

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

Jaifai

Jaifai

Mar 10th 2012

Dr

21/2

O.A. No. 439/2000
T.A. No.

198

Naik

DATE OF DECISION _____

Bhola Dutt Joshi Petitioner

Mr. Manish Bhandari Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. V.K. Jain, Adv. brief holder for Advocate for the Respondent(s)
Mr. N.K. Jain

CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman

The Hon'ble Mr. A.P.Nagrath, Adm.Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(A.P.Nagrath)
Member (A)

(G.L.Gupta)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 10.12.01

OA 439/2000 With MA 430/2000

Bhola Dutt Joshi s/o Shri Krishnanand Joshi r/o 346, South-West Block, Alwar.

... Applicant

Versus

1. Union of India through Income Tax Commissioner, Income Tax Department, Central Revenue Building, Statue Circle, Jaipur.
2. Commissioner Income Tax, Income Tax Department, Central Revenue Building, Statue Circle, Jaipur.
3. Dy. Commissioner Income Tax, Income Tax Department, Alwar.
4. Asstt. Commissioner Income Tax, Income Tax Department, Alwar.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

For the Applicant ... Mr. Manish Bhandari

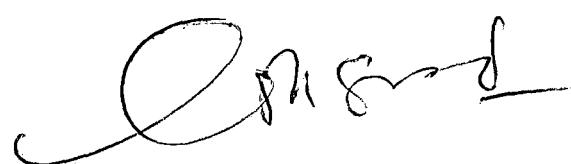
For the Respondents ... Mr. V.K.Jain, Adv. brief holder for
Mr. N.K.Jain

O R D E R

PER MR.JUSTICE G.L.GUPTA

In the instant OA, filed on 14.9.2000, the applicant had prayed that a direction be given to the respondents to regularise his services and, in the alternative, to give him the benefit of temporary status. After filing the OA the applicant was disengaged and, therefore, the OA was amended and additional relief has been claimed that the termination order w.e.f. 1.10.2000 be declared null and void.

2. The facts. The applicant was initially engaged as daily wager (Waterman) in the office of the Assistant Commissioner, Income Tax, Alwar, on 3.8.92. It is averred that he performed the duties of Class-IV servant and Gardener in the respondents' office and his case was recommended for regularisation as Waterman vide communications dated 1.10.93 and 23.12.93. It is further averred that the applicant has appeared in the test of Gardener and has been found eligible for the post of Gardner as per the certificate (Ann.A/3) issued by the Director, Horticulture, Alwar. The case for the applicant is that he was awaiting regularisation but it was not done, instead a person engaged later than the applicant has been regularised. It is further the case for the applicant that he had been called for interview vide



communication dated 8.2.99 yet his services have not been regularised and he has also not been granted temporary status. His services, it is alleged, have been dispensed with by a verbal order w.e.f. 1.10.2000 without complying with the provisions of law.

3. In the counter, the respondents' case is that the applicant is not a member of the service of the respondents and he was engaged only as a daily wager and was paid from the contingency amount. It is stated that the internal correspondence between the two respondents, said to be in favour of the applicant, cannot help the applicant in establishing his case. It is further the case for the respondents that they never directed the applicant to undergo training of the Gardener and, therefore, the certificate obtained by him is of no help, rather it shows that the applicant was attending training elsewhere and was not attending the office of the respondents regularly. It is averred that pursuant to the advertisement issued for filling up the vacant post appointment has been made and, therefore, the applicant has no right to challenge the selection of the person said to be junior to him. The applicant, it is stated, was also considered while making appointment but he was not found eligible for the reason that he had crossed the maximum age limit. It is denied that the applicant has been working continuously for the last ten years. It is further stated that the Regularisation Scheme of 1993 does not apply to the applicant. It is prayed that the OA be dismissed.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

5. The contentions of the learned counsel for the applicant may be summarised as follows. (i) The applicant had a right of regularisation as he had continuously worked for 10 years. (ii) The services of the applicant could not be terminated without following the procedure prescribed under the Central Civil Services (Temporary Service) Rules, 1965. (iii) There was malice on the part of the respondents when they disengaged the applicant after receipt of the notice of the OA filed by the applicant. (iv) Applicant's work was satisfactory all-through and recommendations had been made to regularise him. (v) The person who was engaged after the applicant had been engaged, has been appointed on regular basis ignoring the claim of the applicant. The learned counsel for the applicant placed reliance on the case of State of Haryana & Ors. v. Piara Singh & Ors., (1992) 4 SCC 118.



6. On the other hand, the learned counsel for the respondents vehemently contended that the applicant was never appointed on the civil post rather he was engaged as a contingent employee as and when there was need for contingent work and, therefore, the procedure prescribed in the Central Civil Services (Temporary Service) Rules, 1965 (for short, the Rules, 1965) was not required to be followed. It was further contended that no person engaged after the applicant has been regularised, rather the process for appointment on Group-D post had been commenced and the applicant was also called for interview and on the basis of the selection process one Manoj Kumar was given appointment. The learned counsel for the respondents contended that the respondents were not in know of the fact that OA had been filed by the applicant and, therefore, it is wrong to say that there was malice on the part of the respondents when the applicant was disengaged. Relying on the various decisions of the Tribunal and of the Supreme Court, the learned counsel for the respondents contended that the applicant is not entitled to any relief.

7. We have given the matter our thoughtful consideration.

8. First, it is to be seen whether the applicant has been disengaged after the service of the notice of the OA filed by the applicant. It is noticed that the OA was filed by the applicant on 14.9.2000. It was listed in court on 27.9.2000. On that day, the court directed to issue notices to the respondents, returnable within four weeks. The matter was directed to be listed on 29.11.2000. The office report shows that the notices were issued by the office on 11.10.2000 by registered post. As per the averments made in the OA, the disengagement of the applicant took place on 1.10.2000. It is obvious that on 1.10.2000 the notices even were not dispatched by the court. Therefore, there could not be any occasion of the service of notices of the OA on the respondents. As a matter of fact, the respondents could not have knowledge of the institution of the OA. Therefore, it is futile to contend that the respondents have acted malafidely when they dispensed the services of the applicant on 1.10.2000.

9. The next question to be considered is whether before disengagement the procedure prescribed in the Rules, 1965 was to be followed. The Rules, 1965 apply only to the persons who hold civil posts under the Central Government or who are employed temporarily in work charge establishment and who have opted for pensionary benefits. It is provided in Sub Rule (4) (d) of Rule 1 of the Rules, 1965 in clear terms that these Rules do not apply to the Government Servants paid out of

A handwritten signature in black ink, appearing to read "Anand".

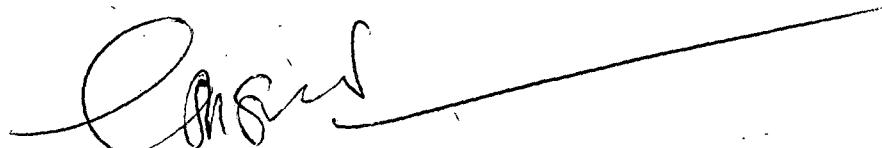
contingencies.

The respondents' version is that the applicant was engaged as a contingent employee. There is no cause to disbelieve the version of the respondents. The applicant has not placed on record any order of appointment or any document indicating that he was appointed as a Group D employee on temporary basis or work charged basis. That being so, it was not necessary for the respondents to have issued a notice under Rule 5 of the Rules, 1965 before disengaging the applicant.

10. The next question arises for consideration is whether the applicant had a right of regularisation. There does not appear to be dispute on this fact that the applicant was initially engaged in the year 1992 and he was in the engagement of the respondents for about 10 years. The learned counsel for the applicants has not brought to our notice any rule or a policy decision whereunder a person engaged on contingent basis is entitled to be regularised. In this connection, our attention was drawn to the scheme known as Casual Labourers (Grant of Temporary status and Regularisation) Scheme 1993. The said scheme provided that a casual labour who had rendered continuous service of at least one year on the date of issuance of the scheme was entitled to grant of temporary status. It is nowhere stated in the OA that as on 10.09.1993, the applicant had put in 240 days of service. That apart, the applicant was not engaged as a casual labour rather he was engaged as a contingent employee and was paid out of the contingency fund. Therefore, his case could not be covered by the Scheme of 1993.

Moreover, if the applicant had a right of conferment of temporary status under the said scheme, he ought to have approached the Tribunal within the period of limitation of one year from the accrual of cause of action. Having that not done, and no application for condonation of delay has been filed, the claim of conferment of temporary status cannot be considered in this OA as being barred by limitation.

11. Learned counsel for the respondents placed reliance on the case of State of Haryana & Others vs. Piara Singh and Others (Supra). Their Lordships have made observations from Para 44 onwards. With regard to the casual labour the observations have been made at Para 51 of the report, wherein it was stated that if a casual labourer is continued for a fairly long spell-say two or three years-a presumption may arise that there is regular need for his services and in such a situation it becomes obligatory for the authority concerned to examine the feasibility of his regularisation.



The observations indicate that though their Lordships considered the period of 2-3 years as fairly long spell yet the matter was left to the employer to examine the feasibility of regularisation of the employee. It is noticed that the applicant's duty was to serve water to the employee and he was paid out of the contingency fund. In the year 1999 recruitment for Group D employee was held, in which the applicant was also called for interview. It has to be accepted that the recruitment process was a step towards regularisation. Since the applicant was not found eligible for appointment, he was not appointed on regular basis. It may be that in that process one Manoj Kumar, who had been engaged after the applicant, succeeded in getting appointment on regular basis but on that ground it cannot be said that the applicant has been discriminated. The post was meant to be filled up by direct recruitment. Even an outsider could be given appointment. The applicant did not have a preferential right of appointment under the rules and, therefore, no relief cannot be granted to the applicant on the basis of appointment of said Manoj Kumar.

12. The Hon'ble Supreme Court in the case of Union of India & Others vs. Bishamber Dutt, 1997 SCC (L&S) 478, has held that on the basis of long term engagement a person cannot claim regularisation. In that case, the petitioner was receiving a consolidated pay of Rs.500/- per month, which was raised to Rs.600/- per month for working six hours a day. Their Lordship's without expressing any opinion as to whether it was full time, hourly basis or monthly basis engagement, observed as follows :-

" Suffice it to state that they were not appointed to a regular post after selection according to rules they were appointed as part-time employees dehors the rules. The question, therefore, is whether they are entitled to the temporary status or regularisation as directed by the Tribunal? It is seen that pursuant to the enquiry whether temporary status should be granted to the part-time employees, directions were issued by the Ministry of Personnel, Public Grievances and Pension dated 12.7.1994 in the Memorandum, clause 3, that they are not entitled to such status. Since they are not appointed on regular basis in accordance with rules the direction issued by the Tribunal to regularise the service is obviously illegal. It is then contended by the learned counsel for the respondents that in view of the fact that they were regularly working for a long time they are entitled to regularisation. We do not appreciate the stand taken on behalf of the respondents. Unless they are appointed on regular basis according to rules after consideration of the claims on merits, there is no question of regularisation of the services." (emphasis supplied)

The position of the applicant is not better than the petitioner before the Supreme Court. The applicant was also paid a fixed amount



from the miscellaneous contingencies. His appointment was not according to the Rules for appointment of the Group-D employees. Therefore, he cannot claim regularisation on the basis of long time engagement.

It has been held in the case of Himanshu Kumar Vidyarthi & Ors. v. State of Bihar & Ors., (1997) 4 SCC 301, that a daily wager does not have a right to hold the post. Observing that a daily wager who was not appointed according to rules and is engaged according to need of work, has no right to hold the post and the concept of retrenchment cannot be stretched to cover such employee.

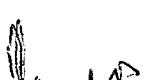
This court in the case of Shambhu Singh & Anr. v. Union of India & Anr., OA 333/97, decided on 13.9.2000, held that a casual labour does not have a right to continue on the post and cannot claim regularisation on Group-D post.

So also, in the case of Mukandi Lal Meena v. Union of India & Ors., OA 413/97, decided on 15.3.2001, which was a case of the contingent worker, it was held that he was not entitled for regularisation.

It was held in the case of Vijay Kumar Chandel v. Union of India & Ors., OA 441/97, decided on 25.5.2001, that a casual labour has no right to a particular post as he is neither a temporary Government servant nor a permanent Government servant. It is significant to point out that in that case also the applicant had been engaged on daily wage basis to serve as a Waterman on contingent basis.

13. In view of what we have held that the applicant has not been disengaged after the service of the notices of the OA and that he did not have a right of regularisation, the applicant cannot succeed in this OA. It may be that the junior functionaries had recommended the case of the applicant for regularisation but that internal correspondence of Anns.A/1 & A/2 does not confer a right on the applicant to claim regularisation.

14. For the reasons stated above, we find no merit in this OA and dismiss it with no order as to costs.


(A.P. NAGRAATH)

MEMBER (A)


(G.L. GUPTA)
VICE CHAIRMAN