

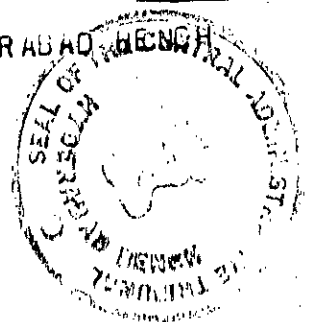
(19)

Annex A 5 (22)

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

Counsel for the Applicants : Shri P.P. Vittal

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

CORAM:

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

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

... 2.

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

Heard Sri M.P.Vittal, counsel for the applicants and
Sri V.Rejushwar 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 Thokate 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 were 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 confirmation 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 them temporary status with effect from 01-9-93 and consequential benefits

in the payment of monthly salary.

4. The main contention of the applicants in this DA 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 Labourers/working 8 hours per/day continuously till ^{and are} day continuously till ^{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 reproduced below :-

4. Temporary Status

(i) Temporary status would be conferred

....4.

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. Rafiquennesa

and others Vs. Lal Bahadur Chetri & Others). This amendment

came into effect only from the date of issue of the memorandum..

D. 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 Personnel & 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 Personnel & 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-

measures 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.

(26)

Annexure A 629

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD



ORIGINAL APPLICATION No.1313/98

DATE OF ORDER : 03-07-1997.

Between :-

M.Srinivas

.. Applicant

And

1. The Commissioner of Customs & Central Excise, Lal Bahadur Stadium, Basheerbagh, Hyderabad-29.
2. The Asst.Commissioner of Central Excise, Division IX, Ponet Bhavan, Ramkot, Hyderabad.
3. Union of India rep. by its Secretary, M/o Personnel, Public Grievances & Pensions (Dep.t of Personnel & Training), New Delhi.

.. Respondents

-- -- --

Counsel for the Applicant : Shri P.P.Vittal

Counsel for the Respondents : Shri V.Rajulipar Rao, DDC

-- -- --

UDRAM:

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

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

-- -- --

... 2.

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

-- -- --

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

2. The applicant in this OA was initially engaged as a daily rated casual worker for performing duties of Sweeper in Bonthapalli Range Division-VII of the Central Excise Department at Hyderabad on 18-7-91 at Rs.8/- per day. The fact that the applicant was working from 18-7-91 as full time casual labourer is evident from the letter dt.19-12-97 (Annexure A-1 to OA). The applicant filed representation requesting for grant of temporary status by his letter dt.14-6-96, which was rejected by the impugned order No.C/II/31/17/95-ES-5 dt.27-9-96 (Annexure-5 to the OA).

3. This O.A. is filed praying for a direction to set aside the impugned letter dt.27-9-96 and consequently to grant him the temporary status with effect from 1-9-93, the date when the casual labourers (Temporary Status & Regularisation) Scheme came into force.

4. It is an admitted fact that the applicant is a full time casual labourer. The contentions of both sides and the prayer in this OA are similar to the one submitted in OA 404/96. In view of the reasons given in OA 404/96, which is disposed of today, ~~In view of reasons given in OA 404/96~~ this O.A. ^{is} also to be allowed for the same reasons.

5. In the result, the impugned letter No.C/II/31/17/95-ES-5 dt.27-9-96 is set aside. The applicant should be ~~granted~~

- 3 -

granted temporary status in accordance with the scheme promulgated by office memorandum No.51016/2/90-Estt (C) dt.10-9-93 and the consequential benefits on that basis should also be granted to him within 3 months from the date of receipt of a copy of this order.

6. The O.A. is ordered accordingly. No costs.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

D. S. S. S. S.
न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद बेंच
HYDERABAD BENCH

True Copy.
ACU-2
Advocate

29

Annexure A

32

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.991/97

dated : 4-8-97

Between

C. Balakrishna

: Applicant

and

1. Union of India, rep. by
The Secretary,
M/o Finance, Govt. of India
New Delhi

2. The Commissioner of Central Excise
Basheer Bagh
Hyderabad 500029

3. Supdt. of Central Excise
Azambad I Range
Hyderabad

: Respondents

Counsel for the applicant

: P.P. Vittal
Advocate

Counsel for the respondents

: N.R. Devaraj
Sr. CGSC

CORAM

HON. MR. H. RAJENDRA PRASAD, Member (Admn.)



OA.991/97

dated : August 4, 97

Judgement

Oral order (per Hon. Mr. H. Rajendra Prasad, Member)

Heard Sri P.P. Vittal for the applicant and Sri H.R. Devaraj for the respondents.

1. The facts and circumstances of the case are similar to OA.408/95, 404/96, 1352/96.
2. If the contention of the applicant as regards his continuous service of more than 206 days in any year is correct, and if he is otherwise eligible for grant of temporary status followed by subsequent regularisation in terms of the scheme evolved by the Department of Personnel and Training with effect from 1-9-93, the claim of the applicant shall be considered and necessary relief be granted to him by the respondents. This maybe done within 90 days from the date of receipt of copy of this order.
3. Thus the OA is disposed of.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

[Signature]
COURT OFFICER

न्यायालय अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
HYDERABAD BENCH

OA 991/97
4-8-97
3-8-97
[Signature]

The City
M. K. P.
Advocate

Since the casual employees would be paid the same wages as the regular employees, the casual employees would be paid the same wages as the regular employees.

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Since it is mandatory to
engage casual employees
through employment exchange
the appointment of casual
employees must be made
through employment exchange
and not directly.

Clarifications

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The undersigned is directed to refer to department personnel maintaining OM No. 51016/2-90-Bst(C), dated 10th 03 on the subject noted above and to say that many returns have been received from various Ministries/Departments so the entry of information relating to grant of temporary leave for casual labourers in 1991.

.....

ON 13

76 JULY 1946

Ministry of Education and Science
Department of Higher Education
Institute of Education
1950

31

... casual
... working in
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... be entitled to
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... off

Since the facility of
paid weekly off is ad-
missible after 6 days
of continuous work, this
would not be admissible
to casual employees work-
ing for 5 days in a week.

For the purpose of
assessing leave
entitlement how should
qualifying period be
reckoned?

Qualifying period should
be reckoned with reference
to actual number of days
duty performed ignoring
days of weekly off, leave
and absence etc. All days
of duty will be counted
irrespective of intervening
spells of absence, which
do not constitute break
in service.

7. Frequency at which
leave will be credited.

Twice a year, on the 1st
January and 1st of July
credit will be afforded
for the preceding half year
or fraction thereof, on
a pro-rata basis at the
rate of one day for every
10 days of work.

Sd/-

(KRISHNA MENON)
DEPUTY SECRETARY TO THE GOVT. OF INDIA.

To

All Ministries/Departments/Offices of the Govt. of
India.

The copy
M. S.
Adm. Sec.

OFFICE OF THE COLLECTOR, CUSTOMS AND CENTRAL EXCISE,
CUSTOM HOUSE, PORT AREA, VISAKHAPATNAM.

E.No.1/22/20/92.Admn.

Dt. 20.1.94.

Establishment Order (N.G.O) No. 1/94.

Sub: _ Grant of Temporary status to Casual Workers- Reg .

..

The following casual Workers who were appointed on casual basis are hereby granted temporary status with effect from 01.09.1993.

1. K.Narayanamma	Div I	Sweeper cum Water carrier
2. S. Appalanarasamma	Div I	Sweeper cum Water carrier
3. I. Laxmi	Div I	Scavenger
4. K. Ramulu	Div I	Sweeper cum Water carrier
5. Ch. Rama Rao	Div I	Scavenger
6. P. Sarojini	Div II	Sweeper cum Water carrier
7. S. Sarojini	Div II	-do-
8. K. Appalanarasamma	Div II	-do-
9.S. Suramma	Div II	-do-
10. V. Appalanarasamma	Div III	-do-
11. G. Suramma	VZM Div	-do-

2. The temporary status has been conferred on them in terms of instructions contained in Office Memorandum No. 51016/2/90-Estt (C) dated. 10.09.1993 communicated in circular No. 105/93- Coord, dated 24.09.1993. (F.No. 12/10/93 Coord.) of Government of India, Ministry of Finance, Department of Revenue.

3. Temporary status would entitle the above casual Workers to the following benefits:

i) Wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group 'D' official including D.A, H.R.A, and C.C.A.

ii) Benefits of increments at the ratio indicated to Group 'D' employees would be taken into account for caliculating prorata wages for every one year of service subject to performance of duty for atleast 240 days(206 days in the case of offices observing 5 days week) in the year from the date of conferment of temporary status.

- iii) Leave entitlement will be on prorata basis at the rate of one day for every ten days of work. Casual or any other kind of leave except maternity leave will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularisation. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service.
- iv) Maternity leave to lady casual labourers as admissible to regular Group 'D' employees will be allowed.
- v) 50% of the service rendered under Temporary Status would be counted for the purpose of retirement benefits after their regularisation.
- vi) After rendering three years continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group 'D' employees for the purpose of contribution to the General Provident Fund and would also further be eligible for the grant of Festival Advance/ Flood Advance on the same conditions as are applicable to temporary Group 'D' employees, provided they furnish two sureties from permanent Government servants of their Department.
- vii) Until they are regularised, they would be entitled to productivity linked bonus/ adhoc bonus only at the rates as applicable to casual labourers.
4. No benefits other than those specified above will be admissible to the above casual workers with temporary status.
5. Despite conferment of temporary status the services of a casual labourer may be dispensed with by giving a notice of one month in writing. A casual labourer with temporary status can also quit service by giving a written notice of one month. The wages for the notice period will be payable only for the days on which such casual worker is engaged in work.

Sd/-

Additional Collector of Customs
And Central Excise.

True copy.
H. S. 2
Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCHO.A.1502/97

Date: 17-11-1997

Between:

G. Krishna Rao

.. Applicant

A N D

1. The Commissioner of Customs
and Central Excise,
Lal Bahadur Stadium Road,
Basheerbagh,
Hyderabad.
2. The Assistant Commissioner
of Central Excise, Div.VIII
Postnet Bhavan, Ramkote,
3. Union of India,
through
The Secretary,
Ministry of Finance,
Govt. of India,
New Delhi.

.. Respondents

Counsel for the applicant : Shri P.P. Vithal

Counsel for the respondents : Shri N.R. Devraj

Coram:

Hon'ble Shri H. Rajendra Prasad, Member(A)

..2/-

-: 2 :-

O R D E R

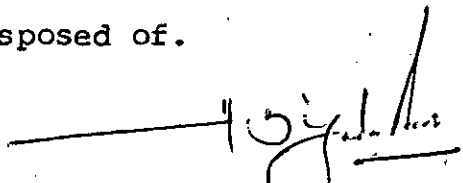
(Per Hon'ble Shri H. Rajendra Prasad, M(A))

Heard Mr. P.P. Vithal for the applicant
and Mr. N. R. Devraj for the respondents.

2. The facts of this case are analogous
to OAs 1451/97, 1452/97, 404/96, 1313/96, and
991/97. The directions issued therein are
applicable to this case also.

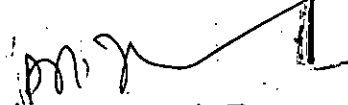
3. The respondents are therefore directed
to examine the prayer of the applicant in terms
of the relevant scheme and arrive at a suitable
decision within 90 days from the date of receipt
of a copy of this order.

4. Thus the OA is disposed of.


(H. Rajendra Prasad)
Member (A)

MD

Dated: 17th November, 1997
Dictated in the open court


Deputy Registrar.

O.A. 1802/97.

To

1. The Commissioner of Customs and
Central Excise, Lal Bahadur Stadium Road,
Hyderabad.
2. The Asistant Commissioner of Central Excise,
Div.VIII Posnett Bhavan, Rajkote, Hyderabad.
3. The Secretary, Ministry of Finance,
Union of India, Govt.of India, New Delhi.
4. One copy to Mr.P.P.Vittal, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, Sr.CGSC. CAT.Hyd.
6. One copy to HHRP.M.(A) CAT.Hyd.
7. One copy to D.R.(A) CAT.Hyd.
8. One spare copy.

pvm

24/11/97

I Court.

TYPED BY:

CHECKED BY:

COMPARED BY:

APPROVED BY:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE.
VICE-CHAIRMAN

And

THE HON'BLE MR. H. RAJENDRA PRASAD :M(A)

DATED:-

17/11/97

ORDER/JUDGMENT.

M.A../RA../C-A.No..

in

O.A.No.

1502/97

T.A.No.

(W.P.

)

Admitted and Interim directions issued.

Allowed

Disposed of with Directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No. order as to costs.

With 8-Copies

