

10

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

14/

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

1. Original Application No. 14/07
2. Misc Petition No. /
3. Contempt Petition No. /
4. Review Application No. /

Applicant(S) Shri P.M. Hazarika VS Union of India & Ors

Advocate for the Applicant(S) M. Chandra, S. Nath
G. N. Chakravarty, Ms. U. Dutta

Advocate for the Respondent(S) Case

Notes of the Registry	Date	Order of the Tribunal
<p>The application is in form is filed for Rs. 50/- d deposited vide IPO No. <u>286934806</u> Dated <u>26.12.06</u> Dy. Registrar <u>Defective</u> <u>Steps not taken</u> <u>13.1.07</u></p>	18.1.2007	<p>Present: The Hon'ble Shri K.V. Sachidanandan Vice-Chairman.</p> <p>The Applicant was engaged by the Respondents on 14.07.1993. The DOPAT issued a circular dated 10.09.1993 for grant of temporary status and regularisation scheme. According to the Applicant, she is entitled to the benefit of the scheme and hence she filed an O.A. No.245/2002 and vide on 12.08.2003 this Tribunal passed the following orders:-</p> <p>"The Government of India purposely gave a cut-off date that employees were to be in employment on the date of the Scheme and to get temporary status one is to render continuous</p>

2- OA. 14/07

Contd.
18.1.2007

service of at least one year, which means that the casual employee was to be engaged for at least 240 days or 206 days in a year as the case may be. Clause 4 of the Scheme did not give a blanket authority to confer temporary status to all casual workers as and when they complete one year continuous service. To earn the benefit a casual employee must be in employment on the date when the scheme was introduced.

7. For all the reasons stated above the application is allowed and the respondents are directed to consider the case of the applicant for conferment of temporary status in the light of the Scheme and the findings and observations made above.

No order as to costs."

The contention of the Respondents in that O.A. was that the scheme has been introduced in 1993 and was implemented on 01.10.1993. Since the Applicant did not complete 206 days in case of five days a week, as the case may be, as on 10.09.1993 she is not entitled to the scheme. The Court observed that since cut-off date has been given as 10.09.1993 and the prescribed period of service should not be prior to the implementation of the order and the benefits was granted by this Tribunal. Thereafter, vide order dated 27.01.2004 the case of the Applicant was rejected by the Respondents. Then again in O.A. 32/2004 filed by the Applicant this Court vide order dated 29.03.2005 again directed the Respondents to verify as to whether the

Contd.P/2

OA. 14/07

- 3

Contd.
18.1.2007

Applicant had completed 240 days or 206 days in a five days week continuously treating Sundays and holidays as on duties and if so, to pass order conferring temporary status to the Applicant communicating to him. The matter taken before the High Court in W.P.(C) No.4521/2005 and the Hon'ble High Court dismissed the said W.P.(C) upholding the order of this Tribunal. Subsequently, by virtue of the impugned order dated 05.01.2007 purported to be a speaking order the Respondents once again rejected the claim of the Applicant on the same ground that the Applicant does not fulfill the condition of completion of 240 days or 206 days in a five days week, as the case may be, prior to implementation of the scheme. Aggrieved by the said action of the Respondents the Applicant has filed this O.A. as third round of litigation.

Heard Mr.M.Chanda, learned counsel for the Applicant. Mr.M.U.Ahmed, learned Addl.C.G.S.C. appearing for the Respondents submitted that notice should be issued to the Respondents.

Considering the issue involved in this case, I am of the view that the O.A. has to be admitted. Admit the O.A. Issue notice to the Respondent Nos. 1, 2 & 3. Six weeks time is granted to the Respondents to file reply statement.

Contd.P/2

Notice & order sent to D/Section for issuing to R-1, 2 by regd. A/D post and R-3, 4 sent to received by hand.

12/2/09 D/No-187, 188, 189, 190
D/E 15/2/07

~~07/11/07~~ 14.07

Contd.
18.1.2007

Post the matter on 02.03.2007.

Considering the issue involved and the earlier orders of this Tribunal, I direct that the operation of the impugned order dated 05.01.2007 will be stayed until further orders and also direct the Respondents not to disengage the Applicant as casual labourer till the next date.

Notice for R-3
received back
as unserved.
6/3/07

Vice-Chairman

/bb/
2.3.07. Further four weeks time is granted to the counsel for the respondents to file written statement. Post the matter on 3.4.07.

Ce
Member Vice-Chairman

Notice duly served
on R-4.
6/3/07

2.4.07
no W/S filed
by.

lm
3.4.07. Counsel for respondents has submitted that he has filed the written statement to-day. It may be presumed that if it is otherwise in order. Liberty is given to the applicant to file rejoinder. Post the matter on 7.5.07.

Vice-Chairman

9.4.07
W/S filed by
Respondent Nos. 1, 2 & 3
page - 1 to 34

lm
7.5.07. Counsel for the applicant wanted time to file rejoinder. Let it be done. Post the matter on 7.6.07. Interim order shall continue.

Vice-Chairman

No rejoinder has
been filed.

My
4.5.07.

Order dt. 7/5/07 issuing
to both the parties.

6/10/07. No rejoinder has
been filed.

OA-14/2007 S-

7.6.2007

Reply statement has been filed. Three weeks time is granted to the Applicant for filing of rejoinder.

Post the case on 28.6.2007. Interim order shall continue till then.

order dt. 7/6/07
issuing to learned
advocate's for both
the parties.

Vice-Chairman

/bb/

28.6.2007

Two weeks' time is granted to file rejoinder.

Post the case on 12.7.2007. In the meantime, interim order shall continue.

Vice-Chairman

/bb/

No rejoinder filed.

27.6.07.

12.7.07. Counsel for the applicant wanted time to file rejoinder. Post the matter on 31.7.07. In the meantime liberty is given to the respondents for further pleadings. Interim order shall continue.

Vice-Chairman

order dt. 28/6/07
issuing to learned
advocate's for both
the parties.

lm

31.7.2007

Post the case on 17.8.2007 for hearing. Interim order will continue till such time.

Vice-Chairman

/bb/

Rejoinder not
filed.

11.7.07.

order dt. 12/7/07
issuing to both
the parties.

Rejoinder not filed.
31.7.07
21.8.07.

-6- OA-14/07

Order dt: 31/7/07
issuing to both
the parties.

31/07

31.8.07 Post on 18.9.07 for hearing. Interim
order will continue till such time.

Vice-Chairman

pg

Rejoinder not filed.

M
30.8.07

28.9.2007

Mrs.U.Dutta, learned counsel for the
Applicant files a rejoinder after serving a
copy on Mr.M.U.Ahmed, learned Addl.
Standing Counsel for the Central
Government.

Call this matter on 04.10.2007 at the
request made by Mrs.U.Dutta, learned
counsel for the Applicant for final hearing.

Rejoinder not
filed.

M
27.9.07

1.10.07

Rejoinder filed
to the Applicant.
copy served.

AP

(Khushiram)
Member (A)

(M.R.Mohanty)
Vice-Chairman

/bb/

The case is ready
for hearing.

M
3.10.07

On behalf of the applicant prayer has
made for adjournment. Mr.M.U.Ahmed,
learned Addl. Standing Counsel appearing
for the Central Government, is absent for
his sickness.

Call this matter on 09.10.07.

(Khushiram)
Member(A)

Monoranjan Mahanty
Vice-Chairman

The case is ready
for hearing.

M lm
8.10.07


09.10.2007

Mr M. Chanda, learned Counsel for the Applicant is present. Mr M.U. Ahmed, learned Additional Central Government Standing Counsel is absent for the reason of his sickness.

Call this matter on 23.11.2007 for final hearing.

Interim protection granted to the applicant shall remain in force till disposal of the case.



(Khushiram)
Member


(M. Mohanty)
Vice-Chairman

nkm

23.11.2007

Adjourned to be taken on 16.01.2008. Interim order shall continue to remain in force till the next date.



(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

16.01.2008

On the prayer of Mr.M.Chanda, learned counsel appearing for the Applicant, this case stands adjourned to be taken up on 27.02.2008.

Interim order to remain in force till the next date.


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

9.10.07

Pl. comply

order dt-9/10/07
issuing to learned
advocate's for both
the parties.

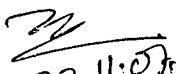
16/10/07

order dt. 9/10/07 handed
over to both side

22/10/07

The case is ready
for hearing.

/bb/


22.11.07

21.23.11.07

Pl. comply

order dt. 23/11/07 sent
to D/Section for
issuing to learned
advocate's for both
the parties

6/12/07 D/No-1729,1730
Dt- 6/12/07

GA 14/07

1

27.02.2008

Mr.M.Chanda, learned counsel for the Applicant is present. Mr. M.U.Ahmed, learned Addl. Standing Counsel appearing for the Respondents has submitted a letter of absence.

Call this matter on 07.04.2008.

The case is ready for hearing.

22

15.1.08,

Order dt. 16/1/08

issuing to learned advocates for both the parties.

lm

9
(Khushiram)
Member (A)

08.04.2008

Call this matter on 26.05.2008.

The case is ready for hearing.

22

26.2.08.

lm

9
(Khushiram)
Member(A)

4
(M.R.Mohanty)
Vice-Chairman

26.05.2008

On the prayer of Mr.M.Chanda, learned counsel appearing for the Applicant (made in presence of Mr. M. U. Ahmed), this case is adjourned and to be taken up on 02.06.2008 for hearing.

The case is ready for hearing.

22

7.4.08.

The case is ready for hearing.

22

23.5.08.

lm

9
(Khushiram)
Member(A)

4
(M.R.Mohanty)
Vice-Chairman

02.06.2008

Mr.M.Chanda, learned counsel appearing for the Applicant has filed a Misc. Case in this O.A. after serving a copy thereof on Mr.M.U.Ahmed, learned Addl. Central Govt. Standing Counsel for production of certain records. Mr.M.U.Ahmed prays for four weeks time to file reply to this M.P. Prayer is allowed.

The case is ready for hearing.

22

30.5.08.

5.6.08

Additional Respondent filed by the Applicant copy served.

22

The case is ready for hearing.

Call this matter 04.07.2008.

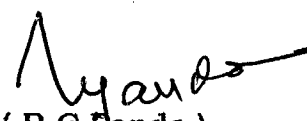
9
Member(A)

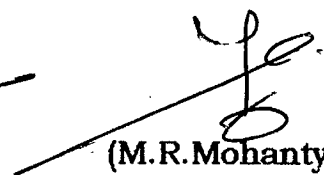
04.07.07

9

04.07.08 Heard Mr M.Chanda, learned counsel appearing for the Applicant and Mr M.U.Ahmed, learned Addl. Standing Counsel appearing for the Respondent departments. We also perused the materials placed on record. Mr M.U.Ahmed has only obtained the attendance sheet of the Applicant relating to year 1993.

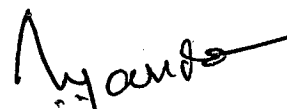
Hearing concluded. Order reserved.

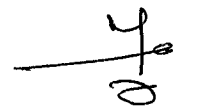

(R.C.Panda)
Member(A)


(M.R.Mohanty)
Vice-Chairman

pg

08.07.08 Judgment pronounced in open Court, kept in separate sheets. The application is disposed of in terms of the order. No costs.


(R.C.Panda)
Member(A)


(M.R.Mohanty)
Vice-Chairman

pg

Received copy
of Judgment -
Date 8/7/08

G. Baskin
8/8/08
Respon
1701 NO 3

970 ASI
Gurwahan Circle
Gurwahan
Ambari Bhy 1

11.8.08

Copy of the
judgment send to the
office for issue
the same to the
applicant as well
as to the Respon No 1 & 2,
by Baskin.
8/8

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 14 of 2007

DATE OF DECISION: 08.07.2008

Smti Padmarani Mudai Hazarika

.....Applicant/s

Shri M.Chanda

..... Advocate for the
Applicant/s.

- Versus -

Union of India & Others

.....Respondent/s

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

.....Advocate for the
Respondents

CORAM

THE HON'BLE MR. MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE DR.R.C.PANDA, ADMINISTRATIVE MEMBER

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 their Lordships wish to see the fair copy of the Judgment? ~~Yes~~/No

Vice-Chairman/Member (A)

gand

12

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.14 of 2007

Date of Order: This, the 8th Day of July, 2008

HON'BLE SHRI MANORANJAN MOHANTY, VICE CHAIRMAN

HON'BLE DR.RAMESH CHANDRA PANDA, ADMINISTRATIVE MEMBER

Smti Padmarani Mudai Hazarika
Wife of Shri Ballav Hazarika
Chandmari Colony
Nizampur
Guwahati-781 003.

..... Applicant.

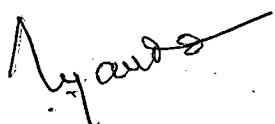
(By Advocate: Shri M.Chanda)

- Versus -

1. Union of India
Represented by the Secretary
to the Government of India
Ministry of Art and Culture
New Delhi.
2. The Director General
Archaeological Survey of India
Janapath
New Delhi-110 011.
3. The Superintending Archaeologist
Archeological Survey of India
Guwahati Circle, Ambari
Guwahati-781 001, Assam.
4. Sri P.K.Mishra
Superintending Archaeologist (in-charge)
Archeological Survey of India
Guwahati Circle, Ambari
Guwahati-781 001, Assam.
Guwahati.

... Respondents.

(By Advocate: Mr.M.U.Ahmed, Addl.C.G.S.C.)



ORDER
08.07.2008

DR. RAMESH CHANDRA PANDA, ADMINISTRATIVE MEMBER:

This is the third journey of the Applicant to this Tribunal under Section 19 of the Administrative Tribunals Act, 1985. In the present O.A. the Applicant has sought the relief (i) to quash and set aside the impugned letter No.1/33(c)/2005-Admn-3625 dated 05.01.2007 (Annexure-AXIV), (ii) to direct the Respondents to grant the Applicant temporary status in terms of Government Scheme of 1993; and (iii) to direct the Respondents to allow the Applicant at least to continue in the same capacity as casual labour.

2. Shri M.Chanda, learned counsel appearing for the Applicant presented the background of the case and demanded that the Applicant was entitled to the temporary status by the Respondents. Mr.M.U.Ahmed, learned Addl. C.G.S.C. averred the case of the Respondents and cited the judgment of Hon'ble Supreme Court of India rendered in a batch of 10 Civil Appeal Nos.5812 to 5821 of 2007 between Archaeological Department of India & Another and Dinesh Chand & Others and stated that the Applicant was not entitled to get the temporary status at all.

3. This Tribunal in an earlier O.A. (No.245 of 2002 decided on 12.08.2003) of the Applicant examined the issue on conferment of temporary status of the Applicant in the light of Government of India,

Agarwal

Department of Personnel and Training (DOPT) Office Memorandum (OM) dated 10.09.1993 and decision of the Hon'ble Supreme Court of India rendered in the case of Union of India and Another vs. Mohan Pal, etc. (decided on 29.04.2002); and allowed the said case of the present Applicant on 12.08.2003 with the direction to the Respondents "*to consider the case of the Applicant for conferment of temporary status in the light of the Scheme and the findings and observations made*" therein.

4. In view of the above said directions of this Tribunal, the Respondents, after verification of the records, found the Applicant not fit for grant of temporary status and rejected the Applicants' representation dated 31.10.2003.

5. Being aggrieved by the orders of the Respondents, the Applicant made a second journey to the Tribunal (in O.A. No.32 of 2004) which was heard and decided by this Tribunal on 29.03.2005 with directions as follows:-

"4. I have considered the rival submissions. I do not find any merit in the submission of Mr.A.K.Chaudhuri, learned Addl. C.G.S.C. for the reason that this issue is already concluded by the decision of this Tribunal in O.A.245 of 2002 (vide Annexure XI). It is an admitted position that the respondents have not challenged the said order of the Tribunal before the higher forums and thus the order has become final. This order clearly states that it is not necessary for the applicant to fulfill the later condition, namely, completion of 240 days or 206 days, as the case may be continuously as on the date of the scheme i.e. on 10.09.1993 and that it is sufficient that the applicant is having continuous service for 240 days or 206 days, as

Agarwal

the case may be, even subsequent to the date of the scheme. In this view of the matter the impugned order dated 27.1.2004 is illegal, arbitrary and unjustified. The said order is accordingly quashed and the respondents are directed to verify as to whether the applicant had completed 240 days or 206 days in a five days week continuously irrespective of the date of the scheme. It is made clear that for the counting of continuous period of service Sundays and holidays will be treated as on duties. If the applicant had completed 240 days or 206 days in a five days a week continuously even after the date of the scheme, respondents will immediately pass an order conferring 'temporary status' to the applicant and the same will be communicated to her. This exercise will be done at any rate within a period of six weeks from the date of receipt of the order."

6. Against the aforesaid decision of this Tribunal rendered in O.A. No. 32 of 2004, the Respondents filed a Writ Petition before the Hon'ble Gauhati High Court, (W.P. (C) No.4521 of 2005) and the said Writ Petition was decided by the Hon'ble High Court on 01.11.2006 as follows:-

" On close perusal of the impugned judgment and order dated 29.3.05 passed by the Central Administrative Tribunal, Guwahati Bench in Original Application being O.A. No.32/04 by which the Tribunal relying upon the judgment and order dated 12.8.03 passed earlier by the said Tribunal in O.A.245/02 that attained finality on not being challenged before the higher forum, directed the respondents/petitioners to verify as to whether the applicant/respondent had completed 240 days or 206 days in a five days a week continuously and if so, the respondents would immediately pass order conferring "temporary status" to the applicant/respondent in the light of the scheme underlined in the Office Memorandum dated 10th September, 1993 floated by the Ministry of Personnel, P.G. and Pensions, Department of Personnel & Training, Govt. of India and upon hearing the learned counsel for the parties, we do not find any compelling or convincing reasons to disturb the impugned judgment."

Agarwal

7. Consequent to the above cited judgment of Hon'ble High Court, the Applicant filed her representation on 10.11.2006 to the Respondent No.2. The Respondent No.3 considered the representation of the Applicant in the light of the DOPT O.M. dated 10.09.1993 and the directions of the Hon'ble High Court in W.P.(C) No.4521/2005, and passed a speaking order dated 05.01.2007. The relevant portion of the said order is as follows:-

“ Whereas before and within 10.09.1993 the applicant did not fulfill the condition of working for a period of at least 206 days (this office observed 5 days work) and she was engaged with effect from 14.07.1993, even during the calendar year 1993 the applicant was not engaged for 206 days and was actually engaged for 116 days.

In view of the above the application/petition of Smt. Padmarani Mudai Hazarika can not be considered for her appointment on regular basis or conferring temporary status to her.”

8. We have heard the rival view points in this third round of litigation filed by the Applicant for conferment of temporary status. In the course of the hearing, one issue that emerged to be clarified by this Tribunal being not the part of the prayers is considered by us. What constitutes 'one year' in the case? The issue dealt in earlier two adjudications and in the Honourable High Court is whether the Applicant had worked continuously for 206 days in one year Out of the two conditions prescribed by the DOPT O.M. dated 10.09.1993, one condition (casual labourer to be on employment on the date of issue of this O.M. namely 10.09.1993) has been fulfilled. The

By order

Applicant was engaged by Respondent No.3 with effect from 14.07.1993. Therefore, there is no dispute about the Applicant being on work with the Respondent No.3 on the crucial date i.e., 10.09.1993. This is an admitted fact. The second condition for eligibility is that the casual labourer should have rendered a continuous service of at least one year; which means that he/she must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week). This Tribunal in O.A. No.32 of 2004 decided on 29.03.2005, issued a specific direction to the Respondents "to verify as to whether the applicant had completed 240 days or 206 days in a five days week continuously" and "for counting of continuous period of service Sundays and holidays will be treated as on duties. If the applicant had completed 240 days or 206 days in a five days a week continuously even after the date of the Scheme", the Applicant will be entitled to get "temporary status". The Hon'ble High Court in the Judgment in W.P.(C) No.4521/2005 (supra) did not "find any compelling or convincing reason to disturb the impugned judgment."

9. The Respondent No.3 in his speaking order dated 05.01.2007 has adopted the Calendar Year 1993 to find out whether the Applicant had completed 206 days and found that she was engaged for 116 only during 1993. days. Since, she was engaged from 14.07.1993, the Calendar year would not technically be the period of one year for verification by the Respondents. This is admitted by both parties. In Calendar year of

By and

1993, there are about 170 days and she has worked for 116 days. One year for the purpose has not been clearly defined. This Tribunal has directed in its order dated 29.03.2005 passed in O.A. No.32 of 2004 to verify the Applicants' service for one year continuously even after the date of the Scheme. The learned counsel for the Applicant interpreted that one year could be any calendar year even after 1993 and cited that she had worked for more than 206 days in subsequent years (1994, 1995, 1996, 1999, 2000 and 2001) and had been still continuing. Respondents did not dispute these facts. We have considered this issue in the context of the Scheme and existing judgments of this Tribunal. We have to clarify the phrase of "one year continuously even after the Scheme" for the purpose of this case only. The question is how to calculate one year for the Applicant's case - when she joined few months before the Government Scheme was implemented? One year in case of the Applicant can be considered to be from 14.07.1993 (the date of joining as casual labourer) to 13.07.1994. The Respondents are directed to verify whether the Applicant had completed 206 days (5 days a week office) continuously in one year period from 14.07.1993 to 13.07.1994. In case, she fulfills this condition, the Applicant becomes eligible to get the temporary status.

10. In view of the above observations and directions, the impugned letter No.1/33(c)/2005-Admn-3625 dated 05.01.2007 is quashed and set aside. The Respondents are directed to consider the


By order

Applicant's case afresh in the light of our above said observations and pass a speaking order within 60 days from the date of receipt of the certified copy of this order. No costs.



(RAMESH CHANDRA PANDA)
ADMINISTRATIVE MEMBER

/bb/



(MANORANJAN MOHANTY)
VICE-CHAIRMAN

File in Court on.....

Court Officer.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. No. 14 of 2007

Smt. Padmarani Mudai Hazarika

-Vs-

Union of India and Others

Lists of Dates

- 23.04.1987- Applicant's name was registered in the District Employment Exchange, Guwahati. She is a member of SC community.
- 14.07.1993- Applicant was initially appointed in the office of Archaeological Survey of India, Guwahati as casual worker and she was attached to Library Section. (Annexure- I page- 22)
At present she is working as Gr. 'D' worker in General Section in the office of the respondent No. 3.
- 10.09.1993- Department of Personnel and Training, Govt. of India, issued the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme. (Annexure-IV, page- 25)
- 18.07.1995- Superintending Archaeologist, A.S.I. Guwahati commended qualities and abilities of the applicant. (Annexure- II, page- 23)
- 10.03.1998- Archaeological Survey of India, New Delhi directed all the concerned officials to take immediate action for grant of temporary status to casual workers in the light of the O.M dated 10.09.93. (Annexure- IVA, page- 29)
- 16.07.1998- Superintending Archaeologist, Guwahati Circle commended quality of service of the applicant. (Annexure- III, page- 24)
- 1999- Respondent department granted temporary status to one Smti Ranju Devi who was appointed along with the applicant. (Para- 4.7, page- 4, 5 of the O.A)
- 2002- Applicant approached this Hon'ble Tribunal through O.A. No. 245/2002 praying for direction to the respondents for grant of temporary status.
- 30.08.2002- Written statement in O.A. No. 245/2002 filed by the respondents. (Annexure- IX, page- 40)
- 23.01.2003- Respondent No. 3 in O.A. no. 245/02 filed written statement. (Page- 42 of O.A)
- 12.08.2003- Hon'ble Tribunal allowed OA No. 245/02 and directed the respondents to consider the case of the applicant for conferment of

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Filed by the applicant
through U. Bult, advocate
on 04.07.08

temporary status in the light of the Scheme and findings and observations in the judgment and order dated 12.08.03.

(Annexure-VII, page-33)

- 27.01.2004- Respondent No. 3 rejected claim of the applicant for grant of temporary status on the ground that she does not qualify the number of days i.e. 240/206 days in a year.
(Annexure- VIII, page- 39)
- 2004- Applicant approached this Hon'ble Tribunal through O.A. No. 32/2004 challenging impugned order dated 27.01.04.
- 29.03.2005- Hon'ble Tribunal in OA No. 32/04 pleased to set aside and quash the impugned order dated 27.01.04 and directed that if the applicant had completed 240/206 days in a five days a week continuously even after the date of the scheme, respondents would immediately pass an order conferring temporary status to the applicant.
(Annexure- X, page- 45)
- 2005- Respondents approached the Hon'ble Gauhati High Court through W.P (C) No. 4521/2005 against the judgment and order dated 29.03.05 passed in O.A. No. 32/2004.
- 01.11.2006- Hon'ble Gauhati High Court dismissed the WP (C) No. 4521/2005 holding that the judgment and order dated 12.08.03 in O.A. No. 245/2002 has attained finality on not being challenged before the higher forum.
(Annexure-XII, page- 55)
- 10.11.2006- Applicant submitted representation for conferring temporary status, enclosing therewith a copy of the judgment dated 01.11.06 of the Hon'ble High Court.
(Annexure- XIII, Page- 59)
- 05.01.2007- Respondent No. 4 issued impugned order dated 05.01.07 rejecting bonafide claim of the applicant for grant of temporary status in deliberate violation of the direction contained in the judgment and order dated 29.03.05 and repeated exactly the same ground taken in the earlier order dated 27.01.04.
(Annexure-XIV, page- 61)

It is pertinent to mention here that the ground taken in the impugned order dated 05.01.07 for rejection of claim of the applicant has been rejected by this Hon'ble Tribunal in judgment and order dated 29.03.05 in OA No. 32/04, as such the action of the respondents are contemptuous, illegal, arbitrary and the impugned order dated 05.01.07 is liable to be set aside and quashed.

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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 2765 of 2005

Between:

1. A. Pydi Raju, S/o.Pydayya, 19513Z
2. B. Narayana murthy, S/o. Narayanaraju, 19514 A
3. K. Shankara Rao, S/o.Sanyasi Rao, 19515 B
4. B. Marayya, S/o.Malakshmi, 19516 F
5. K. Nagabhushanarao, S/o.Appanna, 19517H
6. M. Ramanayya, S/o.Gopalaswamy, 19518 K
7. K. Sadasivarao, S/o.Apalanaidu, 19519 N
8. K. Trimurthulu, S/o.Subramanyam, 19522W
9. P. Demudu, S/o.Apparao, 19525A
10. K. Somaraju, S/o.Venkappa 19525A
11. D. Veeraju S/o.Chinnapentayya, 19526 B
12. A. Suban, S/o.Appa Rao, 19529 K
13. G. Rama Rao, S/o.Demudu, 19530N
14. Ch. Ramulu, S/o.Mahalakshmi, 19532T
15. O. Sadhurao, S/o.Appilli, 19537B
16. B. Ramana, S/o.Gangunaidu, 19539H
17. S. Chinna Rao, S/o.Simhachalam, 19541N
18. N. Narayanarao, S/o.Suri, 19542R
19. S. Sankar, S/o.Ramulu, 19546Z
20. R. Raju, S/o.Ramudu, 19547A
21. P.Raja Rao, S/o.Potha Raju, 19549F
22. G. Satyanarayana S/o.Naidu 19550H
23. M. Adinarayana, S/o.Pentayya, 19551A

23

24. S. Venkatarao, S/o.Chinnaiah, 19553R
25. E. Ramadandu, S/o.Sanyasappadu, 19555W
26. P. RajaRao, S/o.Potharaju, 19556Y
27. V. Rama Rao, S/o.Sriramulu, 19558A
28. B. Trinadharao, S/o.Pentayya, 19559B
29. N. Demudu, S/o.Sannibabu, 19560F
30. N. Raju, S/o.Mohana rao, 19561H
31. S. Subba Rao, S/o.Apparao, 19562K
32. G. Rama Rao, S/o.Appanna, 19564R
33. J. V.Suribabu, S/o.Suryanarayana 19566W

All the applicants are worked as Unskilled Labourer (USL) in the Naval Dockyard, Visakhapatnam, R/o.Visakhapatnam.

..... PETITIONERS

AND

1. Union of India, represented by its Secretary,

Ministry of Defence, Central Secretariat, New Delhi.

- 2 Chief of the Naval Staff, Naval Headquarters, New Delhi.
- 3 Flag officer commanding-in-chief, Eastern Naval Command, Naval Base,

Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any writ order or direction particularly one in the nature of Mandamus or any other appropriate writ declaring the order dated 09-09-2004 in O.A.No.1489 of 2003 on the file of the Honourable Central Administrative Tribunal, Hyderabad Bench, Hyderabad as illegal, arbitrary, contrary to the various G.O.s of the Government of India concerning absorption and regularization of the employees, discriminatory, unconstitutional and consequently by nullifying the same direct the respondents to restore the temporary status with effect from 07-01-2002 granted in furtherance of O.M.No.51016/12/90-Estt. dated 10-09-1993 of the Government of India together with all consequential and attendant benefits including regularization and pass such other order or orders as this Hon'ble court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:DR.P.B.VIJAY KUMAR

Counsel for the Respondent No.: MR.KOTI REDDY IDAMAKANTI

The Court made the following:

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ORDER: (Per Hon'ble Sri Justice G. Bikshapathy)

The writ petition is filed by the petitioners assailing the order passed by the Central Administrative Tribunal, Hyderabad in O.A.No.1489 of 2003 dated 09.09.2004.

2. The matter relates to conferment of temporary status to casual labourers. More than 250 persons including the petitioners worked as casual labourers right from 1982-83 in the Naval Dockyard. However, the Government introduced a scheme under circular OM.No.51016/2/90-Estt.(c), dated 10.09.1993 to confer Temporary status of the casual labourers, who had worked for 240 days in a calendar year. In pursuance of the said circular, Temporary status was granted to 54 Unskilled Labourers (hereinafter referred to as USLS) and thereafter, the 54 USLS were sought to be terminated by the orders of the 4th respondent dated 21.05.2002 on the ground that they are not entitled to the benefit of Temporary Status under the said Scheme for want of 240 days of service, and the said orders came to be challenged in O.A.No.723 of 2002 and the said O.A. was disposed of on 18.06.2002 on merits. In view of the said directions given by the Tribunal, notices dated 27.06.2002 were served to the petitioners and others seeking their representations, if any, against the proposed withdrawal of the temporary status. In the said notice, it was pointed out that the conditions laid down in para2 (b) & (c) dated 10.09.1993 have not been satisfied. Against the said notice, the petitioners and others have submitted a similar reply dated 25.07.2002 contending *inter alia* that since they have satisfied the conditions 2 (b) & (c) mentioned in the office Memorandum of DOPT, they are entitled for the grant of Temporary status in accordance with the Scheme. Having received the said similar representations from all the applicants by individual, the respondents issued proceedings dated 31.07.2002 holding that the applicants have not completed 240 days of engagement after the issuance of the O.M. dated 10.09.1993, and the said proceedings came to be

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challenged before the Tribunal in O.A.No.973 of 2002. The said O.A. came to be disposed of with a direction to consider the claim of the applicants and pass appropriate orders. In pursuance of the said direction, temporary status of only 16 casual labourers, was conferred with temporary status and the remaining persons have been denied the benefits. Therefore, aggrieved by the order of denying the temporary status, the O.A.No.1489 of 2003 was filed and the said O.A. was dismissed by an order dated 09.09.2004. Against the said order, the present writ petition has been filed.

3. The learned counsel for the petitioners submits that the very approach of the authorities is illegal inasmuch as they tried to calculate 240 days of service after 10.03.1993 which procedure was found to be illegal by the Tribunal in O.A. No.973 of 2002 and the Tribunal directed the authorities to consider as to whether the petitioners had worked for 240 days prior to 10.03.1993, and if so, they should be continued in the temporary status.

4. It is the case of the petitioners that even though the service certificates were issued to the petitioners by the immediate officers, but they were not taken into consideration and the Tribunal having held that the authorities were not directed to conduct any enquiry, refused to go into the matter, and therefore, the order is liable to be set aside and it requires re-consideration.

5. In so far as the documentary evidence produced by the workmen is concerned, the learned standing counsel for the Central Government submits that since the workmen did not submit any documents before the Tribunal, their case was dismissed.

6. After going through the order and also after hearing the learned counsel for both the

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parties, we find that the Tribunal did not concentrate on the enquiry aspect and it held that there was no such direction to the authorities to conduct enquiry into the matter. But as can be seen from the order of rejection issued in pursuance of the orders passed in O.A.723 of 2002, the petitioners submitted the documentary evidence and also the service certificates issued by the immediate officers, but they were rejected on the ground that they did not relate to the period subsequent to 10.03.1993 and they related to the period prior to 10.03.1993 and that the approach of the authorities is contrary to the order of the Tribunal in O.A.No.973 of 2003 inasmuch as the petitioners are possessing the necessary documents to support their case that they worked 240 days.

7. We are of the considered view that the relief should not be denied on the ground that no enquiry was directed to be conducted by the Tribunal, and accordingly, we hold that the order of the Tribunal is not sustainable and set aside the same, and direct the authorities to conduct a fresh enquiry to find as to whether the petitioner has completed 240 days prior to 10.03.1993. It is also open for the petitioners to produce necessary documents in support of their case. The authorities are directed to consider the same and pass appropriate orders. It is needless to mention that if similarly situate workers were already granted the temporary status on the basis of the documentary evidence of the Department, the same benefit, including restoration of their temporary status, should also be extended to the petitioners.

8. Accordingly, the writ petition is allowed. The matter is remitted back to the authorities for fresh consideration keeping in view the observations as indicated above. This exercise shall be done within a period of two months from the date of receipt of a copy of this order.

9. At this stage, the learned counsel for the petitioners submits that after the

2x

disengagement of the petitioners, fresh casual labourers are being engaged by the Government and therefore, he seeks appropriate directions to the authorities to give preference to the petitioners.

10. On the other hand, the learned standing counsel for Central Government submits that in view of the ban, the authorities are not engaging any casual labourers.

11. However, We make it clear that in case of engaging any casual labourers in future, the first preference shall be given to the petitioners and in case, the petitioners fail to report to the duty, the engagement shall be given to the others.

(G. BIKSHAPATHY,J)

(P.S. NARAYANA, J

Date: 03.03.2005

Ksn

..... REGISTRAR

28

// TRUE COPY //

SECTION OFFICER

To

1. The Secretary, Ministry of Defence, Central Secretariat Union of India,
New Delhi.
2. Chief of the Naval Staff, Naval Headquarters, New Delhi.
3. Flag officer commanding-in-chief, Eastern Naval Command,

Naval Base, Visakhapatnam.

4. 2 CD copies

5. The Registrar, Central Administrative Tribunal, Hyderabad Bench, Hyderabad

Form-NIC-OGS/WP{JA}

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5812 OF 2007
(@SPECIAL LEAVE PETITION (CIVIL)NO.7979 OF 2006)

136492

ARCHAEOLOGICAL DEPTT. OF INDIA & ANR

Appellant(s)

VERSUS

Certified to the true copy

DINESH CHAND

R. Khanna

WITH

Assistant Registrar (Judicial), Respondent(s)

20-12-2007

Supreme Court of India

CIVIL APPEAL NO.5813 OF 2007
(@SPECIAL LEAVE PETITION (CIVIL)NO.8194 OF 2006)

CIVIL APPEAL NO.5814 OF 2007
(@SPECIAL LEAVE PETITION (CIVIL)NO.8656 OF 2006)

CIVIL APPEAL NO.5815 OF 2007
(@SPECIAL LEAVE PETITION (CIVIL)NO.8657 OF 2006)

CIVIL APPEAL NO.5816 OF 2007
(@SPECIAL LEAVE PETITION (CIVIL)NO.8658 OF 2006)

CIVIL APPEAL NO.5817 OF 2007
(@SPECIAL LEAVE PETITION (CIVIL)NO.8660 OF 2006)

CIVIL APPEAL NO.5818 OF 2007
(@SPECIAL LEAVE PETITION (CIVIL)NO.8662 OF 2006)

CIVIL APPEAL NO.5819 OF 2007
(@SPECIAL LEAVE PETITION (CIVIL)NO.8663 OF 2006)

CIVIL APPEAL NO.5820 OF 2007
(@SPECIAL LEAVE PETITION (CIVIL)NO.8665 OF 2006)

AND WITH CIVIL APPEAL NO.5821 OF 2007
(@SPECIAL LEAVE PETITION (CIVIL)NO.8666 OF 2006)

O R D E R

Leave granted.

The respondents in all these appeals claimed that they worked as casual labourers on daily wage basis, at various

sites of the appellants- the Archaeological Department of India. The respondents filed applications before the Central Administrative Tribunal seeking a direction that they be given temporary status under the Casual Labourers (Grant of Temporary Status & Regularisation) Scheme of the Government of India, 1993, dated 10.9.1993. The Central Administrative Tribunal directed that they be given temporary status after screening and calculating the period of service, under the said Scheme. The Department challenged the said orders by filing writ petitions. The order of the Division Bench of the Rajasthan High Court declined to interfere with the said order of the Tribunal is under challenge in these appeals.

Heard learned counsel for the appellants and also learned senior counsel for the respondents.

Learned counsel for the appellants submits that all the respondents were engaged as casual workers on work-charge basis, as and when the funds were made available to the department by the Government, for specific project. It is pointed out that the work at various sites depended upon the need for repairs, maintenance, security of archaeological monuments and sanction of funds and the respondents were not engaged for 240 days in a year. It is also contended that the 1993 Scheme was a one time scheme and was not intended to apply to all casual workers as and when they completed 240 days of service in a year. It is also submitted that none of the

respondents fulfilled the criteria for conferment of temporary status under the Scheme. On the other hand, learned senior counsel for the respondents submitted that the respondents were entitled to get temporary status, but was unable to show that the respondents were regularly employed. There are no documents to show either appointment or termination or continuous service for the prescribed period.

Learned senior counsel for the respondents next submitted that some persons engaged subsequent to respondents were continued in some places. The learned counsel for appellant disputed the position. He stated that if respondents were engaged in some projects at an earlier point of time and some others were engaged in some other projects at a later point of time, and if the projects in which respondents were engaged ended earlier, and the projects where others were engaged continued, it cannot be said there is any *inter-se* seniority or that the 'juniors' were continued while dispensing with services of 'seniors'. Be that as it may.

In the facts and circumstances, we are of the view that the respondents have failed to establish that they are entitled to get temporary status under the 1993 Scheme. However, as and when the archaeological department has work in any particular site and as and when the funds are available, the department may consider employing the respondents for casual work in the work-charged establishment, by giving them

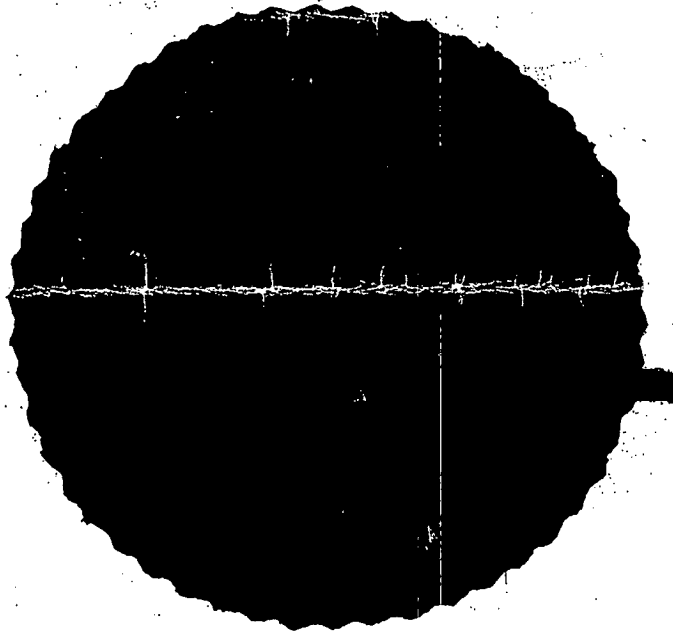
32
preference over any new comers. For this purpose the respondents may register themselves with the respective offices of the Department. We make it clear that this observation shall not be treated as creating or recognising any right in the respondents to get any 'status' or to claim regularisation.

We, therefore, set aside the orders of the Tribunal and High Court challenged in these appeals and dispose of these appeals with the said observations. No costs.

Sd
.....CJI.
(K.G. BALAKRISHNAN)

Sd
.....J.
(R.V. RAVEENDRAN)

NEW DELHI;
7TH DECEMBER, 2007.



URGENT FEE Rs. 5/-

SUPREME COURT OF INDIA
Central Library and Archives
CA 5812/07
Matter No. Archaeological Department of India
Brief Cause Title - n -
Dinesh Chandra

SERIAL NO. OF
Nos. of Folio(s): 4
Costs including
Certification RS 14/-
fees
(.....Fourteen only)

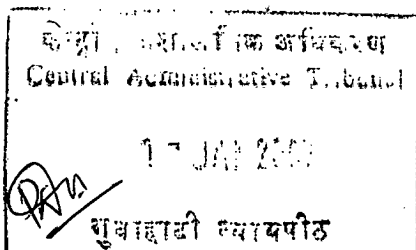
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Supreme Court of India
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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI**

(An application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 14 /2007

Smti Padmarani Mudai Hazarika

-Vs-

Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 14.07.1993- Applicant was initially appointed as casual worker and she was attached to Library Section in the office of the Respondent No. 3. (Annexure- I)
- 10.09.1993- Department of Personnel and Training, Govt. of India, issued the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993. (Annexure-IV)
- 10.03.1998- Respondent department vide order dated 10.03.98 directed the concerned officials to take immediate action for grant of temporary status to casual workers in the light of the O.M dated 10.09.93. (Annexure- IVA)
- 12.08.2003- Hon'ble Tribunal by it's judgment dated 12.08.03 in OA No. 245/02 directed the respondents to consider the case of the applicant for grant of temporary status. (Annexure-VII)
- 27.01.2004- Respondent No. 3 rejected claim of the applicant for grant of temporary status. (Annexure- VIII)
- 29.03.2005- Hon'ble Tribunal vide it's judgment dated 29.03.05 in OA No. 32/04 set aside and quashed the impugned order dated 27.01.04 and directed that if the applicant had completed 240/206 days in a five days a week continuously even after the date of the scheme, respondents would immediately pass an order conferring temporary status to the applicant. (Annexure- X)
- 01.11.2006- Respondents approached Hon'ble Gauhati High Court against the judgment and order dated 29.03.05 through WP (C) No. 4521/2005, which was dismissed on 01.11.06. (Annexure-XII)
- 05.01.2007- Respondent No. 4 issued impugned order dated 05.01.07 rejecting bonafide claim of the applicant for grant of temporary status in

Padmarani Mudai Hazarika.

deliberate violation of the direction contained in the judgment and order dated 29.03.05 and repeated exactly the same ground taken in the earlier order dated 27.01.04. It is pertinent to mention here that the ground taken in the impugned order dated 05.01.07 for rejection of claim of the applicant has been rejected by this Hon'ble Tribunal in judgment and order dated 29.03.05 in OA No. 32/04, as such the action of the respondents are contemptuous, illegal, arbitrary, illegal and the impugned order dated 05.01.07 is liable to be set aside and quashed.
(Annexure-XIV)

Hence this Original Application.

P R A Y E R S

1. That the Hon'ble Tribunal be pleased to set aside and quash impugned speaking order bearing letter No. 1/33(c)/2005-Admn-3625 dated 05.01.2007 (Annexure-XIV).
2. That the Hon'ble Tribunal be pleased to direct the respondents to grant Temporary Status to the applicant in terms of the Government Scheme, 1993 as well as in the light of the judgment and order dated 12.08.2003 and 29.03.2005 of this Hon'ble Tribunal and also in terms of Hon'ble High Court's order dated 01.11.2006 passed in WP (C) No. 4521/2005 with immediate effect.
3. That the Hon'ble Court be pleased to declare that applicant is entitled to continue in service at least in the same capacity as casual worker and further be pleased to direct the respondents to allow the applicant in the service in the same capacity as casual worker.
4. Costs of the application.
5. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for.

During pendency of this application, the applicant prays for the following relief: -

1. That the Hon'ble Tribunal be pleased to stay operation of the impugned order issued under letter bearing letter No. 1/33(c)/2005-Admn-3625 dated 05.01.2007 (Annexure-XIV) and further be pleased to direct the respondents not to oust the applicant till disposal of the O.A.

Padmarani Mudali Hazarika.

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI**

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

O.A. No. 14 / 2007

Smt. Padmarani Mudai Hazarika : Applicant

-Versus -

Union of India & Others : Respondents.

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Filed by

S. Naha

Advocate

Date: *17/1/07.*

Padmarani Mudai Hazarika

1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Filed by the applicant
through? S. N. N. Advocate
17.01.2007.

BETWEEN:

Smti Padmarani Mudai Hazarika
Wife of Shri Ballav Hazarika
Chandmari Colony
Nizarapur
Guwahati-781003.

.... Applicant.

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Art and Culture
New Delhi.
2. The Director General
Archaeological Survey of India
Janapath,
New Delhi-110011
3. The Superintending Archaeologist,
Archeological Survey of India,
Guwahati Circle, Ambari
Guwahati-781001, Assam.
4. Sri P.K. Mishra,
Superintending Archaeologist (in-charge)
Archeological Survey of India,
Guwahati Circle, Ambari
Guwahati-781001, Assam.

...Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

Padmarani Mudai Hazarika.

This application is made against the impugned order bearing letter No. 1/33 (C)/2005-Admn. 3625 dated 05.01.2007 (Annexure-), whereby the claim of the applicant for Temporary Status has been rejected in total violation of the direction/order contained in the judgment and order dated 29.03.2005 passed in O.A. No. 32 of 2004 and also praying for a further direction upon the respondents to grant Temporary Status to the applicant with all consequential service benefit in the light of the direction contained in the Judgment and order dated 29.03.2005.

2. Jurisdiction of the Tribunal.

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

3. Limitation

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the case.

4.1 That the applicant is a citizen of India and as such she is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India. She is also a member of the Scheduled Caste Category.

4.2 That the applicant was initially appointed as casual worker under the Respondents in July, 1993 vide order No. 1/1993 dated 14.07.1993 issued by the Respondent No. 3 and was attached to Library Section in the office of the Respondent No. 3 for assisting the in-charge Librarian.

Copy of the Office Order dated 14.7.1993 is annexed hereto as Annexure-I.

4.3 That since her appointment as casual worker on 14.7.1993, the applicant has been serving continuously under the respondents, without any break

Padmawani Mudai Hazarika.

where she is still continuing till date. At present she is working in General Section as Group 'D' Worker and is being entrusted with different types of works.

- 4.4 That the applicant has been attending to all types of works as assigned to her by the Respondents from time to time and has been performing her works to the best satisfaction of the respondents who have appreciated her qualities and abilities on different occasions and have issued valuable certificates in her favour.

Copy of certificates dated 18.7.1995 and dated 16.7.99 are annexed hereto as Annexure II and III respectively.

- 4.5 That by virtue of her continuous service from July 1993 under the respondents as casual worker, she has become entitled for grant of Temporary Status under "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993" issued by the D.O.P.T., Government of India under its O.M. dated 10.9.1993. The said Scheme inter alia provides as follows: -

"4. Temporary status

- i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.M. 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 enforcement of temporary status would be without reference to the creation/ availability of regular Group 'D' posts.

Padmaarani Mudali Hazwika.

- 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."

Needless to state that in the instant case the applicant has fulfilled all the criteria as stated above. This apart, even the respondent department vides its order No. F. 33/12/96-Admn. II dated 10.3.1998 directed their concerned officials to take immediate action for grant of Temporary status to Casual Workers in the light of the O.M. dated 10.09.1993 of Govt. of India.

Copy of O.M. dated 10.09.1993 and order dated 10.03.1998 are annexed hereto as Annexure-IV and IV A respectively.

- 4.6 That the applicant begs to state that she is a member of Scheduled Caste Category and as such deserves privileged considerations as guaranteed under the Constitution of India. Her name has duly been registered for employment by the District Employment Exchange, Guwahati, Government of Assam.

(Copy of SC certificate issued by D.C. Kamrup and copy of registration certificate dated 23.4.1987 of District Employment Exchange are annexed hereto as Annexure V and VI respectively).

- 4.7 That in spite of her entitlement for grant of Temporary status under the Scheme aforesaid, the applicant is not being considered by the

Padmarani Mudni Hazarika.

Respondents over these years for grant of the said benefit. In the year 1999, Temporary Status has been granted to one Smti Ranju Devi who was also appointed along with the Applicant as Casual Worker by the Respondents but the said benefit was denied to the applicant on the false plea that she did not work for 206 days during the year as required under the scheme and that her services fell short by 21 days than the required 206 days for grant of Temporary Status as required under the Scheme and it is alleged that while counting the number of days, the authority deliberately did not take into consideration the Saturday and Sunday as required under the Rule, hence she did not qualify for the said status. It is relevant to mention here that Smti Ranju Devi, who was engaged along with the applicant, also fell short by 21 days than the requirement of 206 days during the year but she was granted the Temporary Status under the aforesaid Scheme without any objection whereas the same was denied to the applicant who was similarly situated with that of Smti Ranju Devi. Further, the numbers of days as shown by the respondents in case of the applicant are also not correct since the applicant worked for more than 206 days in each year. Hence the entire service records of the applicant showing days of her attendance including relevant payment vouchers for all those years with effect from July 1993 to till date needs be produced by the respondents before the Hon'ble Tribunal for correct ascertainment of facts and proper adjudication of her case thereof. Therefore Hon'ble Court be pleased to direct the respondents to produce attendance registrar and vouchers for perusal of Hon'ble Court.

- 4.8 That your applicant approached this Hon'ble Tribunal initially by filing an original application which was registered as O.A. No. 245/2002. The said O.A was contested by the respondent on the alleged ground that the applicant is not entitled to temporary status in terms of the notification/scheme dated 10.09.1993 as because she has not completed 240/206 days on the date of notification of the scheme i.e. on 10.09.1993. In

Padmarani Mudar Hazarika.

the written statement submitted by the respondent in O.A. No. 245/2002, it was a specific contention of the respondents that she did not render service 206 days on 10.09.1993. The said contention of the respondents was rejected by the Tribunal vide its judgment and order dated 12.08.2003 passed in O.A No. 245/2002. In the said judgment the learned Tribunal after detailed consideration of the materials on records and also the Apex Court judgment passed in the case of U.O.I and Ors. -Vs- Mohan Pal held that to earn the benefit of temporary status, a casual employee must be on employment on the date when the scheme was introduced and accordingly directed the respondents to consider the case of the applicant for conferment of temporary status in the light of the scheme and the findings and observation made by the learned Tribunal.

(A copy of the judgment and order dated 12.08.2003 is enclosed as Annexure-VII).

- 4.9 That after receipt of the judgment and order dated 12.08.2003, the respondents i.e. Superintendent, Archaeologist passed the impugned order bearing letter No. 1/22/2003-Admin-2974 dated 27.01.2004 whereby claim for grant of temporary status of the applicant has been rejected. On the same alleged ground which was taken earlier in the written statement by the same respondents in O.A. No. 245/2002. It is further alleged in the impugned order that the applicant did not complete 206 days as per direction contained in the O.M dated 10.09.1993 and further referred decision of Mohon Pal's case in the said impugned order. The main contention of the respondents written statements, that the applicant needs to complete 240/206 days on 10.09.1993, which contention of the respondent was specifically rejected by the learned tribunal in its judgment dated 12.08.2003 and specifically held in the instant case of the applicant, that an employee must be on employment on the date of notification of the scheme i.e. on 10.09.1993 and if thereafter she completes

Padmarani Mudali Hangurika.

240/206 days, in that event she would be entitled to grant of temporary status. Since the present applicant was appointed on 14.07.1993 and she was very much in employment on 10.09.1993, as such she has acquired a legal right for consideration of her case for grant of temporary status, more particularly by virtue of the judgment and order dated 12.08.2003 pass by the learned Tribunal. In view of the clear findings and decision of the learned Tribunal, the respondents is required to consider the case of the applicant taking Saturday and Sunday into consideration for grant of temporary status, but the respondent rejected the claim of temporary status only on the alleged ground that the applicant did not complete 206 days service as on 10.09.1993, and thereby rejected her claim for grant of temporary status even after the judgment and order dated 12.08.2003 passed in O.A. No. 245/2002, the respondent are not entitled to question the validity and legality of the judgment dated 12.08.2003 and also not entitled to reiterate their earlier stand as indicated in the impugned order dated 27.01.2004, without challenging the said judgment dated 12.08.2003 before the appropriate forum.

(Copy of the order dated 27.01.2004 and a copy of the written statement and additional written statement filed in O. A. No. 245/2002 are enclosed as Annexure-VIII and IX respectively).

- 4.10 That your applicant being highly aggrieved by the impugned order dated 27.01.2004 challenged the said order before this learned Tribunal by filing an original application which was also contested by the respondents by filing a written statement. In the said written statement the respondent No. 1, 2 and 3 further reiterated and contended as follows, the relevant portion is quoted below; -

"That the casual worker should have been in employment on the date of commencement of the scheme and also should have rendered a continuous service of 206 or 240 days as the case may be on that date i.e. 10.09.1993."

Padmarani Mudali Hazari
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Whereas the learned Tribunal in O.A. No. 245/2002 specifically held as follows: -

"To earn the benefit a casual employee must be in employment on the date when the scheme was introduced."

It would further be evident from para 2 of the judgment and order dated 12.08.2003 that the basic contention of the respondents in O.A. No. 245/2002 was as follows: -

"According to the respondents the applicant was not entitled for being conferred the temporary status on the score that she was engaged as a casual worker on 14.07.1993 and she did not complete the requisite number of days, i.e. 206 days as on 10.09.1993, the basic criteria for conferment of temporary status to casual workers."

But the said contention of the respondent although rejected by this Hon'ble Tribunal in the judgment and order dated 12.08.2003, but the respondent reiterated the same stand in their written statement, filed in O.A. No. 32/2002. More particularly in para 8, 15, 17 and 19 it was contended that 41 days of service rendered as per her own statement, in between 14.0.1993 to 10.09.1993 and 114 days during the calendar year 1993. Therefore she is not entitled to grant of temporary status. However, the learned Tribunal in its judgment and order dated 29.03.2005, after taking into consideration the materials on record held that in view of the judgment passed in O.A. No. 245/2002, the said order clearly states that, it is not necessary for the applicant to fulfill the later condition. Namely completion of 240/206 days continuously as on the date of the scheme i.e. on 10.09.1993 and it would be sufficient that the applicant is having continuous service for 240 days or 206 days as the case may be even subsequent to the date of the scheme, and accordingly the learned Tribunal set aside the impugned order dated 27.01.2004 and further

Padmarani Mudei Hazvika.

directed the respondents to verify as to whether the applicant had completed 240 days or 206 days in a five day week continuously irrespective of the date of the scheme. The learned Tribunal also made it clear that for the counting of continuous period of service Sundays, Saturdays and holidays will be treated as on duties. If the applicant had completed 240 days or 206 days in a five days a week continuously even after the date of the scheme, respondents would immediately pass an order conferring temporary status to the applicant and the same would be communicated to her and the said exercise would be done within a period of six weeks from the date of the receipt of this order.

The applicant after receipt of the said judgment and order dated 29.03.2005 submitted a representation for implementation of the same, but finding no response she preferred a contempt petition before this Hon'ble Tribunal, however the respondents being aggrieved with the judgment and order dated 29.03.2005 preferred a writ petition before the Hon'ble Gauhati High Court, which was registered as WP (C) No. 4521/2005. The contempt petition was not pressed but closed due to interim order passed by the Hon'ble High Court.

(A Copy of the judgment and order dated 29.03.2005 as well as the written statement filed by the respondent in O.A. No. 32/2004 are enclosed as Annexure-X and XI respectively).

- 4.11 That the said writ petition came up for hearing before the Hon'ble High Court on 01.11.2006 and the Hon'ble High Court on 01.11.2006, on close perusal of the impugned judgment and order dated 29.03.2005 did not find any compelling or convincing reasons to disturb the impugned judgment and was pleased to dismiss the writ petition and thereby upheld the judgment and order dated 29.03.2005, more so in view of the fact that the earlier judgment and order dated 12.08.2003 had attained finality.

Padmarani Mudali Hingrika.

(A copy of the Hon'ble High Court's order dated 01.11.2006 is enclosed as Annexure- XII).

- 4.12 That after the judgment and order dated 01.11.2006, the applicant submitted a representation on 10.11.2006 addressed to the DG, ASI, New Delhi, enclosing therewith a copy of the judgment and order dated 01.11.2006 passed in WP (C) No. 4521/2005, for implementation of the said order.

A copy of the representation dated 10.11.2006 is enclosed as Annexure-XIII.

- 4.13 That it is stated that most surprisingly, the respondent, more particularly Sri P.K. Mishra the respondent No. 4, who is now holding the charge of Superintending Archaeologist in the absence of the regular incumbent, who is on leave, issued the impugned speaking order bearing letter No. 1/33(C)/2005-Admn-3625 dated 05.01.2007 rejecting the bonafide claim for grant of temporary status. In the said impugned order the respondent more particularly Sri P.K. Mishra the officiating Superintending Archaeologist has further stated as per direction/instructions of DOPT O.M dated 10.09.1993, the casual worker must have been on employment on the date of issue of DOPT O.M dated 10.09.1993 and it is not an on going scheme and they should rendered a continuous service of 240/206 days of at least one year and whereas it has been found from the official records that the applicant does not satisfy the above condition. It is further contended by Sri P.K. Mishra in a very clever manner with a malafide intention in deliberate violation of the direction contained in the judgment and order dated 29.03.2005 that before and within 10.09.1993 the applicant did not fulfill the condition of working for a period of at least 206 days (this office observed 5 days work) and she was engaged with effect from 14.07.1993, even during the calendar year 1993 the applicant was not engaged for 206 days and was actually engaged for 116 days.

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The aforesaid contention/grounds of the respondents have already been taken earlier by the aforesaid respondents both in O.A. No. 245/2002 as well as in O.A. No. 32/2004, as such the aforesaid alleged ground cannot be sustained in the eye of law any more and the respondents are barred by law of estoppel to take the aforesaid ground any more in deliberate violation of the judgment and order dated 29.03.2005 passed by the learned Tribunal in O.A No. 32/2004 which was confirmed by the Hon'ble High court in its order dated 01.11.2006 passed in WP (C) No. 4521/2005. The Hon'ble High Court very specifically stated that there is no compelling or convincing reason to disturb the judgment of the learned Tribunal. It is surprising to note here at this stage that the respondents authority with a deliberate intention repeatedly ignoring the specific direction of the learned Tribunal to the effect that the requisite number of working days i.e. 206 days in the instant case should not be restricted from the date of the scheme i.e. on 10.09.1993 and it would be sufficient that if the applicant is having continuous service for 240 days or 206 days as the case may be, even subsequent to the date of the scheme. Accordingly the impugned order dated 27.01.04 was set aside and quashed by the learned Tribunal. But unfortunately the respondents have exactly repeating the same ground in the impugned order dated 05.01.2007, which they have taken in the earlier impugned order dated 27.01.04 inter alia by alleging that in clause 4 of the scheme for grant of temporary status, that the scheme does not appear to be a general guideline to be applied for the purpose of giving temporary status to the casual workers as and when they complete 1 year continuous service, since the scheme is not an ongoing scheme. When the said alleged ground was set aside and quashed by the learned Tribunal and a specific direction is given in para 4 of the judgment and order dated 29.03.05 to grant temporary status after verifying as to whether the applicant had completed 240 days/206 days in a five days week continuously irrespective of the date of the scheme. It is also made clear by the learned Tribunal that while counting the

Padmarani Mudali Hazarika.

continuous period of service Sundays and Saturdays be treated as on duties. The learned Tribunal further made it repeatedly clear that if the applicant had completed 240/206 days even after the date of the Scheme, in that event also the respondents should pass an order conferring temporary status in favour of the applicant but the respondents authority willfully and deliberately repeatedly violated the said order of the learned Tribunal and passed exactly similar impugned order dated 05.01.2007 taking the same alleged ground which they had earlier taken in the impugned order dated 27.01.2004. As such action of the respondents in issuing impugned order dated 05.01.2007 is illegal, arbitrary, malafide and also in colourable exercise of power, therefore the impugned order dated 05.01.2007 is liable to be set aside and quashed, with heavy cost.

(Copy of the impugned order dated 05.01.2007 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- XIV).

- 4.14 That most surprisingly the respondents vide impugned order dated 05.01.2007 rejected the prayer for grant of Temporary Status on the plea that before and within 10.09.1993 the applicant did not fulfill the condition of working for a period of at least 206 days and she was engaged with effect from 14.07.1993, even during the year 1993 the applicant was not engaged for 206 days and was actually engaged for 116 days. It is categorically stated that this Hon'ble Tribunal in it's judgment and order dated 29.03.2005 passed in OA No. 32/2004 it has specifically held in Paragraph 4 as follows:

"4. This order clearly states that it is not necessary for the applicant to fulfill the latter condition, namely, completion of 240 days or 206 days, as the case may be continuously as on the date of the scheme i.e. on 10.09.1993 and that it is sufficient that the applicant is having continuous service for 204 days or 206 days, as the case may be, even subsequent to the date of the scheme. In this

Padmarani Mudai Hazarika.

view of the matter the impugned order dated 27.1.2004 is illegal, arbitrary and unjustified. The said order is accordingly quashed and the respondents are directed to verify as to whether the applicant had completed 240 days or 206 days in a five days week continuously irrespective of the date of the scheme."

Therefore, from the above findings of the Hon'ble Tribunal it is very much clear that this Hon'ble Tribunal has rejected the contention of the respondents that even if the applicant did not complete 206 days in the calendar year 1993 and the said dictum of this Hon'ble Tribunal has also upheld by the Hon'ble High Court vide it's judgment and order dated 01.11.2006 passed in WP (C) No. 4521/2005. It appears that the impugned order dated 05.01.2007 has been passed by the officiating Superintending Archaeologist, that is, local Head of Office in total violation of the direction of the this Hon'ble Tribunal issued the impugned order dated 05.01.2007. A mere reading of the impugned order it appears that the same has been passed mechanically without application of mind with the sole intention to avoid the implementation of the Judgment and order of the Hon'ble Tribunal. at the instance of Respondent No. 4.

It is relevant to mention here that even from the date of stay order passed by this Hon'ble Tribunal in Misc. Petition No. 109/2002 the applicant continuing in service till date and in the meanwhile during the calendar year 2002-03 and 2003-04 she has completed 240/206 days service as required under the Scheme and there is no scope on the part of the respondents to deny the said period of service as because she is continuing in service under the interim order otherwise it will be amount to violation of the interim order passed by the learned Tribunal, which may further attract contempt proceeding against the respondents in the event of denying the interim order. In the fact and circumstances the impugned order dated 05.01.2007 is liable to be set aside and quashed.

Padmarani Murali Hazarika.

4.15 That it is stated that the applicant long back completed the required number of working days in a year i.e. 206/240 during the every calendar year since her engagement under the respondents with effect from 14.07.1993. Therefore, denial of temporary status to the applicant is contrary to the law. The applicant is confident that if the records/payment vouchers are produced before this Hon'ble Tribunal from which it would be crystal clear that the applicant has attained eligibility for grant of temporary status in the light of the Scheme issued by the Government of India for grant of Temporary Status and Regularisation. It is pertinent to mention here that the respondent No. 3 on a query from the headquarter office, New Delhi submitted a report showing lesser number of working days without taking into consideration of Saturdays and Sundays as required under the Rule in respect of the present applicant with the intention to deprive the benefit for grant of temporary status and regularization but surprisingly the report where number of working days in respect of the applicant shown to the headquarter office not disclosed in the written statement. Therefore, Hon'ble Tribunal be pleased to direct the respondent to produced all connected records before the Hon'ble Tribunal, more particularly the report furnished by the respondent no. 3 with reference to letter bearing No. F. No. 30-1/2001-Adm.II dated 7.9.2001.

Detail particulars of working days in respect of the applicant since her joining are furnished hereunder:

Sl. No.	Year	No. of working days
1	14.7.1993	116
2	1994	243
3	1995	207
4	1996	246
5	1997	201
6	1998	217
7	1999	219
8	2000	240
9	2001	219

Padmarani Mudai Hazarika.

The above table is prepared by the applicant taking into consideration Saturdays and Sundays so far the number of working days are concerned. In this connection it is relevant to mention here that the respondent authority also did not count the Saturday and Sunday for the purpose of granting temporary status. It is true that the applicant on many occasions were not paid wages for Saturdays and Sundays but the same ought to have been counted for the purpose of granting temporary status.

- 4.16 That the applicant begs to state that a large number of casual workers who are recruited after 14th July 1993 & junior to the present applicant in different offices under the Superintending ARCHAEOLOGICAL SURVEY OF INDIA, Guwahati Circle. The detail particulars of those juniors who are still working furnished hereunder for perusal of the Hon'ble Tribunal.

Sl. No.	Name	Place of posting
1	Sri Parameswar Das	Surya Pahar, Goalpara
2	Sri Pravat Baruah	Goalpara
3	Sri Biren Kalita	Goalpara
4	Sri Dipen Deka	Guwahati
5	Sri Pradip Deka	Tezpur
6	Sri Samar Ali	Guwahati
7	Smt Sashirani Saka	Udaipur, Tripura
8	Sri Bijoy Kurmi	Sibsagar, Assam
9	Sri Saraj Barman	Guwahati
10	Smt. Sabitri Nath	
11	Sri Samar Das	Guwahati
12	Smt. Dipali Brahma	
13	Sri Mukut Kumar	Tezpur
14	Sri Amal Medhii	Guwahati
15	Sri Bhupen Deka	Suryapahar, Goalpara

It is quite clear from above that under a large number of juniors casual workers are retained in service, therefore the applicant is also entitled to continue in service in the facts and circumstances stated above.

Padmarani Mudra Hargovika.

4.17 That it is stated that Sri P.K. Mishra, the officiating Superintending Archaeologist has been impleaded as party respondent No. 4 in the instant Original Application as because Sri P.K. Mishra in the absence of regular Superintending Archaeologist has issued the impugned order dated 05.01.2007, knowing fully well that the judgment and order dated 29.03.2005 passed by the learned Tribunal in O.A No. 32/2004 has already been confirmed by the Hon'ble High court in its order dated 01.11.2006 passed in WP (C) No. 4521/2005. Moreover, this Hon'ble Tribunal in it's order dated 29.03.2005 has set aside and quash the impugned order dated 27.01.2004, therefore issuance of impugned order dated 05.01.2007 by Sri P.K. Mishra on the exactly same ground is nothing but with the ulterior motive to harass the applicant. Therefore, the impugned order dated 05.01.2007 is also contemptuous in nature as such the Hon'ble Tribunal be pleased to set aside and quash the impugned order dated 05.01.2007 and further be pleased to direct the respondents to grant temporary status to the applicant with immediate effect and also be pleased to impose heavy cost upon the respondent No. 4 for non-compliance of the judgment and order dated 29.03.2005.

4.18 That your applicant is apprehending that she may be ousted from service at any point of time, therefore she is approaching before this Hon'ble Tribunal for a direction upon the respondents not to oust the applicant from service till disposal of this Original Application as an interim measure and further praying for a direction upon the respondents to grant the applicant temporary status with immediate effect.

4.19 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

5.1 For that, the applicant has been serving under the respondents as Casual Labour since July 1993 continuously.

Padmarani Mudali Haysarika.

- 5.2 For that, the applicant has acquired a valuable legal right for grant of Temporary Status in terms of the "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993" launched by the Government of India vide O.M. dated 10.09.1993.
- 5.3 For that, the applicant has been serving since 1993 continuously and without any break and her performances have been certified as satisfactory by the respondents.
- 5.4 For that, such Temporary Status has been granted to another similarly situated Casual Worker.
- 5.5 For that, the denial of the grant of Temporary status and appointment to the applicant is arbitrary, unjust, unfair and violative of the principles of natural justice and also of Article 14 and 16 of the Constitution of India.
- 5.6 For that, the applicant submitted representations and made approaches to the respondents for grant of Temporary Status but with no result.
- 5.7 For that even the Respondent department vide its letter dated 10.03.1998 (Annexure- IV A) directed its concerned officials to take appropriate action to grant Temporary Status to Casual Labourers in terms of O.M. dated 10.09.1993 of Government of India but to no result.
- 5.8 For that the impugned order dated 27.01.2004 (Annexure-XIII) is contrary to the Judgment and order dated 12.08.2003 passed in O.A. No. 245/2002 and also contrary to the relevant records.
- 5.9 For that the juniors of the applicant are still working in the said department.
- 5.10 For that the grounds taken by the respondents in the impugned order dated 05.01.2007 have already been taken by the respondents both in O.A.

Padmarani Mudali Hazarika.

No. 245/2002 as well as in O.A. No. 32/2004 and the respondents are barred by law of estoppel to take the aforesaid ground any more in deliberate violation of the judgment and order dated 29.03.2005 passed by the learned Tribunal in O.A No. 32/2004 which was confirmed by the Hon'ble High court in its order dated 01.11.2006 passed in WP (C) No. 4521/2005.

- 5.11 For that this Hon'ble Tribunal in its judgment and order dated 29.03.05 passed in O.A. No. 32/2004 it has specifically held that it is not necessary for the applicant to fulfill the latter condition, namely, completion of 240 days or 206 days, as the case may be continuously as on the date of the scheme i.e. on 10.09.1993 and that it is sufficient that the applicant is having continuous service for 240 days or 206 days, as the case may be, even subsequent to the date of the scheme. Therefore, the plea taken by the respondents that the applicant has not completed 206 days in the calendar year 1993 is in total disregard to the dictum of this Hon'ble Tribunal as such the impugned order dated 05.01.2007 is contemptuous in nature and the same is liable to be rejected.

6. Details of remedies exhausted.

That the applicant states that she has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application. Personal approaches and representation made by the applicant failed to evoke any response.

7. Matters not previously filed or pending with any other Court.

The applicant further declares that saves and except filing of OA No. 245/2002 and 32/2004 before this Hon'ble Tribunal she had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the

Padmarani Mudali Hazarika.

subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief (s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief (s):

- 8.1 That the Hon'ble Tribunal be pleased to set aside and quash impugned speaking order bearing letter No. 1/33(c)/2005-Admn-3625 dated 05.01.2007 (Annexure-XIV).
- 8.2 That the Hon'ble Tribunal be pleased to direct the respondents to grant Temporary Status to the applicant in terms of the Government Scheme, 1993 as well as in the light of the judgment and order dated 12.08.2003 and 29.03.2005 of this Hon'ble Tribunal and also in terms of Hon'ble High Court's order dated 01.11.2006 passed in WP (C) No. 4521/2005 with immediate effect.
- 8.3 That the Hon'ble Court be pleased to declare that applicant is entitled to continue in service at least in the same capacity as casual worker and further be pleased to direct the respondents to allow the applicant in the service in the same capacity as casual worker.
- 8.4 Costs of the application.
- 8.5 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

Padmarani Mudali Hazarika.

During pendency of this application, the applicant prays for the following relief: -

- 9.1 That the Hon'ble Tribunal be pleased to stay operation of the impugned order issued under letter bearing letter No. 1/33(c)/2005-Admn-3625 dated 05.01.2007 (Annexure-XIV) and further be pleased to direct the respondents not to oust the applicant till disposal of the O.A.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

- | | | | |
|------|---------------|---|-------------------|
| i) | I. P. O. No. | : | 286 934806. |
| ii) | Date of Issue | : | 26.12.2006. |
| iii) | Issued from | : | G.P.O., Guwahati. |
| iv) | Payable at | : | G.P.O., Guwahati. |

12. List of enclosures.

As given in the index.

Padmarani Mudali Hazarika.

VERIFICATION

I, Smti Padmarani Mudai Hazarika, Wife of Sri Ballav Hazarika, aged about 44 years, resident of Chandnari Colony, Nizarapar, Guwahati-3, District Kamrup, Assam, applicant in the instant original application do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 17th day of January 2007.

Padmarani Mudai Hazarika.

1/19-Admn/95
Government of India,
Archaeological Survey of India,
Office of the Superintending Archaeologist,
Guwahati Circle, Dispur, Guwahati-781005.

OFFICE ORDER NO. _____

/1993

14/7/93

Miss Padmarani Mudai has been engaged as Assistant librarian
as casual basic from 14/7/1993.

[Signature]

(D. Bhengra).

Superintending Archaeologist,
Head of Office

1. Copy to Miss Padmarani Mudai for information.
2. UDC Adm.
3. Office Copy.

[Signature]

Superintending Archaeologist,

Superintending Archaeologist,
Archaeological Survey of India,
Guwahati Circle, Dispur,
GUWAHATI-781005

*Interested
Mudai
Advocate*

भारत सरकार
GOVERNMENT OF INDIA

ANNEXURE-II

PHONE : 87961

सं.सं. : ५७९६१

कार्यालय :-

अधीक्षक पुरातत्वविद
भारतीय पुरातत्व सर्वेक्षण
गुवाहाटी मंडल
दिसपुर,
गुवाहाटी-७८१००५, असम



OFFICE OF THE
SUPERINTENDING ARCHAEOLOGIST
ARCHAEOLOGICAL SURVEY OF INDIA
GUWAHATI CIRCLE

DISPUR, GUWAHATI-781 005, ASSAM

No.

Dated the.....19

क्रमांक

दिनांक १९

TO WHOME IT MAY CONCERN

THIS to certify that Mrs. Padma Rani Mudai Hazarika
W/o Sri Ballav Hazarika of Chandmari, Guwahati is working in
this office as Assistant Librarian on casual basis since
14.7.93 till the date. She posses a good knowledge in her work.
She is sincere, hard worker and obideant.

I wish her every succes in her life.

D. BENGHRA

SUPERINTENDING ARCHAEOLOGIST
HEAD OF OFFICE

Superintending Archaeologist,
Archaeological Survey of India,
Guwahati Circle, Dispur,
GUWAHATI-781005

Attested
By
Advocate

भारत सरकार

GOVERNMENT OF INDIA

PHONE : 61261

दूरभाष : 61961

कार्यालय :

आधीक्षक पुरातत्वविद
भारतीय पुरातत्व सर्वेक्षण
गुवाहाटी मंडल

गुवाहाटी-781001 असम

क्रमांक.....

दिनांक..... १९



प्रतकीर्तिमपावृणु

OFFICE OF THE
SUPERINTENDING ARCHAEOLOGIST
ARCHAEOLOGICAL SURVEY OF INDIA
GUWAHATI CIRCLE

Ambon GUWAHATI-781001 ASSAM

No 1/9/99-Adm.-1117

Dated the 16.7.99.19

TO WHOM IT MAY CONCERN

Certified that Srimati Padmarani Mudai working on casual basis in this office since July, 1993 and attached with the Library Section to assist the incharge Librarian in matters off accessioning of books, safe keeping them in the self and issued as and when needed. Besides she knows English Typing and time to time typed letters etc. Partening the Library section, I found her very honest, sincere and dutiful .

I wish her all sucess in her future career to get a regular job in any Central and State Govt. Offices, where her competency could be utilised properly, if appointment ~~was~~ as office assistant/Library Assistant .

(Dr. G. C. Chauley)
Superintending Archaeologist -
Guwahati Circle.

16/7/99

Archaeological Survey of India
Guwahati Circle

Attested
Writter
Advocate

11/2/90-Estt(C)
Government of India
Ministry of Personnel, P.G. and Pensions
Department of Personnel & Training

New Delhi, the 10th Sept. 1993

OFFICE MEMORANDUM

Subject: Grant of temporary status and regularisation of casual workers - Formulation of a scheme in pursuance of the CAT, Principal Bench, New Delhi, judgement dated 16th Feb 1990 in the case of Shri Raj Kamal & Others Vs. UOI.

The guidelines in the matter of recruitment of persons on daily-wage basis in Central Government offices were issued vide this Department's O.M. No. 49014/2/86-Estt(C) dated 7.6.88. The policy has further been reviewed in the light of the judgement of the CAT, Principal Bench, New Delhi delivered on 6.2.90 in the writ petition filed by Shri Raj Kamal and others vs. Union of India and it has been decided that while the existing guidelines contained in O.M. dated 7.6.88 may continue to be followed, the grant of temporary status to the casual employees, who are presently employed and have rendered one year continuous service in Central Government offices other than Department of Telecom, Posts and Railways may be regulated by a scheme as appended.

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 containing O.M. dated 7.6.88. Cases of negligence should be viewed seriously and brought to the notice of appropriate authorities taking prompt and suitable action.

Sd/-
(Y.G. Paranda)
Director

- Ministries/Departments/Offices of the Government of India as per the standard list.
- to:
- (1) All attached and subordinate offices of
(i) Ministry of Personnel, PG and Pensions
(ii) Ministry of Home Affairs
 - (2) All offices and sections in the MHA and
Ministry of Personnel, PG and Pensions.

Attested
Advocate

Sd/-
(Y.G. Paranda)
Director

APPENDIX

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

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

2. This scheme will come into force w.e.f. 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 O.M. 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 'O' 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 'O' 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 'O' official including DA, HRA and CCA.

ii) Benefits or increments at the same rate as applicable to a Group O 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 be allowed

*Attested
Duty
A/c*

to carry forward the leave at their credit on their regularisation. 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 regularisation.

vi)

After rendering three years' continuous service after conforming to 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 surattas from permanent Govt. servants of their Department.

vii)

Until they are regularised, they would be entitled to productivity linked bonus/Ad-hoc bonus only at the rates as applicable to casual labourers.

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 Dispute Act, they shall continue to be admissible to such casual labourers.

7. Despite conforming to 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

(1). 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 & 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 post, regularisation will be considered only against those posts in respect of which literacy or

.....

(Signature)

or lack of minimum qualification will not be a requisite qualification. They could be allowed age relaxation equivalent to the period for which they have worked continuously as casual labourer.

9. On regularisation 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 O.M. dated 7.6.88 should be followed strictly in the matter of engagement of casual employees in Central Government Offices.
11. Department of Personnel & 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.

Attorney
Linda
Advocate

- 29 - - ANNEXURE - IV A

(62)

NO.F.33/12/96-Adm.II
Government of India
Archaeological Survey of India

Janpath, New Delhi-11.

Dated:- 10.3.98.

To

All Heads of Circles/Branches:

Sub:- Grant of Temporary Status to Daily Wagers - reg.

Sir,

It may kindly be recalled that a number of daily wage workers had been granted Temporary Status in 1993-94 in accordance with the DOP & Trg. "Casual Labourers (Grant of Temporary status and Regularisation) Scheme of Govt. of India 1993". It is also possible that a number of cases for grant of temporary status are pending in your office. The DOPT instructions have been circulated vide O.M. No.52016/2/90-Estt(C) dated 10.3.1993 and this Deptt. have subsequently also issued a number of instructions on the subject. The grant of Temporary Status in the Survey has been reviewed in consultation with DOP & Trg. in connection with a representation submitted by one of the ex. casual labourer before the Chairman, National Commission for Scheduled Castes & Scheduled Tribes, New Delhi. The advice given by DOP & Trg. in the case is reproduced below for guidance:-

1. The Scheme for grant of temporary status to the casual employees was formulated in pursuance of the judgement dated 16.2.90 of the CAT Principal Bench, New Delhi in the case of Shri Raj Kamal & others Vs. Union of India & others. The Scheme for grant of temporary status is a one time affair and is applicable in respect of those casual employees who were in service on the date of the notification of the scheme i.e. (10.9.93) and had rendered one year of continuous service with 240 days or 206 days of service as the case may be, on that date. The provisions of the scheme are also not applicable in respect of those casual employees who were recruited otherwise than through the sponsorship of employment exchange.

- ii. In this connection attention is also invited to the Supreme Court judgement dated 27.1.97 in the case of Passport Officer, Trivandrum & Others Vs. Venugopal C & Ors. in which the hon'ble court has held that "if Department decides that only those employees who were recruited in normal manner i.e. through the employment exchange shall be given the temporary status, no fault can be found with the Deptt."

P.T.O.

*Shri
Advocate*

The decision cannot be said to be unreasonable or arbitrary. Therefore, we find it difficult to accept the line of reasoning taken by the Tribunal in holding that the decision was inconsistent with article 11 of the Constitution".

In view of the above, you are requested to permit all the cases for the temporary status to casual workers to be referred for state action. A detailed report will be furnished to the office for information and record.

Yours faithfully,

(SATHYANARAYAN)
DIRECTOR (ADMINISTRATION)

Scheduled Cast

ANNEXURE VI

X-10(B).

GOVERNMENT OF ASSAM
DEPARTMENT OF LABOUR & EMPLOYMENT
DISTRICT EMPLOYMENT EXCHANGE
SILPUKHURI:GUWAHATI-3.

(Not on Instruction Card for Interview with Employer).

1. Name of the applicant *Miss... Padma... Ramr... Mudai.*
2. Date of Registration. *23.4.87*
3. Registration No. *W-417.87*
4. N.C.O. Code No. *101.30*
5. Date of Birth. *1-8-62*

INSTRUCTION OF THE APPLICANT.

- a). Bring this Card with you whenever you come to the Exchange.
b). Write Your Registration Number and N.C.O. number whenever you write to the Exchange.
c). Renew your Registration Every Three years. If you do not renew by the due date your Registration will be cancelled.
d). You can renew your Registration personally or by post. For renewal by post DO NOT SEND THIS CARD. Apply to the Exchange on a Reply & paid post card.

1. I have secured Employment with

(Name of Employer).

Through 'YOU' me own effort.

2. I no longer required Employment assistance.

Padmakani Mudai.
(Signature of applicant).

Asstt. Director of Employment,
District Employment Exchange,
Silpukhuri, Guwahati-3.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.245 of 2002

Date of decision: This the 12th day of August 2003

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

Smt Padmarani Mudal Hazarika
Wife of Shri Ballav Hazarika,
Chandmari Colony, Nizarapar,
Guwahati.

.....Applicant

By Advocates Mr M. Chanda, Mr G.N. Chakraborty
and Mr H. Dutta.

- Versus -

1. The Union of India, represented by
The Secretary to the Government of India,
Ministry of Art and Culture,
New Delhi.
2. The Director General
Archaeological Survey of India,
New Delhi.
3. The Superintending Archaeologist,
Archaeological Survey of India,
Guwahati Circle, Ambari,
Guwahati, Assam.

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....

O R D E R (ORAL)

CHOWDHURY. J. (V.C.)

Conferment of temporary status in the light of the Office Memorandum dated 10.9.1993 issued by the Government of India is the issue raised in this O.A. in the following circumstances:

The applicant was initially appointed as Assistant Librarian on casual basis on 14.7.1993. According to the applicant she was thereafter shifted to the General Section as Group 'D' Worker and entrusted with different works. The applicant was working as such under the



*Shri H. Dutta
Advocate*

respondents and moved this O.A. for conferment of temporary status. It seems that by order dated 1.8.2002 the employment of the applicant as casual worker was to be terminated after one month from the date of issued of the order. The applicant, on receipt of the same preferred a Misc. Petition and vide order dated 30.8.2002 in M.P.No.109 of 2002 the impugned order of termination was kept under suspension. By the present O.A. the applicant has claimed for conferment of temporary status in the light of the O.M. dated 10.9.1993.

2. The respondents submitted their written statement and asserted that the applicant was engaged as a casual worker on 14.7.1993 on daily wage basis subject to availability of work. According to the respondents the applicant was not entitled for being conferred the temporary status on the score that she was engaged as a casual worker on 14.7.1993 and she did not complete the requisite number of days, i.e. 206 days as on 10.9.1993, the basic criteria for conferment of temporary status to casual workers.

3. The controversy in this application centres round the interpretation of the Scheme known as the Casual Labourers' (Grant of Temporary Status and Regularisation) Scheme, 1993. According to the applicant the Scheme favours for conferment of temporary status to her, whereas accordingt to the respondents the applicant did not fulfil the conditions prescribed in the Scheme, more particularly in Clause 4(i) of the Scheme read with the Office Instructions issued by the Department from time to time.

4. I have heard Mr M. Chanda, learned counsel for the applicant and Mr A. Deb Roy, learned Sr. C.G.S.C. at length. Mr A. Deb Roy submitted that the Scheme in question.....

question is a one time measure and not an ongoing process. The applicant no doubt was employed on the date of issue of the O.M. dated 10.9.1993, but then she did not fulfil the other conditions, namely she did not complete 206 days when the Scheme came into operation. The Scheme in question was issued in the light of the Judgment and Order rendered by the Principal Bench of the Central Administrative Tribunal in O.A.No.2306 of 1989 disposed of on 16.2.1990 (Raj Kamal and others Vs. Union of India). In the said O.A. the applicants prayed for regularisation of their services. The Principal Bench of the Central Administrative Tribunal finally disposed of the said O.A. and issued numerous directions on the respondents to consider regularisation of the employees. In the light of the said order of the Tribunal the above mentioned Scheme was formulated for granting temporary status to casual workers who were employed on the date of issuance of the Notification dated 10.9.1993. Clause 4(i) of the Scheme indicated the condition for conferment of temporary status, which reads as follows:

"Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.M. 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)."

4. According to Mr Chanda since the applicant was in employment on the date of issue of the O.M., she was entitled for conferment of temporary status on completion of one year service. Mr A. Deb Roy referred to the communication dated 10.3.1998 issued by the Government of India, Archaeological Survey of India to All Heads of Circles/Branches and contended that the grant of temporary status.....



status is a one time affair and is applicable in respect of those casual employees who were on service on the date of NOTification of the Scheme, i.e. 10.9.1993 and had rendered one year of continuous service with 240 days or 206 days of service as the case may be on that date. Mr A. Deb Roy, in other words, submitted that both the conditions must be fulfilled for conferment of temporary status, namely one must be on employment on 10.9.1993 and one must have already rendered one year of continuous service with 240 days or 206 days of service as the case may be, on the date of issue of the Notification.

5. There is no dispute to the fact that the applicant was in employment on the date of issue of the O.M. The controversy is as regards the fact that the applicant did not complete 206 days when the Scheme came into existence. From the records it appears that the applicant continued to serve under the respondents and by order dated 10.10.2000 the applicant was considered for semi skilled status with effect from 1.10.2000 until further orders and on which capacity she continued to work. On perusal of Clause 4(i) it appears that for conferment of temporary status one was to be in employment on the date of issue of the O.M. dated 10.9.1993 and one was to render a continuous service of at least one year which means one was to be engaged for a period of 240 or 206 days as the case may be. There are two conditions for conferment of temporary status - (1) one was to be in employment on the date of issue of the Notification and (2) one was to complete the period of service as prescribed. There is no dispute that a casual worker was required to be in employment when the Scheme was introduced vide O.M. dated 10.9.1993 - a clear-cut date was given. In addition, a

casual.....

casual worker was to complete 240 days or 206 days of service. Mr A Deb Roy submitted that the second condition would be fulfilled only in those cases where the persons completed 240 days or 206 days as the case may be when the Scheme was introduced. I find it difficult to accept the contention of Mr A. Deb Roy. The Scheme was introduced from a particular date. That means the Scheme was applicable to all those casual employees who were in employment on the date of issue of the Scheme. Paragraphs 2 and 3 of the Scheme are relevant for this purpose, which read as follows:

"This scheme will come into force w.e.f. 1.9.1993.

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....."

6. The Scheme was made for those casual employees who were in employment on the date of issue of the Scheme. It did not contemplate that those persons were required to complete the prescribed period of 240 days or 206 days as the case may be on the date the Scheme came into force. the O.M. No.40011/2/2002-Estt.(C) dated 12.4.2002 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, seemingly clarified the position. It referred to the stipulation contained in the O.M. dated 10.9.1993, namely that "(i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of OM; and (ii) should 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)".

Paragraph.....

Sanctioned to be true & correct

प्रमाणित इतिदिति

26/5/03

Section Officer (I)

CASUAL LABOURER

Paragraph 2 further mentioned that in most cases the first condition stipulated was ignored and a view was taken as if the scheme was an ongoing scheme. The Supreme Court in Union of India and another Vs. Mohan Pal, etc disposed of on 29.4.2002 clarified the scheme and observed that the scheme in question was not an ongoing scheme and that temporary status could be conferred on the casual labourers under the Scheme only on fulfilling the conditions incorporated in Clause 4 of the Scheme, namely, they should have been casual labourers in employment as on the date of the commencement of the Scheme and they should have rendered continuous service of at least one year, i.e. at least 240 days in a year or 206 days (in case of offices having 5 days a week). [The Government of India purposely gave a cut-off date that employees were to be in employment on the date of the Scheme and to get temporary status one is to render continuous service of at least one year, which means that the casual employee was to be engaged for at least 240 days or 206 days in a year as the case may be. Clause 4 of the Scheme did not give a blanket authority to confer temporary status to all casual workers as and when they complete one year continuous service. To earn the benefit a casual employee must be in employment on the date when the scheme was introduced.

7. For the reasons stated above the application is allowed and the respondents are directed to consider the case of the applicant for conferment of temporary status in the light of the Scheme and the findings and observations made above.

No order as to costs.

Sd/VICE CHAIRMAN



*Attorney
Advocate*

Annexure - VIII

No. 1/33/2003-Adm.- 2974
 Government of India
 Archaeological Survey of India
 Guwahati Circle, G.N.B. Road., Ambari, Guwahati-781001.

Dated, the 27/1/2004

ORDER

In the light of the judgement order dated 12th of August, 2003 passed by the Hon'ble Central Administrative Tribunal Guwahati Bench, Guwahati in O.A. NO. 245/2002 and Misc. Petition No. 140/2002 of O.A. NO. 245/2002 Smt. P. R. Mudai Hazarika V/S U.C. & others and the application of Smt. Padmarani Mudai Hazarika dated 31.10.2003 the undersigned has thoroughly checked and verified the records to consider her case for grant of Temporary Status in accordance with:-

- (i) That the scheme of grant of temporary status as one time scheme and not an ongoing scheme.
- (ii) That casual worker must have been on employment on the date of issue of DOPT O.M. dated 10.9.1993.
- (iii) That they should have also rendered a continuous service of atleast one year and must have been engaged for a period of atleast 240 days (206 days in the case of offices observing 5 days weeks).
- (iv) Office Memorandum No. 40011/2/2002-Estt.(C) dated 12.4.2002 and dated 6.6.2002 of Deptt. Of Personnel and Training, govt. of India, New Delhi..
- (v) The judgement of Hon'ble Supreme Court of India dated 29.4.2002 in S.B. Appeal No. 3168 of 2002 filed by the Union of India V/S Mohan Pal etc.

After proper scrutiny and verification of records it appears that the applicant does not qualify the number of days i.e. 240 days in a year or 206 days in case of offices observing 5 days week as per direction/instructions of the DOPT O.M. dated 10.9.1993 and in accordance with the judgement of the Hon'ble Supreme Court of India dated 29.4.2002, the Hon'ble Supreme court has clarified that in Clause 4 of the Scheme for grant of Temporary Status that this scheme does not appear to be a general guide line to be applied for the purpose of giving Temporary Status to all the Casual workers and when they complete one year continuous service and the said scheme is not an ongoing scheme.

After proper verification and perusal of records and speaking orders of higher authorities in terms of the scheme for grant of temporary status to casual workers, the above Office Memorandums and Judgement of Hon'ble Supreme Court of India as indicated (i&v) the case for grant of Temporary Status to the applicant is not found fit, hence her application dated 31.10.2003 is rejected.

(R. D. SINGH)
 SUPERINTENDING ARCHAEOLOGIST
 HEAD OF OFFICE..

To,
 Smt. Padmarani Mudai Hazarika
 W/O. Sri Ballav Hazarika
 Chandmari colony
 Nizarapar
 Guwahati.

Advocate

10/1/93
 27/1/04

S/L - 402

Annexure - IX

In the Central Administrative Tribunal
Guwahati Bench, Guwahati

O.A. No. 245/2002

Smt P. M. Hazarika

-Vs-

Union of India and others

-And-

In the matter of

Written statement submitted by the respondents

The respondents beg to submit written statement as follows :

1. That with regard to para 1 to 3 and 4.1 of O.A. the respondents beg to offer no comments.
2. That with regard to para 4.2 of O.A., the respondents beg to state that it is the fact that the applicant was engaged as casual worker on 14.7.1993 on daily wages basis subject to availability of work and fund.
3. That with regard to para 4.2 of O.A., the respondents beg to state that it is baseless to say that the wages of Mrs. Hazarika for the month of November 2001 and December 2001 have not been paid. Actually Mrs. Hazarika was not engaged for work in the month of November 2001 and December 2001.
4. That with regard to para 4.4 of O.A., the respondents beg to offer no comments.
5. That with regard to para 4.5 of O.A., the respondents beg to state that the applicant does not qualify for conferring T.S. in terms of the provisions contained in the Circular dated 10.9.93 issued by the Department of Personnel and Training, Govt. of India, New Delhi followed by the clarification/instruction issued by the Department of Archaeological Survey of India, New Delhi vide para (1) (i) of his office letter No. 13/12/96-Adm II dated 10.3.98 and 13/24/2002-Adm. II dated 4.7.2002 (Annexure I, II & III).
- Since Mrs. Hazarika was engaged as a casual worker on 14.7.93 she did not qualify the requisite number of days, i.e. 206 days (as on 10.9.93) the basic criteria for conferring T.S. to casual workers.
6. That with regard to para 4.6 of O.A., the respondents beg to offer no comments.
7. That with regard to para 4.7 to 4.11 of O.A., the respondents beg to state that the facts already stated above in the para 4.5.

Contd... p/2

8. That with regard to para 5.1 of O.A. the respondents beg to state that she was engaged time to time as per availability of the work and fund.
9. That with regard to para 5.2 to 5.7 of O.A. the respondents beg to state that the facts already stated above in the para 4.5.
10. That with regard to para 6 to 7 of O.A. the respondents beg to offer no comments.
11. That with regard to para 8.1 of O.A. the respondents beg to state that the facts already stated above in the para 4.5.
12. That with regard to para 8.2 to 8.3 and 9.1 of O.A. the respondents beg to offer no comments.

VERIFICATION

I, Syed Jamal Hasan presently working as Superintending Archaeologist be duly authorised and competent to sign this verification do, hereby solemnly affirm and declare that the statements made in para 2 & 3.

are true to my knowledge and belief, these made in para 5, 8 & 13. being matter of record, are true to my information derived there from 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 28th day of August, 2002.

[Signature]
Declarant

Syed Jamal Hasan
Superintending Archaeologist
ARCHAEOLOGICAL SURVEY OF INDIA
Guwahati Circle

S/c 11-42

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Filed 27 23/1/03

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI

O.A. NO.245 OF 2002

Smt. Padma Rani Mudai Hazarika

....

Applicant

Versus

Union of India and others

....

Respondents

Additional Affidavit by Respondent No. 3

I, Syed Jamal Hasan, Superintending Archaeologist, Archaeological Survey of India, Guwahati Circle, Guwahati, the Respondent No.3 herein, do hereby solemnly affirm and state as under.

1. I am 3rd Respondent herein and as such well conversant with the facts of the case. I am competent and authorized to swear in this affidavit on behalf of the Respondent Nos. 1 & 2.

2. I state that the Applicant herein as filed the present O.A. before of this Hon'ble Tribunal for grant of 'temporary' status in terms of the Casual Labour (Grant of Temporary Status and Regularization) Scheme 1993 issued by the Department of Personnel and Training issued vide Office Memorandum No.51016/2/90 dated 10.9.1993.

3. I submit that the Hon'ble Supreme Court of India in its Judgement dated 29.4.2002 in C.A. No.3168 of 2002 titled Union of India and Anr. Versus Mohan Pal and Others, has clearly held that the said Scheme is not an ongoing Scheme. In order to acquire 'temporary' status the casual labourer should have been in employment as on the date of commencement of the Scheme and should have also rendered a continuous service

Attested
Wttr
Advocate

of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 in case of offices observing 5 days' week. While commenting upon Clause 4 of said Scheme the Hon'ble Supreme Court of India has categorically stated that from Clause 4 of this Scheme it does not appear to be a general guideline to be applied for the purpose of giving 'temporary' status to all the casual workers as and when they complete one year's continuous service.

4. I submit that as per her own showing the Applicant herein was employed vide Order No. 1 of 1993 dated 14.7.1993 and as such was not entitled to benefit of grant of 'temporary' status under the Casual Labour (Grant of Temporary Status and Regularization) Scheme 1993.

5. I state that the petitioner herein has filed Misc. Petition No. 140 of 2002 praying for amendment in O.A. No. 245 of 2002 by inserting para 4.10 H and contending that "denial of benefit of conferment of 'temporary' status to the present applicant on the plea of one time Scheme, is highly arbitrarily, illegal, unfair and the same is also violative of Article 14 of the constitution of India"

I submit that the petitioner herein has placed reliance upon grant of 'temporary' status to certain people in the Department of Telecommunication and Department of Posts. The Scheme formulated by the DOPT vide O.M. No. 51016/2/90 dated 10.9.1993 is not applicable to the Railway and the Telecommunication Departments, and as such there is no discrimination or violation of Article 14 of the Constitution of India.

6. I state that in the light of the Judgement of the Hon'ble Supreme Court of India dated 29th April, 2002 in C.A. No. 3168 of 2002 (Copy enclosed herewith for ready reference). It is humbly prayed that O.A. does not call for any interference by this Hon'ble Tribunal and deserves to be dismissed.

I state that what is stated herein above is true and correct.

DEPONENT

VERIFICATION:

I the above named deponent do hereby verify that the contents of Para 1 to 6 of the above affidavit are true and correct based on the knowledge derived from the record of the case and nothing material has been concealed there from.

Verified on this 15th day of January. 2003.

DEPONENT

Y
Y

15/1/03
Sd/-

Superintending Archaeologist
ARCHAEOLOGICAL SURVEY OF INDIA

Attested
Wants
Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 32 of 2004.

Date of Order: This, the 29th day of March, 2005

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

Smti Padmarani Mudai Hazarika
Wife of Shri Ballav Hazarika
Chandmari Colony
Nizarapur
Guwahati-781003.

..... Applicant.

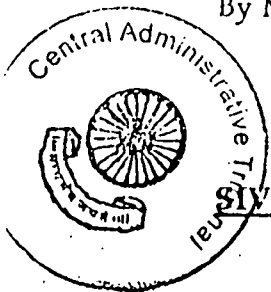
By Advocates S/Shri M.Chanda, G.N.Chakraborty, S.Nath & S.
Choudhury.

- Versus -

1. The Union of India
Represented by the Secretary
to the Government of India
Ministry of Art and Culture
New Delhi.
2. The Director General
Archaeological Survey of India
Janapath
New Delhi - 110 011.
3. The Superintending Archaeologist
Archaeological Survey of India
Guwahati Circle, Ambari
Guwahati - 781 001, Assam.

..... Respondents.

By Mr.A.K.Chaudhuri, Addl.C.G.S.C.



ORDER (ORAL)

SIVARAJAN, J.(V.C.):

The applicant was initially appointed as a casual worker on 14.7.1993 (Annexure-I). The Central Government introduced a scheme as a one time measure for conferment of 'temporary status' to casual workers

*Shri
Advocate*

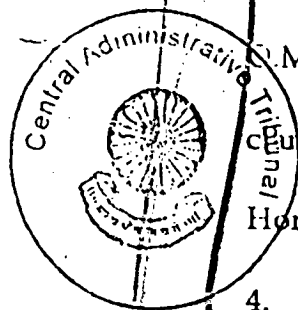
as per the O.M. dated 10.9.1993 (Annexure IV). Since the applicant has not been conferred with 'temporary status' as provided in Annexure-IV, he approached this Tribunal by filing O.A. No.245 of 2002 which was disposed of by order dated 12.8.2003 (vide Annexure-XI). This Tribunal held that the applicant is entitled for conferment of 'temporary status' if ^{that} she was in service under the respondents as on the date of issuance of the scheme i.e. on 10.9.1993 and had continuous service of at least one year i.e. at least 240 days service (206 days in a five days week) irrespective of whether it is prior to or after the date of the notification. The respondents were accordingly directed to consider the case of the applicant for conferment of temporary status in the light of the scheme, findings and observations made therein. The grievance of the applicant is that notwithstanding such direction respondents have issued an order dated 27.1.2004 (Annexure-XIII) taking a view that the applicant is not entitled to the conferment of 'temporary status' for the reason that he did not complete 240 days service (206 days in a five days a week) on the date of the O.M. i.e. 10.9.1993.

2. Mr. M. Chanda, learned counsel for the applicant submits that the question regarding the applicability of the scheme in the case of the applicant was considered by the Tribunal with reference to the scheme dated 10.9.1993 (Annexure-IV), the clarification issued in O.M. dated 10.3.1998 (Annexure-IVA) and the decision of the Hon'ble Supreme Court in Union of India & another vs. Mohan Pal and held that it is not necessary, under the scheme, for the applicant to complete 240 days or 206 days, as the case may be, as on the date of the O.M. and that it is sufficient

9.11

that the applicant has got 240 days of continuous service even subsequently. Mr. M. Chanda further submits that the respondents have, in fact, flouted the direction issued by the Tribunal which will amount to contempt of Court.

3. I have also heard Mr. A. K. Chaudhuri, learned Addl. C. G. S. C. for the respondents. The standing counsel with reference to the averments made in the counter affidavit states that the applicant did not complete 240 days or 206 days, as the case may be, in the first year and that the averments made in Paragraphs 4.18 and 4.20 are incorrect and misleading. Mr. Choudhuri further submits that the scheme is made as a one time measure and that unless the applicant satisfies the two conditions, namely, the applicant was in service on 10.9.1993 (date of the scheme) and completed 240 days or 206 days, as the case may be, as on the date of the M., she cannot be conferred with 'temporary status' in view of the clarification of the scheme in Annexure-IVA and the decision of the Hon'ble Supreme Court mentioned above.



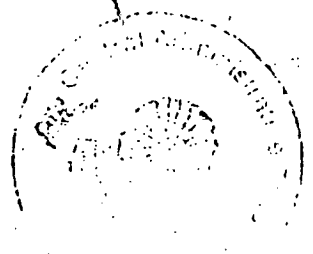
4. I have considered the rival submissions. I do not find any merit in the submission of Mr. A. K. Chaudhuri, learned Addl. C. G. S. C. for the reason that this issue is already concluded by the decision of this Tribunal in O.A.245 of 2002 (vide Annexure XI). It is an admitted position that the respondents have not challenged the said order of the Tribunal before the higher forums and thus the order has become final. This order clearly states that it is not necessary for the applicant to fulfill the latter condition, namely, completion of 240 days or 206 days, as the case may be continuously as on the date of the scheme i.e. on 10.9.1993 and that it is

9/8

sufficient that the applicant is having continuous service for 240 days or 206 days, as the case may be, even subsequent to the date of the scheme. In this view of the matter the impugned order dated 27.1.2004 is illegal, arbitrary and unjustified. The said order is accordingly quashed and the respondents are directed to verify as to whether the applicant had completed 240 days or 206 days in a five days week continuously irrespective of the date of the scheme. It is made clear that for the counting of continuous period of service Sundays and holidays will be treated as on duties. If the applicant had completed 240 days or 206 days in a five days a week continuously even after the date of the scheme, respondents will immediately pass an order conferring 'temporary status' to the applicant and the same will be communicated to her. This exercise will be done at any rate within a period of six weeks from the date of receipt of the order.

5. The application is disposed of as above.

SO/VICE CHAIRMAN



Verified to be true Copy
[Signature]

19.4.05

Section Officer (J)
C.A.T. GUWAHATI BRANCH
[Signature]

19/4/05

Attested
[Signature]
Advocate

- 49-
g/c
Annexure-XI

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

GUWAHATI

In the matter of

O.A. NO. 32 of 2004

Smt. Padmarani Mudai Hazarika

- Applicant

Vrs.

Union of India and others

- Respondents

**WRITTEN STATEMENT FOR
AND ON BEHALF OF RESPONDENTS NOS. 1;2 AND 3.**

I Shri R.D. Singh, Superintending Archaeologist, Archaeological Survey of India, Guwahati Circle, Ambari, Guwahati-781001, do hereby solemnly affirm and say follows:

- (1) That I am the Superintending Archaeologist, Archaeological Survey of India, Guwahati Circle, Guwahati-1 and respondent No. 3 in the above case and as such fully acquainted with the facts and circumstances of the case. I have gone through the copy of the application and have understood the contents thereof save and except whatever it specifically admitted in this written statement, the other contentions and statements made in the application may be deemed to have been denied. I am authorized and competent to file this written statement for and on behalf of the other respondents also.
- (2) That the respondents have no comments to the statements made in paragraph 4.1 of the application.
- (3) That with regard to the statements made in paragraph 4.2 of the application the respondents beg to state that the applicant has been engaged as casual worker in July, 1993 i.e. 14.07.1993 to perform purely temporary nature of works.

Attested
Advocate

(4) That with regard to the statements made in paragraph 4.3 of the application the respondents beg to state that the applicant was engaged from time to time as casual worker to perform purely temporary nature of works subject to availability of work and funds under the respondent on daily wage basis. The applicant has not been engaged during the month of November and December, therefore she is not entitled for the wages of the said periods. However the applicant never has brought before this matter to the notice of the respondents nor in the earlier O.A. No. 245/2000.

(5) That with regard to the statements made in paragraph 4.4 of the application the respondents beg to state that the applicant was engaged from time to time Subject to availability of work and funds under the respondent.

It is amount-
interrupt.

(6) That with regard to the statements made in paragraph 4.5 of the application the respondents beg to state that the applicant was engaged as casual worker from 14.7.1993, as such she is not entitled for grant of temporary status under the Grant of Temporary Status and Regularization Scheme of Govt. of India 1993 circulated vide O.M. No. 51016/2/90.Estt.(C) dated 10th September, 1993 and No. 40011/2/2002.Estt.(C) dated 12.4.2002 of Deptt. of Personnel & Training, Govt. of India, New Delhi and the advice of the DOPT in this matter circulated by the Archaeological Survey of India, Janpath, New Delhi vide F. No. 33/12/96-Admn.II dated 10.3.1988 (Annexure I), ^{EC} that the casual worker should have been in employment on the date of commencement of the scheme and also should have rendered a continuous service of 206 or 240 days as the case may be on that date i.e. 10.9.1993. 7

per-

(7) That the respondents have no comments to the statements made in paragraph of the application.

(8) That with regard to the statements made in paragraph 4.7 of the application the application the respondents beg to state that the applicant was engaged from 14.7.1993 and thereafter from time to time as per availability of work and funds under the respondent and the applicant has completed only 41 days of service

from 14.7.1993 to 10.9.1993. As per her own showing in para 4.20 that she has completed 114 days of service in the calendar year 1993. The scheme to grant of temporary status came into force with effect from 1.9.1993 and it is already mentioned in the O.M. dated 10.9.1993 that the casual worker should have been in employment on the date of commencement of the scheme and should also rendered a continuous service of at least one year which means they must have been engaged for 240 days (206 days in case of office observing 5 days week). Since the applicant did not cover under the scheme, her case was not covered. This is also pointed out that this scheme is one time scheme and not an on going One hence records after 1993 is not required.

That with regard to the statements made in paragraph 4.8 of the application the respondents beg to state that in terms of O.M. dated 10.9.1993 and dated 12.4.2002 of DOPT and subsequent advice in this matter by the DOPT circulated vide F. No. 33/12/96-Admn.II dated 10.3.1998 regarding grant of temporary status to casual workers the representation of the applicant has been considered but the applicant was found ineligible for grant of temporary status.

- (10) That with regard to the statements made in paragraph 4.9 of the application the respondents reiterate the statements made in paragraph 6 and 8 of the written statement.
- (11) That with regard to the statements made in paragraph 4.10 of the application the respondents beg to state that the casual workers are not entitled for leave.
- (12) That with regard to the statements made in paragraph 4.11 of the application the respondents beg to state that the casual workers are engaged from time to time as per availability of work and funds for performing purely temporary nature of works.
- (13) That with regard to the statements made in paragraph 4.12 of the application the respondents beg to state that the termination order was issued in consultation With appropriate authority and this has no resemblance with medical leave etc. As the casual workers are not entitled for leave.

(14) That with regard to the statements made in paragraph 4.13 of the application the respondents beg to state that the applicant was engaged as casual worker from 14.7.1993 and thereafter from time to time and she has completed only 41 days of service from 14.7.1993 to 10.9.1993 as such she is not entitled for grant of temporary status. The termination order was served to the applicant as there was no work to provide to the applicant as engagement of casual workers are subject to availability of works.

(15) That with regard to the statements made in paragraph 4.14 of the application the respondents beg to state that the number of days of service rendered by the applicant has been calculated as per rule and the actual days of presence of the applicant. The applicant has not performed the required number of days of service as on 10.9.1993 i.e. 206 or 240 days as the case may be. The applicant in her own showing in para 4.20 of the application has shown that she has completed 114 days of service in the calendar year 1993.

(16) That with regard to the statements made in paragraph 4.15 of the application the respondents beg to submit that the applicant was not short of 21 days of service in requirement of 206 days of service, as she worked only 41 days of service on the date of implementation of O.M. dated 10.9.1993.

(17) That with regard to the statements made in paragraph 4.16 of the application the respondents beg to state that as per records and her own showing the applicant in Para 4.20 of the application she has not completed one year of continuous service On 10.9.1993 for grant of temporary status. The statement made by the applicant That she has completed 206/240 days in each calendar year since her engagement As casual worker on 14.7.1993 is totally false and baseless, as her own showing in Paragraph 4.20 of the application she has completed 114 days in the calendar year 1993.

(18) That with regard to the statements made in paragraph 4.17 of the application the respondents beg to state that as per the scheme for grant of temporary status to casual workers, the casual workers should have been in service on the date of commencement of the scheme and also should have rendered a continuous one

year of service i.e. 206 or 240 days as the case may be on that date i.e. 10.9.1993.

The Hon'ble Supreme Court of India in its judgment in the case of Union of India and others Vs. Mohan Pal etc. has held that the scheme is not an on going scheme for the purpose of giving temporary status to all the casual workers as and when they complete one year of service. That means the grant of temporary status will be conferred to those casual workers who were in service on the date of commencement of the scheme and have rendered continuous one year of service on that date.

- (19) That with regard to the statements made in paragraph 4.18 and 4.20 of the application the respondents beg to state that the applicant has given false and baseless statement that she has completed 206 days in each calendar year since her initial engagement as casual worker, as in her own showing in para 4.20 of the application she has completed 114 days in the calendar year 1993 and as per she is not entitled for temporary status.

- (20) That with regard to the statements made in paragraph 4.19 of the application the respondents beg to state that in the light of judgment of the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati dated 12.8.2003 with a direction to the respondents to consider the case of the applicant for conferment of temporary status. Accordingly the case has been considered in terms of the scheme for grant of temporary status circulated vide DOPT O.M. dated 10.9.1993, 12.4.02 and the advice given by the DOPT in this matter circulated by the Headquarter office of the Archaeological Survey of India, Janpath, New Delhi vide F. No. 33/12/96-Admn.II dated 10.9.1998, the judgment of Hon'ble Supreme Court of India dated 29.4.2002 in S.B. Appeal No. 3168 of 2002 by the Union of India and others Vs. Mohan Pal etc. (Annexure II). Under the scheme the casual Workers who were in service on the date of commencement of the scheme and those who have completed one year regular service i.e. 206 or 240 days as the case may be on that date i.e. 10.9.1993 should be granted temporary status. The scheme is not an on going one to be considered to all casual workers as and when they complete one year of continuous service. The applicant has completed only 41 days of service from 14.7.1993 to 10.9.1993, therefore her case for grant of temporary status could not be considered by the respondents.

- (21) That with regard to the statements made in paragraph 4.21 in the application the respondents beg to state that the casual workers are engaged from time to time on daily wage basis to meet out purely temporary nature of works at monuments/sites by the site incharge within the jurisdiction of Guwahati Circle. Likewise the casual workers are also engaged in Guwahati to meet out purely temporary nature of works subject to availability of work and funds.

Some of the persons mentioned by the applicant are also engaged on daily wage basis by the site incharge at different monuments/sites within the jurisdiction as per availability of work and funds against a particular estimate. A status report to this effect is submitted for perusal of the Hon'ble Tribunal (Annexure III).

Verification

I Shri R. D. Singh, Superintending Archaeologist, Archaeological Survey of India, Guwahati Circle, Ambari, Guwahati do hereby verify that the statements made in paragraph of the written statement are true to my knowledge, those made in paragraphs..... being matter of records are true to my information derived therefrom which I believe to be true and those made in the rest are humble submissions before the Hon'ble Tribunal. I have not suppressed any material facts.

And I signed this verification on this the..... day of
April, 2004 at Guwahati.

*Attested
Dutta
Advocate*

Deponent

दिनांक के लिए आवेदन की तारीख Date of application for the copy	स्टाम्प और फोटो की अपेक्षा संख्या सूचित करने की तिथि Date fixed for notifying the requisite number of stamps and photos.	अपेक्षित स्टाम्प और फोटो देने की तारीख Date of delivery of the requisite stamps and photos.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicants.
9/11/06	9/11/06	9/11/06	9/11/06	9/11/06

Annexure-XII

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from

Civil Rule

wp ©

No. 4521 of 2005

Appellant

Petitioner

The Union of India & ors.

Bombi Podmarani Versus Mudai Shikha & ors.

Respondent

Opposite Party

Appellant

For

Petitioner

MR. H. Rahman, Advocate,
Asstt. S. G. C.

Respondent

For

Opposite Party

Mr. M. Chanda,

Mr. S. K. Ghosh,

Mr. S. Choudhury, Adv. for Res. No. 1.

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			9/11/06

Attested
by
Advocate

- 2 -

12th No. 1)

- A N D -

IN THE MATTER OF :

1. The Union of India,

represented by the Secretary to
the Govt. of India, Ministry of

Art & Culture, New Delhi.

Art & Culture, New Delhi.

2. The Director General, Archaeological

Survey of India, Govt. of India,
New Delhi.

New Delhi.

...3

- 3 -

- 3 -

3. The Superintending Archaeologist,
Archaeological Survey of India,
Govt. of India, Guwahati Circle,
Ambari, Guwahati, Assam.

.... PETITIONERS

- Versus -

1. Smt. Padmarani Mudai Hazarika,
W/o Sri Ballav Hazarika,
Chandmari Colony, Nizarapar,
Guwahati.

2. The Central Administrative Tribunal,
Guwahati Bench, Guwahati - 5.

.... RESPONDENTS

The humble petition of the
petitioners above-named -

The respondent no. 2.
is delete nide H e o d d.
G. 9. 06.

11-9-06

Attested
Advocate

dia,
1963.
(100)

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

WP © 4521/05

BEFORE
THE HON'BLE MR. JUSTICE AH SAIKIA
THE HON'BLE MR. JUSTICE BD AGARWAL

1.11.06

Heard Mr. H. Rahman, learned Asstt. Solicitor General appearing for the petitioners and Mr. M. Chanda, learned counsel appearing for the respondent No. 1.

On close perusal of the impugned judgment and order dated 29.3.05 passed by the Central Administrative Tribunal, Guwahati Bench in Original Application being O.A. No. 32/04 by which the Tribunal relying upon the judgment and order dated 12.8.03 passed earlier by the said Tribunal in O.A. No. 245/02 that attained finality on not being challenged before the higher forum, directed the respondents/petitioners to verify as to whether the applicant/respondent had completed 240 days or 206 days in a five days week continuously and if so, the respondents would immediately pass order conferring "temporary status" to the applicant/respondent in the light of the scheme underlined in the Office Memorandum dated 10th September, 1993 floated by the Ministry of Personnel, P.G. and Pensions, Department of Personnel & Training, Govt. of India and upon hearing the learned counsel for the parties, we do not find any compelling or convincing reasons to disturb the impugned judgment.

In the result, this writ petition stands dismissed.

SR/- B.D. Agarwal SR/- A.H. Saikia

Judge

Judge

P. NO 63315

DATE 9.11.06

CERTIFIED TO BE TRUE COPY	

Date	9/11/06
Superintendent (Copying Section)	
Gauhati High Court	
Authorized U/S 76, Act I. 1871	

Advocate

9/11/06

Annexure-XIII

The Director General
Archaeological Survey of India,
Govt. of India,
Janapath,
New Delhi-110011

(Through proper channel)

Subj: Judgment and order dated 01.11.2006 passed in W.P.(C) No. 4521/2005 by the Hon'ble Gauhati High Court: compliance
or.

Respected Sir,

Most humbly I am enclosing herewith judgment and order dated 01.11.06 passed in W.P (C) No. 4521/2005 by the Hon'ble Gauhati High Court (Union of India & Ors. - Vs. Smti Padmarani Mudai Hazarika & Ors.) whereby the Hon'ble High Court has upheld the judgment and order dated 29.03.2005 passed in O.A. No. 52/2004 by the learned Central Administrative Tribunal, Gauhati Bench. In this connection I beg to state that the undersigned is continuously working since 1993 in the local office at Guwahati. My service was terminated by the order dated 30.03.02, however, the said order of termination was stayed by the Hon'ble Tribunal and thereafter I am working without any artificial break during the operation of the stay order. However, the Original Application was disposed of by the Hon'ble CAT on 29.03.05 with a direction to consider my case for conferment of temporary status under the relevant scheme. It is categorically submitted that the undersigned has completed more than 206240 days in each calendar year including Saturday and Sunday since my initial enmeshment in the year. However, the order dated 29.03.2005 of the learned CAT was challenged before the Hon'ble Gauhati High Court by the respondents Union of India & Ors. by filing a Writ Petition and the Hon'ble High Court in its order dated 01.11.2006 has confirmed the judgment and order dated 29.03.05 of the learned CAT.



Attested
Duly
Advocate

Therefore, I request your Honour to pass necessary order conferring temporary status to the undersigned in terms of the judgment and order dated 29.03.05 passed in O.A. No. 32/2004 as well as in terms of the judgment and order dated 01.11.06 passed in W.P (C) No. 4521/2005.

I am enclosing a copy of the judgment and order dated 01.11.06 for your perusal and necessary action thereof.

Enclor - Copy of the order dated 01.11.06 passed in
WP (C) No. 4521/2005.

Yours faithfully

Padmarani Mudai Hazarika

Date: 10.11.06.

(PADMARANI MUDAI HAZARIKA)

W/o- Sri Ballav Hazarika
Chandamari Colony,
Nizarapan,
Guvahati.

Dated, the..

Sub: Judgment / Order dated 1.11.2006 passed by the Hon'ble High Court, Gauhati in
W.P. (C) No. 4521/2005 UOI & Others Vs. P. M. Hazarika -regarding.

SPEAKING ORDER

Whereas in respect of Judgment and Order dated 01.11.2006 passed by the Hon'ble High Court, Gauhati in W.P. (C) No. 4521/2005 Union of India and others Versus Smt. Padmarani Mudai Hazarika and others upheld the judgment and Order dated 29.03.2005 passed by the Learned Central Administrative Tribunal, Guwahati Bench in Original Application being O.A. No. 32/2004 by which the Learned Tribunal relying upon the judgment Order dated 12.08.2003 passed earlier by the said Tribunal in O.A. No. 245/2002 that attained finality on not being challenged before the higher forum, directed the respondents/petitioners to verify as to whether the applicant/respondent had completed 240 days or 206 days in a five days week continuously and if so the respondents would immediately pass order conferring temporary status to the applicant/respondent in the light of the scheme underlying in the Office Memorandum dated 10th September, 1993 floated by the Ministry of Personnel P. G. and Pensions, Department of Personnel, DOPT, Government of India.

Whereas the scheme of grant of temporary status as per direction/instructions of the DOPT O.M. dated 10.09.1993 clearly states that the scheme for grant of temporary status was one time scheme and not an on going scheme. The casual worker must have been on employment on the date of issue of DOPT O.M. dated 10.09.1993, they should also have rendered a continuous service of at least one year and must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week). Whereas it has been found from the official records that the applicant does not satisfy the above conditions.

Whereas before and within 10.09.1993 the applicant did not fulfill the condition of working for a period of at least 206 days (this office observed 5 days work) and she was engaged with effect from 14.07.1993, even during the calendar year 1993 the applicant was not engaged for 206 days and was actually engaged for 116 days.

In view of the above the application/petition of Smt. Padmarani Mudai Hazarika can not be considered for her appointment on regular basis or conferring temporary status to her.

This order issues with the approval of competent authority.

For Superintending Archaeologist

To
Smt. Padmarani Mudai Hazarika
W/O Sri Ballav Hazarika
Chandmari Colony, Nizarapar
Guwahati
Assam.

Attended
Advocate

5 APR 2007

गुवाहाटी ब्याचपीठ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

102
M.H. Ahmed
3/4/07
Chd

IN THE MATTER OF

O.A.No.14 of 2007

Smt Padmarani Mudai Hazarika : Applicant

- VS -

Union of India & Others : Respondents

- AND -

IN THE MATTER OF:

Written statement submitted by the
Respondent Nos.1, 2 and 3

WRITTEN STATEMENT:

The humble answering respondents submit their
written statements as follows:

I, Dr B. Bandyopadhyay, Superintending
Archaeologist, Archaeological Survey of India, Guwahati
Circle, Ambari, Guwahati-781001, do hereby solemnly affirm
and state as follows:

(a) That I am the Superintending Archaeologist,
Archaeological Survey of India, Guwahati Circle, Guwahati-1
and respondent No.1 in the instant case. I have gone
through a copy of the application served on me and have
understood the contents thereof. Save and except whatever
is specifically admitted in this written statements, the

contentions and statements made in the application may be deemed to have been denied. I am competent and authorized to file the written statement on behalf of all the respondents.

(b) The application is filed unjust and unsustainable both on facts and in law.

(c) That the application is bad for non-joinder of necessary parties and misjoinder of unnecessary parties.

(d) That the application is also hit by the principles of waiver estoppels and acquiescence and liable to be dismissed.

(e) That any action taken by the respondents was not stigmatic and some were for the sake of public interest and it cannot be said that the decision taken by the Respondents against the applicants had suffered from the vice of illegality.

2. That with regard to the statements made in paragraph 4.1 of the Original Application, the answering respondents have no comments.

3. That with regard to the statements made in paragraph 4.2 of the Original Application, the answering respondents begs to state that the facts are true as per official records.

4. That with regard to the statements made in paragraph 4.3 of the Original Application, the answering respondents beg to state that since her engagement as Casual worker on 14.07.1993 in Guwahati circle the applicant has been serving with some breaks.

5. That with regard to the statements made in paragraph 4.4 of the Original Application, the answering respondents do not admit anything except those that are based on records and rationale foundation.

6. That with regard to the statements made in paragraphs 4.5 of the Original Application, the answering respondents beg to state that as per provisions of the DOPT O.M.No.51016/2/90.Estt.(C) dated 10th September, 1993 and No.40011/2/2002.Estt. (C) dated 12.4.2002 and the advice of the DOPT in the matter of granting Temporary Status to Casual Workers circulated by the Archaeological Survey of India, Headquarter office Janpath, New Delhi-110011 vide F. No.33/12/96-Adm.II dated 10.3.1998 (Annexure-I), that the casual workers should have been in employment on the date of the commencement of the scheme and have also rendered a continuous service of 206 or 240 days as the case may be on that date i.e. 10.9.1993. In the instant case the applicant has not fulfilled all the criteria as stated above as she has served only 41 days of service from 14.07.93 to 10.9.1993 prior to the implementation of the scheme of

granting Temporary Status. Therefore the applicant has not been found fit for grant of Temporary status.

The circular dated 10.3.1998 is annexed and marked as Annexure-I.

7. That with regard to the statements made in paragraph 4.6 of the Original Application, the answering respondents beg to submit that in the DOPT O.M. for Granting Temporary Status there is no special provision for member of Scheduled Caste category, therefore the applicant does not deserve any privilege consideration.

8. That with regard to the statements made in paragraph 4.7 of the Original Application the answering respondents beg to state that in view of her not completing 206 or 240 days of regular service i.e. on 10.9.1993 which is a primary condition for grant of Temporary Status, the applicant is not entitled for grant of temporary status and there is no provision in the DOPT principles for granting any relaxation in counting of number of days of service rendered by the casual workers. Besides no discrimination has been made in this case. The counting of days of her service has been made as per laid down principles.

9. That with regard to the statements made in paragraph 4.8 of the Original Application the answering respondents beg to state that in the judgment by the Hon'ble High Court Gauhati, it has been clearly stated that

she may be given consideration in the light of the Scheme underlined in the Office Memorandum dated 10th September, 1993 floated by the Ministry of Personnel, P.G. and Pensions, Department of Personnel and Training, Govt. of India that means the applicant must fulfill the criteria laid down in the DOPT O.M. dated 10.09.1993. Therefore the speaking order dated 05.01.2007 issued to the applicant is fully justified (Annexure-II).

The order dated 5.01.07 is annexed herewith and marked as Annexure-II.

10. That with regard to the statements made in paragraph 4.9 of the Original Application the answering respondents beg to state that the claim for grant of temporary status of the applicant has been rejected on just grounds as she has not rendered required number of days of her service as casual worker i.e. 206 or 240 days continuous service as the case may be on 10.09.1993. The counting of the days of her casual service is based on office records and is just as per laid down principles.

11. That with regard to the statements made in paragraph 4.10 of the Original Application the answering respondents beg to state that in the original application filed by the respondents challenging the said order dated 27.01.2004 was based on the guidelines given by the DOPT in its O.M. No.52016/2/90/Estt.(C) dated 10.09.1993 and the respondents have pointed it out rightly. Besides it was

specifically stated that the Scheme was a one time consideration with laid down stipulation which must have to be fulfilled for getting temporary status that means a casual worker must be on service on the date of issue of the DOPT O.M. dated 10.9.1993 and also they must have rendered 206 or 240 days of service as the case may be on that date i.e. 10.9.1993. In the instant case the applicant did not fulfill the requirement, as she did not complete 206 or 240 days of service as on 10.9.1993.

12. That with regard to the statements made in paragraph 4.11 of the Original Application the respondents beg to state that while dismissing the writ petition and upholding the judgment order dated 29.03.2005 the Hon'ble High Court Gauhati specifically stated that there is no compelling or convincing reasons to disturb the judgment of Learned Tribunal. However it had pointed out to give consideration only if the applicant fulfills the criteria laid down in the DOPT Office Memorandum dated 10.09.1993. Therefore the Speaking order is just and as per rules.

13. That with regard to the statements made in paragraph 4.12 of the Original Application the answering respondents beg to state that it is true that the prayer for grant of temporary status of the applicant has been rejected on the due grounds for not fulfilling the criteria laid down by the DOPT principles.

14. That with regard to the statements made in paragraph 4.13 of the Original Application the answering respondents beg to state that Shri P.K. Mishra did not officiate as Superintending Archaeologist while issuing the speaking order dated 5.1.07 and he is the Deputy Superintending Archaeologist of the office only. He has merely issued the order approved by the competent authority and have no intention to harass the applicant so the charges against him is false and baseless. The order issued in the light of the DOPT O.M. dated 10.09.1993 and subsequent advice on to the matter is quite just and as per rules.

15. That with regard to the statements made in paragraph 4.14 of the Original Application the respondents beg to state that as per DOPT O.M. dated 10.09.1993 for grant of Temporary Status and the advice of the DOPT in the matter of Grant of Temporary Status to Casual Workers circulated by the Archaeological Survey of India, Headquarter office Janpath, New Delhi-110011 vide F.No.33/12/96-Adm.II dated 10.3.1998 clearly states that a casual worker must have fulfilled the conditions laid down in the DOPT O.M. dated 10.9.1993 that means a casual worker must have been in service on the date of issue of the said O.M. issued by the DOPT and should also have rendered a continuous service of at least 206 or 240 days as the case may be on that date i.e. 10.9.1993 for conferment of temporary status. In the instant case the applicant was

engaged w.e.f. 14.07.1993 and has rendered only 41 days of service from 14.07.93 to 10.09.1993 and 116 days of service from 14.07.93 to December, 1993 and therefore the applicant does not fulfill the requisite laid down norms of DOPT for grant of temporary status to her.

Furthermore, completion of 240 days of continuous service in a year may not by itself be ground for conferment of Temporary Status and/or Regularisation, when someone had not been appointed in accordance with the extant Rules. It is pertinent to mention here that the scheme was not an ongoing scheme, but was applicable only to those casual employees/workers who were in employment on the date of the commencement of the scheme.

16. That with regard to the statements made in paragraph 4.15 of the Original Application the answering respondents beg to state that as per Hon'ble Supreme Court order in Civil Appeal No.3168 of 2002 (Union of India & Ors. Vs. Mohan Pal and others, dated 29.4.2002) the Hon'ble Court has stated that the grant of temporary status is a one time consideration and is applicable to the casual workers who were in casual service prior to the implementation of the scheme for grant of temporary status and who have rendered 206 or 240 days of continuous service as on 10.9.1993. As in the instant case the applicant did not fulfill the laid down principles therefore her case has been rejected (Annexure-III).

17. That with regard to the statements made in paragraph 4.16 of the Original Application the answering respondents beg to state that some of the casual workers/labourers mentioned in para 4.16 are engaged from time to time on daily wage basis on no work no wage basis to meet out purely temporary nature of works at different nationally protected monuments/sites by the site Incharge with the jurisdiction of Guwahati Circle i.e. North East Region subject to availability of work and funds under the respondents.

18. That with regard to the statements made in paragraph 4.17 of the Original Application the answering respondents beg to state that Shri P.K. Mishra did not officiate as Superintending Archaeologist while issuing the speaking order dated 5.1.07 and he is the Deputy Superintending Archaeologist of the office only. He has merely issued the order approved by the competent authority and has no intention to harass the applicant so the charges against him are false and baseless. The order issued is quite just and as per rules.

19. That with regard to the statements made in paragraph 4.18 of the Original Application the answering respondents beg to state that the casual worker is employed on purely temporary works, therefore the authorities are competent to discontinue the service of a casual worker when service is not needed.

The respondents further beg to submit and pray that the O.A. is not tenable under rule and your Lordship may please dismiss the O.A. without any cost, on the ground that as per DOPT O.M. dated 10.09.1993 for grant of temporary status to daily wagers and the advice of DOPT on the matter circulated by the Archaeological Survey of India, Headquarter Office, Janpath, New Delhi-110011 vide No.F.33/12/96-Adm.-II dated 10.03.1998 which clearly states that the Scheme for grant of temporary status is a one time affair and is applicable in respect of those casual employees who were in service on the date of the notification of the scheme i.e. 10.09.1993 and had rendered one year of continuous service with 240 days or 206 days of service as the case may be, on that date. The provisions of the scheme are also not applicable in respect of those casual employees who were recruited otherwise than through the sponsorship of employment Exchange. In the instant case the applicant though was in service from 14.07.1993 but she did not render a continuous service of 240 days or 206 days in a year on the date of the notification of the said Scheme i.e. 10.09.1993 and also she was not sponsored through the employment exchange at the time of her initial appointment as casual worker from 14.07.1993. The applicant has rendered only 41 days of her service from 14.07.1993 to 10.09.1993 and her claim for grant of temporary status have been rejected by the respondents only in the light of the DOPT O.M. dated 10.09.1993 and subsequent advice on to the

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matter received and circulated by ASI Headquarter office,
New Delhi vide dated 10.3.1998. The Hon'ble High Court
Gauhati while dismissing the W.P. (C) No.4521/2005
specifically stated that we do not find any compelling or
convincing reasons to disturb the impugned judgment to
verify as to whether the applicant/respondent had completed
240 days or 206 days in a five days week continuously and
if so, the respondents would immediately pass order
conferring "temporary status" to the applicant/respondent
in the light of the scheme underlined in the Office
Memorandum dated 10th September, 1993 floated by the
Ministry of Personnel, P.G. and Pensions, Department of
Personnel and Training, Govt. of India. In the instant case
the case of the applicant for grant of temporary status
have been verified by the respondents in the light of DOPT
O.M. dated 10.09.1993 and found that the applicant is
ineligible for grant of temporary status as she did not
render a continuous service of 240 days or 206 days as the
case may be on 10.09.1993 and therefore her case has been
rejected.

20. The respondents beg to submit that the aforesaid claim of the applicant is devoid of any merit and as such liable to be dismissed with costs.

Under the above facts and circumstances Your Lordship would be pleased to dismiss the claim of the applicant, which is not based on any statutory provisions/guidelines and/or to pass other order(s) as Your Lordship may deem fit and proper.

AND

For this act of kindness, your petitioners/ respondents shall ever pray.

VERIFICATION

I, Dr B. Bandyopadhyay, Superintending Archaeologist, Archaeological Survey of India, Guwahati Circle, Ambari, G.N.B. Road, Guwahati-781001 do hereby solemnly affirm and state that I am authorized and competent to sign this verification and the statements made in paragraphs 2, 7 & 13 & 19 of the application are true to my knowledge and belief and those made in paragraphs 3, 4 & 6 being matters of record are true to my information derived there from and those made in the rest are humble submissions before the Hon'ble Tribunal and I have not suppressed any material facts.

And I sign this verification on this the 30th day of ^{April} ~~March~~ 2007 at Guwahati.

Bimal Bandyopadhyay
DEPONENT

No. F. 33/12/96-Adm.II
Government of India
Archaeological Survey of India

Janpath, New Delhi - 11
Dated:- 10.3.98.

To

All Heads of Circles/Branches:

Sub:- Grant of Temporary Status to Daily Wagers - reg.

Sir,

It may kindly be recalled that a number of daily wage workers had been granted Temporary Status in 1993-94 in accordance with the DOP & Trg. "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Govt. of India 1993". It is also possible that a number of cases for grant of temporary status are pending in your office. The DOPT instructions have been circulated vide O.M. No. 52016/2/90-Estt (C) dated 10. 3. 1993 and this Deptt. have subsequently also issued a number of instructions on the subject. The grant of temporary status in the Survey has been reviewed in consultation with DOP & Trg. In connection with a representation submitted by one of the ex. Casual labourer before the Chairman, National Commission for Scheduled Castes & Scheduled Tribes, New Delhi. The advice given by DOP & Trg. In the case is reproduced below for guidance:-

- i. The scheme for grant of temporary status to the casual employees was formulated in Pursuance of the judgment dated 16. 2. 90 of the CAT Principal Bench, New Delhi In the case of Shri Raj Kamal & others Vs. Union of India & others. The scheme for grant of temporary status is a one time affair and is applicable in respect of those

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Casual employees who were in service on the date of the notification of the scheme i.e. 10. 9. 1993 and had rendered one year of continuous service with 240 days or 206 days of service as the case may be on that date. The provisions of the scheme are also not applicable in respect of those casual employees who were recruited otherwise than through the sponsorship of employment exchange.

- ii. In this connection attention is also invited to the Supreme Court judgment dated 27. 1. 97 in the case of Passport Officer, Trivandrum & others VenuGopal C & others in which the Hon'ble Court has held that "If Department decides that only those employees who were recruited in normal manner i.e. through the employment exchange shall be given the temporary status, no fault can be found with the Deptt.

"The decision can not be said to be unreasonable or arbitrary. Therefore, we find it difficult to accept the line of reasoning taken by the Tribunal in holding that the decision was inconsistent with Article 14 of the Constitution"

In view of the above, you are requested to review all the cases for grant of temporary status to casual workers immediately for appropriate action. A detailed report may be furnished to this office for information and record within one month.

Yours faithfully

Sd/-
(SATYA PAL)
DIRECTOR (ADMINISTRATION)

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No.51016/2/90-Estt.(C)
Government of India
Ministry of Personnel, P.G. and Pensions
Department of Personnel & Training
.....

New Delhi, the 10th September, 1993

OFFICE MEMORANDUM.

Subj: Grant of temporary status and regularization of Casual workers – formulation of scheme in pursuance of the CAT, Principal Bench, New Delhi, judgement dated 16th February, 1990 in the case of Shri Raj Kamal & others Vs. U.O.I.
.....

The guidelines in the matter of recruitment of persons on daily-wage basis in Central Government offices were issued vide this Department's O.M. No. 49014/2/86-Estt (C) dated 7.6.88. The policy has further been reviewed in the light of the judgement of the Central Administrative Tribunal, Principal Bench, New Delhi delivered on 16.2.90 in the writ petition filed by Shri Raj Kamal and others Vs. Union of India and it has been decided that while the existing guidelines contained in O.M. dated 7.6.80 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 O.M. dated 7.6.88. Cases of negligence should be viewed seriously and brought to the notice of appropriate authorities for taking prompt and suitable action.

Sd/-
(Y.G. Paranda)
Director

To,

All Ministries/Departments/offices of the Govt. of India as per the standard list.

Copy to : (1) All attached and subordinate offices of
(i) Ministry of Personnel, P.G. and Pensions
(ii) Ministry of Home Affairs.

(2) All Officers and sections in the MHA and Ministry of Personnel, P.G. and Pensions.

Sd/-
(Y.G. Paranda)
Director

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APPENDIX

Department of Personnel & Training, Casual Labourers
(Grant of Temporary Status and Regularisation) Scheme.

1. This Scheme shall be called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993.
2. This scheme will come into force w.e.f. 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 O.M. and who have rendered a continuous service of at least one years, 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.
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.
 - (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 atleast 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 on 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.

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to carry forward the leave at their credit on 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 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 per applicable to temporary Group 'D' employee, provided they furnish two sureties from permanent Govt. servants of their Department.
 - (vii) Until they are regularized, they would be entitled to Productivity linked Bonus/Ad-hoc bonus only at the rates as applicable to casual labourers.
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 Dispute 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 dismissed 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 & 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 fulfill the minimum qualification prescribed for post, regularization will be considered only against those posts in respect of which literacy or back 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.

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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 O.M. dated 7.6.88 should followed strictly in the matter of engagement of casual employees in Central Govt. Offices.
11. Department of Personnel & 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.

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(iii) Where work of more than one type is to be performed throughout the year, a multifunctional post may be created with the concurrence of Ministry of Finance.

2. **Daily Wages.**— If the nature of the casual workers and regular employees is the same, casual workers should be paid at 1/30th of pay at the minimum of pay scale of the regular post *plus* D.A. (No. CCA/HRA will be taken into account).

If the nature of work is different, minimum wage as notified by the State Government/ UT as per the Minimum Wages Act, 1948, is payable.

3. **Weekly off.**—One paid weekly off after six days of continuous work.

4. **National Holiday.**— Daily wage is admissible for a National Holiday falling on a working day for them.

5. **No payment for other days of absence.**—Except on weekly off days and a National holiday, no payment is admissible when duty is not performed.

6. **Appointment in Group 'D' posts.**— Casual labourers not registered with Employment Exchange should not be appointed in regular posts. Those appointed through Employment Exchange and possessing minimum 2 years' continuous service as casual labour in the office/establishment are eligible for appointment to regular post without further reference to Employment Exchange. Those recruited directly without reference to Employment Exchange should register and then put in 2 years' service for becoming eligible for regular appointment if nominated by Employment Exchange.

7. **Two years' continuous service.**—The benefit referred to in previous Para. will be available if the casual labourer has put in at least 240 days of service (206 days in the case of offices observing 5-day week) including broken periods of service during each of the two years service.

8. **Ban on engagement of casual workers for duties of Group 'C'.**— There is complete ban on engagement of casual workers for duties of Group 'C' posts.

9. **Scheme for grant of temporary status and regularization of casual workers.**—

(i) **Applicability.**—The scheme brought into force from 1-9-1993 for grant of temporary status is applicable to casual labourers in employment on 1-9-1993 in Ministries/Departments of the Government of India, but not applicable to casual workers in Railways, Departments of Telecommunication/Posts who already have their own Schemes.

(ii) **Temporary Status.**—Temporary Status is conferred on all casual labourers in employment on 1-9-1993 and in continuous service of at least

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P 3/4

one year. This means that they must have been engaged continuously for at least 240 days (206 days in the case of offices observing 5 day-week) before 1-9-1993. No change in duties.

(iii) *Benefits under the Scheme.*—

- (1) Wages will be at daily rates with reference to the minimum of pay scale for regular Group 'D', *plus* DA, HRA and CCA. From 1-8-1997 Transport Allowance of Rs. 100 for A-1/A cities and Rs. 75 for other places should also be taken into account. Expenditure is debitable to sub-head "wages".
- (2) Benefit of increment after one year service subject to performance of duty for 240/206 days from 1-9-1993 onwards is available for calculation of daily wages. But there will be no arrears for the period prior to 1-9-1993. There will be no change in payment procedure since they continue to be casual labourers.
- (3) Leave entitlement will be at one day for every 10 days of work (weekly off and other non-working days excluded). Credit of leave may be carried forward on regularization.
- (4) Maternity leave to lady workers will be as admissible for regular Group 'D' staff.
- (5) Leave encashment is not admissible.
- (6) Service up to 50% rendered under Temporary Status is reckonable for pensionary benefits.
- (7) After three years' continuous service under Temporary Status, the personnel will be treated at par with temporary Group 'D' employees for contribution to GPF, grant of Festival Advance and Flood Advance.
- (8) Productivity-linked Bonus/*Ad hoc* Bonus is admissible only at the rates for casual labourers until regularization as of temporary status.
- (9) Leave is credited on 1st and 1st July each year with reference to the duty performed in the previous half-year. (Matter regarding carry-over of credit is under consideration.)

No benefit other than the above is admissible under this Scheme. Other benefits already available to casual workers in industrial establishments will however, continue.

(iv) *Termination.*—

Services of a casual labourer with Temporary Status may be dispensed with by one month's notice. Similarly, a casual labourer can quit after a month's notice. Wages for the notice period will be only for the days worked.

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(v) *Procedure for filling up of Group 'D' posts.*—Two of every three vacancies in Group 'D' cadre in offices where casual labour is engaged will be filled from casual workers in temporary status, under the conditions prescribed in the Recruitment Rules as per instructions issued by DoP & T. However, Group 'D' employees rendered surplus will have prior claim for absorption against existing/future vacancies. In case of illiterate casual labourers or those not fulfilling the minimum qualification prescribed for the post, regularization will be considered only against those posts for which literacy or minimum qualification will not be a requisite qualification. Age relaxation is permissible to the extent of the continuous service as casual labour.

(vi) *No substitute in place of a regularized casual worker.*—On regularization of casual worker with temporary status, no substitute to be appointed as he was not holding any regular post. (In other words, the regularization does not create a vacancy in the casual labour quota).

(vii) *Service Book.*—Though not prescribed, Service Book may be maintained for a Temporary Status Casual worker to facilitate recording particulars at one place.—Chapter 22.

8. Bonus*

[Swamy's — Complete Manual on Establishment and Administration]

(i) Productivity-Linked Bonus

(ii) *Ad hoc* Bonus

Conditions common to both the type of Bonus:

1. **Eligibility.**—Admissible to all non-gazetted employees without any pay limit.

2. **Quantum of Bonus.**—Every year bonus granted as equivalent to emoluments for certain number of days for the relevant financial year.

3. **Emoluments.**—'Emoluments' include basic pay, special pay, personal pay, SI, deputation (duty) allowance, dearness allowance, special allowance and training allowance paid to faculty members of training institutions. (Other allowances not included).

4. **Maximum limit.**—Restricted to that admissible for the emoluments of Rs. 2,500 p.m.

5. **Suspension.**—Period excluded from calculation for the year, but will be taken into account if the period is regularized as duty.

Conditions applicable for PLB:

1. **Average Emoluments.**—Quantum of PLB for the number of days declared every year to be calculated on the average emoluments drawn for the relevant financial year, i.e., emoluments for April to March next.

* Requires revision consequent to Fifth Pay Commission's Recommendations.

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No.1/33(C)/2005-Adm.-3625
Government of India

ANNEXURE 02
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Archaeological Survey of India
Office of the Superintending Archaeologist
Guwahati Circle, Ambari, G. N. B. Road, Guwahati-781001

Dated, the..

05/04/2007

Sub: Judgment / Order dated 1.11.2006 passed by the Hon'ble High Court, Gauhati in
W.P. (C) No. 4521/2005 UOI & Others Vs. P. M. Hazarika -regarding.

SPEAKING ORDER

Whereas in respect of Judgment and Order dated 01.11.2006 passed by the Hon'ble High Court, Gauhati in W.P. (C) No. 4521/2005 Union of India and others Versus Smt. Padmarani Mudai Hazarika and others upheld the judgment and Order dated 29.03.2005 passed by the Learned Central Administrative Tribunal, Guwahati Bench in Original Application being O.A. No. 32/2004 by which the Learned Tribunal relying upon the judgment Order dated 12.08.2003 passed earlier by the said Tribunal in O.A. No. 245/2002 that attained finality on not being challenged before the higher forum, directed the respondents/petitioners to verify as to whether the applicant/respondent had completed 240 days or 206 days in a five days week continuously and if so the respondents would immediately pass order conferring temporary status to the applicant/respondent in the light of the scheme underlying in the Office Memorandum dated 10th September, 1993 floated by the Ministry of Personnel P. G. and Pensions, Department of Personnel, DOPT, Government of India.

Whereas the scheme of grant of temporary status as per direction/instructions of the DOPT O.M. dated 10.09.1993 clearly states that the scheme for grant of temporary status was one time scheme and not an on going scheme. The casual worker must have been on employment on the date of issue of DOPT O.M. dated 10.09.1993, they should also have rendered a continuous service of at least one year and must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week). Whereas it has been found from the official records that the applicant does not satisfy the above conditions.

Whereas before and within 10.09.1993 the applicant did not fulfill the condition of working for a period of at least 206 days (this office observed 5 days work) and she was engaged with effect from 14.07.1993, even during the calendar year 1993 the applicant was not engaged for 206 days and was actually engaged for 116 days.

In view of the above the application/petition of Smt. Padmarani Mudai Hazarika can not be considered for her appointment on regular basis or conferring temporary status to her.

This order issues with the approval of competent authority.

For Superintending Archaeologist
05-01-07

To
Smt. Padmarani Mudai Hazarika
W/O Sri Ballav Hazarika
Chandmari Colony, Nizarapar
Guwahati
Assam.

Contd....

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- A N D -

IN THE MATTER OF :

1. The Union of India,
represented by the Secretary to
the Govt. of India, Ministry of
Art & Culture, New Delhi.
2. The Director General, Archaeological
Survey of India, Govt. of India,
New Delhi.

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3. The Superintending Archaeologist,
Archaeological Survey of India,
Govt. of India, Guwahati Circle,
Ambari, Guwahati, Assam.

.... PETITIONERS

- Versus -

1. Smt. Padmarani Mudai Hazarika,
W/o Sri Ballav Hazarika,
Chandmari Colony, Nizarapar,
Guwahati.

2. The Central Administrative Tribunal,
Guwahati Bench, Guwahati - 5.

.... RESPONDENTS

The humble petition of the
petitioners above-named -

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The respondent no. 2.
is delete n de H e o d d.
6.9.06.

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11-9-06

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

WP © 4521/05

BEFORE

THE HON'BLE MR. JUSTICE AH SAIKIA
THE HON'BLE MR. JUSTICE BD AGARWAL

1.11.06

Heard Mr. H. Rahman, learned Asstt. Solicitor General appearing for the petitioners and Mr. M. Chanda, learned counsel appearing for the respondent No.1.

On close perusal of the impugned judgment and order dated 29.3.05 passed by the Central Administrative Tribunal, Guwahati Bench in Original Application being O.A. No. 32/04 by which the Tribunal relying upon the judgment and order dated 12.8.03 passed earlier by the said Tribunal in O.A. No. 245/02 that attained finality on not being challenged before the higher forum, directed the respondents/petitioners to verify as to whether the applicant/respondent had completed 240 days or 206 days in a five days week continuously and if so, the respondents would immediately pass order conferring "temporary status" to the applicant/respondent in the light of the scheme underlined in the Office Memorandum dated 10th September, 1993 floated by the Ministry of Personnel, P.G. and Pensions, Department of Personnel & Training, Govt. of India and upon hearing the learned counsel for the parties, we do not find any compelling or convincing reasons to disturb the impugned judgment.

In the result, this writ petition stands dismissed.

SR/- B.D. Agarwal SR/- A.H. Saikia

Judge

13/4 Judge

P. NO 43315

DTR 9.11.06

CERTIFIED TO BE TRUE COPY	
Retained from file	
Date	21/11/06
Superintendent (Copying Section)	
Gauhati High Court	
Authorised U/S 76, Act 1. 1871	

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ANNEXURE - 03.

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Sl. No. 2 (R)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO 5103 OF 2002

Arising out of SLP (Civil) No. 2224/2000)

Union of India and Anr.

Appellants

Vs.

Mohan Pal etc. etc.

Respondent

With 3182, 3179, 3176-3179 & 3169 of 2002, 3481/2002

CIVIL APPEALS NOS OF 2002

(Arising out of SLP (Civil) No. 13024/2001 SLP (Civil) No. 1563/2001

SLP (Civil) No. 17174-17176/2000. SLP (Civil) No. 2151/2000, SLP (Civil)
326/2001)

AND

CIVIL APPEAL NOS OF 2002

(Arising out of SLP (Civil) Nos. 6738-6739/2000)

Lt. Governor (Admn) & Ors.

Appellants

Vs.

Sadanandan Bhaskar & Ors. etc. etc.

Respondents

With

CIVIL APPEAL NOS. OF 2002

(Arising out of SLP (Civil) Nos. 6740-41 and 6742-43/2000 and
970/2001)

JUDGMENT

K. G. Balakrishnan J

15/3/4

In all these appeals, common questions of law arise for consideration and hence they are being disposed of by a common judgment. In one set of appeals, the Union of India is the appellant and in another set of appeals, Lt. Governor (Andaman & Nicobar Islands) is the appellant. The matter relates to the grant of 'temporary' status to the casual workers working in some of the departments of the appellants. The Department of Personnel & Training of the Government of India formulated a scheme for the grant of 'temporary' status and regularization of the services of casual labourers working in the various departments under the Government of India. The scheme came into effect from 1. 9. 1993. Clause 3 of the scheme stated that it would apply to all casual labourers in employment of the Ministries/Departments of Government of India and their attached and subordinating offices, and that this Scheme may not apply to Railways and Telecommunications Departments. The Scheme envisaged conferring of 'Temporary' Status on all casual labourers who had worked for at least 240 days in a year (206 days in the case of offices observing 5 days week). The main features of the Scheme are as follows:-

- (1) Conferment of 'temporary' status on casual labourers would not involve any change in their duties and responsibilities and the engagement will be on daily rates of pay on need basis.
2. The casual labourers who acquire 'temporary' status will not have been to be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.
3. The wages and wage rate will be fixed at the minimum of the pay scale for a corresponding regular Group 'D' officials including DA, HRA and any other welfare measures.
- 4., Benefits of increments are the same rate applicable to a Group 'D' employee would be taken into account for calculating pro-rata basis and the leave entitlement would also be on a pro-rata basis viz. 1 day for every 10 days of works.

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5. Maternity leave to lady casual labourers would be permissible on par with Group 'D' employees.
6. It is also made clear that 50% of the service rendered under the temporary status would be counted for the purpose of retirement benefits after regularization.
7. 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 General Provident Fund, and they would also be eligible for the grant of Festival Advance, flood Advance on the same conditions as are applicable to Temporary Group 'D' employees.
8. They would be entitled to Productivity Linked Bonus/Ad hoc Bonus only at the rates applicable to casual labourers.

It was also made clear that apart from these benefits that may acquire by the employees on conferment of 'temporary' status the casual workers working in the Industrial Establishment may be entitled to any additional benefits they may be admissible to them under the provisions of the Industrial Disputes Act. Clause 7 specifically states that despite the conferment of 'temporary' status the services of a casual labourer may be dispensed with by giving a notice of one month in writing and the 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. While filling up the vacancies in group 'D' post, some preference is given to the casual labourers who have been conferred 'temporary' status. 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 the Department of personnel and Training from amongst casual workers with 'temporary' status.

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In these appeals, the question that arises for consideration is whether the conferment of 'temporary' status is a one time programme as per the Scheme or is this an ongoing Scheme to be followed by the Department and whether the casual labourers are to be given 'temporary' status as and when they complete 240 days of work in a year (206 days for the offices observing 5 days a week). Another question that came up for consideration is whether the services of casual labourers who had been given 'temporary' status can be dispensed with as per clause 7 as it they were regular casual labourers.

The first question is to be decided on the basis of the interpretation of clause 4 of the Scheme. As already noticed, the Scheme came into effect from 1. 9. 1993 Clause 4 (1) of the Scheme reads as follows:-

'temporary' status – (1) 'temporary' status would be conferred on all casual labourers who are in employment on the date of issue of this O.M. 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)

Clause 4 of the Scheme is very clear that the conferment of 'temporary' status is to be given to the casual labourers who were in employment as on the date of commencement of the Scheme. Some of the Central Administrative Tribunals took the view that this is an ongoing Scheme and as and when casual labourers complete 240 days of work in a year or 206 days (in case of offices observing 5 days a week), they are entitled to get 'temporary' status. We do not think that clause 4 of the Scheme envisages it as an ongoing Scheme. In order to acquire 'temporary' status, the casual labourers should have been in employment as on the date of

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commencement of the Scheme and he should have also rendered a continuous service of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. From clause 4 of the Scheme it does not appear to be a general guideline to be applied for the purpose of giving 'temporary' status to all the casual workers, as and when they complete one years continuous service. Of course it is up to the Union Government to formulate any Scheme as and when it is found necessary that the casual labourers are to be given 'temporary' status and later they are to be absorbed in Group 'D' posts.

The second question that arises for consideration is whether the casual labourers who have been given 'temporary' status can be removed from service by giving notice as per clause 7 of the Scheme. It is true that by conferment of 'temporary' status, the casual labourers acquire certain rights. Their daily rates of wages will be on the pro rata basis of salary and allowances payable to the employees working under the Group 'D' posts. They are also eligible for the casual and other kinds of leave. On completion of 3 years continuous service after conferment of 'temporary' status, they would be admitted to the General Provident Fund. They are entitled to get Festival Advance and flood Advance and other welfare measures applicable to the Group 'D' employees. Clause 7 of the Scheme makes it clear that despite the conferment of 'temporary' status, the services of a casual labourers may be dispensed with by giving one month notice in writing. This clause would certainly give the employer the right to terminate the services of casual labourers who have been given 'temporary' status.

The Division Bench of Calcutta High Court in Writ Petition (CT) No. 85/99
(Rajakih & Ors Vs. Union of India & Ors. etc. etc.) held that clause 7 must be read in a manner

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in which it does not render it unconstitutional. The employers can not at their whims dispense with the services of the casual labourers who have acquired 'temporary' status. The entire object of 1993 Scheme was to regularize all casual workers. To allow such uncenalised power of termination, would also defeat the object of the Scheme. Dispensing with the services of a casual labourer under clause 7 in our view, could be for mis-conduct etc.

having regard to the general Scheme of 1993, we are also of the view that the casual labourers who acquire 'temporary' status can not be removed merely on the whims and fancies of the employer. If there is sufficient work and other casual labourers are still to be employed by the employer for carrying out the work, the casual labourers who have acquired 'temporary' status shall not be removed from service as per clause 7 of the Scheme. If there is serious misconduct or violation of service rules, it would be open to the employer to dispense with the services of a casual labourers who had acquired the 'temporary' status.

In Civil Appeals/arising out of SLP(Civil) No. 6738-6739/2000, SLP (Civil) Nos. 6740-41 and 6742-43.2000 and SLP (Civil) No. 970/200, the Division Bench of the High Court of Calcutta held that the termination of the services of the employees was not legal and was based on various extraneous grounds. We do not propose to interfere with the same.

In Civil Appeals arising out of SLP (Civil) No. 2224-2000 SLP(Civil) No. 13024/2001 SLP(Civil) No. 1563 2001 SLP (Civil) No. 17174-17176-2000.

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SLP(Civil) No. 2151/2000, the respondents have been given 'temporary' status, even though, they did not specifically fulfill the condition in clause 4 of the Scheme. Some of them were engaged by the Department even after the commencement of the Scheme. But these casual labourers had also rendered service for more than one year and they were not given 'temporary' status pursuant to the directions issued by the Court. We do not propose to interfere with the same at this distance of time. However we make it clear that the Scheme of 1. 9. 1993 is not an ongoing Scheme and the 'temporary' status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in Clause 4 of the Scheme, namely they should have been casual labourers in employment as on the date of the commencement of the Scheme and they should have rendered continuous service of at least one year i.e. at least 240 days in a year or 206 days (in case of offices having 5 days a week). We also make it clear that those who have already been given 'temporary' status on the assumption that it is an ongoing Scheme shall not be stripped of the 'temporary' status pursuant to our decision.

The appeals are disposed of accordingly.

Sd/-

New Delhi

April 29, 2002.

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File in Court on 28.09.07
Court Officer.

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Filed by the applicant
through U. Dutta, advocate
on 28.09.07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the matter of: -

O.A. No. 14 of 2007

Smt. Padmarani Mudai Hazarika

-Vs-

Union of India and Others.

- And -

In the matter of: -

Rejoinder submitted by the applicant in
reply to the written statements
submitted by the respondents.

The applicant above named most humbly and respectfully begs to state as
under: -

1. That your applicant categorically denies the statements made in paragraph 1 (b), (c), (d), (e) of the written statement and further begs to say that the applicant has been forced to file the instant application due to deliberate non-compliance of the earlier decision of the learned Tribunal which was upheld by the Hon'ble High Court, as such the application deserves to be allowed with exemplary cost upon the respondents.
2. That with regard to the statements made in paragraph 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the written statement, the applicant denies the correctness of the same and reiterates the statement made in the O.A. So far contention raised in para 6 and 8 is concerned, the learned Tribunal has already dealt with the issue and the decision of the learned Tribunal on the points have already attained finality, as such the respondents are not entitled to advance any more arguments with regard to the provision laid down in O.M dated 10.09.2003, 12.04.2002 as well as the letter dated 10.03.98. It is

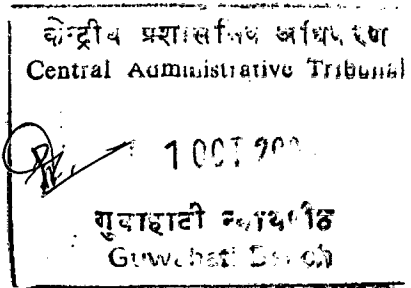
1 OCT 2007

गुवाहाटी न. १२५५१८

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also categorically submitted that the respondents while computing the number of working days did not take into consideration Saturdays, Sundays and holidays which is a mandatory requirement.

3. That with regard to the statements made in paragraph 11, 12, 13, 14, 15, 16 and 17 of the written statement, the applicant denies the correctness of the same and further begs to say that the respondents deliberately in violation of the judgment and order of the learned Tribunal dated 29.03.05, which was upheld by the Hon'ble High Court, passed the impugned order dated 05.01.2007. The statement made in para 12 is contemptuous in nature. The respondents deliberately and tactfully misinterpreted the order of the Hon'ble High Court and now attempt is being made to mislead the Hon'ble Tribunal just in order to defeat the legitimate claim of the applicant. As such the applicant reiterates the statements made in O.A. The decision rendered by the Hon'ble Supreme Court in the case of U.O.I & Ors. -Vs- Mohan Pal has been dealt by the Hon'ble Tribunal and taken into consideration, while passing the judgment and order dated 29.03.05 in O.A No. 32/2004. The contention raised in para 17 is categorically denied.
4. That your applicant categorically denies the statements made in paragraph 18, 19 and 20 of the written statement and reiterates the statements made in O.A.
5. That in the facts and circumstances stated above, the applicant humbly submits that he is entitled to the reliefs prayed for and the O.A. deserves to be allowed with costs.



VERIFICATION

I, Smti Padmarani Mudai Hazarika, wife of Shri Ballav Hazarika, aged about 44 years, resident of Chandmari Colony, Nizrapar, Guwahati- 3 Dist- Kamrup, applicant in the instant Original Application, do hereby verify that the statements made in Paragraph 1 to 5 of the rejoinder are true to my knowledge and I have not suppressed any material fact.

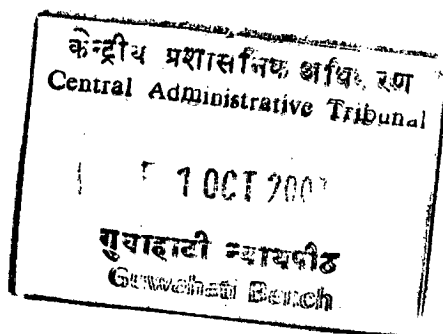
And I sign this verification on this the ~~23~~²⁴ day of September 2007.

Padmarani Mudai Hazarika.

NOTICE

From:-
Mrs. O. Dutta.
Advocate

To: Mr. M. V. Ahmed
All. C.G.S.C.



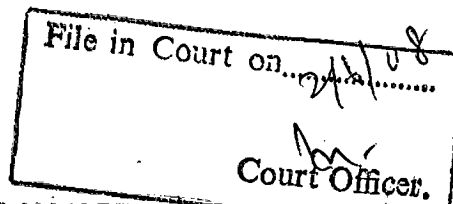
Sub:- Rejoinder in O.A. NO. 14/2007

Sir, find please enclosed herewith a copy of the rejoinder, which is being filed on today. This is for your information and necessary action.

Please acknowledge receipt.

Received
20/9/07
(M. V. Ahmed)
All. C.G.S.C.

Yours Sincerely
Mrs. O. Dutta
Advocate



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

Filed by the applicant
through U. Dutta, advocate
on 02.06.08

In the matter of:-

O.A. No. 14 of 2007

Smti. Padmarani Mudoi Hazarika.

Applicant.

-Versus-

Union of India & Ors.

Respondents.

-And-

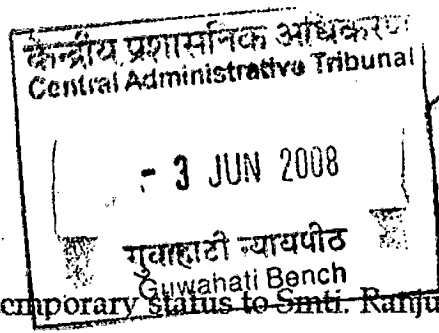
In the matter of:-

Additional rejoinder submitted by the applicant
against the written statement submitted by the
respondents.

The above named applicant most humbly and respectfully begs to state as under:-

1. That your applicant stated that she was appointed on 14.07.1993 as casual worker and one Smti. Ranju Devi another casual worker was also appointed on March, 1993. During the year 1999, the applicant as well as Smti. Ranju Devi were considered for grant of temporary status. Since Saturday and Sunday was not taking into consideration for the purpose of grant of temporary status in respect of the applicant so she was found short of 21 days out of 206 days required for grant of temporary status. whereas Smti. Ranju Devi who was appointed in the month of March, 1993 have been granted temporary status in the year 1999 taking into consideration Saturday and Sunday for the purpose of completing of 206 days within the calendar year. The present respondents in their written statement now objecting to grant of temporary status to the present applicant on the sole ground that prior to the cut of date i.e 10.09.1993, the applicant did not complete 206 days, but such a condition was never insisted upon by the present respondent in the case of Smti. Ranju Devi. The respondent being a model employer cannot discriminate the employees in the matter of grant of temporary status. If the relevant file/record is available in the office of

Padmarani Mudoi Hazarika



the respondents regarding grant of temporary status to Smti. Ranju Devi as well as the relevant file rejecting the claim for grant of temporary status in the year 1999 then it would be evident that Smti. Ranju Devi has been given undue benefit for grant of temporary status, ignoring the conditions which is now insisting by the respondent in the case of the applicant.

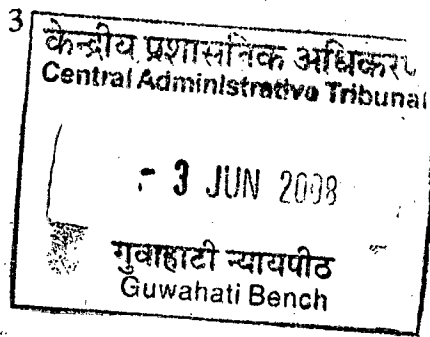
2. That it is stated that the Hon'ble Tribunal be pleased to call for the following records:-

- 1) Relevant file, documents/record granting temporary status to Smti. Ranju Devi, casual worker.
- 2) Relevant file, document/records rejecting the claim of the temporary status in 1999 to the applicant.
- 3) Attendance register for calculation of the no. of working days for each calendar year from the year 1993 onwards till date be placed before the learned Tribunal for proper adjudication of the case.

3. That it is further stated that the casual worker who are junior to the applicant are still continuing as casual worker whereas an attempt is made by the respondents to terminate the service of the applicant while juniors are still retain in service. It is also relevant to mention here that Sri Dipen Deka, Sri Parameswar Das and Smti. Swaraj Kumari who are junior to the applicant subsequently recruited as a casual worker but they have regularized in the existing vacancies after holding interview whereas no steps has been taken in respect of the applicant for regular absorption in the existing group 'D' post inspite of availability of vacancies. It is also stated that after institution of contempt case the respondents did not allow the applicant to sign the attendance register thereafter. However her presence in the office is now mark by the authority as per their own choice.

4. That in the facts and circumstances as stated above the original application deserves to be allowed with costs.

Padmarani Mudei Hazarika



VERIFICATION

I, Smti. Padmarani Mudoi Hazarika, wife of Shri Ballav Hazarika, aged about 45 years, resident of Chandmari Colony, Nizrapar, Guwahati-3, Dist. Kamrup, applicant in the instant Original Application, do hereby verify that the statements made in the Paragraph 1 to 4 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 31st day of ^{May}~~June~~, 2008.

Padmarani Mudoi Hazarika.