

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

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SECTION OFFICER (Judl.)

(4)

FORM NO. @
(See Rule 42,)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

O R D E R S H E E T

Original Application No. 288/05

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant(s) H. Ananta Das

Respondent(s) U.O.T. 9011

Advocate for the Applicants Adil Ahmed

Advocate for the Respondent(s) _____

CGSC

Rly St. Counsel

Notes of the Registry	Date	Order of the Tribunal
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22-11-2005 Present : Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

Heard Mr. A. Ahmed, learned counsel for the applicant and Ms. U. Das, learned Addl. C.G.S.C. for the respondents.

Issue notice to the respondents to show cause as to why the application shall not be admitted.

Post on 06.01.2006.

E. V. Siva Rajan
Vice-Chairman

Steps taken

Path

Please comply order dated
22.11.05.

NTS
22/11/05

Received notice for
R. No. 3
Usha Das
Addl C.G.S.C
21/12/05

mb

6-1-06
Vakalatnama filed by
Mr. B.G. Paria & as on 6/1/06
Providence Park

Om.

Contd.....

Notice & order
Sent to D/Section
for issuing to
resp. No 1, 2 by
regd-A 1D post.

(as) D/No: 1660
2/12/05 Dt: 1661
5/12/05

Notice duly
Served on resp.
No - 3.

(as)
2/12/05

Notice duly
Served on.

resp. No - 1.

(as)
19/12/05

5 - 1 - 06

① Notice duly served
on R. No - 1 & 3.

② No Reply has been
billed.

My

24 - 2 - 06

① Notice duly served on
R. No - 1 & 3.

② No W.Ls has been billed.

My

20 - 3 - 06

No. W.Ls has been
billed.

My
No W.Ls has been billed
20-3-06

06.01.2006

Mr. A. Ahmed, learned
counsel for the applicant is
present. Ms. U. Das, learned Addl.
C.G.S.C. ~~xxxxxx~~ had earlier
entered appearance on behalf of
the respondents. But today another
Vakalatnama on behalf of the
respondents is filed by Mr. B.C.
Pathak. He also seeks for time
for filing written statement.
Post on 27.2.2006. Written state-
ment, if any, in the meantime.

W.P.
Member

Q.J.
Vice-Chairman

27.2.2006.

Mr. B.C. Pathak learned for the
Respondents seeks for time to file
written statement. Post on 21.3.06.

Vice-Chairman

21.3.06.

Mr. B.C. Pathak, learned counsel for
the Respondents seeks for time to file
written statement. Let it be done.

Post on 24.4.06.

Vice-Chairman

24.4.2006

Further time of four weeks is
granted to file reply statement. Post
on 25.5.2006.

Vice-Chairman

W.P.
Member

20 - 3 - 06

No. W.Ls has been
billed.

My
No W.Ls has been billed
20-3-06

O.A 288/05

Notes of the Registry Date Order of the Tribunal

9-5-06

25-05-2006

Mr. A. Ahmed, learned counsel for

applicant submitted that he has received
reply statement today and wanted to file
rejoinder.

Post on 28.06.2006.

AM

W/S has been filed

mb

Vice-Chairman

AM
24-5-06

28.06.2006

Post on 02.08.2006. In the meantime,
learned counsel for the applicant is at
liberty to file rejoinder.

27-6-06

No rejoinder has been
filed

AM
Vice-Chairman

1-8-06

28.06

No rejoinder has been
filed.

The issue involved in this case is
regularisation of the applicant. Con-
sidering the issue O.A. is admitted.
written statement already filed. The
applicant will be at liberty to file
rejoinder.

Post on 23.8.06 for order.

AM
22.8.06.

AM
Member

Vice-Chairman

pg

23.8.06

Post the matter for hearing
on 20.10.06. The applicant are
liberty to file rejoinder.

AM
Vice-Chairman

lm

Notes of the Registry Date Order of the Tribunal

29.10.06

The learned counsel for the respondents is not attend the Court due to his personal difficulty. Post the matter for hearing on 22.11.06.

No rejoinder has been filed.

lm

Vice-Chairman

21
21.11.06.

22.11.2006 Present: Hon'ble Sri K.V. Sachidanandan Vice - Chairman.

Learned Counsel for the applicant submitted an application expressing his inconvenience to appear before this Tribunal on 21.11.2006 to 23.11.2006 and sought for adjournment. Let the matter be posted on 27.11.2006 for hearing.

No rejoinder has been filed.

22
28.11.06.

/mb/

29.11.06.

Post the matter on 11.12.06.

No rejoinder has been filed.

lm

Vice-Chairman

23
8.12.06.

11.12.06

Let the case be posted on 19.1.07 for hearing.

No rejoinder has been filed.

24
18.1.07.

pg

17.1.07.

Counsel for the respondents is not attend the Court for his personal difficulty. Post the matter for hearing on 8.2.07.

No rejoinder has been filed.

25
17.2.07.

lm

Vice-Chairman

8.2.07. The counsel for the respondents made on a letter stating that he has got some personal difficulty. Post the matter on 22.2.07.

No reponider him
been used.

Vice-Chairman

21.2.07.

22.02.2007 Mr.B.C.Pathak, learned counsel for the Respondents prays for adjournment of the matter and posting the matter tomorrow as because he has got some other engagement today.

Post on 23.02.2007.

Vice-Chairman

/bb/

22.02.2007 Mr.B.C.Pathak, learned counsel for the Respondents prays for adjournment of the matter and posting the matter tomorrow as because he has got some other engagement today.

Post on 23.02.2007.

Vice-Chairman

/bb/

23.2.2007

Heard Mr.A.Ahmed, learned counsel for the Applicant and Mr.B.C.Pathak, learned counsel for the Respondents. Hearing concluded.

Order is reserved.

Vice-Chairman

bb

6 OA 288/05

3.5.2007

Judgment pronounced in open court...

kept in separate sheets. The O.A. is disposed of in terms of the order.

No costs.

Vice-Chairman

/bb/

No responder has been
filed.

33
21.2.07

Vice-Chairman

22.02.2007 Mr.B.C.Pathak, learned counsel for the Respondents prays for adjournment of the matter and posting the matter tomorrow as because he has got some other engagement today.

Post on 23.02.2007.

Vice-Chairman

/bb/

22.02.2007 Mr.B.C.Pathak, learned counsel for the Respondents prays for adjournment of the matter and posting the matter tomorrow as because he has got some other engagement today.

Post on 23.02.2007.

Vice-Chairman

/bb/

23.2.2007

Heard Mr.A.Ahmed, ~~xxxxxx~~ learned counsel for the Applicant and Mr.B.C.Pathak, learned counsel for the Respondents. Hearing concluded.

Order is reserved.

Vice-Chairman

bb

3.5.2007

Judgment pronounced in open court,
kept in separate sheets. The O.A. is
disposed of in terms of the order.

No costs.

fixed
Debenath
11/5/07

1.5.07
Certified copy
has been collected
by the L/Adv. for
the appellant.

/bb/

Vice-Chairman

10

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No.288 of 2005

DATE OF DECISION: 03.05.2007

Shri Harakanta Das Applicant/s
Mr. A.Ahmed Advocate for the
..... Applicant/s.

- Versus -

U.O.I. & Ors Respondent/s
Mr.B.C.Pathak Advocate for the
..... Respondents

CORAM

THE HON'BLE MR. K.V. SACHIDANANDAN, VICE CHAIRMAN

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether to be forwarded for including in the Digest Being compiled at Jodhpur Bench & other Benches ? Yes/No
4. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

Vice-Chairman

315

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 288 of 2005.

Date of Order: This, the 3rd day of May, 2007.

THE HON'BLE MR. K.V.SACHIDANANDAN, VICE CHAIRMAN

Shri Harakanta Das
Son of Late Bali Ram Das
Village:-Baushi Urugal
P.O: Tetalia, P.S: Hajo
Dist: Kamrup (Rural)
Assam.

...Applicant.

By Advocate Mr.A.Ahmed.

- Versus -

1. The Union of India
Represented by the Secretary
to the Government of India
Ministry of Labour
New Delhi-1.
2. The Central Provident Fund Commissioner
Provident Fund Organization
Bhavishyanidhi Bhawan, 14
Bhikaji Complex
New Delhi – 110 066.
3. The Regional Provident Fund
Commissioner-I (NER)
Employees Provident Fund Organization
N.E. Region, G. S. Road, Bhangagarh
Guwahati-781005, Assam.

... Respondents.

By Advocate Mr. B. C. Pathak.

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ORDER (ORAL)SACHIDANANDAN. K.V.,(V.C.):

The Applicant was engaged as part time casual labourer w.e.f. 02.06.1995 by the 3rd Respondent and the said Respondent accorded sanction orders for payment for the period 2/1997 to 9/2000 (Annexure-C). The daily wage of the Applicant was also enhanced by the 3rd Respondent from Rs.42.10 to Rs.62/- vide Annexure-D, but on 22.2.2005 Applicant's service was terminated by verbal order. He submitted representation on 8.2.2005 (Annexure-E) against the verbal order of termination but to no avail. Being aggrieved by the non-disposal of the representation the Applicant filed O.A. No.105/2005 before this Tribunal. This Tribunal vide order dated 12.05.2005 directed the Applicant to make proper representation and also directed the competent authority to dispose of the same within a period of three months. Accordingly, Applicant submitted representation on 20.5.2005 and the said representation was disposed of by the Respondents on 12.08.2005 rejecting his prayer. Aggrieved by the aforesaid impugned order the Applicant has filed this O.A. seeking the following reliefs:

“1. The Hon’ble Tribunal may be pleased to direct the respondents to set aside the impugned order under Reference No. AS/LC/EPFO/RO/OA/105/05/HKD/ 05/1448 dated 03/12.08.2005 issued by the Respondent No.3 and the Respondents may be directed by the Hon’ble Tribunal to regularize the service of the Applicant in the Group-D posts with effect from the date of his joining and also the Hon’ble Tribunal may be pleased to direct the Respondents to re-appoint the Applicant in his post and also to release the regular pay scale of the applicant in the Group-D post with retrospective effect with all consequential service benefits including seniority etc.”

2. The Respondents have filed a detailed reply statement contending that there is no cause of action or any legal right to justify in filing of this O.A. The Applicant was engaged as a casual labourer on daily wage basis to meet the job of very casual nature of water carrier in its erstwhile rented building having no proper water facilities and provisions. Applicants’ claim that he was engaged as a Group-D staff is totally baseless and such statements are misleading ones. The power to engage/appoint casual labourer and Group-D staff lies with the Regional Provident Fund Commissioner, Grade-I of the respective regions as provided under Regulation 5 of the “Employees’ Provident Fund (Staff and Condition of Service) Regulations, 1962”, which is framed under the provision of

Section 5 (D)(7)(a) of the Employees Provident Funds and Misc. Provisions Act, 1952. The Respondents have their own Recruitment and other statutory Rules to regulate the affairs of recruitment, appointment, discipline and appeal etc. and no recruitment/appointment can be made dehors such rules and regulations. The Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993 is applicable to Employees Provident Fund Organization (EPFO in short) also. The said scheme came into force w.e.f. 1.9.1993 as a one time measure to take care of the cases of Casual Labourers who had been in engagement while the scheme was introduced and completed at least 240 days in job. The Applicant was engaged as casual labourer on daily wage basis to meet the contingent nature of job and he was never appointed against any earmarked vacancy and as per provisions of any such Recruitment Rules. His engagement was purely of casual nature. He was not issued any order of appointment. As such, he has acquired no legal right to be regularized in service. By the shifting of the office from its rented building to its own premises having all the facilities available as an in-built arrangement, certain requirements and jobs have ceased to exist. The jobs of water carrier and such allied jobs were no longer required. Moreover, there is no post

lying vacant in the establishment to accommodate the person. Accordingly, the Applicant has been disengaged from 23.03.2005. The Applicant is not entitled to any relief as prayed in this O.A. and therefore, the O.A. is to be dismissed.

3. I have heard Mr.A.Ahmed, learned counsel for the Applicant and Mr.B.C.Pathak, learned counsel for the Respondents. Learned counsel for the parties have brought my attention to the various pleadings, materials and evidence placed on record. Learned counsel for the Applicant would argue that having put in more than ten years of service the Applicant has acquired a legal right and his service cannot be terminated. Learned counsel for the Respondents, on the other hand, persuasively argued that the Applicant was engaged as casual labourer on daily wage basis and when the office was shifted to its own premises the job has ceased to exist and therefore, his engagement was stopped. Applicant has no legal right to be appointed in any Group-D post.

4. I have given due considerations to the arguments, pleadings, materials and evidence placed on record. It is an admitted fact that the Applicant was engaged as part time water carrier w.e.f. 02.06.1995 and he has been engaged upto

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23.03.2005 and as such he has put in almost ten years of service. Applicant's case is that he has been engaged continuously without any break against the job of carrying water, which was, a must. He approached this Tribunal in earlier O.A. No.105/2005 and this Tribunal directed the Respondents to consider his case with reference to the relevant provisions and Govt. orders in that regard and dispose of the matter. Applicant submitted a detailed representation relying certain decisions of the Hon'ble Supreme Court claiming that he cannot be terminated without any valid reasons. However, by the impugned order dated 03.08.2005 Respondents have rejected his claim giving detailed explanation of the Supreme Court rulings and contended that the Applicant is not entitled for the same. It is an admitted fact that Respondents Authorities are governed by the Employees Provident Fund (Staff and Condition of Service) Regulations, 1962 and Employees Provident Funds and Misc. Provisions Act, 1952. They have got their own recruitment and other statutory rules to regulate appointment, recruitment, discipline and appeal etc. and no appointment can be made dehors the rules and regulations. The Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1993 was introduced by the Govt. of

India to care of the cases of the casual labourers. It is profitable to quote Clause 4 of the said Act as under:-

“ 4. *Temporary status.*-(i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).

(ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group ‘D’ posts.

(iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.

(iv) Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group ‘D’ posts.”

The aforesaid Scheme came into effect w.e.f. 01.09.1993. The Hon’ble Supreme Court in the case of **Mohan Paul vs. Union of India**, reported in 2002(4) SCC 573 held the said scheme is a one time measure and not an ongoing process to include all the

casual labourers for all the times to come. The scheme has been formulated to take care of the case of the casual labourers who had been in engagement at the time of introduction of the scheme and completed 240 days of work in a year prior to the stipulated date of notification i.e., 10.09.1993. At Clause 4 of the said scheme it is categorically stated that such casual labourer who may be granted temporary status as per the scheme shall not be brought to permanent establishment unless they are selected through a regular selection process for Group D post. At Clause 8 of the scheme it is mentioned that two out of every three vacancies in Group-D posts in respective office where the casual labourers have been working would be filled up as per extant Recruitment Rules and instructions of the Govt. of India. Admittedly, the Applicant was engaged only in 1995 much after the date of notification. It is borne out that the Applicant was engaged as casual labourer on daily wage basis to meet the contingent nature of job of water carrier not against any earmarked vacancy. Applicant was engaged on 02.06.1995 - the date, which is much later than the crucial date i.e., 10.09.1993. Even assuming that the Applicant completed 240 days of work in a calendar year it was not prior to 10.09.1993. He was dis-engaged on 23.03.2005.

5. Learned counsel for the parties in support of their contentions relied on the various decisions. In the case of **Dhirendra Chamoli & Others -vs- State of U.P.**, reported in (1986) 1 SCC 637, also relied by the counsel for the Applicant, the Apex Court held as under:-

“But we hope and trust that posts will be sanctioned by the Central Government in the different Nehru Yuvak Kendra, so that these persons can be regularized. It is not at all desirable that any Management and particularly the Central Government should continue to employ persons on casual basis in organization, which have been in existence over 12 (Twelve) years.”

In another case of **Bharatiya Dak Tar Mazdoor Manch -vs- Union of India and Another**, reported in (1988) 1 SCC 122, relied by the counsel for the Applicant, the Hon'ble Supreme Court held that the Govt. cannot take advantage of its dominance position. This Court would now refer to the relevant decisions on this issue. In **Gujarat Agricultural University vs. Rathod Labhu Bechar**, reported in 2002 (2) SCT 394 after taking into consideration the earlier decisions on the point, the Apex Court held that long continuation of work carry a presumption of existence of regular posts. Financial constraints of statutory

body of the State cannot be stretched for the benefits of the institution or the State at the cost of the workers. The State should take up only that much work which is within its financial resources. In the case of **Dherender Chamoli & Another -vs- State of Haryana**, reported in 1986 (1) LLJ 134 the Hon'ble Supreme Court held that non-availability of a post is no ground for rejecting regularisation of the employees, if they are otherwise eligible.

Much water has flown through the river and when repeated directions of various Courts has finally been settled by the Hon'ble Court with a direction to the Central Govt. to formulate a policy for regularization of the casual labourer the DOPT has formulated the Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1993 that has been discussed above. The Hon'ble Supreme Court has now settled the law that service of casual labourer, work charge employee, ad hoc employee cannot be permanently regularized dehors the rules, such persons would only be considered as per the Recruitment Rules on fulfilling the required criteria.

6. Now, it will be befit of things to evaluate the case of the Applicant with the above legal position. The Hon'ble



Supreme Court in its latest decision in this regard rendered in the case of **Mineral Exploration Corporation Employees' Union – vs- Mineral Exploration Corporation Ltd., and Another**, reported in (2006) 6 SCC 310 observed that ample material on record showed that temporary/casual/contingent employees of respondent Corporation were doing work of permanent nature and work which used to be done by skilled employees, but were continued as temporary/contingent workmen for long duration of time and held that it shall be proper to regularize the services of such workmen who had worked for several years, however, the workmen in order to succeed will have to substantiate their claims as per established principles of law. The matter was remitted back to the Tribunal by the Apex Court with detailed directions to decide the case of the employees therein strictly in accordance with and in compliance with all the directions given in the case of **Secretary, State of Karnataka & Others –vs- Umadevi (3) and Others**, reported in (2006) 4 SCC 1, more particularly the paragraphs 12 & 53 thereof and without being influenced by any of the observations made in the Judgment. For better elucidation paragraphs 12 & 53 of the said judgment is reproduced below:-

"12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for the Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V.Narayanappa*, *R.N.Nanjundappa* and *B.N.Nagarajan* and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of

orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

This decision, being the latest and Full Bench Judgment of the Hon'ble Supreme Court wherein many earlier judgments are discussed, some of which are already referred in this judgment, governs the field. The Supreme Court in the said judgment has declared that it is erroneous for the Supreme Court to merely consider equity for the handful of people who have approached the court with a claim whilst ignoring equity for the teeming millions seeking employment and a fair opportunity for

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competing for employment - Further, courts must be careful in ensuring that they do not interfere unduly with the economic/financial arrangement of the affairs of the State or its instrumentalists and recognized the sovereignty of the State in engaging casual labourers on daily wages in public employment as it may require. But it then declared in above paras that those who have put more than ten years of service technicalities should not stand in the way for their regularisation. Considering entire aspects of the legal position as discussed above, I am of the view that the Applicant, who had been engaged from 1995 till 2005 almost for ten years, cannot be deprived of its chances and abrupt denial to provide work to the Applicant is not just and proper. But the contention of the Respondents to the effect that there is no scope for any job for him since office has already been shifted to its own building having its own infrastructural facilities has also to be taken into consideration. The specific case of the Applicant is that Respondents are engaging other persons in other works of the casual nature. If that is true, it should not be permitted because the accepted legal dictum - "an ad hoc employee should not be replaced by another ad hoc employee" is equally applicable in casual labourer employment also.

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7. Considering the entire gamut and facts of the case I direct the Respondents to engage the Applicant on casual labourer job in preference to his juniors and new comers if any casual labourer job under the Respondents in the unit is available or in the next available vacancy. In other words, Applicant will get topmost priority for such jobs. Respondents shall pass appropriate orders and communicate the same to the Applicant taking the spirit of the above decisions/observations made by the Hon'ble Supreme Court and this Court. ✓

The Original Application is disposed of with the above directions. In the circumstances, there will be no order as to costs.



(K.V.SACHIDANANDAN)
VICE CHAIRMAN

/BB/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI.

(An Application Under Section 19 of The Administrative Tribunals Act 1985)

ORIGINAL APPLICATION NO. 288 OF 2005.

BETWEEN

Shri Harakanta Das ...Applicant

- Versus -

The Union of India & Others ...Respondents

LIST OF DATES AND SYNOPSIS

02.06.1995 The applicant was engaged as part time water carrier by the Respondent No. 3
(Annexure - A, Page - 13 to 14)

22.09.1998 The Respondent No. 3 attached the applicant to the P.R.O. Cell as Group-D staffs in addition to his status as water carrier on daily wages basis.
(Annexure - B, Page - 15)

23.03.2001 The Respondent No.3 accorded sanction of arrears payment to the Applicant for the period from 2/97 to 9/2000 amounting of Rs.9697.10 (Rupees Nine Thousand and Six Hundred Ninety Seven and Paise Ten Only).
(Annexure - C, Page - 16)

29.07.2003 The applicant's daily wage was also enhanced by the Office of the Respondent No.3 from Rs.42.10 (Rupees Forty Two and paise Ten only) to Rs. 62/- (Rupees Sixty Two only) w.e.f 01.11.2001.
(Annexure - D, Page - 17)

23.02.2005 The applicant's service was terminated by the Respondent No. 3 by a verbal order.

08.03.2005 The applicant submitted representation before the Respondent No. 3 against the verbal order dated 23.02.2005 for consideration of his case. (Annexure - E, Page-18)

12.05.2005

Being aggrieved by the action of the Respondents for non-disposal of the Applicant's Representation, the Applicant filed an Original Application No.105 of 2005 before the Hon'ble Tribunal. The Hon'ble Tribunal disposed of the said Original Application at the Admission stage and directed the Applicant to make a proper representation stating all the claims with the reference to relevant provisions or Government Orders in that regard before the competent authority within a period of one month from the date of passing of the order. The Hon'ble Tribunal further stated that if any such Application is filed by the applicant the competent authority will consider the same and pass a speaking order thereon within three months thereafter.

(Annexure – F, Page - 19 of 21)

20.05.2005

The Applicant filed a representation before the Respondents as per direction of this Hon'ble Tribunal.

(Annexure – G, Page - 22 of 24)

03/12.08.2005

The Respondent No. 3 vide its impugned order under Reference No. AS/LC/EPFO/RO/OA/105/ 05/HKD/05/ 1448 disposed of the representation dated 20.05.2005 with a observation that the applicant is not entitled to be regularized in any Group D posts and the applicant is also not to be re-engaged in any job of causal labour as at the present there is no such requirement of service of any such casual labour in the office of the Regional Provident Fund Commissioner, N.E. Region.

(Annexure – H, Page - 25 of 29)

Hence this application against the impugned order dated 03/12.08.2005 seeking reappointment and regularization in the office of the respondents.

— 1 —

28
File No.
Shri Harakanta Das
Applicant
Hojago, Assam
(Acc. Date)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI.**

(An Application Under Section 19 of The Administrative Tribunals Act 1985)

ORIGINAL APPLICATION NO. 288 OF 2005.

BETWEEN

Shri Harakanta Das
Son of Late Bali Ram Das
Village-Baushi Urugal P.O.-Tetalia
P.S.- Hajo, District-Kamrup (Rural),
Assam.

... Applicant

- AND -

1. The Union of India represented by the Secretary, Government of India, Ministry of Labour, New Delhi-1
2. The Central Provident Fund Commissioner, Head Quarter, Employees Provident Fund Organisation, Bhavishyanidhi Bhawan, 14 Bhikaji Complex, New Delhi - 110066.
3. The Regional Provident Fund Commissioner - I (NER), Employees Provident Fund Organisation, N.E. Region, G. S. Road, Bhangagarh, Guwahati-781005, Assam.

... Respondents

DETAILS OF THE APPLICATION

1 PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

This application is made against the Impugned Order under Reference No.AS/LC/EPFO/RO/OA/105/05/HKD/05/1448 Dated 03.08.2005 issued by the Respondent No.3 and also against the

Harakanta Das

termination of services of the Applicant from his service on 23.03.2005 by the Office of the Respondent No.3.

2. JURISDICTION OF THE TRIBUNAL:

The Applicant declares that the subject matter of the instant application is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION:

The Applicant further declares that the subject matter of the instant application is within the limitation prescribed under Section 21 of the Administrative Tribunals Act 1985.

4. FACTS OF THE CASE:

Facts of the case in brief are given below:

4.1 That your humble Applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges guaranteed under the Constitution of India. He belongs to Other Backward Classes of Assam. He is now aged about 38 years.

4.2 That your Applicant begs to state that he was appointed as part time water carrier with effect from 02.06.1995 vide order issued by the Office of the Respondent No.3 i.e. Office of the Regional Provident Fund Commissioner, Bhangagarh, Guwahati-5. The Respondent No.3 vide his Order No. Adm/AS/31/Personal/Vol-II/11793 dated 22.09.1998 attached him to the P.R.O. Cell as Group-D staffs in addition to his status as Water Carrier on daily wages basis.

ANNEXURE - A is the photocopy of engagement letter of the Applicant as part time Water Carrier w.e.f. 02.06.1995 issued by the Office of the Respondent No.3.

Hag Konta Dass

ANNEXURE - B is the photocopy of Order No.Adm/AS/31/Personal/Vol-II/11793 dated 22.09.1998 issued by the Respondent No.3.

4.3 That your Applicant begs to state that the Office of the Respondent No.3 vide Office Order No.Adm/AS/31/Personal/Vol-II/7114 Dated 23.3.2001 accorded sanction of arrears payment to the Applicant for the period from 2/97 to 9/2000 amounting of Rs.9697.10 (Rupees Nine Thousand and Six Hundred Ninety Seven and Paise Ten Only). His daily wage was also enhanced by the Office of the Respondent No.3 from Rs.42.10 (Rupees Forty Two and paise Ten only) to Rs.62 (Rupees Sixty Two only) w.e.f 01.11.2001 vide Office Order No.As/Adm/31/Personal/Vol-II/3350 dated 29th July 2003.

ANNEXURE - C is the photocopy of Office Order No.Adm/AS/31/Personal/Vol-II/7114 dated 23.3.2001.

ANNEXURE - D is the photocopy of Office order No.As/Adm/31/Personal/Vol-II/3350 dated 29th July 2003.

4.4 That your Applicant begs to state that he was working continuously for more than 10 (Ten) years as a Casual Worker but all of a sudden on 23.03.2005 his services were verbally terminated by the Office of the Respondent No. 3. He immediately on 08.03.2005 filed a representation before the Respondent No.3 against the verbal termination order of his services but the Respondent No.3 did not take any action in this regard. Being aggrieved by this, your Applicant filed an Original Application No.105 of 2005 before this Hon'ble Tribunal. The Hon'ble Tribunal vide its Order dated 12th May 2005 directed the applicant to make a proper representation stating all the claims with the reference to relevant provisions or Government Orders in that regard before the competent authority within a period of one month

Harkar Singh

from the date of passing of the order. The Hon'ble Tribunal further stated that if any such Application is filed the competent authority will consider the same and pass a speaking order thereon within three months thereafter. Accordingly, your Applicant filed a representation on 20th May 2005 before the Respondents as per direction of this Hon'ble Tribunal.

ANNEXURE - E is the photocopy of Judgment & Order dated 12.05.2005 passed by the Hon'ble Tribunal in O. A. No. 105 of 2005.

ANNEXURE - F is the photocopy of Representation dated 20th May 2005 filed by the Applicant before the Respondents.

4.5 That your applicant begs to state that the Respondent No. 3 vide its impugned order under Reference No. AS/LC/EPFO/RO/OA/105/ 05/HKD/05/ 1448 dated 03/12.08.2005 disposed of the representation dated 20.05.2005 with a observation that the applicant is not entitled to be regularized in any Group D posts and the applicant is also not to be re-engaged in any job of causal labour as at the present there is no such requirement of service of any such casual labour in the office of the Regional Provident Fund Commissioner, N.E. Region.

ANNEXURE - G is the photocopy of the impugned order dated 03/12.08.2005 passed by the Respondent No. 3.

4.6 That your applicant begs to state that the said impugned order dated 03/12.08.2005 passed by the Respondent No. 3 is illegal, arbitrary, whimsical and also without applying his mind. The Respondent No. 3 in his rejection order dated 03/12.08.2005 has admitted that the applicant was in his job from 02.06.1995 to 23.03.2005 continuously. The respondents has quotated the Government of India's Scheme, namely Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Govt. of

Harkat Singh

India 1993 issued by the Department of Personnel and Training vide O.M. No. 51016/2/90-Estt..(C) dated 10.09.1993 and also stated that the applicant was appointed on 02.06.1995 after the said Scheme. So he is not entitled for regularization of his service and grant of temporary status. The reasons/grounds stated by the respondents in the order dated 03/12.08.2005 is flimsy and also without application of mind. If the respondents is well aware of the said Scheme of 1993 they should not engage/appoint the applicant continuously for more than 10 years since 1995 to 2005. The applicant cannot suffer for the fault of the respondents. The respondents also cannot adopt such policy which is not in conformity with the equality clause and an employee is not to be hired and fired. If such person is engaged for a long period steps should be taken to regularize them by taking aid of some legal policies. The applicant was in need of job and accordingly in whatever conditions he was brought with but the respondents as a state is to act as benevolent employer which demands fairness in action. The applicant rendered job under the Respondents without any blemish in his service which has generate a legitimate exception on the part of the applicant to expect a fair deal for regularization of his service.

4.7 That your Applicant begs to state that he has acquired a legal right for regularisation and also regular pay scale as a Group-D staff.

4.8 That your Applicant begs to state that the Office of the Respondent No.3 under which he had worked was a newly set up office and the office is properly functioning in the said new building. In the said office the Respondents in requirement of his service appointed your applicant on casual basis with an assurance that the services will be regularised within a short span of time but in spite of the said assurance the Respondents did not materialize the case of the applicant, but all of a sudden he has been thrown out from the service by the Respondents after 10 (Ten) years dedicated and sincere service of the Applicant. Hence, the action of

the respondents is illegal, arbitrary, whimsical and also capricious. As such, the Hon'ble may be pleased to interfere this matter for the ends of justice.

4.9 That your Applicant begs to state that the Hon'ble Supreme Court in daily rated casual labour employed under P & T department through Bharatiya Dak Tar Mazdoor Manch -Vs- Union of India and another, (1988) 1 S.C.C. 122 held that the government cannot take advantage of its dominate position and also directed to prepare a scheme for absorbing the casual labours who rendered one year casual service in the Posts and Telegraph Department. Similar direction for regularization of services of casual labours passed by the Hon'ble Supreme Court in the case of the Dhirendra Chamoli & others -Vs- State of U.P., (1986) 1 SCC 637 wherein it was held as follows: -

“But we hope and trust that posts will be sanctioned by the Central Government in the different Nehru Yuval Kendra, so that these persons can be regularized. It is not at all desirable that any Management and particularly the Central Government should continue to employ persons on casual basis in organization, which have been in existence over 12 (Twelve) years.”

In view of the aforesaid position and law laid down by the Hon'ble Supreme Court of India, the Applicant is entitled to be reappointed and regularized w.e.f. date of his engagement.

4.10 That your Applicant begs to state that if the Hon'ble Tribunal does not interfere the case of the applicant, the applicant will suffer irreparable loss and injury. Therefore the respondents may be directed to re-appoint the applicant and to regularize the services of the applicant.

4.11 That your Applicant begs to state that he is a very poor person and consisting a huge family who are fully dependent to him. Moreover he was working very sincerely and honestly under the Respondents since last 10 (Ten) years. There is no blemish in

Harkandas

his service career. Now suddenly he has been thrown out from job and his entire family members of the Applicant has been at the stage of starvation. Hence the Hon'ble Tribunal may be pleased to protect the Applicant and his family members from starvation by passing an Interim Order directing the Respondents for re-appointment of the Applicant till the disposal of this Original Application.

4.12 That your Applicant begs to state that apart from the illegality of the Respondents regarding non regularisation of the service of the Applicant, the Respondents have denied the benefit of equal pay to equal work to the present Applicant. The work performed by the Applicant is similar to the work performed by the regular Group-D employees but those Group-D employees are in receipt of higher pay than that of the present Applicant.

4.13 That your applicant begs to state that the balance of convenience is strongly in favour of the applicant. As such, the respondents cannot deny the same without any reasons or causes.

4.14 That your Applicant begs to state that finding no other alternative your Applicant has compelled to approach this Hon'ble Tribunal again for seeking justice in this matter and also for setting aside the impugned order under reference No. AS/LC/EPFO/RO/OA/105/05/HKD/05/1448 dated 03/12.08.2005.

15 That this application is filed bonafide for the ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:

5.1 For that, on the reasons and facts which are narrated above the action of the Respondents is *prima facie* illegal, arbitrary, whimsical and without jurisdiction. Hence, the impugned order under reference No. AS/LC/EPFO/RO/OA/105/05/HKD/05/1448 dated 03/12.08.2005 is liable to be set aside and quashed.

5.2 For that the action of the Respondents are malafide and with a motive behind to deprive the applicant from his legitimate right. Hence, the impugned order under reference No. AS/LC/EPFO/RO/OA/105/05/HKD/05/1448 dated 03/12.08.2005 is liable to be set aside and quashed.

5.3 For that, the action of the respondents is not in conformity with the equality clause and also an employee is not hired and fired by the employer after working for a considerable long period, i.e. for ten (10) years. Hence, the impugned order under reference No. AS/LC/EPFO/RO/OA/105/05/HKD/05/1448 dated 03/12.08.2005 is liable to be set aside and quashed.

5.4 For that, the respondents fully aware of the Scheme of the Casual Labours (Grant of Temporary Status and Regularisation) Scheme of Government of India 1993 as mentioned in their order dated 03/12.08.2005, but after knowing well about the scheme the respondents have engaged/appointed the applicant from 1995 to 2005 for ten years. Hence, the impugned order under reference No. AS/LC/EPFO/RO/OA/105/05/HKD/05/1448 dated 03/12.08.2005 is liable to be set aside and quashed.

5.5 For that the respondents have violated of Articles 14, 16 & 21 of the Constitution of India. Hence, the impugned order under reference No. AS/LC/EPFO/RO/OA/105/05/HKD/05/1448 dated 03/12.08.2005 is liable to be set aside and quashed.

5.6 For that the Applicant have become over aged for other employment.

5.7 For that there are still vacancy under the respondents in their offices, but the respondents have willfully and intentionally deprive the applicant from his legitimate claim. Hence, the impugned order under reference No. AS/LC/EPFO/RO/OA/105/05/HKD/05/1448 dated 03/12.08.2005 is liable to be set aside and quashed.

5.8 For that it is not just and fair to terminate the service of the Applicant only because he was initially recruited on casual basis.

5.9 For that he has gathered experience of different works in the establishment.

5.10 For that the nature of work entrusted to the Applicant is of permanent nature and therefore he is entitled to be regularised in his post.

5.11 For that the Applicant has got no alternative means of livelihood.

5.12 For that the Central Government being a model employer cannot be allowed to adopt a differential treatment as regard payment of wages to the Applicant.

5.13 For that in view of the matter the action of the respondents in the eye of law as well as in the facts and circumstances of the case.

The Applicant craves leave of this Hon'ble Tribunal to advance further grounds at the time of hearing of instant application.

6. DETAILS OF REMEDIES EXHAUSTED :

That there is no other alternative and efficacious and remedy available to the applicant except the invoking the jurisdiction of this Hon'ble Tribunal.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:

The Applicant further declares that he has not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, authority, nor any

such application, writ petition of suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above the Applicant most respectfully prayed that Your Lordships may be pleased to admit this application, call for the records of the case, issue notices to the Respondents to show cause as to why the relief or relieves sought for by the Applicant may not be granted and after hearing the parties may be pleased to direct the Respondents to give the following reliefs.

8.1 The Hon'ble Tribunal may be pleased to direct the respondents to set aside the impugned order under Reference No. AS/LC/EPFO/RO/OA/105/05/HKD/05/1448 dated 03/12.08.2005 issued by the Respondent No. 3 and the Respondents may be directed by the Hon'ble Tribunal to regularize the service of the Applicant in the Group-D posts with effect from the date of his joining and also the Hon'ble Tribunal may be pleased to direct the Respondents to re-appoint the Applicant in his post and also to release the regular pay scale of the applicant in the Group-D post with retrospective effect with all consequential service benefits including seniority etc.

8.2 To pay the costs of the application.

9. INTERIM ORDER PRAYED FOR:

Pending final decision of this application the Applicant seek the following the interim relief from this Hon'ble Tribunal :

9.1 That the Respondents may be directed by this Hon'ble Tribunal re-appoint the Applicant in his service till final disposal of this Original Application.

Hari Kondaday

10 THIS APPLICATION IS FILED THROUGH ADVOCATE.

11 PARTICULARS OF L.P.O.

L.P.O. No. : 20 Cr 156786

Date of Issue : 8/11/05

Issued from : C.R.P.O, Granthati

Payable at : Granthati

12 LIST OF ENCLOSURES:

As stated above.

Verification

HarkaterDas

VERIFICATION

I, Shri Harakanta Das, Son of Late Bali Ram Das, aged about 38 years residence of Village-Baushi urugul P.O.-Tetalia, P.S.- Hajo, District-Kamrup (Rural), Assam do hereby solemnly verify that the statements made in paragraph nos. 4.1, 4.6, 4.7, 4.8, 4.10 to 4.13 —

— are true to my knowledge, those made in paragraph nos. 4.2, 4.3, 4.4, 4.5, 4.9 are being matter of records are true to my information derived there from which I believe to be true and those made in paragraph 5 are true to my legal advice and rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 21st/11/2005 day of 2005
at Guwahati.

Harakanta Das

Harakanta Das

ANNEXURE-A
-Typed Copy-

Office of the Regional P.F. Commissioner

Sri Harakanta Das has been engaged as part time water carrier w.e.f. 2.6.95. Hence, Sri Das may be allowed to perform his duties before and after office hours and also on holidays.

Sd/-
Illegible
Assistant P.F.Commissioner (Admn.)
(Office Seal)

To

Sri D. Boro }
Sri M. Das }
 Chowkidar

(Afford)
fd *Ansute*

Office of the Regional P. P. Commissioner.

ANNEXURE - A

12/14/41
Sri HareKanta Das has been
engaged as part-time water carrier
W.e.t. 2. G. 75. Hence, Sri
Das may be allowed to perform
his duties before and after
Office hours and also on holidays.

To

Sri D. B. Das
Sri M. Das

Ass't. P. P. Commissioner

Chowkidar (H.C.R.) Gully

After
fil. date

13-15
ANNEXURE - B

EMPLOYEES' PROVIDENT FUND ORGANISATION, REGIONAL OFFICE
N.E. REGION, G.S. ROAD, BHANGAGARH,
GUWAHATI - 781 005 (ASSAM)

No: Adm/AS/31/Personal/Vol-II/11793

Date: 22.09.98

Sub:- Deployment of Group 'D' staff for PRO Cell.

The PRO Cell is presently functioning with one Group 'D' staff only. With the introduction of the new system where claimants have to first meet the PRO for getting the information regarding their claims etc., the services of one Group 'D' has been found in-adequate. In order to facilitate quick disposal of the enquiries from the various sections through the PRO, one additional staff is being deputed. Accordingly Shri H.K.Das, Water Carrier will in addition to his duties will now be attached to the PRO Cell under the supervision and control of the PRO for the purposes of getting the status of the claims etc. This additional work of Messenger to Shri H.K.Das will, however, not affect his status as a Water Carrier on daily wages.

RWA

(R. GOSWAMI)
Regional P.F. Commissioner-I (NER)

To,

Shri H.K.Das.

Copy to:-

1. AC(Adm)
2. PRO.

Attached
File
Date

ग्राम : भविष्यनिधि, गुवाहाटी
Telegrom : BHAVISHYANIDHI, Guwahati
फोन/Fax : 0361-529047
e-mail : rpfguw@nsm.nic.in



ANNEXURE - C

दूरध्वाय/Phone : 451510, 529958, 557264, 455189
कार्यालयीय भविष्य निधि संगठन
Employees' Provident Fund Organisation
प्रग संवाला, भारत राज्य
Ministry of Labour, Govt. of India
श्रीमीय यार्यालय, पूर्वोत्तर क्षेत्र, जी. एस. रोड,
REGIONAL OFFICE, N. E. REGION, G. S. ROAD
भागलपुर, गुवाहाटी - 781005 (असाम)
भागलपुर, गुवाहाटी - 781005 (असाम)

क्रमांक.....

Ref. No.....Adm/AB/31/Personal/Vol-II/711,

मित्रांक.....

Date.....25/5/01

O F F I C E O R D E R

Sanction is hereby accorded for payment to Sri
H. Das, Water Carrier as arrear payment for the period
from 2/97 to 9/2000 amounting to Rs.9697.10.

W.M. KAPAI
(R.W. KAPAI)
Assistant P.F. Commissioner (Adm)
For Regional P.F. Commissioner-I (NEB)

To,

1. Pay Bill Seat to prepare the bill in the name of C.T.
2. P.A.C.
3. Care Taker (Local) is directed to disburse the amo amount to Sri H.Das (Water Carrier)

Attest
Shanta

To,

The Hon'ble Commissions
Provident fund N.E. Region
Regional office G.S. Road,
Bhamagarh, Guwahati.

Sub.: Prayer for consideration of my reinstatement position.

Sir,

I have the honour to put before you the following few lines for your kind consideration and natural justice.

That sir, I was engaged as a water carrier, then after engaged me in the IV grade staff vide order No. Adm/As/31 personal /Vol-II/11793 of 22.9.98.

That Sir, after having heard the verbal order. I am bolt from the blue that without any legal objection, may terminated a person from his service in a matter of very serious and regarded as his family will be remain starving for fooding.

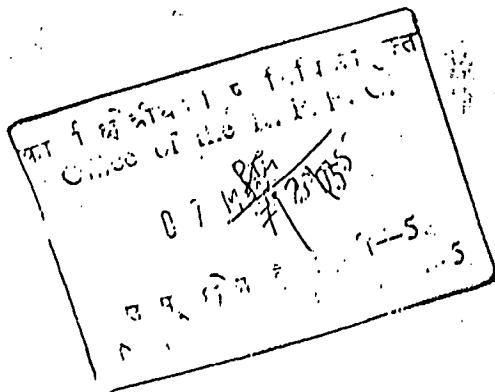
That sir, even the pay for the month of Jun February /05 is pending under your office, yet not received may kindly allow to lining the family members.

There for, I servently request your kindly to make an arrangement to consider my case of reinstatement in the same service as well as before as if the poor person may fine by the favour of your honourable justice to the humble petetioner and objects.

Yours faithfully

Harihar Das
(H. Das)

8/3/05



*Harihar
Das*

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 105/2005.

Date of Order : This the 12th day of May, 2005

The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman
The Hon'ble Mr. K.V. Prabhakar, Administrative Member

Sri Harukanta Das
Son of Late Bali Ram Das
Village - Baushiurugul P.O. - Tetalia
P.S. Hajo District - Kamrup (Rural),
Assam

By Advocate Mr. Adil Ahmed.

... Applicant

- Versus -

1. The Union of India, represented by the Secretary, Government of India, Ministry of Labour, New Delhi - 1.

2. The Central Provident Fund Commissioner Head Quarter, Employees Provident Fund Organisation, Bhuvishyamidhi Bhawan, 14 Bhikaji Complex, New Delhi - 10 006.

3. The Regional Provident Fund Commissioner - I (NER) Employees Provident Fund Organisation, N.E. Region, G.S. Road, Bhangaghat, Guwahati - 781 005, Assam.

By Mr. M.U. Ahmed, Addl. C.G.S.C.

... Respondents

ORDER (ORAI)

SIVARAJAN J. (V.C.)

The applicant was engaged by the 3rd respondent as a part time water career with effect from 02.06.1995. Subsequently, the applicant was given additional

48

duty of group 'D' staff evidenced by letter dated 22.09.1998 (Annexure - B). The Office Order dated 29.07.2003 shows that the applicant was engaged on daily wages basis. The grievance of the applicant is that though he had worked under the respondents right from 1995 till February, 2005, his services was discontinued without proper cause. The applicant, it is stated, has filed a representation dated 08.03.2005 (Annexure - E) before the 2nd respondent. The applicant seeks for a direction to the respondents to regularize his services in the Group 'D' post with effect from the date of his joining and also to re-appoint him to the said post with all consequential benefits.

2. We have heard Mr. A. Ahmed, learned counsel for the applicant and also Mr. M.U. Ahmed, learned Addl. C.G.S.C. on behalf of the respondents.

3. Since it is stated that the applicant had worked under the Respondents as a Casual Worker/Group 'D' employee since 1995 till February 2005 and that his service has been discontinued without proper notice or opportunity and since the applicant has already filed a representation for the relief sought in this application, we are of the view that this application can be disposed of at the admission stage itself. Since we feel that the representation already submitted does not contain all the requisite details both on facts and on legal position, we direct the applicant to make a proper representation stating all the claims with reference to the relevant provisions or Government Orders in that regard before the competent authority within a period of one month from today. If any such application is filed, the said authority will consider the same and pass a speaking order thereon within three months thereafter.

GD

Albert
11/1/2005

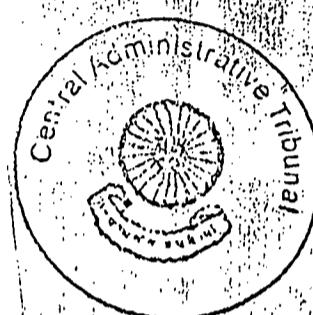
The Original Application is disposed of as above at the admission stage itself.

The applicant will produce this order alongwith representation before the concerned respondent for compliance.

Issue urgent copy of this order to the parties.

sd/ VICE CHAIRMAN

sd/ MEMBER (A)



TRUE COPY

Section Officer (S) 17/5/05
C.A.T. GUWAHATI HANCI
Guwahati-781005
KES 17/5

Attended
A. J. Bora

Dated 20th May 2005

W9

To

The Central Provident Fund Commissioner,
Head Quarter, Employees Provident Fund Organisation,
Bhavishyanidhi Bhawan, 14 Bhikaji Complex,
New Delhi-110066.

Ref.: Original Application No.105 of 2005

Shri Harakanta Das

... Applicant

-Vs-

Union of India & Others

... Respondents

Sub: - In reference to the above O.A.No.105 of 2005 the Applicant submitted the following Representation before the Respondents as per direction of the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati.

Respected Sir,

Most humbly with due respect I beg to submit this representation for your sympathetic and kind consideration.

1) That Sir, I belong from other backward classes and also from a very poor and economically backward family. Now I am aged about 38 years. I was appointed as part time water carrier with effect from 02.06.1995 vide order issued by the Office of the Respondent No.3 i.e. Office of the Regional Provident Fund Commissioner, Bhangaghat, Guwahati-5. The Respondent No.3 vide his Order No. Adm/AS/31/Personal/Vol-II/11793 Dated 22.09.98 attached me to the P.R.O. Cell as Group-D staffs in addition to my status as a Water Carrier on daily wages.

Annexure-A is the photocopy of engagement letter as part time Water Carrier w.e.f. 2-6-1995 issued by the Office of the Respondent No.3.

Annexure-B is the photocopy of Order No. Adm/AS/31/Personal/Vol-II/11793 Dated 22.09.98 issued by the Respondent No.3.

2) That Sir, the Office of the Respondent No.3 vide their Office Order No. Adm/AS/31/Personal/Vol-II/7114 Dated 23.3.01 accorded sanction of arrear payment to me for the period from 2/97 to 9/2000 amounting of Rs.9697.10 (Rupees Nine Thousand and Six Hundred Ninety Seven and Ten Paise) only. My daily wage also enhanced by the Office of the Respondent No.3 from Rs.42.10 (Rupees Forty Two and Ten paise) only to Rs.62 (Rupees Sixty Two) only w.e.f. 01-11-2001 vide Office order No. As/Adm/31/Personal/Vol-II/3350 Dated 29th July 2003.

Annexure-C is the photocopy of Office Order No. Adm/AS/31/Personal/Vol-II/7114 Dated 23.3.01.

Annexure-D is the photocopy of Office order No. As/Adm/31/Personal/Vol-II/3350 Dated 29th July 2003.

Continued...

After
Ad *WNG*

3) That Sir, I am working continuously for more than 10 (Ten) years as Casual worker in the office of the Respondent No.3 i.e. the Regional Provident Fund Commissioner-1 (NER), Guwahati, Assam. But all of sudden on 23-03-2005 my service was verbally terminated by the Office of the Respondent No.3. I immediately on 08-03-2005 filed a representation before the Respondent No.3 against the verbal termination order of my service but till date the Respondent No.3 have not taken any action in this regard nor I was again re-engaged by the Respondents. As such finding no other alternative I was compelled to approach the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati by filing Original Application No.105 of 2005 for seeking justice in this matter. The Hon'ble Tribunal vide its order dated 12-05-2005 disposed off this said Original Application at the Admission stage by directing me to file a proper representation stating all the claims in reference to the relevant provisions or Government orders in that regard before the competent Authority within a period of one month from the day. If any such Application is filed, the said Authority will consider the same and passed a speaking order thereon within 3 (three) months thereafter. I was also directed by the Hon'ble Tribunal to produce the said order along with representation before the concerned Respondent for compliance. As such I filed this Representation as per direction issued by the Hon'ble Tribunal in O.A.No.105 of 2005 dated 12-05-2005.

Annexure-E is the photocopy of Judgment dated 12-05-2005 passed by the Hon'ble Tribunal in O.A.No.105 of 2005.

4) That Sir, I have been deprived from regular pay scale, service benefits, dearness allowance, house rent, medical allowance. I have already served a considerable long period under the Office of the Respondent No.3 and now I am over aged for other government or semi government jobs.

5) That Sir, I have acquired a legal right for regularisation and also regular pay scale as a Group-D staff.

6) That Sir, the Office of the Respondent No.3 under which I had worked was a newly set up office and the office was properly functioning in the said new building. In the said office the Respondents in requirement of my service appointed me on casual basis with an assurance that my service will be regularised within a short span of time but the assurance given to me by the Respondent No.3 was not materialized but I was thrown out from my job by the Respondent No.3 after 10 (Ten) years dedicated and sincere service rendered by me.

7) That Sir, the Hon'ble Supreme Court in daily rated casual labour employed under P & T department through Bharatiya Dak Tar Muzdoor Manch -Vs- Union of India and another 1988 (1) S.C.C. 122 held that government cannot take advantage of its dominate position and also directed to prepare a scheme for absorbing the casual labour who rendered one year casual service in the Posts and Telegraph Department. Similar direction for regularization of services of casual labours passed by the Hon'ble Supreme Court in the case of the Dhirendra Chinnoli & others -Vs- State of U.P. 1986 (1) S.C.C.637 wherein it was held as follows: -

"But we hope and trust that posts will be sanctioned by the Central Government in the different Nehru Yuvak Kendra, so that these persons can be regularized. It is not at all desirable that any Management and particularly the Central Government should continue to employ persons on casual basis in organization, which have been in existence over 12 (Twelve) years.

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In view of the aforesaid position and law laid down by the Hon'ble Supreme Court of India I am also entitled to be reappointed and regularized in my services as Group-D employee w.e.f. date of my engagement.

8) That Sir, I am a very poor person living in a huge family who are fully dependent on me. Moreover I was working very sincerely and honestly under the Respondent No.3 since last 10 (Ten) years. There is no blemish in my service career. Suddenly I have been thrown out from job and my entire family members are at the stage of starvation.

I therefore most humbly prayed before your honour to re-engaged me in any Group-D post by passing necessary orders in this regard and also save my family members from starvation as I have no alternative source of income to maintain my huge family.

Thanking you in anticipation.

Yours faithfully

(Shri Harakanta Das)
Son of Late Bali Ram Das
Village-Baushi urugul
P.O.- Tetulia, P.S. - Hajo,
District - Kamrup (Rural),
Assam.

Copy for information and necessary action:

- (i) The Secretary, Government of India, Ministry of Labour, New Delhi-1.
- (ii) The Regional Provident Fund Commissioner-I (NER), Employees Provident Fund Organisation, NE Region, G.S.Road, Bhangagarh, Guwahati-781 005.

Sd/-

(Shri Harakanta Das)
Son of Late Bali Ram Das
Village-Baushi urugul
P.O.- Tetulia, P.S. - Hajo,
District - Kamrup (Rural),
Assam.

Offered
1/1/2018



EMPLOYEES' PROVIDENT FORGANISATION
(Ministry of Labour, Govt of India)
Regional Office, North East Region, Bhangagarh,
Guwahati, Assam - 781005

ORDER

Whereas Shri Harakanta Das (referred to as the applicant") filed an application in the Central Administrative Tribunal, Guwahati Bench (herein after referred to as the 'Tribunal') which was registered as O.A. No. 105/05 (herein after referred to as the 'application'). The said application was disposed by the Hon'ble Tribunal at the admission stage vide order dated 12/5/2005 before any step could be taken by the Respondents thereto. By the said order the Hon'ble Tribunal directed the applicant to make a proper representation stating all the claims with reference to the relevant provisions or Govt. order in that regard before the competent authority within 1 month from the date of the order. By the said order it was further directed that the respondent would consider the representation and pass a speaking order thereon within 3 months thereafter and accordingly the application was disposed of.

Accordingly, the applicant made a representation on 20/5/2005 and the same was addressed to the Central Provident Fund Commissioner. In the said representation the applicant has stated that he was engaged as part time Water Carrier w.e.f. 2/6/95. In Para 2 of the representation the applicant has mentioned about the mode of payment made to him from time to time. In Para 3 the applicant has raised the issue of the situation, which has led him to file the application in the Hon'ble Tribunal. By Para 4 of the representation the applicant has alleged that he has been deprived of regular pay scale and service benefits etc. and by now he is overaged to

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seek other Govt. or Semi-Govt. job. By the statement made in Para 5 the applicant has claimed that he has acquired legal right for regularization with regular pay scale as Group D Staff. By Para 6 of the representation the applicant has stated that he was given assurance for regularization in service but such assurance by the respondent No.3 was never carried out. In the Para 7 & 8 of the representation the applicant has referred to some judgment of the Hon'ble Supreme Court and has demanded that he is entitled to be reappointed and regularized as Group-D employee from the date of his engagement and necessary order in that regard be passed by the respondent authority.

Whereas the respondent on receipt of the said representation dated 20/5/2005 has examined the matter in entirety and the relevant provisions of Laws and Rules in that regard.

The matter in this case relates to engagement/appointment in the office of the Regional Provident Fund Commissioner. The competent authority for such appointment/recruitment is the Regional Provident Fund Commissioner, North-Eastern Region as provided under Regulation 5 of the "Employees' Provident Fund (Staff & Conditions of Service) Regulations, 1962 and not the Central Provident Fund Commissioner. The Employees' Provident Fund Organization (referred to as the "EPFO") is a statutory body under the "Employees Provident Fund and Miscellaneous Provisions Act, 1952". The EPFO has its own Recruitment and other Rules to regulate the appointment, recruitment, discipline and appeal etc. The EPFO follows the Central Govt. Instructions and Circulars with regard to appointment/recruitment/salary etc. As per the provisions of sub section (7)(a) of section 51 of EPF & MP Act, 1952 the method of recruitment, salary and allowances, discipline and other conditions of service of officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay.

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The provisions of scheme formulated by the Govt. of India, Department of Personnel and Training vide O.M. No. 51016/2/90-Estt.(C) dated 10/9/1993 namely the "Casual Laborers (Grant of Temporary Status and Regularization) Scheme of Govt. of India 1993" are applicable to the EPFO also. The said scheme came into force w.e.f. 1993 as a one time measure to take care of the cases of Casual Laborers who had been in engagement while the scheme was introduced and completed atleast 240 days in job in 12 calendar months prior to that date of notification i.e. 10/9/1993. In the said scheme it has been categorically stated in Clause 4 that such Casual Laborer who may be granted temporary status as per provisions of the said Clause shall not be brought to permanent establishment unless they are selected through a regular selection process for Group D post. The clause 8 of the said scheme also provides the procedures for filling up such posts. In Clause 8 it has been categorically mentioned that two out of every three vacancies in Group D posts in respective office where the Casual Laborers have been working would fill up as per extant Recruitment Rules and in accordance with the instructions of the Govt. of India. The Hon'ble Supreme Court in *Union of India - vs - Mohan Pal, reported in 2002(4) SCC 573* has held that the scheme of 1993 is a one time measure and is not a ongoing process to include all the Casual Laborers for all times to come. The EPFO has its own statutory Recruitment Rules relating to Recruitment of Peons, (Group-D) vide EPFO Peons (Headquarters and Regional Offices) Recruitment Rules 1992". "EPFO Chowkider, Helper, Mali, Farash, Water Carrier and Sweeper (Safaiwala) Recruitment Rules, 1992" and "EPFO (Multi-task Attendant) Recruitment Rules, 2004". All these rules are framed for recruitment of Group D posts and all such recruitments are to be carried out strictly as per provisions of those Recruitment Rules. In those Recruitment Rules method of recruitment, age limit and other qualifications and eligibility criteria are prescribed and selection and recruitment are to be made

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strictly as per vacancy as provided in the Recruitment Rules. From the claim of the applicant the documents relied upon by him it is very much clear that the applicant was engaged as Casual Laborer on daily wage basis to meet the contingent nature of job and he was never appointed against any earmarked vacancy and as per provisions of any such Recruitment Rules. The engagement of the applicant was purely of casual nature or not against any specific vacancy or post. The Law is also settled that no mandamus could be issued to direct the authority to refrain from enforcing law or to act contrary to the provisions of law. From the facts and circumstances of the case of the applicant, it is also clear that he has not acquired any legal right to be regularized in service or to be re-engaged as casual laborer under any provision of law.

As stated hereinabove, the applicant is also not entitled to any benefit of the Scheme of 1993 as he was not in existence on the crucial date i.e. 10/9/1993, the date of publication/notification of the scheme. The applicant was also not in continuous service (at least 240 days) immediately prior to 10/9/1993. In fact, as intimated by the applicant himself, the applicant was first engaged as part time water carrier on 2/6/1995, a date which is much later than the crucial date of 10/9/1993. In view of the settled provisions of law laid down in Union of India - vs - Mohan Pal (supra), the scheme being not an on going and continuous one, the applicant is also not covered by the provisions of the said scheme as he was not in engagement as on 10/9/1993.

It is also pertinent to state here that by the shifting of the office of the Regional Provident Fund Commissioner, N.E. Region from its rented building to its own premises having all the facilities available as an in-built arrangement, certain requirements and jobs have ceased

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to exist. The job of water carrier and such allied jobs was no longer required. Since the job requirement is taken care by the Multi Task Attendants. On the other hand, there are policy decision of the Government to maintain absolute austerity measure and to cut avoidable expenditures. Under the circumstances and the provisions of law, the competent authority decided not to continue the applicant and accordingly he has been disengaged from 23/3/2005.

In view of the above reasons and the provisions of law, the applicant Sri Harakanta Das is not entitled to be regularized in any Group D post and he is also not to be re-engaged in any job of casual laborer as at present there is no such requirement of service of any such casual laborer in the office of the Regional Provident Fund Commissioner, N.E. Region. The claims of the applicant cannot be acceded to and accordingly the representation dated 20/5/2005 is considered and disposed of.

13/7/2005
(A.N. RAY)
REGIONAL P.F. COMMISSIONER(I), NER

Ref.No.AS/LC/EPFO/RO/OA/105/05/HKD/05/ 1448
To,

Date: 03/08/2005

12 AUG 2005

✓ Shri Harakanta Das
S/o late Bali Ram Das
Village - Baushi urugul
P.O. Tetelia, P.S. Hajo
Dist. Kamrup (Rural)
Assam.

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Almora*

- 9 MAY 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: AT GUWAHATI

O.A. No. 288/2005

Sri Harkanta Das Applicant

-versus-

Union of India and others Respondents

(Written statements filed by the Respondent No. 2 and 3)

The Written Statements of the aforesaid respondents are as follows:

1. That a copy of the O.A. No. 288/2005 (referred to as the "application") has been served on the respondents. The respondents have gone through the same and understood the contents thereof.
2. That the statements made in the application, which are not specifically admitted are hereby denied by the respondents.
3. That the interest of all the respondents are common and therefore the Written Statements has been filed as common for all of them.
4. That with regard to the statements made in para 1, 2 and 3 of the application the respondents state that the orders dated 23.3.2005 and 3.8.2005 impugned in the application have been issued by the competent authority as per provisions of law. Hence, there is no cause of action or any legal right to justify filing of the application and therefore the application is liable to be dismissed summarily.
5. That with regard to the statements made in para 4.1, 4.2 and 4.3 of the application the answering respondents state that the applicant was engaged as a casual labourer on daily wage basis to meet the job of very casual nature of water-carrier in its erstwhile rented building

Filed by
Bishakha Pathak

Advocate
8/5/06

having no proper water facilities and provisions. The claim of the applicant that he was engaged as a Group -D staff is totally baseless and such statements are misleading ones.

In this connection the respondents begs to state that the competent authority and power to engage/appoint casual labourer and Group - D staff lies with the Regional Provident Fund Commissioner, Grade-I of the respective regions as provided under Regulation 5 of the "Employees' Provident Fund (Staff and Condition of Service) Regulations, 1962" (hereinafter referred to as the "Regulation". This Regulation is a statutory Regulation framed under the provision of section 5 D (7)(a) of the Employees Provident Funds and Misc. Provisions Act, 1952 (hereinafter referred to as the "Act"). The answering respondents authorities and the Central Board of Trustees (herein after referred to as the "CBT") are also statutory authorities and statutory body under the provisions of the said Act. The respondents have their own Recruitment and other statutory Rules to regulate the affairs of Recruitment, Appointment, Discipline and Appeal etc and no recruitment/ appointment can be made dehors such rules and Regulations. The Board of Trustees follows the Central Govt. Instructions and Circulars with regard to appointment, Recruitment, Salary etc. As per the provisions of sub-section (7) (a) (b)of section 5 D of the Act the method of Recruitment, Salary and allowance, discipline and other conditions of service of the officers and employees of the CBT shall be such as may be specified by the CBT in accordance with the Rules and orders applicable to the officers and employees of the Central Govt. drawing corresponding scale of pay.

The provisions of scheme formulated by the Govt. of India, Department of Personnel and Training vide O.M. No.51016/2/90-Estt. (C) dated 10.9.1993 namely the "Casual Laborers (Grant of Temporary Status and Regularization) Scheme of Govt. of India 1993" (hereinafter referred as the "Scheme of 1993") are applicable to the EPFO also. The said scheme came into force w.e.f 1.9.93 as an one-time measure to

take care of the cases of Casual Labourers who had been in engagement while the scheme was introduced and completed at least 240 days in job in 12 calendar months prior to the specified date of notification i.e. 10.9.1993. In the said scheme it has been categorically stated in Clause 4 that such Casual Labourer who may be granted temporary status as per provisions of the said Clause shall not be brought to permanent establishment unless they are selected through a regular selection process for Group D post. The Clause 8 of the said scheme also provides the procedures for filling up such posts. In Clause 8 it has been categorically mentioned that two out of every three vacancies in Group-D posts in respective office where the Casual Labourers have been working would be filled up as per extant Recruitment Rules and in accordance with the instructions of the Govt. of India. The Hon'ble Supreme Court in ***Union of India -vs- Mohan Pal, reported in 2002(4) SCC 573*** has held that the scheme of 1993 is a one time measure and is not a ongoing process to include all the Casual Laborers for all times to come. The EPFO has its own statutory Recruitment Rules relating to Recruitment of Peons, (Group-D) vide "EPFO Peons (Headquarters and Regional Offices) Recruitment Rules 1992", "EPFO Chowkidar, Helper, Mali, Farash, Water Carrier and Sweeper (Safaiwala) Recruitment Rules, 1992" and "EPFO (Multi-task Attendant) Recruitment Rules, 2004". All these rules are framed for recruitment of Group D posts and all such recruitments are to be carried out strictly as per provisions of those Recruitment Rules. In those Recruitment Rules the method of recruitment, age limit and other qualifications and eligibility criteria are prescribed and selection and recruitment are to be made strictly as per vacancy as provided in the Recruitment Rules. From the claim of the applicant the documents relied upon by him it is very much clear that the applicant was engaged as Casual Labourer on daily wage basis to meet the contingent nature of job and he was never appointed against any earmarked vacancy and as per provisions of any such

Recruitment Rules. The engagement of the applicant was purely of casual nature or not against any specific vacancy or post. The applicant was engaged without following any provisions of those statutory recruitment rules or any procedure thereof. Since it was not a recruitment against any vacancy, but just a measure to mitigate the contingent nature of problem of carrying water to provide to the officers and staff as there was no proper supply of water in the rented office building. The applicant was never issued with any order of appointment as required under the Regulation and the recruitment rules. He was merely engaged on daily rated and casual basis. From the facts and circumstances of the case of the applicant, it is also clear that he has not acquired any legal right to be regularized in service or to be re-engaged as casual laborer under any provision of law.

As stated hereinabove, the applicant is also not entitled to any benefit of the Scheme of 1993 as he was not in existence on the crucial date i.e. 10.9.1993, the date of publication/ notification of the scheme. The applicant was also not in continuous service (at least 240 days) immediately prior to 10.9.1003. In fact, as admitted by the applicant himself, the applicant was first engaged as part time water carrier on 2.6.1995, a date which is much later than the crucial date of 10.9.1993. In view of the settled provisions of law laid down in Union of India -vs- Mohan Pal (supra), the scheme being not an on going and continuous one, the applicant is also not covered by the provisions of the said scheme as he was not in engagement as on 10.9.1993.

It is also pertinent to state here that by the shifting of the office of the Regional Provident Fund Commissioner, N.E. Region from its rented building to its own premises having all the facilities available as an in-built arrangement, certain requirements and jobs have ceased to exist. The jobs of water carrier and such allied job were no longer required. Moreover, there is no post lying vacant in the establishment to accommodate any person.

On the other hand, there are policy decisions of the Government to maintain absolute austerity measure and to cut avoidable expenditures. Under the circumstances and the provisions of law, the competent authority decided not to continue the applicant and accordingly he has been disengaged from 23.3.2005. The answering respondents crave the leave of this Hon'ble Tribunal to allow them to rely upon and produce any such rules, regulations and scheme etc at the time of hearing of the case.

6. That with regard to the statements made in para 4.4, 4.5 and 4.6 of the application the answering respondents reassert the foregoing statements and state that after the shifting of the office of the Respondent No. 3 from the rented house to its own building having all full furnished accommodation including continuous water supply, the job of the applicant was no longer required by the Respondent No. 3 and accordingly, the engagement of the applicant was discontinued. The order of dis-continuance was challenged by the applicant in O.A. No. 105/2005 and this Hon'ble Tribunal vide order dated 12.5.2005 disposed of the application at the admission stage itself. The said order was passed by the Hon'ble Tribunal ex parte and without hearing the answering respondents. As directed by the Hon'ble Tribunal the representation dated 20.5.2005 filed by the applicant was duly considered by the competent authority and passed the necessary speaking order on 3.8.2005. By the said speaking order the claim of the applicant was rejected on the legal grounds as stated therein. The copy of the said order was duly communicated to the applicant vide Annexure-G in the application. In this connection, the respondents begs to state that the creation and abolition of posts is an executive prerogative of the Government and in such matter the court should not interfere or sit as a court of appeal. The law in this regard is well settled by the Hon'ble Apex Court. Law is also well settled that the services of casual labourer, work charge employees, adhoc employees etc. cannot be automatically regularized dehors rules. Such person in engagement should only be considered only as per Recruitment Rules

on fulfillment of such eligibility criteria prescribed by such Rules along with others candidates. If such persons can get selected as per Recruitment Rules then they may be regularized. But in case, they fail to fulfill the required criteria as provided in the Recruitment Rules, they must give way to the others. In the instant case, there is no vacancy for such post in the establishment of the Respondent No. 3 for consideration of such recruitment. The Scheme of 1993 as referred to and relied upon by the applicant is not an on-going Scheme. The said Scheme of 1993 was introduced as an one-time measure by the Govt. of India as per direction of the Hon'ble Apex Court. From the Scheme of 1993 it has been made abundantly clear that the Scheme come into force from 1.9.1993. The clause 4 of the said Scheme also provides that the temporary status would be conferred on all casual labourer who are in employment on the date of issue of Office Memorandum and who have rendered a continuous services of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week). But the admitted fact is that the applicant was engaged only on 2.6.1995 much later than the crucial date of 10.9.1993 on which the Office Memorandum was issued vide Govt. of India, Department of Personal and Trg. O.M. No. 51016/2/90-Estt. (C) dated 10.9.1993. Therefore, the applicant is not covered by the benefit provided in the said Scheme. As stated hereinabove the Hon'ble Supreme Court has already pronounced that the said Scheme of 1993 is an one time Scheme only and not an ongoing process.

The copy of the Scheme of 1993 is annexed as Annexure - 1.

7. That with regard to the statements made in para 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14 and 4.15 of the application the answering respondents state that the applicant has not acquired any legal right as claimed by him and the ratio laid down by the Hon'ble Supreme Court as relied upon by the applicant is no longer a precedent holding the field as the law in that regard has undergone manifold changes at

the instance of the Hon'ble Supreme Court itself. Hence, the application is liable to be dismissed as devoid of any merit.

8. That with regard to the statements made in para 5.1, 5.2, 5.3, 5.4 to 5.13 the answering respondents state that in view of the facts and circumstances of the case, the provisions of law and the ratio laid down by the Hon'ble Apex Court, the grounds shown by the applicant cannot sustain in law and the application is consequently liable to be dismissed with cost.
9. That with regard to the statements made in para 6 and 7 of the application the respondents state that the statements made in these two paragraphs are not factually correct. In fact, the applicant submitted his representation and the same has been rejected by a speaking order. It is also admitted fact that the applicant preferred another O.A. No. 105/2005, which was also disposed of by this Hon'ble Tribunal before filing of this instant application.
10. That with regard to the statements made in para 8.1, 8.2, and 9.1 the answering respondents state in view of the facts and circumstances of the case and the provisions of law the applicant is not entitled to any relief whatsoever as prayed for and the application may be dismissed with cost.

In the premises aforesaid it is, therefore, respectfully prayed that the Hon'ble Tribunal may be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records and also considering the provisions of law may be pleased to dismiss the application with cost.

VERIFICATION

I, Shri Ningshen Thothar, presently working as Assistant Provident Fund Commissioner in the office of the Regional Provident Fund Commissioner, Regional Office, N.E. Region, G.S. Road, Guwahati, being duly authorized and competent to sign this Verification, do hereby solemnly affirm and state that the statements made in para 3, 7, 8 & 9 are true to my knowledge, belief, those made in para 4, 5 & 6 being matter of records, are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this Verification on this 8th day of MAY 2006, at Guwahati.


(NINGSHEN THOTHAR)
DEPONENT

M. No. 49014/2/86-Estt. (C), dated 7-6-1988 [see *Orders under (1) above*]. The policy has further been reviewed in the light of the judgment of the CAT, Central Bench, New Delhi, delivered on 16-2-1990, in the Writ Petition filed by Shri Raj Kamal and others v. Union of India and it has been decided that while the existing guidelines contained in OM, dated 7-6-1988, may continue to be followed, the grant of temporary status to the casual employees, who are presently employed and have rendered one year of continuous service in Central Government offices other than Department of Telecom, Posts and Railways may be regulated by the Scheme as appended.

2. Ministry of Finance, etc., are requested to bring the scheme to the notice of appointing authorities under their administrative control and ensure that recruitment of casual employees is done in accordance with the guidelines contained in OM, dated 7-6-1988. Cases of negligence should be viewed seriously and brought to the notice of appropriate authorities for taking prompt and suitable action.

APPENDIX

Department of Personnel and Training, Casual Labourers (Grant of Temporary Status and Regularization) Scheme

1. This scheme shall be called "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993".

2. This scheme will come into force with effect from 1-9-1993.

3. This scheme is applicable to casual labourers in employment of the Ministries/Departments of Government of India and their Attached and Subordinate Offices, on the date of issue of these orders. But it shall not be applicable to casual workers in Railways, Department of Telecommunication and Department of Posts who already have their own schemes.

4. *Temporary status.*— (i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).

(ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts.

(iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.

2002 (4) SCC 573 - UOI -vs - Mohan Paul

Swamy's Scheme

(iv) Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.

5. Temporary status would entitle the casual labourers to the following benefits:—

(i) Wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group 'D' official including DA, HRA and CCA. [Special Compensatory Allowance or Compensatory (City) Allowance or Composite Hill Compensatory Allowance, etc., i.e., only one of the compensatory allowance, more beneficial to them, can be taken into account for the purpose of calculating their wages.— O.M. No. 3 (2)/95-E.II (B), dated the 15th January, 1996.]

(ii) Benefits of increments at the same rate as applicable to a Group 'D' employee would be taken into account for calculating pro rata wages for every one year of service subject to performance of duty for at least 240 days (206 days in administrative offices observing 5 days week) in the year from the date of conferment of temporary status.

(iii) Leave entitlement will be on a pro rata basis at the rate of one day for every 10 days of work. Casual or any other kind of leave, except maternity leave, will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularization. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service.

(iv) Maternity leave to lady casual labourers as admissible to regular Group 'D' employees will be allowed.

(v) 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularization.

(vi) After rendering three years' continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group 'D' employees for the purpose of contribution to the General Provident Fund, and would also further be eligible for the grant of Festival Advance, Flood Advance on the same conditions as are applicable to temporary Group 'D' employees, provided they furnish two sureties from permanent Government servants of their Department.

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They are regularized, they would be entitled to Productivity-
Linked Bonus/Ad hoc Bonus only at the rates applicable to casual
labourers.

Prakash Pathak
Advocate

66 SWAMY'S — ESTABLISHMENT AND ADMINISTRATION

6. No benefits other than those specified above will be admissible to casual labourers with temporary status. However, if any additional benefits are admissible to casual workers working in industrial establishments in view of provisions of Industrial Disputes Act, they shall continue to be admissible to such casual labourers.

7. Despite conferment of temporary status, the services of a casual labourer may be dispensed with by giving a notice of one month in writing. A casual labourer with temporary status can also quit service by giving a written notice of one month. The wages for the notice period will be payable only for the days on which such casual worker is engaged on work.

✓ 8. Procedure for filling up of Group 'D' posts.— (i) Two out of every three vacancies in Group 'D' cadres in respective offices where the casual labourers have been working would be filled up as per extant Recruitment Rules and in accordance with the instructions issued by Department of Personnel and Training from amongst casual workers with temporary status. However, regular Group 'D' staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies. In case of illiterate casual labourers or those who fail to fulfil the minimum qualification prescribed for the post, regularization will be considered only against those posts in respect of which literacy or lack of minimum qualification will not be a requisite qualification. They would be allowed age relaxation equivalent to the period for which they have worked continuously as casual labourer.

9. On regularization of casual worker with temporary status, no substitute in his place will be appointed as he was not holding any post. Violation of this should be viewed very seriously and attention of the appropriate authorities should be drawn to such cases for suitable disciplinary action against the officers violating these instructions.

10. In future, the guidelines as contained in this Department's OM, dated 7-6-1988, should be followed strictly in the matter of engagement of casual employees in Central Government offices.

11. Department of Personnel and Training will have the power to make amendments or relax any of the provisions in the scheme that may be considered necessary from time to time.

[G.I., Dept. of Per. & Trg. O.M. No. 51016/2/90-Estt. (C), dated the 10th September, 1993.]

8. **Clarifications to OM, dated 10-9-1993, regarding grant of temporary status and regularization of casual workers**

References are being received from various field formations seeking clarifications regarding orders issued by the D.P. & Trg. in connection with

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Certified to be true Copy.

M. V. Hash Pathak
Advocate