

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT AT INDORE

Original Application No. 296 of 1999

For consideration please.

G. Shanthappa
(C. Shanthappa)
Judicial Member
12.11.2003

Hon'ble Shri M.P. Singh, Vice Chairman -

MP
12/11/03

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

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Original Application No. 296 of 1999

Indore this the 12th day of November, 2003
Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

1. Mukesh Bhadaria, S/o. Shri
Bachchan Singh, Aged 29 years,
Occupation Unemployed, R/o. :
602, Nandan Nagar, Dhar Road,
Indore (MP).

2. Ashok Kumar Dubey, S/o. Shri
Laxmiprasad Dubey, Aged 31 years,
Occupation Unemployed, R/o : E-1/3,
Income Tax Colony, Daily College
Road, Indore (M.P.).

... Applicants

(By Advocate - Shri Rajendra Tiwari on behalf of Shri
C.B. Patne)

V e r s u s

1. The Union of India,
through Secretary to the Govt.
of India, Ministry of Revenue,
New Delhi.
2. The Chief Commissioner of Income
Tax, Madhya Pradesh, Aaykar Bhawan,
Hoshangabad Road, Bhopal-
462 011 (MP).
3. The Commissioner of Income Tax,
C.G.O. Complex, Govt. of India,
Indore (MP).
4. The Senior Authorised Representative,
Income Tax Appellate Tribunal,
Indore Bench, C.G.O. Complex, Indore
(MP).

... Respondents

(By Advocate - Shri S. Akthar on behalf of Shri B.da.Silva)

O R D E R

By G. Shanthappa, Judicial Member -

The above application is filed seeking the relief to
quash the termination of services of the applicants and to
direct the respondents to reinstate the applicants forthwith
in service with all backwages and also for a direction to the
respondents to absorb the applicants in Group-D category in
according to the decision of the Hon'ble Supreme Court

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reported in AIR 1988 SC 517.

2. The facts of the case are that the applicant No. 1 has passed the 5th class examination and the applicant No. 2 has passed the 10th class Board examination and they have been working on regular basis with effect from 17.11.1994 and 27.11.1995 respectively.

3. The applicants have been working without any break of service for more than 300 days in a year on daily wage basis in Group-D category. The applicant No. 1 submitted his representation on 08.12.1998 as per Annexure A-6 requesting the respondents for payment of his bonus for the year 1997-98. The applicants have submitted another representation as per Annexure A-8 and Annexure A-9 requesting the respondents for their regularization of their services on the ground that they worked under the respondents for more than 240 days in a year. The applicants had approached the Hon'ble High Court of Madhya Pradesh Indore Bench in WP No. 11/1999. The Hon'ble High Court was pleased to dispose of the above writ petition vide order dated 30.01.1999 directing the applicant to approach the Labour Court. In the Division Bench of the Hon'ble High Court of Madhya Pradesh reported in 1999(1) JLJ 37 (Pawan Kumar Shrivastava Vs. Municipal Corporation, Jabalpur) every Department of the Government is not an Industry and therefore the office of the respondents is not an industry. Hence they have filed the application before this Tribunal for grant of reliefs as claimed in the OA.

4. Per contra the respondents have filed reply denying particular officer on the some of the facts and allegations made in respect of a/ ground that there was a discrimination made among the

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applicants and the other selected Group-D employees. The case of the respondents is that the applicants were engaged without following the procedure for engagement of casual labour stipulate their registration with employment exchange and where engagement is without reference to employment exchange, such applicants cannot be considered for appointment to the regular establishment unless they get themselves registered with employment exchange and render from the date of such registration a minimum of two years continuous service as Casual Labour.

5. The services of the applicants have been discontinued as their work was not found satisfactory and no written order has been passed for discontinuance of services, as the same was not necessary because the applicants were engaged as casual labourers on purely temporary basis for miscellaneous type of works. The respondents further contended that the applicants have worked for more than 206 days in a year but it is mandatory to engage casual employees through employment exchange. The applicants were paid under the sub head 'Office expenses' only and not from 'wages' for a certain work that has been assigned to them for a particular period. The respondents have relied on the office memorandum dated 24.01.1961, 16.02.1961, 02.12.1966, 12.02.1969 and D.P. & A.R. O.M. No. 49014/19/84-Estt. (C), dated the 26th October, 1984. Under the said office memorandum the procedure for appointment of casual labourers to Group-D post are mentioned and the applicants have not fulfilled the other conditions mentioned in the said office memorandum. Hence the applicants have no legal right for grant of reliefs as prayed in the OA. Therefore the respondents have prayed the Tribunal for dismissal of the said Original Application.

6. Subsequent to filing of the reply the applicants have filed rejoinder to the reply clarifying the stand taken by the respondents. The applicants have repeated the facts mentioned in the OA. Therefore the respondents have ~~not~~ ^{properly} considered the case of the applicant ~~on~~ ⁱⁿ par with the judgment of the Hon'ble Supreme Court of India. The applicants have already relied on the judgment of this Tribunal at Principal Bench in the case of Shri Rajesh Kumar Mahto and others Versus Chief Controller of Accounts in OA No. 1672/1995, dated 1st July, 1996 in which the Tribunal has allowed the OA and directed the respondents for grant of temporary status to the applicant with effect from which they have completed 206 days on continuing service in a year in terms of paragraph 4 of the Casual Labourers (Grant of Temporary Status & Regularisation) Scheme, 1993, circulated by DPAR office memorandum dated 10.09.1993.

7. The respondents have filed MA No. 182/2003 for amendment of their reply by incorporating the following :

"The applicants have claimed regularisation under the Scheme of Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993. The applicants, as per their own contention were engaged with effect from 17.11.1994 and 27.11.1995. As per the said scheme, only those Casual Labourers, who were in service as on 01.09.1993 were entitled to the benefits of the scheme and not all those casual labourers engaged subsequently. Thus, the applicants are not entitled to grant of Temporary Status."

8. The applicants have filed an additional rejoinder contending that they are also eligible for grant of temporary status and also for regularisation of their services in view of the judgment of the Hon'ble Supreme Court in the case of Union of India Vs. Mohan Pal & Others.

9. After hearing the applicants and the respondents and

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after perusal of the pleadings and the documents available on record, the case is decided on merits. Whether the action taken by the respondents for termination of the services of the applicant is proper or not, and whether the applicants are entitled for the benefit of the judgment of the Hon'ble Supreme Court reported in AIR 1988 SC 517?

10. Admittedly the applicants were in service for more than 206 days in a year. As on the date of filing of the OA they were not in service. The applicants were engaged on daily wage basis whenever their services were required under the respondents. The applicants have not fulfilled the conditions mentioned in the office memorandum issued by the respondents vide Annexure R-1, annexed alongwith the reply which was published in Swamy's Complete Manual on Establishment and Administration (S-2/1999), regarding appointment of casual labourers in Group-D posts. The applicants have referred the orders of the CAT Principal Bench in OA No. 1672/1995. The facts of the said order are not applicable to the facts of the present case. Since the applicants are not in service, they were terminated before 30.01.1999 i.e. before approaching the Hon'ble High Court of Madhya Pradesh in WP No. 11/1999. This OA is filed on 20.04.1999. The applicants were terminated long back prior to the filing of the OA and also they have not fulfilled the conditions mentioned in the office memorandum issued by the D.P. & A.R.

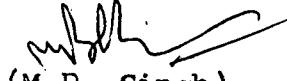
11. The applicants have submitted a judgment reported in 1999 (1) JLJ 37 (Pawan Kumar Shrivastava Vs. Municipal Corporation, Jabalpur). The facts of the said case are not similar to the present case. The applicants have failed to prove their case for grant of the reliefs at par with the directions issued by the Hon'ble Supreme Court reported in

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AIR 1988 SC 517. Considering the facts of the case and the judgments cited ^{of} by different courts the applicants are not entitled for any kind of reliefs as prayed for. Accordingly, the Original Application is dismissed. No costs.


(G. Shanthappa)

Judicial Member


(M.P. Singh)

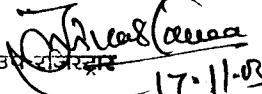
Vice Chairman

"SA"

पूर्णांकन द्वारा/कर्ता..... जारीकर, दि.....
कानूनी विवरण दिए गए हैं -

(1) राजीनामा द्वारा दिए गए विवरण, जिनका सूची
(2) विवरण, जिनका सूची दिए गए हैं - विवरण C.B. Patna, Adh. I&II
(3) विवरण द्वारा दिए गए विवरण, जिनका सूची दिए गए हैं - विवरण D. Daulwar, Adh.
(4) विवरण द्वारा दिए गए विवरण, जिनका सूची दिए गए हैं -

सूचना द्वारा आवश्यक कानूनी विवरण


उपराजिकरण
17-11-03

cc (गोपनी)
at Melone