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18.12.2012

Mr. C.B. Sharma - Counsel for applicant
Mr. Mukesh Agarwal - Counsel for respondents

Heard the learned counsel for
the parties.

For the reasons dictated
separately, the OA stands disposed
of.

K. S. Rathore
(Justice K. S. Rathore)
(Member W)

RJ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 18th day of December, 2012

Original Application No.686/2012

CORAM:

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

Ganesh Chandra
s/o Shri Govind Ram,
aged about 38 years,
r/o G-4, Residency Area,
Near Civil Lines, Jaipur and
Presently working as Casual Gardener
Under Income Tax Appellate Tribunal,
Jaipur Bench, Chamber Bhawan,
M.I. Road, Jaipur

... Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through its Secretary, Ministry of Law and Justice, Department of Legal Affairs, Shashtri Bhawan, New Delhi.
2. The Registrar, Income Tax Appellate Tribunal, Loknayak Bhawan, Tenth Floor, Khan Market, New Delhi.
3. The Registrar, Income Tax Appellate Tribunal, CGO Building, Forth Floor, Maharshi Karve Marg, Mumbai.
4. The Assistant Registrar, Income Tax Appellate Tribunal, Chandigarh Zone, Chandigarh.
5. The Assistant Registrar, Income Tax Appellate Tribunal, Jaipur Bench, Chamber Bhawan, M.I. Road, Jaipur

... Respondents

(By Advocate : Shri Mukesh Agarwal)

ORDER (ORAL)

This is second round of litigation. Earlier the applicant filed OA No.447/2012 and the same was disposed of vide order dated 10.7.2012 with direction to the respondents to decide the representation of the applicant dated 11.6.2012 in accordance with the provisions of law and shall pass a reasoned order as to why the payment of applicant for daily wage from April, 2012 has been stopped. Pursuant to direction issued by this Tribunal, the representation of the applicant has been decided vide order dated 10.9.2012 (Ann.A/1) stating therein that applicant's representation dated 11.6.2012 could not be considered for payment of salary for the month of April and May, 2012 as there was no sanction for the same from the competent authority. It is also stated that the applicant is not working since 29.3.2012, therefore, the applicant is not entitled to ask for payment of salary for the month of April and May, 2012.

2. The learned counsel appearing for the applicant challenged the impugned order 10.9.2012 on the ground that this order issued by respondent No.5 is without competency as order dated 18.11.2011 (Ann.A/6) is issued with the approval of the Vice President and vide this order considering availability of

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work, the period of the applicant from 29.11.2011 was extended up to 28.3.2012.

3. It is not disputed that beyond 28.3.2012, the period of engagement has not been extended. The grievance of the applicant is that he has been working for the last 6 years and without considering his case for regularization of his service, he has been informed orally that his services are not needed beyond the period from 28.3.2012, which is per-se contrary to the office memorandum dated 4/10, December, 2008 whereby the Government of India, Ministry of Finance, Department of Revenue has put a complete ban on engaging casual labour in offices under the Department of Revenue.

4. Per contra, the learned counsel appearing for the respondents denied the submissions made by the applicant and stated that appointment of the applicant was on daily wage for fixed term and the same came to end on efflux of his term of appointment. Hence, he has no right to continue in service and the action of the respondents cannot be said to be illegal and unjustified in view of the ratio decided by the Hon'ble Supreme Court in the case of Vidyavardhaka Sangha and Another vs. Y.D.Deshpande and ors. reported in (2006) 12 SCC 482, wherein the Hon'ble Supreme Court observed as under:-



"4. It is now well settled principle of law that the appointment made on probation/adhoc basis for a specific period of time comes to an end by efflux of time and the person holding such post can have no right to continue on the post. In the instant case as noticed above, the respective respondents have accepted the appointment including the terms and conditions stipulated in the appointment orders and joined the posts in question and continued on the said posts for some years. The respondents having accepted the terms and conditions stipulated in the appointment order and allowed the period for which they were appointed to have elapsed by efflux of time, they are not now permitted to turn their back and say that their appointments could not be terminated on the basis of their appointment letters nor they could be treated as temporary employees or on contract basis. The submission made by the learned counsel for the respondents to the said effect has no merit and is, therefore, liable to be rejected. It is also well settled law by several other decisions of this Court that appointment on adhoc basis/temporary basis comes to end by efflux of time and persons holding such posts have no right to continue on the post and ask for regularization etc."

5. Having heard the rival submissions made on behalf of the respective parties and upon careful perusal of the material available on record and the judgment rendered by the Hon'ble Supreme Court in the case of Vidyavardhaka Sangha (supra), it is evident that appointment of the applicant was purely on daily wage basis for a fixed term in view of the exigency of work and it is not disputed that on expiry of the term on 28.3.2012, the engagement automatically came to end, as there is no order of extension. Thus, the applicant was not in employment after 28.3.2012, therefore, the question of paying salary from April,

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2012 onwards does not arise and the ratio decided by the Hon'ble Supreme Court in the case of Vidyavardhaka Sangha (supra) is fully applicable to the facts and circumstances of the present case. It is settled proposition of law laid down by the Hon'ble Supreme Court and High Courts that appointment on adhoc/temporary basis comes to end by efflux of time and person holding such post have no right continue on the post and ask for regularization etc.

6. In view of the ratio decided by the Hon'ble Supreme Court (supra), I find no merit in this OA and the OA being bereft of merit fails and the same is hereby dismissed with no order as to costs.

7. The interim direction already issued on 27.9.2012 stands vacated.


(JUSTICE K.S.RATHORE)
Judl. Member

R/