

(50)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.404/96

DATE OF ORDER : 03-07-1997.

Between :-

1. Top Bahadur
2. P.Panduranga

.. Applicants

And

1. The Union of India,
rep; by Secretary,
M/o Finance, (Dept. of Revenue),
Govt. of India, North Block,
New Delhi.
2. The Commissioner of Central
excise, Basheerbagh, Hyd-25.

.. Respondents

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Counsel for the Applicants : Shri P.P.Vittal

Counsel for the Respondents : Shri V.Rajeshwar Rao, CGSC

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CORAM:

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

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... 2.

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

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Heard Sri P.P.Vittal, counsel for the applicants and Sri V.Rajeshwar Rao, standing counsel for the respondents.

2. There are two applicants in this OA. The first applicant was initially engaged as contingent Watchman on daily wages to work at Thokata Village with effect from 19-4-90 (Annexure-1 to OA) at the rate of Rs.18/- per day and 12 hours per day on shift system. The second applicant was initially engaged as contingent Sweeper-cum-scavenger with effect from 1-9-89 (Annexure-2 to OA) at the rate of Rs.8/- per day. It is further stated that both of them are working continuously till today. Since August/March, '95 they were paid Rs.40/- and Rs.30/- per day respectively. Now it is that learnt/the wages have been enhanced to Rs.45/- per day. A Scheme called "Casual Labourers (Grant of Temporary Status & Regularisation) Scheme" was introduced by office memorandum No.51016/2/90-Estt (C) dt.10-9-93 (Annexure-4 to OA). This scheme came into force with effect from 1-9-93. The scheme gives parameters for conferring temporary status on the casual labourers.

3. The applicants submit that they fulfilled all the conditions for confirmment of temporary status in terms of the said scheme dt.10-9-93 and hence they have to be brought on temporary status from the date of introduction of that scheme. The applicants have filed representations for the above relief on 27-6-95 (Annexure-5 to OA), for which reply has not yet been given. This OA is filed praying for a direction to the respondents to grant the temporary status with effect from 01-9-93 and consequential benefit

in the payment of monthly salary.

4. The main contention of the applicants in this OA is that they fulfill the conditions laid down in the memorandum dt. 10-9-93 for bringing them on temporary status from the date of issue of that memorandum.

5. A reply has been filed by the respondents. The main contention of the respondents in denying them the temporary status is due to the fact that the above scheme was amended by office memorandum No.49014/2/93-Estt.(C) dt.12-7-94 (Annexure R-1 to the counter). As per ^{amended} memorandum the temporary status can be ^{only} granted/to those who were engaged on being sponsored by the Employment Exchange. As the applicants ^{were} not sponsored by the employment Exchange, they are not eligible for grant of temporary status under the scheme dt.10-9-93. The second contention of the respondents is that the applicant cannot rely on the judgement dt.30-6-94 in OA 697/91 as the applicants are not parties to that OA. Hence they cannot be given the relief as granted in the judgement in OA 697/91. The various contentions were analysed as below :-

The office memorandum dt.10-9-93 clearly stipulates the condition for granting temporary status to casual labourers. It is an admitted fact that the applicants were engaged as Casual ^{and are} day continuously till ^{now} Labouers/working 8 hours per/now. Sub para (i) of para-4 of memorandum dt.10-9-93 indicates the conditions for granting temporary status to the casual labourers working for 8 hours per day. This para is re produced below :-

4. Temporary Status

(i) Temporary status would be conferred

on all casual labourers who are in employment on the date of issue of this memorandum and who have rendered a continuous service of at least one year which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 day week).

In terms of the above para, the casual labourers should be in service on 1-9-93, the date on which the scheme came into force and the casual labourers should have been engaged for a period of 240 days to grant them temporary status. The applicants in this OA were engaged in 1990 and 1989 respectively and it is an admitted fact that they are working continuously from that date. Hence there is no doubt that the applicants had worked for 240 days earlier to the introduction of scheme with effect from 1-9-93. It is also an admitted fact that both the applicants were in service on 1-9-93. Hence the applicants complied with the conditions fully and are eligible for grant of temporary status.

7. The only reason given for not granting temporary status is that they were not engaged on being sponsored by the Employment Exchange. As the subsequent amendment by office memorandum dt.12-7-94 stipulates that the temporary status can be granted only to those sponsored by the Employment Exchange, the applicants were denied the grant of temporary status. The learned counsel for the respondents submit that the memorandum dt.12-7-94 should be read in conjunction with earlier memorandum dt.10-9-93 by which the scheme was introduced. This contention is not a very valid one. By reading the later memorandum dt.12-7-94 along with memorandum dt.10-9-93, the vested right accrued to them is taken away without any justification. Such a denial of the rights already accrued by a later memorandum is to be struck down as arbitrary of constitutional rights under Article 14 and hence ...5.

the later memorandum cannot be given retrospective effect (authority 1989 (9) ATC 773 - Haribans Misra & others Vs. Railway Board & Others and AIR 1964 SC 1511 - Mst. Rafiquennessa and others Vs. Lal Bahadur Chetri & Others). This amendment came into effect only from the date of issue of the memorandum.

8. The learned counsel for the respondents brought to my notice para-11 of the memorandum dt.10-9-93 wherein it is stated that "Department of Personnel & Training will have powers to make amendments or relax any of the provisions in the scheme that may be considered necessary from time to time". In view of the above provisions in the memorandum dt.10-9-93, the respondents can amend the earlier memo by a later memo giving retrospective effect to the later memo from the date of issue of first memorandum. The above quoted provisions in the memorandum dt.10-9-93 does not state that the later amendments if any will come into force from the initial date of introduction of the scheme. It merely says that the Department of Personal & Training have powers to amend the provisions of the scheme dt.10-9-93. I have no doubt about the powers of the Department of Personal & Training to modify the scheme to suit the needs. However as observed earlier that such amendments will have only prospective effect and in no way permit the respondents to give retrospective effect. Hence the contention that due to 1994 amendment the benefit of the scheme dt.10-9-93 cannot be extended to the applicants has to be rejected. As the applicants were in service as on 1-9-93 and fulfilled the conditions for grant of temporary status as on that crucial date, they should be brought on temporary status irrespective of the fact whether any amendment was made later to the issue of the initial memorandum of the scheme. Such amend-

ments will have only prospective effect.


9. The applicants relying on the judgement of this Tribunal in OA 697/91 submit that the applicants in that OA are juniors to the present applicants. Hence it will be incongruous if the juniors were given temporary status and seniors were not given the same. The applicants in OA 697/91 were given temporary status in view of the directions in that OA by this Tribunal and that cannot be quoted as a ground for getting the relief for the applicants herein. In the above referred OA 697/91 there is no analysis in regard to the implication of OM dt.12-7-94. In any case even without relying on the judgement, the applicants are entitled to get the relief as prayed for in this OA in view of what is stated above.

10. The learned counsel for the applicants also relies on the judgement of Calcutta Bench of this Tribunal in OA 909/90 and OA 910/90 dt.30-1-95 (Ramnath Paswan & another Vs. Union of India) to state that even if the applicants are not engaged after being sponsored by the Employment Exchange, they are entitled for the regularisation. I do not want to comment on this as the eligibility of the applicants to get temporary status has already been taken in view of the rule position.

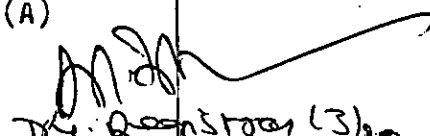
11. The applicants also submit that in view of the Apex Court ruling in Pyara Sing's case, they are entitled for grant of temporary status. I do not consider it necessary to go into this contention as the applicants are entitled for grant of temporary status even under departmental instructions.

12. In view of what is stated above, (i) the O.A. is allowed and the applicants should be granted temporary status with effect from 1-9-93 (ii) the consequential benefits arising out of that status should also be given to the applicants within a period of 3 months from the date of receipt of a copy of this order.

13. O.A. is ordered accordingly. No costs.


(R. RANGARAJAN)
Member (A)

Dated: 3rd July, 1997.
Dictated in Open Court.


J. R. Ramesh (3)

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25/7/97
TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR: M
(J)

DATED: 3/7/97

ORDER/JUDGEMENT

M.A./R.A./C.A. NO.

in

O.A. NO.

404/96

Admitted and Interim directions
Issued.

Allowed

Disposed of with directions,

Dismissed

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

YLKR

II Court.

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal प्रेषण/DESPATCH 21 JUN 1997 हैदराबाद बेंच HYDERABAD BENCH
