

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 10.08.1998

OA No.37/97

Ramesh Chand S/o Sh. Sohanlal aged about 26 years r/o Ward No.4 Buda Darwaja, Deeg, Bharatpur, lastly employed as Casual Labourer O/o Sub Circle Officer, Archaeological Department, Deeg, Distt. Bharatpur.

OA No.38/97

Dinesh Chand S/o Sh. Sohanlal aged about 24 years r/o Ward No.4 Buda Darwaja, Deeg, Bharatpur, lastly employed as Casual Labourer O/o Sub Circle Officer, Archaeological Department, Deeg, Distt. Bharatpur.

... Applicants

Versus

1. Union of India through Secretary to the Government of India, Department of Archaeological, Ministry of Human Resources, New Delhi.
2. Superintendent, Archaeological Department, D-49, C-Scheme, Subhash Marg, Jaipur.
3. Sub Circle Officer, Archaeological Department of India, Deeg, Bharatpur.

.. Respondents

Mr. C.B.Sharma, counsel for the applicants

Mr. S.S.Hasan, counsel for the respondents

CORAM:

Hon'ble Mr. Ratan Prakash, Judicial Member

ORDER

Per Hon'ble Mr. Ratan Prakash, Judicial Member

Applicants Ramesh Chand and Dinesh Chand has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 to quash and set-aside the order terminating their services w.e.f. 1.5.1996 with all consequential benefits including wages and continuity of service. They have also

sought a direction against the respondents to confer temporary status upon them w.e.f. 1.9.1993 with all consequential benefits as per the scheme dated 10.9.1993 as at Ann.A1.

2. The facts and the controversy raised in both these OAs being similar, they are being disposed of by a common order.

3. The facts relevant for disposal of these applications in brief are that the applicants were initially engaged as Casual Labourers on daily wages rate to perform the duties of Labour and Chowkidar in the respondent Department of Archaeological, Government of India at Deeg, Bharatpur w.e.f. the month of January, 1991. It is the case of the applicants that they continued to work in the respondent Department with respondent No.3 upto April, 1996 with some technical breaks as per the details given in para 4(ii). It is the grievance of the applicants that as they have completed the requisite period of service with the respondent Department as per the Scheme "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993" (Ann.A1) they are entitled for being conferred temporary status. They asked the authorities in the respondent Department to confer upon them the temporary status as also to pay them regular pay and other benefits admissible under the Scheme; instead of allowing them the benefits under the Scheme, the respondent Department has disengaged them w.e.f. 1.5.1996 and have not allowed them to perform their work after 30.4.1996. Both the applicants served notices for demand of justice to the respondents on 2/15.7.1996 (Ann.A2) but having failed to receive any reponse and finding that two junior persons S/Shri Hari Shankar Sharma and Mopla Ram have been engaged; they have now approached this Tribunal to claim the aforesaid relief.

(10)

4. The respondents have opposed these applications by filing a written reply to which no rejoinder has been filed. It is the stand of the respondents that though both the applicants had worked with them till the end of April, 1996, yet none of them had continuously worked in a financial or a calendar year for 240 days. The respondents have also averred that the applicants have left the services on their own and that their services have not been terminated by the respondents. It has also been stated by the respondents that since the Department of Archaeological Survey of India is looking after conservation, preservation and chemical treatment work of the centrally protected monuments all over India. For accomplishment of this task the respondent Department has been engaging such local casual labour namely Beldar etc. on daily wages muster roll basis against approved/sanctioned work estimates for the concerned centrally protected monument as and when required. The applicants are neither regular employees of the respondent Department nor appointed against any sanctioned post. The applicants having left the services on their own; hence the respondents had to accomplish the aforesaid tasks by engaging other daily wage labourers whether they come later or sooner. It has, therefore, been urged that there is no illegality or irregularity in not conferring upon the applicants temporary status; more so since they are not covered under the aforesaid Scheme of 1993; they can neither seek reinstatement nor ask for temporary status and hence the OA deserves rejection.

5. I heard the learned counsel for the applicant Shri C.B.Sharma and Shri S.S.Hasan for the respondents and have examined the record.

6. There are two points for determination in this OA. The first one is regarding their termination of service by the respondent Department and the second is with regard to the conferment of temporary status upon them in view of the Scheme of 1993 dated 10th September, 1993 (Ann.A1).

7. On the point of verbal termination of the services by the respondents, the argument of the learned counsel for the applicants is that no formal written order was supplied to them. They were simply dis-allowed to perform the work after 30th April, 1996 and their services were terminated verbally. In support of this contention, the learned counsel has drawn attention to the notices given to respondents on 2/15 July, 1996 as at Ann.A2 to which they have not responded. Even in their reply to the OA; the respondents have simply averred that the paragraph containing the allegations regarding service of notices need no formal reply. It appears that the applicants have been pursuing the matter without loosing any time and have filed these OAs in January, 1997 after expiry of 6 months' time of the notices given to the respondent Department. Therefore, it appears that there is substance in the averment of the applicants that their services were terminated verbally by the respondent Department otherwise they would have informed the applicants about their own absence. This conclusion is also borne out from the reply of the respondents where they do not deny that these applicants have worked with them although intermittently till 28th April, 1996. In fact the respondents have also given details in para 4(ii) of their reply regarding the duration/days when these applicants have worked with the respondent Department. From above analysis it is made out that the applicants were working with the respondents till 28th April, 1996 and thereafter told by the respondents not to come

w.e.f. 1st May, 1996. It may be true that they did not sent notices (Ann. A2) to the respondent Department before 15.7.1996 but that may be because they were pursuing the respondent Department to take work from them or engage them and to continue them in service. In view of this, it appears that there has been wrongful termination of the services of the applicants by the respondent Department w.e.f. 1st May, 1996 which is liable to be quashed. This issued is, therefore answered in the affirmative and in favour of the applicants.

8. On the question of conferment of temporary status as per the Scheme dated 10.9.1993 which has been made effective from 1.9.1993 titled "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993", it is noted that as per clause 4(i) of this Scheme any Casual Labour which are being in engagement for a period of atleast 240 days (206 days in the case of offices observing 5 days week) and who had rendered service of atleast one year; are entitled to be conferred temporary status. As per para 4(ii) of this Scheme 'such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts'.

9. It has, therefore, to be seen whether the applicants are entitled to get any benefit under this Scheme about the conferment of temporary status upon them. Although it is true that there have been technical/artificial breaks in the continuity of service of the applicants with the respondent Department but from the details given by the respondents themselves in para 4.2 of their reply, it is made out that both these applicants have been in service with the respondent Department; w.e.f. 18.2.1988 in the case of Ramesh Chand and 24.8.1989 in the case of applicant No.2 Dinesh Chand. They have

worked as Casual Labourers till 18th April, 1996. The technical/artificial breaks in between their service period with the respondents is ~~not~~ consequential. It is now the settled view that the practice of giving short breaks in the service of daily wagers is followed by a number of establishments in order to prevent the Casual Labourers from seeking the claim of regularisation and temporary status. This matter has been elaborately dealt with in the case of Daily Rated Casual Labourers Vs. Union of India (1998) 1 SCC page 122 wherein Hon'ble the Supreme Court while considering the matters of large number of Casual Labourers has directed the Union of India to frame a scheme for their regularisation. In other words; such technical or artificial breaks have to be ignored while implementing the scheme of regularisation/conferment of temporary status in pursuance of this Scheme of the year 1993. In view of this, these applicants also would be entitled to be considered for conferment of temporary status in pursuance of the aforesaid Scheme of the year 1993 w.e.f. 1.9.1993. The argument of the learned counsel for the respondents that on the date of implementation of this Scheme, these applicants were not in service would not have a negative effect. More so when these applicants are admitted to be working as Casual Labourers with the respondent Department from 1988/1989 till the end of April, 1996; the technical/artificial breaks indicated in their service record would not deprive these applicants of the benefits to which they become entitled by virtue of the Scheme of 1993. The applicants would, therefore, be entitled for consideration of their cases for conferment of temporary status and the issue on it is answered accordingly.

10. During arguments the learned counsel for the respondents also urged that as in any view of the matter the applicants

have not served the respondent Department w.e.f. 1st May, 1996, they would not be entitled for the back wages or the benefits which would have been available to them had they remained in continuous service with the respondent Department. I have given due thought to this argument. This argument of the learned counsel for the respondents has some force in view of the repeated pronouncements of Hon'ble the Supreme Court to the effect that there shall be no wages for no work. Admittedly, the applicants have not served the respondent Department w.e.f. 1st May, 1996.

6. 11. Consequently in view of aforesaid discussion, the verbal orders of termination of services of the applicants w.e.f. 1.5.1996 are hereby quashed. The respondents are directed to take back the applicants on duty within one month of the receipt of a copy of this order by them. It is also made clear that these applicants shall not be paid any back wages for the period between 1.5.1996 till the date of their reinstatement and joining the services with the respondent Department.

7. 12. On the claim of the applicants to confer temporary status upon them, it is hereby directed that the respondents shall screen the cases of these applicants and calculate the period of their service with them w.e.f. the date of their initial engagement to their disengagement i.e. 30th April, 1996 and shall ignore the artificial/technical breaks falling between this duration and pass necessary orders about conferment of temporary status upon them in pursuance of the Scheme "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993" within a period of four months from the date of receipt of a copy of this order.

13. These OAs are disposed of accordingly with no order as to costs. A copy of this order be kept in each of the OAs.

Rec'd copy

RP
21/8/95

(Ratan Prakash)
Judicial Member