such other or further orders.

2. The applicants were initially appointed as Casual Labourers in Indian Navy by Captain, Indian Navy, T.P., East Bheemunipatnam, Visakapatnam. The applicants had joined in service as Casual Labourers on 14-3-1984. Their services were terminated on 10-5-1985 and again they were absorbed as Casual Labourers on 11-7-1985. The applicants state that they were discharging their duties as Casual Labour upto the mark of satisfaction of their superiors since then. The applicants claim that a casual Labour who have put in more than one year of service, entitled for regularisation. It is alleged that the applicants were put in more than 4½ years service continuously and that the respondents were extracting the work of regular nature from them, but were denied the regular pay. The applicants allege that the said action of the respondent is arbitrary, illegal, and in violation of principles of equal pay for equal work. It is also averred that the action of the respondent is against the Judgments of the Hon'ble Supreme Court and reported in AIR 1986 SC 584.

3. The applicants also contend that in terms of letter No. 3(27)/65/11825/D9/Civ(III) of 26-9-1966 (G.N.SC RO) Part II RC.561 dt. 29-11-1966 non-industrial personnel who had been in employment of casual service for more than one year without break should be converted into regular employee with effect from the date of their initial employment as casual employee. It is further stated by the applicants that with regard to Industrial employees, a reference was invited to the Government and subsequently an Army Order No.683/53 was issued. According to the said order, if for any reason the initial casual appointment of an Industrial Employee is to be continued beyond six months he will not be discharged and he should be re-employed from the same date but he should be allowed to continue in service without any break and will be treated as regular appointment i.e. as Industrial employee. It is stated that the applicants are industrial employees.

35

4. The applicants averred that they had approached the Hon'ble High Court of A.P. by filing a Writ Petition bearing W.P.No.7586/85 since the respondents were trying to terminate their services. In the said W.P. the applicants prayed for a direction to the respondents to treat them as regular industrial employees from the date of their initial appointments, and that the Hon'ble High Court had allowed the said writ petition by orders dt. 27-6-1986. It is their case that their services were not regularised inspite of the fact that the Hon'ble High Court directed the respondents to regularise their services from the date of their initial appointment. It is also alleged that they are being paid nominal pay by extracting regular work and more so about 16 Chowkidars who were juniors to them were regularised. The applicants alleged that they have made several representations aggrieved by the action of the respondents, but their efforts are turned to be futile exercise and filed this O.A.

5. The respondents filed counter and opposed the application. It is their case that the application is ~~barred~~ barred by limitation on the ground that the applicants relied upon the Judgment dt. 27-5-1986 in W.P.No.7586/85 delivered by the Hon'ble High Court of A.P. The respondents state that the applicants were engaged on daily wage basis in the year 1984 to complete certain specific items of work which were time-bound and that the said arrangement was discontinued with effect from 10-5-1985 when regular Unskilled Labourers were posted. It is also stated that again during June/July, 1985, the applicants were engaged for a short period for about 29 days. The respondents averred that the applicants were engaged on daily-wage basis and their payment was made once in a month for actual number of days they worked at the fixed rate of Rs.14.75 per day.

It is further averred that the applicants were brought on monthly rate of pay of Rs.1165/- p.m. which is equivalent to the pay of the regular labourers, but are continued as Unskilled Labourers in the existing vacancies of INS Kalinga with intermittent breaks after every spell of 89 days of service. It is stated that they will be regularised only in their turn since a good number of Unskilled Labourers who are seniors to them have not so far been regularised for want of sanction from the Government. The respondents admit that the post of Unskilled Labourer is an Industrial one and that the applicants are paid with effect from 1-6-1989 on monthly rate of pay of Rs.1165/- and that the applicants are entitled for the provisions of letter No.2(17)/51/10805/D(Civ) dt. 10.9.1953 of Ministry of Defence. The respondents state that good number of employees who are senior to the applicants are yet to be regularised for want of sanction of permanent establishment by the Government, the services of the applicants are not regularised and that they will be regularised in their turn. The respondents deny the averment that the Hon'ble High Court in its Judgment dt. 27-6-1986 directed the respondents to regularise the services of the applicants from their initial appointment.

4. The respondents further contend that the Chowkidars are non-industrial category while the applicants falls under industrial category, and therefore, the applicants cannot be compared with the said Chowkidars. The Chowkidars belongs to separate category who are non-industrial and that the applicants being unskilled labourers who are industrial side. The respondents allege that there are no merits in the application and desire the application be dismissed.

...5.

10/10/89

5. The applicant filed a copy of the order dt. 27-6-1986 passed by the Hon'ble High Court of A.P. in a Writ Petition bearing W.P.No. 7586 of 1985 filed by the applicant herein; and copy of the Instruction No.141 dt. 22-11-1974 issued by CE SC Pune. ~~_____~~

6. We heard Sri B.Nageswara Rao, learned counsel for the applicant and Sri Naram Bhaskara Rao, learned Counsel for respondents and perused the records carefully.

7. It can be seen from the Judgment of the Hon'ble High Court in W.P.No.7586 of 1985 dt. 27-6-1986 the respondents were directed while observing -

"In the counter it is stated that there is no continuous service in the case of petitioners and that they did not work for more than 29 days in a month. But it is not categorically stated in the counter that their salary was not paid in lumpsum. Respondents statement is not supported by any material on record. This court on more than one occasion held that a casual labourer, even if he is in continuous service for more than a year he is not liable for retrenchment and that he should be absorbed in service. In this view of the matter, the four petitioners are to be reckoned within the meaning of casual labour who have been in continuous service for more than a year and their services have to be regularised. Hence a direction shall go to the respondents to retain the petitioners in service without causing any retrenchment."

In the present counter also, the respondents have not categorically stated that the applicants have not completed the required length of service as casual labour and that they are not entitled for regularisation. Besides, it is stated in paras-4 (ii) and (iii) of the counter that -

50/10/71

P.4(ii) "the applicants who were engaged on daily-wage basis till 31-5-1989, have been brought with effect from 1-6-1989 on monthly rate of pay of Rs.1165/- p.m. which is equivalent to the pay of the regular labourers. However, they are continued as Unskilled Labourers in the existing vacancies of INS Kalinga with intermittent breaks after every spell of 89 days of service. The services will be regularised only in their turn since a good number of Unskilled Labourers who are seniors to them have not so far been regularised for want of sanction from the Government"

P.4(iii): It is true that the provisions of letter No.2(17) 51/10805/D(Civ) dt. 10.9.1953 of the Ministry of Defence deal with the conditions of service of workmen employed in casual capacity and the applicants, being Unskilled Labourers (Industrial) are entitled for the benefits envisaged therein. However, as a good number of employees who are senior to the applicants are yet to be regularised for want of sanction of permanent establishment by the Government, the services of the applicants will be regularised according to their turn. Till that time they will have to contend themselves as Casual Unskilled Labourers."


8. It can also be seen from the Judgment of this Tribunal in T.A.No. 736 of 1986 (W.P.No.9066/84) dt. 6-10-1988 between Sri D.Kondala Rao and others Vs. Garrison Engineer, Visakapatnam and others, that the applicants therein and the applicants in the present O.A. are similarly situate, and the said case was disposed of with directions on the strength of the decisions of the Hon'ble High Court of A.P. in W.P.Nos.4207/81 and 7045/81 as under -

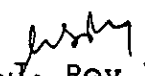
"we issue similar directions to the Respondents in respect of the applicants herein. The respondents shall pass orders giving the applicants the benefit of the instructions contained in letter No.2(17/54/10805/B.Civ.III) dt. 10.9.1953 issued by the Government of India, Ministry of Defence within a period of two months from the date of receipt of this order."

39

9. With regard to the point of limitation raised by the respondents, denial of the benefits due to the applicants is of a recurring nature and hence does not arise as regards the benefits of the 10-9-1953 letter. However, arrears^{W.R.f} of pay, if any, should be restricted to a period one year prior to the filing of this O.A. i.e. 17-1-1988 only.

10. As the facts and circumstances of the applicants herein and in T.A.No.736 of 1986 are similar, the application is liable to be disposed-of with similar directions. Under the circumstances, we issue same directions to the respondents in respect of the applicants herein. The respondents shall pass orders giving the applicants the benefit of the instructions contained in letter No.2(17)/54/10805/D.Civ.III dt. 10-9-1953 issued by the Government of India, Ministry of Defence, within a period of two months from the date of receipt of this order. The arrears, any payable, may however be limited as in para-9. With these directions, the application is disposed-of. There will be no order as to costs.


(R.Balasubramanian)
Member (A)


(C.J. Roy)
Member(J)

Dated 16th June, 1992.


Deputy Registrar(J)

- To
1. The Flag Officer, Commanding-in-Chief,
gth. Head Quarters, Eastern Naval Command,
Naval Base, Visakhapatnam.
 2. One copy to Mr.B.Nageswara Rao, Advocate,
plot No.7 SBH Colony, Asmangadh, Malakpet, Hyderabad.
 3. One copy to Mr.N.Bhaskar Rao, Addl.CGSC.CAT.Hyd.
 4. One spare copy.
 5. One copy to Hon'ble Mr.C.J.Roy, Member(J)CAT.Hyd-Bench.
 6. one copy to DN (J)

pvm.

to 10/11/92

7
TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
--BUNAL : HYDERABAD BENCH.

THE HON'BLE MR.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A) ✓

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY :
MEMBER (J)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (J) ✓

Dated: 16 - 6 - 1992 ✓

ORDER / JUDGMENT

P.A./C.A./M.A. No.

in

O.A. No. 20/89 ✓

T.A. No.

(W.P. No.)

Admitted and interim directions
issued

Allowed

Disposed of with directions ✓

Dismissed

Dismissed as withdrawn

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.

pvm.

