

11-11-2009

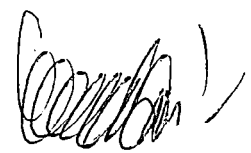
Mr. P.N. Jatti Counsel for applicant.
Mr. Hemant Mathur, Counsel for respondents

Heard learned Counsel for the parties.

For the reasons dictated separately, the OA is disposed of

(B.L. Khatri)

M(A)



(M.L. Chauhan)

M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 11th day of November, 2009

CORAM:

HON'BLE MR. M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L.KHATRI, ADMINISTRATIVE MEMBER

ORIGINAL APPLICATION No.440/2008

Ram Lal Bhati
s/o Shri Narain Lal Bhati,
aged about 32 years
r/o Plot No. 41-42, Lohiya Colony,
Near Vaishali Nagar, Jaipur
Presently disengaged as mali in the
Office of the Chief Commissioner,
Custom and Central Excise,
Statue Circle, Jaipur-1

..Applicant

(By Advocate: Mr. P.N.Jatti)

Versus

1. The Union of India through
the Secretary (Revenue),
Ministry of Finance,
Vitya Bhawan,
New Delhi.
2. The Chief Commissioner,
Custom and Central Excise,
Jaipur-1, Government of India,
Statue Circle, Jaipur
3. Commissioner,
Custom and Central Excise,
Jaipur-1, Revenue Building,
Statue Circle,
Jaipur

.. Respondents

(By Advocate: Mr. Hemant Mathur)



ORIGINAL APPLICATION No.442/2008

Ghanshyam Gujar
 s/o Shri Kalu Ram,
 aged about 27 years
 r/o Plot No. 1-A-22, Subhash Colony,
 Shastri Nagar, Jaipur
 Presently disengaged as Casual Labour
 As Cook (Halwai) in the
 Canteen office of the Chief Commissioner
 Custom and Central Excise,
 Statue Circle, Jaipur-1

..Applicant

(By Advocate: Mr. P.N.Jatti)

Versus

3. The Union of India through
 the Secretary (Revenue),
 Ministry of Finance,
 Vitya Bhawan,
 New Delhi.
4. The Chief Commissioner,
 Custom and Central Excise,
 Jaipur-1, Government of India,
 Statue Circle, Jaipur
4. Commissioner,
 Custom and Central Excise,
 Jaipur-1, Revenue Building,
 Statue Circle,
 Jaipur

.. Respondents

(By Advocate: Mr. Hemant Mathur)

ORDER (ORAL)

By this common order, we propose to dispose of both these

OAs as common question of law and fact is involved.

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2. Briefly stated applicants earlier filed OA No.490/2002 before this Tribunal in which names of applicants of these OAs find mention at Sl.No. 1 and 12 respectively. Copy of the judgment has been placed on record by the applicants as Ann.A/2 in both these OAs. As can be seen from the judgment, the grievance of the applicants was regarding regularization of their services and grant of pay scale of Group-C/Group-D and also for conferment of temporary status under the Casual Labourers (Grant of Temporary Status and Regulation) Scheme of Government of India, 1993. This Tribunal held that the applicants were part-time workers and they are not entitled to conferment of temporary status under the aforesaid scheme. The prayer of the applicants for regularization of their services was also declined. However, while disposing of the OA in para-10 of the judgment, this Tribunal has made the following observations:-

"10. This O.A. is thus disposed of with a direction to the respondents that in case the applicants are willing and they present themselves for working on the posts they were engaged initially and had worked on such posts also for some time, they shall be allowed to work on the same terms and conditions under which they were governed at the time of their dis-engagement, if the work is still available with the respondents. They will not refuse the work to the applicants on the ground that since fresh appointments in place of the applicants have been made, no work is available with them. If need arises, they are free to dispense with the services of the fresh appointees as the replacement of the applicants with fresh appointees is illegal. OA is thus allowed only to this limited extent."

The matter was carried before the Hon'ble High Court by the department and the Writ Petition filed by the department was dismissed by holding that the order passed by the Tribunal is not mandatory in nature and has been issued in the nature of certain

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arrangements under which the petitioner was granted liberty to follow them and it was further observed that the order of the Tribunal has already been carried out by the department and the Writ Petition was dismissed. Based on these facts, the applicants have prayed that the respondents may be directed to implement the order of this Tribunal passed in OA No.490/2002, operative portion of which has been reproduced hereinabove.

3. The respondents have filed reply. In the reply, the respondents have stated that in view of the Ministry letter dated 10.3.2004 appointment of Casual Labour/Daily Wager is totally banned and work of house keeping/contingency work is being got done through contractor w.e.f. 1.1.2005. Therefore, services of part-time Casual Workers were dis-engaged and now all the contingency work is done through contractor w.e.f. 1.1.2005. The respondents have also relied upon the judgment of the Andhra Pradesh High Court in the case of T.Vijay Raj and ors. vs. The Chairman Central Board of Customs and Central Excise, New Delhi, Writ Petition No.14715 of 2005 and other connected matters decided on 3.6.2008 (Ann.R/3) pertaining to the same department whereby the decision rendered by the Hyderabad Bench of the Tribunal was set-aside by which the Tribunal although has declined the relief as prayed for by the applicants in the OA by holding that applicants engaged by the respondents were continuing for a long period should not be dis-engaged by freshers even through contractor and on lifting of the ban on the engagement of Casual Labourers and on availability of funds the respondents shall consider cases of the applicants for the

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purpose of regularization of service, if necessary by formulating a scheme for the said purpose.

4. As can be seen from the judgment rendered by the Hon'ble High Court, the case of regularization of Casual Labourer was not pressed by the learned counsel in view of the mandate of the Constitution Bench decision in the case of State of Karnataka vs. Uma Devi (3), 2006 (4) SCC 1. However, submission was made that department had devised a new scheme to dis-entitle the casual workers for claiming regularization of their services as the mode of engaging their service through medium of contractor and direction given by the Tribunal does not call for interference, the Hon'ble High Court in operative portion has made the following observations:-

"In view of the Constitution Bench judgment of the Apex Court in Uma Devi (3), it is not for Courts/Tribunals to issue a mandamus or direction for regularization of the services of casual labourers. We may not be understood to have stated that the Government, even if it chooses to do so should not frame a scheme for regularizing the services of such casual labourers. All that we have held is that Courts/Tribunals ought not to issue a mandamus or direction in this regard. If the employer in his wisdom chooses to frame a scheme of regularization, it is always open for him to do so. The Central Administrative Tribunal erred in directing that the services of the casual labourers be continued and that they should not be disengaged even through contractors. No such direction could have been granted in view of the judgment of the Apex Court in Steel Authority of India Ltd. Whether the department had a valid licence under the Act, whether the engagement of contractor is a mere camouflage, whether the provision of Contract Labour (Regulation and Abolition) Act, 1970 had been violated in engaging the service of the casual labourers through the contractors are all matters, which are required to be adjudicated on the basis of evidence and not for the Central Administrative Tribunal to have determined.



We consider it appropriate to set aside the order of the Central Administrative Tribunal leaving it open to the casual labourers concerned to avail such other remedies as are available to them in law to agitate their grievance with regards engagement of their services through the contractors for work in Commissionerates, which according to them are permanent and perennial in nature.

Accordingly, the judgment of the Tribunal has been set-aside.

5. In view of the findings recorded by the Andhra Pradesh High Court in the case of T.Vijay Raj (supra), as reproduced above; which reasoning is squarely applicable in the facts and circumstances of this case, it is not permissible for us to issue mandamus to the respondents directing them that services of the applicants be continued and they should not be dis-engaged even though the department has taken decision to execute the work through contractor whether such decision is camouflage or not, it is always open for the applicants to avail such other remedy as are available to them in law to agitate their grievances with regard to engagement of services through contractor for work of Commissionerate.

6. With these observations, the OAs are disposed of with no order as to costs.


(B.L.KHATRI)
Admv. Member


(M.L.CHAUHAN)
Judl. Member

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