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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.251/99

Date of order: 5/11/99

Prem Chand Bairwa, S/o Shri Mool Chand, R/o Pooni Dai
ka Bas, Behind Govt. High School, Bandikui, working as
Temporary Mail Man in the O/O the RMS, Bandikui.

...Applicant.

Vs.

1. Union of India through the Secretary to the Govt. of
India, Deptt. of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. The Chief Postmaster General, Rajasthan Circle, Jaipur.
3. Senior Superintendent, RMS, Jaipur.
4. Head Record Officer, RMS, JP Dn, Jaipur.
5. Sub Record Officer, RMS, Bandikui.

...Respondents.

Mr.P.N.Jati - Counsel for applicant

Mr.M.Rafiq - Counsel for respondents.

CORAM:

Hon 'ble Mr.S.K.Agarwal, Judicial Member

PER HON 'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer:

- (i) the impugned orders dated 3.5.99 and 15.4.99, at
Annx.A1 and A2 be quashed and set aside.
- (ii) the applicant be treated as Group-D employee and duties
be provided to him regularly.
- (iii) to direct the respondents to regularise the services
of the applicant.

2. Facts of the case as stated by the applicant are that he was initially engaged as Casual Labour in RMS Bandikui in the year 1983, since then he is performing the duties continuously and details are given in para 2 of the O.A. It is stated that temporary status was conferred upon him on 22.11.91 w.e.f. 29.11.1989. Deptt. of Posts has also issued orders to treat the casual labour as temporary Group-D employee who completes 3 years of service after temporary status but the respondents have issued orders dated 15.4.99 and 3.5.99 which are arbitrary and against the scheme dated 12.4.91 and orders dated 30.11.92. Therefore, the applicant has filed this O.A for the reliefs as mentioned above.

3. Reply was filed. It is admitted that the applicant was conferred temporary status in view of the D.G Posts' letter dated 12.4.91 but he was engaged only as unapproved/substitute against the leave vacancies of Group-D employees on daily rated basis on the basis of availability of work. It is stated that the letter dated 30.11.92 only provides for certain facilities of Group-D employees to a casual labour completing

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three years after temporary status which does not mean that the applicant be treated as regular Group-D employee. Due to advancement of modern technology work load has been reduced and in view of reduction of work load the respondents have issued certain instructions which are to be followed by the answering respondents. The impugned orders in this way are not arbitrary in any way. Therefore, this O.A is devoid of any merit and is liable to be dismissed.

4. Rejoinder has also been filed reiterating the facts as stated in the O.A which is on record.

5. Heard the learned counsel for the parties and also perused the whole record.

6. As regards the impugned orders dated 15.4.99 and 3.5.99 are concerned, the order dated 15.4.99 reads as under:

"The utilisation of casual labourers already working in the RMS JP Division can not be in a regular way and hence only in cases of extreme urgency and very rarely can be utilised.

The fresh casual labourers also cannot be utilised as there is ban on engagement of fresh casual labourers."

7. Likewise the order dated 3.5.99 also reads as under:

"From the perusal of your statement HRO/JP/Substitute/UAC dated 8/3/99 and 5/4/99 it has been observed that casual labourers are being engaged regularly in SROS/HRO in this regard, please explain what was the justification for engagement of casual labourers at such a regular basis? why not recoveries be made from you? "

8. On a perusal of these orders, it appears that the answering respondents has issued these orders in compliance of certain departmental instructions in view of advancement of modern technology. The orders in my view are not arbitrary and in contraventions of the instructions, therefore, there is no basis to quash and set aside the orders.

9. As regards other prayer of the applicant, the letter dated 30.11.92 provides to give certain facilities to casual labourers having 3 years service after temporary status which are given to Group-D employees of the Postal Department. It does not mean that the applicant has become regular Group-D employee of the department, in view of the circular dated 30.11.92 issued by the respondents. The applicant can be treated as regular Group-D employee only on his regularisation.

10. As regards providing regular work to the applicant, no doubt the applicant is working in the department since 1983 and temporary status was conferred upon him on w.e.f. 29.11.89 and he is getting the facilities which a temporary casual labour is getting as per the instructions issued from time to time. But

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it is settled law that casual labourer has no right to the particular post. He is neither a temporary Govt servant nor a permanent Govt servant. Protection available under Article 311 of the Constitution of India is not applicable to him. His tenure is precarious, his continuance is depend on the satisfaction of the employer and availability of the work. A temporary status conferred upon him by the scheme only confers him those rights which are spelt out in clause 5 of Casual Labourers (Grant of Temporary Status & Regularisation) Scheme issued by the Govt. of India. Therefore, a daily rated casual labourer does not ipso fact gets a right of continuance. His right of continuance is subject to availability of work and satisfactory performance and conduct and a casual labour can only be regularised after selection as per the scheme framed by the Govt. Merely long service as casual labour cannot make him a regular hand.

11. The respondents in the reply has categorically stated that work load has been reduced in view of advancement of modern technology in working. Therefore, the applicant is only entitled to work when work is available to him. Since the applicant is a casual worker at Bandikui RMS and no allegation of malafides/discriminations are imputed against the answering respondents. Therefore, it is not possible to give any direction to the respondents to provide work to the applicant on regular basis.

12. The Philosophy behind the engagement of casual labour is to get the work of intermittent nature completed and normally the persons engaged earlier be re-engaged and after completing certain minimum period they may be considered for regularisation against Class IV vacancies. The main concern of the Court/Tribunal in such matters is to ensure rule of law and to see that executive acts fairly and State is not exploiting to its employees and is not taking advantage of helplessness, misery of unemployed persons/employees. The State must act as a model employer.

13. Hon 'ble Supreme Court of India is consistently developing the law on the subject and delivering the judgments on the issue of absorption/regularisation of casual labourers and deprecating the exploitation of casual worker.

14. In Inderpal Yadav Vs. UOI, (1985) 2 SCC 648, Hon 'ble Supreme Court viewed sympathetically the claim for regularisation of Project Casual Labour. This view was consistently followed by Hon 'ble the Supreme Court in Sunder Singh Vs. Engineer in Chief, CPWD, AIR 1986 SC 584 and it was held that

persons employed in CPWD on daily wage basis are entitled to not only daily wages but also the same wages equal to permanent employees during the identical work.

15. In Ram Kumar & Ors Vs. UOI & Ors. 1988(1) SCC 306, the Supreme Court approved the claim of parity made by casual labourers with other regular employees including the benefit of pension.

16. In UP Income Tax Deptt CPSW Association Vs. UOI, AIR 1988 SC 517, the Supreme Court has given directions to the respondents to frame a scheme for absorbing contingent paid staff of Income Tax Deptt, who have been continuously working for more than one year. This judgment was also followed in AIR 1987 SC 2342, (P&T Deptt. Employees Vs. Union of India). In Jacob Vs. Kerala Water Authority, AIR 1990 2228, it was held by the Supreme Court that once the appointment continued for long the services had to be regularised if the incumbent possesses the requisite qualifications.

17. In Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, AIR 1990 SC 2228, the Apex Court held that once the appointments were made on daily rated workers and they are allowed to work for considerable length of time. It would be hard and harsh to deny them the conferment in ~~the~~ respective posts on the ground that they lack the prescribed Educational qualification.

18. In Dharwad District PWD LDW Association Vs. State of Karnataka, AIR 1990 SC 883, the Apex Court held that the State of Karnatak is obliged to regularise the services of casual employees who are in these cases called daily rated and monthly rated employees to make them the same payment as regular employees.

19. In All Manipur Regular Posts Vacancies Substitute Teachers Association Vs. State of Manipur, AIR 1991 SC 2088, the Supreme Court directed the State Govt to consider the case of regularisation of temporary workers.

20. This trend was changed by Hon'ble the Supreme Court in a leading case, in Delhi Development Horticulture Employees' Union Vs. Delhi Administration and Ors, AIR 1992 SC 789 wherein it was held that:

"... The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal consideration including money. The employment is given first for temporary periods which technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have

completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchange for years. Not all those who gain such back-door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they joint the jobs for better and secured prospects. That is why most of the cases which come to the Courts are of employment in Govt Departments, Public Undertakings or Agencies. Ultimately, it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employee although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts."

21. This decision was reaffirmed by the Supreme Court in State of Haryana & Ors. Vs. Piara Singh & Ors. (1992) 21 ATC 403.

22. In Chief Conservator of Forests & Anr. Vs. Jagannath Maruti Kondhare & Anr. 1996 SCC (L&S) 500, Hon'ble Supreme Court upheld the order of Industrial Tribunal to make such workmen permanent with all consequential benefits.

23. In Union of India Vs. Bhishanbher Dutt, 1997 SCC (L&S) 418 it was held by the Supreme Court that appointment on regular basis is a condition precedent for regularisation and a person appointed as part-time employee de hors rules are not entitled to regularisation even though regularly working for long period.

24. In JLN University Jabalpur M.P Vs. Balkishan Soni & Ors. 1997 SCC (L&S) 1119, it was held by the Supreme Court that employees employed in a sponsored project cannot be regularised although working for a long time.

25. In E.Rama Krishna & Ors. Vs. State of Kerala, (1996) 10 SCC 565, it was held by the Supreme Court that appointee de hors the rules are not entitled to regularisation even though they have officiated for long period of 14 years.

26. In the instant case, the applicant was engaged as casual labour in the year 1983. Since then he is performing his duties regularly as per details given in para 2 of this O.A. The temporary status was conferred upon him on 22.11.91 w.e.f. 29.11.1989. It is not the case of the applicant that the work and conduct and behaviour of the applicant was not satisfactory. The long continuance of the applicant thus show that the work was available with the respondents. I have also perused the Administrative Instructions as incorporated in PST Manual Vol.IV

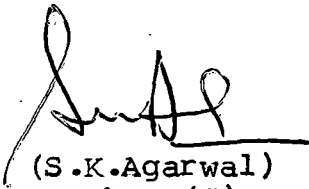
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Part-2(a) and comes to the conclusion that the appointment of the applicant as casual labour is not de hors the rules. These executive instructions also provide that these casual labourers can be considered for absorption in Class IV post on the same terms and conditions as applicable to absorption of casual labourer in regular Class IV posts.

27. In view of the legal position as discussed above and facts and circumstances of this case, the applicant is entitled to be considered for regularisation as and when vacancy is available and if necessary, necessary steps may be taken to create a post for this purpose.

28. I, therefore, dispose of this O.A with the direction to the respondents to consider the applicant for regular appointment in Group-D post as and when vacancy is made available. Till that time the applicant shall not be disengaged provided the work is available. In no case, the applicant will be disengaged without following the proper procedure of law.

29. No order as to costs.


(S.K. Agarwal)
Member (J).