

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.449/2000

Date of order: 12/4/2001

Mukesh Gusar, S/o Nemichand Gusar, R/oB-81, Shastri Ngr
Housing Board, Bhatt's Basti Harijan Colony, Jaipur.

...Applicant.

Vs.

1. Union of India through its Secretary, Mini. of Law, Justice & Company Affairs, Deptt. of Company Affairs, New Delhi.
2. Official Liquidator, Rajasthan High Court, 75-A, Rajendra Marg, Bapu Nagar, Jaipur.
3. Regional Director, Company Law Board, Kanpur.
4. Pawan, newly appointed in place of applicant, O/o Official Liquidator, 75-A, Rajendra Marg, Jaipur.

...Respondents.

Mr.N.K.Bhatt - Counsel for applicant

Mr.Vijay Singh, Proxy of Mr.Bhanwar Bagri- for respondents.

CORAM:

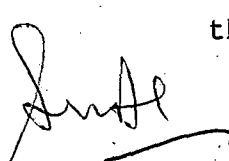
Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

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

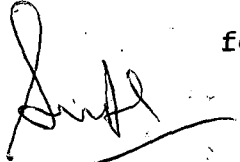
In this O.A under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the order at Annx.A1 dated 17.8.2000 and direct the respondents to reinstate the applicant in service on the post of Safaiwala with all consequential benefits including back wages.

2. Facts of the case as stated by the applicant are that the applicant was appointed on the post of Safaiwala by respondent No.2 on a consolidated salary of Rs.150/- per month and was designated as part-time employee although the applicant had put up 8 to 9 hrs. duty every day. It is stated that the applicant continued in service till the impugned



order was issued and his salary was also increased to Rs.400/- per month w.e.f. 1.3.97 vide order dated 17.4.97. It is also stated that the applicant had apprehension that the work of Safaiwala may be handedover to Contractor and his services may be dispensed with. Therefore, the applicant served a legal notice dated 7.8.2000 to the respondents due to which they annoyed and issued the impugned order of termination. It is stated that the impugned order of termination is arbitrary, unjust and malafide and issued in violation of Articles 14 and 16 of the Constitution of India, therefore, the same is liable to be quashed and set aside. Hence the applicant filed the O.A for the relief as above.

3. Reply was filed. It is stated in the reply that the applicant was only engaged to work as part-time on contract basis to clean the office space before office hours. It is stated that there is no post of Safaiwala in the office of respondent No.2 and the applicant was not having the status of government servant, therefore, this Tribunal has no jurisdiction to entertain the O.A. It is denied that the applicant was assigned the duties of 8 to 9 hours every day but it is stated that the applicant used to work for one hour in the morning before opening of the office to clean the office and he never worked on Saturday and Sunday and other Gazetted holidays. It is further stated that the respondents vide order dated 17.4.97 extended the contract by 28.2.98 and was increased the amount from Rs.15/- per day to Rs.20/- per day and thereafter it was extended upto 18.8.2000. Therefore, in the absence of further sanction, the impugned order was issued which is perfectly legal and valid. It is also stated that the performance of the applicant during the period has not been satisfactory, therefore, the applicant has no case for interference by this Tribunal and the O.A devoid of any



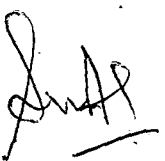
merit is liable to be dismissed.

4. Heard the counsel for the parties and also perused the whole record.

5. The learned counsel for the applicant has argued that the applicant was working with the respondents from April 92 but suddenly his services were terminated vide the impugned order dated 17.8.2000 without affording an opportunity to show cause to the applicant. Therefore, the impugned order of termination is bad in law and liable to be set aside and the applicant is entitled to take back in service with all consequential benefits. In support of his contention, he has referred: (i) 1985(1) SLR, Punjab & Haryana 21, (ii) 1996 (3) SLR Punjab & Haryana, 323, (iii) 1998(4) SLR Punjab & Harhyana 252, (iv) 1999(1) SLR Gujrat 438 and AIR 1999 SC 1160, State of Rajasthan & Ors Vs. Mod Singh. On the other hand, the counsel for the respondents has argued that the applicant was only engaged to work of Safaiwala on part-time basis and his term of contract was not extended beyond 18.8.2000 by the department. Therefore, the impugned order was issued. The applicant in this case does not hold any civil post, therefore, the provisions of Article 311 of the Constitution are not attracted in the instant case.

6. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

7. It is settled law that casual labour has no right to the particular post. He is neither a temporary govt servant nor a permanent govt servant. Protection available under Article 311 does not apply to him. His tenure is precarious. His continuance is depend on the satisfaction of the employer. A temporary status conferred on him by the scheme only confers him those rights which are spelt out in the scheme. A daily



rated casual labourer does not ipso facto get a right of continuance. His right of continuance is subject to availability of work and satisfactory performance and conduct. A casual labourer can be regularised only after selection as per the scheme framed by the department. Merely long service as casual labourer cannot make one a regular hand.

8. In 1985(1) SLR Punjab & Haryana 21, 1996(3) Punjab & Haryana 323 and 1998(4) SLR Punjab & Haryana 252, it has been held that protection of Articles 309 and 311 of the Constitution of India is also available to part-time employees.

9. In the instant case, the applicant does not hold the civil post, therefore, he cannot be termed as employee/govt. servant, within the meaning as defined from time to time.

10. In Secretary of Ministry of Communication vs. Sukhubai, (1997)(11) SCC 224, it has been held that part-time casual labourer has no right to hold the civil post and not covered under the scheme of conferring temporary status.

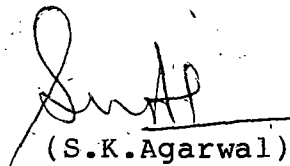
11. In the instant case, the applicant does not hold the civil post and the impugned order is an order of simplicitor only and does not cast any stigma on the applicant. Therefore in view of the facts and circumstances of the case and settled legal position, there is no basis to interfere in the impugned order dated 17.8.2000 and the O.A devoid of any merit is liable to be dismissed.

12. We, therefore, dismiss the O.A having no merit with no order as to costs.



(N.P. Nawani)

Member (A).



(S.K. Agarwal)

Member (J).