

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH:
JAIPUR.

O.A. No.653/96

Date of order: 27.09.98

Gauri Shanker Gehlot s/o Shri Madan Lal Gehlot, r/o House No. 3047, Bhindo Ka Rasta, IIInd Crossing, Near Naiyon Ka Temple, Chandpole Bazar, Jaipur.

: Applicant

Versus

1. Union of India through the Secretary, Central Ground Water Board, Ministry of Water Resources, New Delhi.
2. The Director, Central Ground Water Board, Western Region, Jhalana Office and Complex, Jhalana Doongari, Jaipur.

: Respondents

Mr. Kunal Rawat, counsel for the applicant

Mr. M.Rafiq, counsel for the respondents

CORAM:

Hon'ble Mr. Ratan Prakash, Judicial Member

ORDER

Per Hon'ble Ratan Prakash, Judicial Member

The applicant herein Shri Gauri Shanker Gehlot has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 to quash and set-aside the verbal termination of his services on 7.3.1995 by the respondents besides seeking quashing of the letter/order dated 3.4.1996 rejecting his representation and the further prayer to reinstate him in service with all



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consequential benefits.

2. The facts relevant for disposal of this application and alleged by the applicant are that he was appointed on 3.5.1993 on the post of Peon by respondent No.2, The Director, Central Ground Water Board, Western Region, Jaipur and was paid Rs. 35 per day. His services were terminated in the month of October, 1993 and was again appointed on daily wages basis on the post of Peon from 11.4.1994. He continued to work with the respondent Department till 6.7.1995 but on 7.3.1995 he was not taken on duty and his services were terminated by verbal order without any reason and without any notice.

3. It is the case of the applicant that when he approached respondent No.2 he was given to understand that his services have been terminated as per the instruction of the Head Office. According to the applicant, in September, 1993 the Central Government issued OM No. 51016/2/90-Estt (C) dated 10.9.93 to regularise the services of Casual Labourers working in the respondent Department and similarly situated in other Departments under the scheme "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Govt. of India, 1993" which came into being and was made effective w.e.f. 1.9.1993.

4. It is the grievance of the applicant that in accordance with the aforesaid scheme of the Central Government, it was obligatory on the part of the respondent Department to confer upon all the Casual Labourers including the applicant temporary status as he



was working in September, 1993 in the office of respondent No.2. It is further the case of the applicant that when the applicant was not allowed to join his duties on 7.3.1995 he filed a complaint before the Assistant Labour Commissioner (Central) Jaipur on 14.3.1995 where the respondents filed a reply on 7.11.1995. It has, therefore, been urged that the applicant having failed to persuade the respondents, filed OA No. 142/96 and that OA was disposed of by a direction to the applicant to make a representation to the respondents to seek remedy. His representation having been rejected also by the respondents, he has now approached this Tribunal to claim the aforesaid relief.

5. The respondents have opposed this application by filing a written reply to which no rejoinder has been filed. It is the stand of the respondents that the applicant was never appointed as a Peon in the respondent Department but was engaged only as daily wages Casual Labour on 'No work no wage' basis; as a Waterman to serve water to the officers and staff in Summer Season and after the end of the Summer Season his engagement was discontinued in October, 1993. It has further been urged that the facts narrated by the applicant in his OA are not admitted and that the services were discontinued from the daily wages Casual Labour on 7.3.1995 as there was no need of the services of the applicant. The respondents have further denied that the applicant worked continuously from 11.4.94 till 6.3.1995 but that he worked with broken spells and was paid only for the days he actually worked. It has, therefore, been urged that since the applicant was engaged for a specific job and



for a specific duration purely on daily wage basis and he was not engaged against any vacant sanctioned post, his services were discontinued as they were not required and that the action of the respondents is fully justified. It has further been averred on behalf of the respondents that no person junior or senior to the applicant has been engaged in the office of the answering respondents and that there being no post of Peon or any other Group 'D' post nor post of any Group 'D' cadre, lying vacant at present, the applicant cannot be reinstated and the application deserves rejection.

6. I heard the learned counsel for the applicant and for the respondents and examined the record in great detail.

7. The applicant has approached with the case that he continuously served the respondent Department from 11.4.1994 till 6th March, 1995 besides having worked with the respondent Department in the year 1993. It has been urged by the learned counsel for the applicant that in pursuance of the scheme referred to above, he should have been conferred temporary status and regularised and his services should not have been terminated as he was in service on 1st September, 1993 having worked continuously for more than 240 days. As against this, it has been contended by the learned counsel for the respondents that the applicant has not worked continuously with the respondent Department from 11.4.94 till his services were verbally terminated on 7th March, 1995. It has also been argued that there being no sanctioned post of Group 'D' cadre, the applicant cannot be reinstated in service. The

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learned counsel for the respondents further argued that the applicant was a daily wage Casual Labour working on the basis of 'No work no wage' principle and the work entrusted having come to an end, he cannot be taken back in the service.

8. I have given due thought and consideration to the arguments advanced on behalf of both the parties.

9. It may be stated at the outset that though while disposing of his representation made by the applicant on 19.3.1996 consequent upon the direction given by this Tribunal in OA No. 142/96, Gauri Shanker Gehlot Vs. Union of India and Others; the respondents vide their order dated 3.4.96 have replied to the applicant that he did not work with them continuously as Casual Labour Waterman from 11.4.94 to 7.3.96 and that he remained absent many a times in between; yet the respondents have not been able to explain the admission which they have made in Ann.A2 - the reply to the application filed by the applicant before the Assistant Labour Commissioner, Jaipur. In their reply before the Assistant Labour Commissioner as at Ann.A2, they have admitted in para 3 that the contents of para 3 of the application to the effect that he worked with the respondents continuously between 11.4.94 till 6.3.95 is correct; the respondent Department, therefore, is estopped now to take a different stand. The plea now raised that he did not serve continuously with the respondent Department and did not complete the period of 240 days as required under the aforesaid scheme "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India 1993"; cannot now be

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entertained.

10. Even if it is held that the applicant was eligible for consideration of conferment of temporary status under the background of the regularisation scheme of 1993; the next question which now falls for consideration is whether verbal termination of the services of the applicant has been valid. In support of this stand taken by the applicant, it has been argued by the learned counsel for the respondents that as the services of the applicant were taken as a Waterman to serve water to the officers and staff of the Department in the Summer Season his services being no longer required have been terminated. The reason given is that the applicant was engaged for specific purpose for specific job and for a specific duration purely on a daily wage basis and was not engaged against any sanctioned post. It has, therefore, been argued that after the disengagement of the applicant no person junior or senior has been engaged by the respondent Department. This particular assertion has been made by the respondents on oath in their reply and have not been controverted by the applicant. It is the settled law that if there are no vacant or sanctioned posts in a Government Department and no administrative instructions/statutory rules to appoint a person as a Group 'D' employee; no direction can be given to the Department to regularise the services. In State of U.P. & Ors. vs. Ajay Kumar, 1997(2) SLR page 234 (235), it has been held by Hon'ble the Supreme Court that :-

"It is now settled legal position that there should exist a post and either administrative instructions or statutory rules must be in operation to appoint a person to the post. Daily wage appointment will

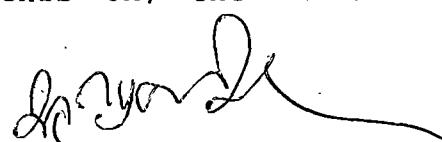


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obviously be in relation to contingent establishment in which there cannot exist any post and it continues so long as the work exists."

In the instant case the aforesaid principle of law laid down by Hon'ble the Supreme Court applies with full force. Here the applicant was engaged for specific purpose and specific job. Since none of the parties have produced any supportive evidence to show that the applicant was engaged for a specified period, it has to be inferred that the engagement of the applicant has all through been on daily wage basis. The respondent Department finding that there is no sanctioned post or vacant post with them, terminated his services by verbal order dated 7.3.1995. In view of the facts brought forth; the action taken by the respondents in terminating the services of the applicant cannot be faulted.

11. There being thus no merit in this OA, the OA is rejected with no order as to costs.



(Ratan Prakash)

Judicial Member