16-1-2007

Mr Dharmendra Jain, Proxy Counsel for
Mr. Manish Bhandari, Counsel for the applicant.
Mr. V.S. Gurjar, Counsel for the respondents.

Heard the learned Counsel for the parties.

Order Reserved.

(M.L. Chauhan)
M(J)

(J.P. Shukla)
M(A)

12/1/07

Order has been Pronounced today in the Open Court by DBC.

12/1/07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

Jaipur, this the 12 day of January, 2007

ORIGINAL APPLICATION No.276/2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)

HON'BLE MR. J.P.SHUKLA, MEMBER (ADMV.)

1. Om Prakash s/o Shri Gopi Dhanka, aged about 38 years, r/o Gram Chandsain, Tehsil Malpura, District Tonk.

2. Rati Ram Mali s/o Shri Radha Kishan Mali, aged about 38 years, r/o Gram Chandsain, Tehsil Malpura, District Tonk.

3. Ganpat s/o Shri Suwa Lal Dhanka, aged about 36 years, r/o Gram Chandsain, Tehsil Malpura, District Tonk.

4. Shanti w/o Prem Narain Sharma, aged 36 years, r/o Gram Malpura, District Tonk.

5. Shyoji s/o Shri Rajbaj Mogiya, aged about 39 years, r/o Gram Ambapura, Tehsil Malpura, District Tonk.

6. Manphooli w/o Ladu Regar, aged about 41 years, r/o Gram Ghati, Tehsil Malpura, District Tonk.

7. Hanuman s/o Gopal Mali, aged about 35 years, r/o Gram Chansan, Tehsil Malpura, District Tonk.

8. Devkaran s/o Shri Bhura Kumar, aged about 41 years, r/o village Chandsain, Tehsil Malpura, District Tonk.

9. Brij Ram s/o Shri Shoykaran Gurjar, aged about 37 years, r/o Malpura, District Tonk.

.. Applicants

(By Advocate: Shri Dharmendra Agarwal, proxy counsel to Shri Manish Bhandari)

Versus

1. Union of India
through the Secretary to the Government,
Ministry of Agriculture,
Government of India,
New Delhi.

2. Indian Grass and Fodder Research Institute,
Jhansi thrugh Director.

3. Western Regional Research Station,
Sub Centre (IGFR),
Avika Nagar,
Malpura, District Tonk
Through Officer Incharge.

.. Respondents

(By Advocate: Shri V.S.Gurjar)

O R D E R

Per Hon'ble Mr. M.L.Chauhan

The applicants 9 in number have filed this OA thereby praying for the following reliefs:-

i) by appropriate order or direction the impugned order dated 21.6.2006/26.6.2006 (Annexure A-1) and order dated 14.6.2006 (Annexure-A2) issued by the respondents may kindly be quashed and set-aside.

ii) by further order or direction the Hon'ble Tribunal may kindly be directed to the respondents to grant temporary status/regularization to the applicants as per the scheme issued by the Government of India as all the application have complete more than 240 days before the year 1993 with a further direction to allow the applicants to continue to work in the office of the respondent No.3

iii) Any other appropriate order or direction which the Hon'ble Tribunal may consider just and proper in the facts and circumstances of the case, may also kindly be passed in favour of the applicants.

iv) The cost of unnecessary litigations may kindly be awarded to the applicants."

2. Briefly stated facts of the case are that the applicants were engaged by the respondents on daily wage basis on various dates from 1987 onwards. They filed OAs in this Tribunal for conferment of temporary status in terms of the Casual Labourers Grant of Temporary Status and Regularisation) Scheme, 1993 as according to the applicants they fulfill the eligibility condition. It appears that those OAs were disposed of by the Bench by directing the respondents to consider case of the applicants for grant of temporary status. Subsequently, the respondents rejected the cases of the applicants vide order dated 22.1.2001 on the ground that taking into account the period from 1.9.92 to 31.8.93, the applicants have not worked for 240 days and as such they are not eligible for grant of temporary status. The said order was again challenged by the applicants by filing OA No.83/2001, which was disposed of by this Tribunal by holding that under the Scheme period of 240 days has to be reckoned in a period of any 12 months, it has nothing to do with the calendar year either. The preceding years means the year preceding the date on which a particular casual labour completes 240 days. The scheme nowhere suggests that it has to be during a

calendar year. It only says that the casual labour should have completed 240 days during the year and this year could be a block of any 12 months during which he completes 240 days. Thus, directions were given to the respondents to scrutinize the working period of each of the applicants and from the day any applicant has completed 240 days of working in a span of 12 months, he shall be granted temporary status w.e.f. that date and on grant of temporary status the applicants shall also be entitled to all the consequential benefits. The matter was further carried by filing Writ Petition before the Hon'ble High Court. The Hon'ble High Court after considering the case of the Apex Court in the case of Union of India and Ors. vs. Mohan Pal etc., 2002 (3) Supp. 602 held that the grant of temporary status is one time programme and the benefit of the scheme cannot be extended to the employees who are employed after September, 1993 or completed 240 days in any calendar year after 1993. Thereafter the Hon'ble High Court in operative portion held as under:-

> "When the applicants-respondents are in the employment on the date of commencement of scheme, which is not in dispute, we see no infirmity in the order as nowhere the scheme requires that they should complete 240 days only in the year 1993, before commencement of the scheme i.e. 1.9.93. No mandatory directions are given to confer the temporary status on the applicants-respondents that benefit of the scheme should be given only if worker has completed 240 days in the year 1993, but left it open to the respondents to scrutinize the working period of each of the applicants and from the day any applicant has completed 240 days of the work in the span on 12 months, they should be granted temporary status."

Thus from reading of the order passed by the Hon'ble High Court and in view of the law laid down by the Apex court in Mohan Pal (Supra) directions given by this Tribunal in earlier OA as observed in para 4 of the judgment that the scheme of 1993 is continuous scheme has been reversed and respondents were directed to scrutinize the working period of each of the applicants and from the day any applicant has completed 240 days of the work in the span of 12 months, he should be granted temporary status. The respondents have again issue the impugned order dated 21.6.2006 (Ann.A1) thereby holding that the applicants are not entitled to grant of temporary status w.e.f. 1.9.93. At this stage, it will be useful to quota relevant portion of the order which thus reads:-

> "In view of the above, the Competent Authority examined the case in the light of the instruction passed by the Hon'ble Court and as per ICAR HQ direction found that as per annexure for their attendance Chart enclosed in the Writ Petition, the petitioner casual labourers do not fulfill the required number of days i.e. 240 days service as on 1.9.93 in the span of 12 months preceeding 1.9.1993 and they were not found fit for granting of 'Temporary status' according to the above direction."

It is this order as well as order dated 14.6.2006 (Ann.A2) whereby tenders in sealed cover were invited from the general public for carrying out the work as mentioned in Ann.A2, are under challenge in this OA. The applicants have further prayed that the respondents may be directed to grant temporary status/regularization to the applicants as per the scheme issued by the Government of India. The

challenge of these orders have been made on the ground that vide the impugned order Ann.A1, the applicants have been denied the benefit of temporary status on the ground they have not completed 240 days as on 1.9.92 to 31.8.93 and according to the applicants, there is no such stipulation in the scheme. Further ground taken by the applicants, as can be seen from para 5(e) of the OA, is that after passing of the impugned order Ann.A1, the respondents have stopped allotting work to the applicants and thus indirectly terminated their services without complying with the mandatory provisions of Section 25-F, G and H of the Industrial Disputes Act, 1947 as the applicant have not been given one month notice or pay in lieu of the notice period. Thus, the impugned order dated 21.6.2006/26.6.2006 is liable to be quashed and set-aside and the applicants are entitled to continue as casual labourers on account of availability of work.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply reliance has been placed on the decision of the Constitution Bench of the Hon'ble Apex Court in the case of State of Karnataka vs. Uma Devi (2006) 4 SCC 1 whereby it has been held that public employment in a sovereign socialist secular democratic republic has to be as set down by the Constitution and the law made thereunder. Our constitutional scheme envisages

employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, according to the respondents, any public employment has to be in terms of the constitutional scheme and the relevant rules. It is further stated that a sovereign government, considering the economic situation in the country and the work to be got done, is not precluded from making temporary appointments or engaging workers on daily wages. The regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up and the filling up of these vacancies cannot be done in a haphazard manner or based on patronage of other consideration. The respondents have also taken plea that the present application is not maintainable for non-joinder of necessary parties as respondent No.3 is sub centre of respondent No.2 and is a research institution of Indian Council for Agricultural Research (ICAR) which is the controlling authority and is a registered society under the Registration of Societies Act, 1980 and the society can be sued only through Secretary.

On merits, it has been stated that none of the applicants have completed 240 days in a year except Shri Rati Ram who has completed 240 days in the year

1989. It is further stated that merely working for 240 days on daily wage basis does not confer any right in favour of the applicants for regularization of their service in the Institute. The respondents have also reproduced para 4(1) of the scheme in the reply and argued that the benefit of the said scheme can be given to those casual labourers who were in employment on the date of commencement of the scheme and they should have been in continuous service for one year and at least 240 days in a year (206 in case of offices observing 5 days a week). Thus, according to the respondents from clause 4 of the scheme it does not appear to be general guidelines for all casual labourers as and when they complete one year of continuous service. For that purpose, reliance has been placed on Director General, Doordarshan vs. Manas Dey, (2005) 13 SCC 437. Since the applicants have not completed continuous service of one year preceding the date when the scheme of 1993 came into force, as such, they are not entitled for regularization in terms of law laid down by the Apex Court in the case of Union of India vs. Gagan Kumar, 2005 SCC (L&S) 803. The respondents have annexed along with the reply, number of days service put in by the applicants preceding the date of notification of the scheme on record as Ann.R1. Thus, according to the respondents, their action is in conformity with the law laid down by the Apex Court and also in terms of the scheme which came

into force w.e.f. 1.9.93. The respondents have further stated that since the applicants have claimed non-compliance of alleged mandatory provisions of Industrial Disputes Act, 1947, therefore, the OA merits rejection on this account alone as alternative, efficacious and speedy before the forums constituted under the Industrial Disputes Act, 1947.

4. The applicants have not filed rejoinder.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. The question which requires our consideration is whether the case of the applicants for grant of temporary status has been considered in the light of the Casual Labourers (Grant of temporary Status and Regularization) Scheme of the Government of India, 1993 and the interpretation given by the Apex Court in number of decisions. In order to decide the matter in issue, it will be useful to quota para 4(1) of the scheme which thus reads as under:-

> "4. Temporary status.-(1) 'temporary' status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days' week)."

7. It is not in dispute that the Scheme of 1993 came into effect from 1.9.1993 and all the applicants were in employment on that date. The controversy is what is

the meaning of continuous service of at least one year as mentioned in para 4(1) of the scheme and as to whether temporary status has to be given to all casual workers who, though on employment on the date when the scheme came into force, have not completed continuous service of one year immediately preceding the date on which the scheme came into force i.e. 1.9.93 but such persons have completed one year of continuous service uninterruptedly in a year prior to preceding one year from the date when the scheme came into force. According to us, the matter on this point is no longer res-integra. The matter has been considered by the Hon'ble Apex Court in the case of Union of India vs. Mohan Pal for the first time and the Apex Court after considering para 4 of the scheme has categorically held that that scheme in question was not an ongoing process but one time scheme. At this stage, it will be useful to quota para 6 of the judgment, which thus reads:-

> "6. 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 labour should have been in employment as on the date of 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 guidelines 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. 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."

8. Thus, from the judgment as quotes above, it is evident that the Apex Court has interpreted para 4 of the scheme and while interpreting the said scheme, the Apex Court has categorically held that in order to acquire temporary status, two conditions must be fulfilled simultaneously i.e. i) casual labourer should have been in employment on the date of commencement of the scheme and ii) 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/206 days in case of offices observing 5 days week. According to the interpretation given by the Apex Court, both these conditions should be fulfilled. The Apex Court has further held that from para 4 of the scheme, it does not appear that these are general guidelines to be applied for the purpose of giving temporary status to all the casual labourers as and when they complete continuous service of one year. Thus, the contention of the learned counsel for the applicants that condition in the scheme that casual labourer should have rendered continuous service of one year immediately preceding the date of commencement of the scheme is not an essential condition and a casual labourer who has completed one year of service on any point of

time, cannot be accepted. If such a contention of the learned counsel for the applicant is accepted then the words "and who have rendered a continuous service of at least one year" appearing in para 4 will become redundant and then any casual labourer who was working as on 1.9.93 and had not even worked in the year 1990, 1991 and 1992 i.e. preceding 3 years but had completed 240 days of work in the year 1988 or 1989 will be entitled for grant of benefit, which is not the intention of the scheme, as is the contention raised and ground pleaded by the applicants in the instant case. It may also be stated here that in para 4(10) of the OA, the applicants have mentioned names of 7 applicants who have completed more than 240 days of work in the year 1989 and 1990 only. The respondents in the reply have categorically stated that some of the applicants were engaged in the year 1990. In para 4 of the reply it is specifically stated that only one person namely Shri Rati Ram had completed 240 days in the year 1989 and none of the applicants have completed 240 days in a year. Thus, even on the basis of the interpretation given by the applicants, none of the applicants have completed 240 days of continuous service of one year except one person. On the contrary, the respondents have placed on record the working days of the applicants for a period from 1st September, 92 to 31st August, 93 (Ann.R1). Perusal of this document shows that none of the applicants have

completed 240 days of continuous service immediately preceding the date when the scheme came into force. Thus, according to us, the applicants are not entitled to any relief.

9. At this stage, it may also be relevant to mention that decision rendered by the Apex Court in the case of Mohan Pal (supra) was also reiterated in the case of Union of India vs. Gagan Kumar, (2005) 6 SCC 70, whereby the Apex Court after noticing clause 4(1) of the scheme which has been reproduced in the earlier part of the order has held that clause 4 of the scheme, it does not appear to a general guidelines 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. 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.

10. At this stage, it will also be useful to quota the decision of the Apex Court in the case of Director General, Doordardhan, Mandi House, New Delhi vs. Manas Dey, (2005) 12 SCC 43, whereby almost similar controversy was involved and in para 8 and 9 the Apex Court has held as under:-

> "8. The controversy can be resolved on the basis of interpretation of clause 4 of the Scheme. As already noticed, the Scheme came into effect from 1.9.91993.
> 9. Clause 4 of the Scheme is very clear that the conferment of 'temporary' status is to be given to the casual labouers who were in employment as on the date of commencement of the Scheme. The Tribunal has taken 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 envisage it as 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 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 five day 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 year's 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."

Thus, in view of the authoritative pronouncements given by the Hon'ble Apex Court in the aforesaid cases, we are of the view that the before a casual labour can be granted temporary status in terms of 1993 scheme, he has to fulfill simultaneously both the conditions, namely that he should be in employment on the date of commencement of the scheme and also he should have rendered continuous service of at least one year immediately preceding the aforesaid date and it is not the object of the scheme that in terms of clause 4 for the purpose of giving temporary status, the casual labour should complete one year's continuous service at any time.

11. At this stage, it will be useful to notice provisions of Section 25-B of the Industrial Disputes

Act, 1947 where continuous service has been defined, which thus reads:-

"25-B. Definition of continuous service.- For the purpose of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident which is not illegal, or a lockout or a cessation of work which is not due to any fault on that part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation- For the purpose of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has laid off under an agreement or as permitted by Standing Orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising our of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceeds twelve weeks."

As can be seen from Section 25-B as reproduced above, Section 25-B is in two parts. Sub section (1) of Section 25-B stipulates that the workman should be in employment for a continuous uninterrupted period of one year except the period of absence which is permissible as mentioned in that Section i.e. on

account of sickness or authorized leave, an accident, a strike which is not illegal, a lock out or a cessation of work etc. Sub-cause (2) of Section 25-B introduce fiction to the effect that even if the workman is not in continuous service for a period of one year or six months, he shall be deemed to be in continuous service for that period under the employer if he had actually worked for the period specified in clause (a) and (b) of sub-section (2). Thus, the sub-section (2) of Section 25-B comprehends a situation that where a workman is not in continuous service within the meaning of sub-section (1) for a period of one year or six months, he shall be deemed to have been in service under the employer for a period of 12 months which is preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days. It is not necessary for the purpose of sub-section 2(a) that the workman should be in service for a period of one year and that his service is continuous service within the meaning of sub-section (1). If his case is governed by sub-section (1) then it need not be covered by sub-section (1). Sub Section (2) envisages a situation not governed by sub-section (1) and sub-section (2) provides for a fiction to treat a workman in continous service for a period of one year despite the fact that he has not rendered uninterrupted service for one year but has rendered service for a

period of 240 days during the period of 12 calendar months counting backwards and just preceding the relevant date, being the date of retrenchment. This is what the Apex Court held in the case of Mohan Lal vs. Bharat Electronics Ltd., 1981 SCC (L&S) 478. Thus, if one has regard to the provisions contained in sub-section (2) of Section 25-B almost similar provisions has been stipulated in para 4(1) of the Scheme of 1993, which have been reproduced above. Thus, the only conclusion which can be drawn is that the casual labourer must have rendered service for a period of 240 days (206 days in the offices observing 5 days week) during the period of 12 calendar months counting backward and just preceding the relevant date which in the present case being the date of coming into force of the scheme w.e.f. 1.9.1993.

12. Even otherwise also, in the facts and circumstances of this case, the respondents have categorically stated in para 4 of the reply that none of the applicants had completed 240 days in a year except Shri Rati Ram, who had completed 240 days in the year 1989. Thus, even on the basis of contention raised by the applicants regarding interpretation to para 4(1) of the scheme that casual labourers are required to complete 240 days at any time continuously in one year and not necessarily immediately preceding the date of enforcement of scheme as is also warranted

under sub-section (2) of Section 25-B is to be accepted even in that eventuality also other 8 applicants are not entitled to any relief as they have not completed 240 days of work and have not put in continuous service of at least one year. At the most it may be one applicant who may be entitled to such relief as per interpretation put by the learned counsel for the applicants regarding para 4(1) of the Scheme. At this stage, it may be stated that the applicants have not filed any rejoinder thereby controverting the fact that one person has completed 240 days in 1989 and none of other applicants have completed 240 days in a year, as such, this part of the averment remained uncontroverted. The Apex Court has in number of decisions held that the burden of proof that the workman has worked continuously for 240 days is on the workman and it is for the workman to discharge the said burden and, as such, no relief can be granted to the daily wager/casual labourer. The Apex Court further held that in such situation proper remedy for the workman is by raising such claim under the Industrial Disputes Act, 1947 so that evidence can be analysed and conclusion arrive at and Writ Petition is not proper remedy. Thus, mere assertion made by the 7 applicants out of 9 applicants in para 4(10) of the OA that they have completed 240 days of service in the year 1989 and 1990 cannot be accepted in view of the law laid down by the Apex Court in the cases of

Surendra Nagar District Panchayat vs. Dahyabhai Amarsing, 2006 SCC (L&S) 38, ONGC Ltd. and anr. Vs. Shyamal Chandra Bhowmik, 2006 SCC (L&S) 113 and Regional Manager, SBI vs. Rakesh Kumar Tewari, 2006 SCC (L&S) 143.

13. Further averments made by the applicants that their services have been disengaged in violation of the provisions contained in Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 cannot be gone into in these proceedings. It is settled law that where the workman has raised controversy regarding violation of the provisions contained in the Industrial Disputes Act, the proper remedy for agitating such matter is before the Industrial Tribunal/Labour Court and such claim cannot be entertained directly either by the Hon'ble High Court or Civil Court or for that matter by this Tribunal. As such, no finding is required on this point.

14. The learned counsel for the applicants has placed reliance on the decision rendered by the Madhya Pradesh High Court in LPA No.194/1996, dated May, 14,1998 in the case of Pawan Kumar Srivastava vs. Municipal Corporation, Jabalpur to contend that for the purpose of counting the period of 240 days of service Sunday cannot be excluded. Thus, according to the learned counsel for the applicants, the finding

recorded by the respondents in the impugned order that the applicants have not completed 240 days of service as on 1.9.1993 in a span of 12 months preceding 1.9.93, cannot be accepted. We have given due consideration to the submissions made by the learned counsel for the applicants, We are of the view that such a contention of the learned counsel for the applicants cannot be accepted for more than one reason. Firstly, it is not the case set up by the applicants in the OA that while computing the period of 240 days service as on 1.9.1993 in the span of 12 months preceding 1.9.1993, the respondents have not included Sundays. Rather, the case of the applicants is that the scheme nowhere provides that a casual labourer who rendered 240 days as on 1.9.1993 in the span of 12 months preceding 1.1.1993 for the purpose of granting temporary status and for that purpose the service rendered by a casual labourer at any time/year can be taken into consideration as such labourer has put in 240 days of continuous service in a year. Thus, it is not permissible for the applicants to raise this contradictory plea based on the judgment relied by them. That apart, as already stated above, the respondents have placed on record Ann.R1 thereby indicating number of days of service rendered by the applicants in a span of 12 months preceding 1.9.1993 i.e. w.e.f. 1.9.92 to 31.9.93. The applicants have not filed any rejoinder thereby disputing the facts that

number of days as reflected by the respondents vide Ann.R1 are not correct and they have not included Sunday. From perusal of this document, it is also evident that some of the applicants have rendered only 100, 138 and 177 days of service during the span of 12 months preceding 1.9.1993 and benefit of 3 national holidays has been given to all the applicant. Thus, this part of statement made by the respondents in the reply has remained uncontroverted. As already stated above, it is for the worker to establish that he has completed 240 days of service by leading evidence and their self statement is not sufficient. Thus, this contention of the learned counsel for the applicants cannot be accepted. That apart, the submission made by the learned counsel for the applicants by placing reliance on the judgment of Pawan Kumar Srivastava (supra) is self destructive. On the one hand, the learned counsel for the applicants has argued that in terms of para 4 of the scheme it is not necessary to a casual labourer to render 240 days of service in the span of 12 months preceding 1.9.1993 whereas on the other hand he has also placed reliance on Section 25-B(2) of Industrial Disputes Act, 1947 which stipulates that for the purpose of computing period of 240 days in terms of Section 25-B(2) during the period of 12 calendar months counting has to be made backward and just preceding the relevant date being the date of retirement. Thus, the learned counsel for the

applicants cannot blow hot and cold on the same breath thereby placing reliance on sub-section (2) of Section 25-B of the Industrial Disputes Act for the purpose of interpreting clause 4(1) of the scheme (on the basis of which the respondents have also computed number of days the applicants have worked and has placed reliance) and simultaneously arguing that it is not necessary that the applicants should have rendered service for a period of 240 days during the period of 12 calendar months counting backward and just preceding the enforcement of the scheme but the requirement of the scheme is that workman should be in continuous service for a period of one year at any time and as and when they complete one year of service may be within four year or more prior to enforcement of the scheme w.e.f. 1.9.1993. Thus, the reliance placed by the applicants to the judgment as stated above is wholly misconceived.

15. Further the reliance placed by the learned counsel for the applicants on the decision of the Apex Court in J&K Public Service Commission and ors. vs. Dr. Narinder Mohan and ors., (1994) 2 SCC 630, is not applicable to the facts and circumstances of this case. That was a case of ad-hoc employees who were replaced by other ad-hoc employees and it was in that context that the Apex Court has held that ad-hoc employees can only be replaced by regularly selected

employees. This is not the case here. The applicants in this OA nowhere pleaded that in their place some other employees have been engaged. Because the department has invited tender for executing the official work, this, ipso facto, does not prove that the services of the applicants have been disengaged and in their place some other employees are engaged. Be that as it may, since the applicants have raised violation of provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, and contended that they have been disengaged in violation of these provisions contained in the Industrial Disputes Act, this Tribunal has got no remedy as observed above.

16. For the foregoing reasons, we are of the view that the present OA is bereft of merit and the same is accordingly dismissed with no order as to costs.

(J.P.SHUKLA)
Administrative Member

(M.L.CHAUHAN)
Judicial Member

R/