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**Central Administrative Tribunal
Jabalpur Bench**

OA No.411/05

Jabalpur, this the 10th day of October 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman

Hon'ble Mr.A.K.Gaut, Judicial Member

1. Kamal Kumar Pasi
Son of Shri Tularam
2. Sheikh Anwar
Son of Shri Shaik Nazeer
3. Vijay Kumar Chourasia
Son of Shri Guru Kayal Chourasia
4. Deena Bahadur
Son of Shri Suraj Bahadur
5. Vikas Anand
Son of Shri O.P.Pillai
6. Rakesh Kumar
Son of Shri Lakshman Prasad. Applicants

(All are working as Casual Industrial Mazdoor
at 54 Company, ASC (Supplies), Type-C, Cantt.
Jabalpur).

(By advocate Shri Prashant Singh)

Versus

1. Union of India through
Secretary
Ministry of Defence
New Delhi.
 2. The D.D.S.T. Area Headquarters
M.P., Bihar & Orissa Area
Ridge Road, Civil Lines.
Jabalpur (M.P.)
 3. The Commanding Officer
54 Company, ASC (Supplies)
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(By advocate: Shri S.A.Dharmadhikari)

ORDER

By A.K.Gaur, Judicial Member

By filing this OA, the applicants seek regularization of their services in the light of the law laid down by Hon'ble Supreme Court in the case of Hindustan Machine Tools Vs. M.Ranga Reddy and others, reported in (200) 7 SCC 741 and a direction to the respondents to pay two months' salary as assured in appointment order dated 1.11.96.

2. The applicants are working in the establishment of the respondents since 1994-95. It is stated in the OA that after due selection, the applicants were appointed as Casual Industrial Mazdoor vide appointment order dated 1.11.96 (A-3). It is alleged that the applicants were not paid salary as assured in the appointment order. Against the non-payment of salary, the applicants earlier filed an OA No.326/98 which was decided in their favour. However, instead of giving two months' salary, it is alleged that the respondents paid less than one month's salary to the applicants, which was against the specific directions of the Tribunal as also the assurance contained in the appointment order. Similarly situated persons were granted the benefit by the Tribunal as per the law laid down by Hon'ble Supreme Court in the case of Hindustan Machine Tools Vs. M.Nanga Reddy and others. It is further stated that the respondents have reduced the working days of the applicants to 4 to 11 days in each month. Despite Tribunal's earlier orders, the respondents have not regularized the services of the applicants. It is stated in the OA that the applicants have virtually become over aged and they are facing an uncertain future. There are 21 vacant and sanctioned posts of Casual Industrial Mazdoors. In spite of that, the respondents are not considering the case of the applicants for regularization despite favourable directions passed by the Tribunal on three earlier occasions.

3. No reply has been filed by the respondents in this case. However, we find that an identical matter has been dealt with by the Tribunal in OA No.412/05 in which a detailed reply has been filed by the respondents. In that case, the contention of the respondents was that that the judgement in the case of Hindustan Machine Tools Vs. M.Ranga Reddy & others reported in 2000 7 SCC 741 is not applicable to the present case, as Hindustan Machine Tools Ltd is a multi unit public sector undertaking of the Government of India and it is a production unit and their recruitment of mazdoors is a subject matter of Ministry of Defence. Though the applicants were offered regular appointment as Casual industrial Mazdoors in the pay scale of Rs.750-940 vide order dated 1.11.96, but due to ban imposed on recruitment by the Ministry of Defence, the offer was immediately withdrawn vide order dated 26.12.1996 and the order dated 1.11.96 was never given effect to. The further contention taken by the respondents was that the order passed in OA No.200/97 had been implemented in letter and spirit. Respondent No.3 has given first opportunity to the applicants for employment as daily rated mazdoors based on extra workload in depot and they are still working as daily rated mazdoors on daily wages as per rates fixed by Station Cell, Jabalpur and they are being paid at the rate Rs.71.57 per day. The case of the applicants for employment on permanent nature has already been taken up with the Ministry of Defence. The respondents further submitted that the applicant would be regularized on a preferential basis as and when regular vacancies arise and released by the Ministry of Defence according to rules.

4. We have heard Shri Prashant Singh, learned counsel for the applicants and Shri S.A.Dharmadhikari, learned counsel for the respondents.

5. As we have already observed, this is the second round of litigation in the matter of regularization of the services of the applicants. Learned counsel for the respondents argued that the OA is barred by constructive res-judicata and order 2 of Rule 2 of CPC. It is seen from the records that the applicants had earlier filed OA

No.326/98, and appropriate directions were issued for considering the case of the applicants for regularization as well as to pay minimum pay scale. The learned counsel for the respondents has specifically stated that though the applicants were offered regular appointment with the pay scale of Rs.750-940/-, but due to the ban on recruitment by the Ministry of Defence, the order could not be given effect to. He has, however, stated that the applicants are continuing as daily rated mazdoors and their case for regularization would be considered on preferential basis as and when the regular vacancies arise.

6. In our considered view, the present case is squarely covered by Supreme Court decision reported in 1997 SCC L&S 135 - Commissioner of Income Tax, Bombay Vs. T.P.Kumaran and it is barred by Order 2 of Rule 2 of CPC and constructive res-judicata. Learned counsel for the respondents has also placed reliance on 2006 Vol.3 SLR 1-Secretary State of Karnataka & others Vs. Uma Devi & others and argued that any public employment has to be in terms of the constitutional scheme and the applicants have been engaged in the teeth of the directions issued by the Government, from time to time banning fresh recruitment. In view of the above decision also, the applicants have no case and the OA is liable to be dismissed. Accordingly the OA is dismissed. No costs.

A.K. Gaur
(A.K. Gaur)
Judicial Member

G.C. Srivastava
(Dr. G.C. Srivastava)
Vice Chairman

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पूठकन सं ओ/न्या.....जबलपुर, दि.....
पलिलिपि अउरी धारः-

- (1) सकिर, उरु म्वालय जउ उरुमिपुम, जबलपुर
 - (2) आरुमरु / सीरुमि / रुकुके काउंसल
 - (3) उरुमि सी/सीरुमि/रुकुके काउंसल
 - (4) उरुमरु, उरुमरु, जबलपुर उरुमरुमि
सुचन एव आरुमरुक उरुमरुमि
- उप रजिस्ट्रार

Prasant Singh
Dr. Dharma Deewan

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