

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

13

ORDERS OF THE BENCH

01.09.2011

OA No. 196/2010

Mr. Anand Sharma, counsel for applicant.
Mr. B.K. Pareek, proxy counsel for
Mr. T.P. Sharma, counsel for respondents.

At the request of learned proxy counsel for Mr. T.P. Sharma, counsel for the respondents, put up the matter for hearing on 13.09.2011.

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

kumawat

9/8
[Signature]

13/09/2011
OA 196/2010

Mr. Anand Sharma, Counsel for applicant.
Mr. T. P. Sharma, Counsel for respondents.

Heard.

The O.A. is disposed of by a
Separate order on the separate sheet
for the reasons recorded therein.

K.S. Rathore
[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 13th day of September, 2011

Original Application No.196/2010

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)

1. Mool Chand s/o Shri Dungaram, r/o Vilalge Amanipura, Tehsil Datanramgarh, Distt. Sikar.
2. Om Prakash Sharma s/o Shri Kanahiya Lal Sharma r/o Village Samri, Tehsil Roopbas, Distt. Bharatpur.
3. Rang Lal Meena s/o Shri Tundaram r/o Village Guwada, Tehsil Post Motiwada, Tehsil Rajgarh, Alwar.
4. Lahri Ram Meena s/o Shri Banshi Lal Meena, r/o village Aaduka, Post Patan, Tehsil Rajgarh, Alwar.
5. Devi Singh s/o Shri Arjun Singh r/o Village Karedia, Tehsil Badesar, Distt. Chittorgarh.
6. Raghuveer Singh s/o Ram Singh r/o Village Surajpole Durg, Distt. Chittorgarh.
7. Bhanwar Lal s/o Shri Hanuman Singh r/o Village Chansing Dak Bangla, Tehsil Malpura, Distt. Jaipur.
8. Rejeev Nayan Dube s/o Shri Narvadeshwar Dube, r/o Village and Post Nunia Pati, Via shishwan, Distt. Siwan (Bihar).
9. Munesh s/o Shri Bal Mukund, Village and Post Jalkheda, Tehsil and District Bulandshahar (UP).
10. Sukhram s/o Shri Prabhati Lal r/o village and post Gadarwada Gujran, Tehsil Baswa, Distt. Dausa.
11. Hari Kishan Meena s/o Shri Mahadev Meena r/o village and post Gudliya, Tehsil Baswa, Distt. Dausa.
12. Chiranji Lal s/o Shri Pooram Mal r/o Neem Choki, Gurjar Mohalla, Sahar, Sawai Madhopur.

13. Jagdish s/o late Shri Premaram Panwar r/o 135, Jagdamba Colony, Bombay Motors, Jodhpur.
14. Himmat Singh s/o Surya Singh Chouhan r/o Village and Post Arthuna, Tehsil Gadi, Distt. Banswara.
15. Rakesh s/o Shri Nand Lal Verma r/o Purana Maliwara, Tehsil Jhalarapatan, Distt. Jhalawar.
16. Shrawam Meena s/o Shri Mali Ram r/o Village Nayabas, Tehsil Neem Ka Thana, Distt. Sikar.
17. Banwari Lal Meena s/o Shri Latoor Ram Meena, r/o Village Pilwa Kalan, Distt. Dausa.
18. Madan Lal s/o Shri Prasadi Lal r/o Village Nagla Kalyanpura, Post Agapura, Distt. Bharatpur.
19. Hari Kishan s/o Shri Kundan, r/o village kalyanpur, Post Agapura, Distt. Bharatpur.
20. Satya Prakash Singh s/o Shri Pooran Singh r/o Kalind Vihar Colony, Jamnapat, Laxmi Nagar, Mathura.
21. Kamlesh Meena s/o Shri Puni Ram r/o Village and Post Gurlia, Tehsil Baswa, Distt. Dausa.
22. Rohitash Meena s/o Shri Phool Chand Meena r/o Jhalana Plot No. 77 HHA, Malviya Nagar, Jaipur
23. Gopal Lal s/o Shri Girdhari Lal Suthar r/o Kumawaton Ka Mohalla, Kila Chittorgarh.
24. Gagan Kumar s/o Shri Arun Kumar r/o Kalakua, Bainajaka Bagh, Jaipur Road. Alwar.

.. Applicants

(By Advocate: Shri Anand Sharma)

Versus

1. Union of India
through Secretary,
Department of Archaeological Survey of India,
Central Secretariat,
Janpath, New Delhi.

2. The Director General,
Archaeological Survey of India,
Govt. of India,
Janpath, New Delhi.
3. The Superintending Archaeologist,
Archaeological Survey of India,
Jaipur Circle,
70/133-140, Patel Marg,
Mansarovar, Jaipur

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

ORDER (ORAL)

The applicants were appointed as daily wager/casual labours in respondent department on different dates from 1.11.1985 to 8.12.1999. All the applicants are posted at different places and are receiving daily wage at the rate of 1/30th of the monthly pay at the minimum pay scale of Group-D employee + Dearness Allowance pursuant to memorandum dated 23.8.1989 and thus all the applicants have been getting Rs. 7684/- per month as fixed remuneration.

2. The Govt. of India, Ministry of Personnel, PG and Pensions, Department of Personnel and Training enacted "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993" which came into force w.e.f. 1.9.1993. It was mentioned in the aforesaid Scheme that temporary status would be conferred on old casual labourers, who are in employment on the date



of issue of aforesaid office memorandum dated 10.9.1993 and who have rendered a continuous service of at least one year, which means they must have been engaged for a period of 240 days (206 days in case of offices observing 5 days week).

3. It was further mentioned in the Scheme that such conferment of temporary status would be without reference to the creation/availability of regular Group-D post. It was also provided that after conferment of temporary status, the respective casual labourers would be entitled to the benefits mentioned in the memorandum dated 10.9.1993 including computation of 50% of the service rendered under temporary status for the purpose of grant of retirement benefits after their regularization.

4. As per the aforesaid Scheme, after rendering 3 years' continuous service on conferment of temporary status, the casual labourers would be treated at par with temporary Group-D employees and would also be entitled for regularization.

5. Pursuant to the aforesaid memorandum dated 10.9.1993 the applicants represented before the respondents for grant of temporary status and then to regularize their services vide representations placed at Ann.A/5 to A/11.

6. Some persons initially engaged as casual labourers much after some of the applicants were initially given



temporary status and subsequently their services have been regularized by the respondent department in June, 2003. The applicants quoted example of one Shri Roop Ram s/o Shri Hari Singh, Shankar Lal Sharma s/o Shri Preetam Sharma, Shri Jagdish s/o Shri Bhanwar Lal Sharma and Shri Dal Chand s/o Shri Kanhiya Lal.

7. Being aggrieved and dis-satisfied with the action of the respondents not regularizing their services and forcing them to work as casual labour on a meager amount after serving in the department from 10 to 25 years, the present OA has been preferred claiming relief that action of the respondents in inviting applications for filling Group-D posts from open market vide advertisement dated 20-26 March, 2010 (Ann.A/1) ignoring the claim of the applicants over such posts may be held illegal and arbitrary and the advertisement may be quashed and set aside. Further, the posts advertised in the aforesaid advertisement may be directed to be filled up through the casual labourers like the applicants after following due process as contemplated in office memorandum dated 10.9.1993 and Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Govt. of India, 1993. Further claimed relief that the respondents be directed to prepare a seniority/priority list of the casual labourers working in respondent department and to grant them temporary status



w.e.f. the date immediately on completion of one year from the date of appointment as casual labour.

8. In support of their submissions, the applicants referred the judgment rendered by the Hon'ble Rajasthan High Court in the case of Jetha Ram Deora vs. ITI Ltd. and ors. reported in 2011 (1) WLC 39 wherein having considered the plea of the employees after 20-25 years that it gave appointment to petitioners de-hors statutory rules against the non-existent and non-advertised posts without prescribing their pay scale. It was observed that it is immaterial from what source employer will pay their salary and direction were given to consider petitioners for regularization.

Also referred the judgment rendered by the Apex Court in the case of Secretary, State of Karnataka and ors. vs. Umadevi (3) and others, reported in (2006) 4 SCC 1 wherein the Full Bench of the Hon'ble Apex Court considered the absorption, regularization or permanent continuation of temporary, contractual, casual, daily-wage or ad hoc employees appointed/recruited and continued for long in public employment. The Hon'ble Apex Court observed that employees continued to work for ten years or more against sanctioned vacant posts but without the intervention of order of the courts or of tribunal, regularization of such employees may have to be considered on merits in the light of the

principles settled by the Supreme Court as one time measure within a period of six months from the date of judgment.

9. Per contra, the learned counsel appearing for the respondents submitted that as the applicants filed the present OA challenging the order Ann.A/1 whereby as many as 7 posts of Group-D have been advertised and application have been invited from the eligible candidates and while issuing the aforesaid advertisement certain terms and condition has been mentioned. However, in order to fill up the posts and to follow the procedure for recruitment, this exercise has been done by the respondents according to this advertisement. The candidates having requisite qualification and experience can apply for all posts. It is further stated that the present OA has been filed without availing legal remedy and in view of the provisions of the Administrative Tribunals Act, 1985 the present OA deserves to be dismissed.

10 With regard to the regularization scheme is concerned, it is submitted by the respondents that as per the record available with the respondents office, none of the applicants was in employment on the date of issuance of the said OM dated 10.9.1993. Moreover, none of the applicants had rendered a continuous service of at least one year, which means that they must had been engaged for a period of at least 240 days prior to issuance of the said OM. The applicants

had not fulfilled the requisite terms and conditions laid down in OM dated 10.9.1993 so as to entitle them to grant temporary status.

11. With regard to the names of persons referred to in the OA whose services have been regularized, it is submitted that persons whose names have been referred in Para-4(6) of the OA were engaged as casual labour much prior to most of the applicants and the said employees were in employment on the date of issuance of the said OM dated 10.9.1993, Therefore, temporary status was conferred upon them.

12. It is further stated that the applicants are not entitled for regularization to the post of Group-D as the respondents have earlier filled all the vacancies of Group-D by way of regularizing the casual labourers, who were conferred temporary status as well as fulfill the terms and conditions as contained in OM dated 10.9.1993 and there is no such casual labourer left remain in the respondent office who having conferred upon temporary status and fulfill the terms and conditions as laid down in the aforesaid OM. Now all the available vacancies in Group-D posts lying in the respondent office are to be filled up through direct recruitment as per recruitment rules.

12. It is also submitted by the respondents that vide letter dated 11th May 2009 (Ann.R/1) grievance of the daily-wage




employees and their Union with regard to entitlement of casual workers for payment of wages has been considered and clarification was issued. As per this clarification, where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay of the minimum of the relevant pay-scale plus dearness allowance for the work of 8 hours a day and in case where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour or the State Govt./Union Territory Administration, whichever is higher, as per the Minimum Wages Act, 1948.

13. The learned counsel appearing for the respondents placed reliance on the judgment rendered in the case of State of Karnataka and ors. vs. Ganapathi Chaya Nayak and ors. reported in (2010) 3 SCC 115 wherein the Hon'ble Supreme Court observed that respondents claim based on premise that they had been in continuous service for ten or more years were entitled for regularization and where the appellant Government's plea that respondents recruited after 1.7.1984, thus not entitled to the scheme for regularization applicable to those recruited prior to 1.7.1984. It is held that in view of law laid down in Constitution Bench decision in Uma Devi(3) and



subsequently reiterated in Dayanad case, respondents were not entitled. Also referred the judgment in the case of Rameshwar Dayal vs. Indian Railway Construction Company Limited and ors., reported in (2010) 11 SCC 733 wherein the Supreme Court held that the Court cannot issue directions for regularization as it is an executive function. It depends on relevant rules and can only be directed by authorities concerned.

14. The applicants also filed additional affidavit and stated that the applicants sought information under RTI Act in respect of persons, who have been working as Casual Labourers even prior to 7.6.1988 and also sought copy of the seniority list of the casual labourers, who were conferred temporary status and vide letter dated 3.12.2010 issued by the Central Public Information Officer of respondent department, list of casual labourers working prior to 7.6.1988 under the jurisdiction of Jaipur Circle as well as list of casual labourers working prior to 10.9.1993 has been provided by the respondents. In the aforesaid two lists, names of all the 11 applicants have been shown. Thus, the respondents have admitted that the applicants have been working in the respondent department even prior to 10.9.1993. Thus, it becomes clear that in the reply to the OA, a factually wrong statement was made by the respondent department.



15. Having heard the rival submissions of the respective parties and upon careful perusal of the material available on record as well as the relevant provisions of law and the judgments referred to by the respective parties, the short controversy in the present case is with regard to regularization pursuant to the OM dated 10.9.1993. It is not disputed that the as per the scheme issued vide OM dated 10.9.1993 temporary status would be conferred upon all casual labourers who were in employment on the date of issue of the aforesaid OM and have rendered continuous service of atleast one year and they must have worked for a period of 240 days in one calendar year and as is evident by the annexures submitted alongwith the additional affidavit the casual labours who were working prior to 10.9.1993 in Jaipur Circle, Jaipur, out of 24 applicants only 11 applicants were working prior to issuance of the said OM. Therefore, in view of the ratio decided by the Hon'ble Supreme Court in various judgments relied upon by the parties and as is evident by the list submitted alongwith the additional affidavit only applicant Nos. 1,2,3,4,5,6,7,8,18,19 and 23 are admittedly appointed prior to issuance of the scheme of 1993 and they are entitled to be considered pursuant to the scheme for regularization and so far as these applicants are concerned, the OA is allowed and respondents are directed to consider their cases strictly in accordance with



the provisions of law and pursuant to the OM dated 10.9.1993 for the purpose of regularization of their services, if otherwise found suitable. With regard to other applicants, the applicants have failed to show that they were engaged prior to issuance of the aforesaid regularization scheme, therefore, the OA with regard to these applicants (except those mentioned in earlier part of this order) stand dismissed as their case does not fall in the ambit of the regularization scheme of 1993.

16. The OA stands partly allowed in the aforesaid terms with no order as to costs.



(JUSTICE K.S.RATHORE)
Judl. Member

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