

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 541/2013

ORDER RESERVED ON : 02.02.2015

DATE OF ORDER : 10 .02.2015

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. Mool Chand son of Shri Dungaram Jai, aged about 45 year, resident of Village Amani Pura, Tehsil Dantaramgarh, District Sikar.
2. Rang Lal Meena son of Shri Tndaram ji, resident of Village Guwada, Tehsil Post Motiwada, Tehsil Rajagarh, District Alwar.
3. Lahri Rai Meena son of Shri Banshi Lal Meena, resident of Village Aaduka, Post Patan, Tehsil Rajgarh, District Alwar.
4. Devi Singh son of Shri Arjun Singh, resident of Village Karedia, Tehsil Badesar, District Chittorgarh.
5. Raghuvver Singh son of Shri Ram Singh, resident of Village Surajpole Durg, District Chittorgarh.
6. Bhanwar Lal son of Shri Hanuman Singh, resident of Village Chansing Dak Bangla, Tehsil Malpura, District Jaipur.
7. Rajeev Nayan Dube son of Shri Narvadeshwar Dube, resident of Village & Post Nunia Pati, Via Shishwan, District Siwan (Bihar).
8. Gopal Lal son of Shri Girdhari Lal Suthar, resident of Kumawaton Ka Mohalla, Kila Chittorgarh.

... Applicants

(By Advocate: Mr. Anand Sharma)

Versus

1. Union of India through Secretary, Department of Archaeological Survey of India, Central Secretariat, New Delhi.
2. Director General, Archaeological Survey of India, Government of India, Janpath, New Delhi.
3. Superintending Archaeologist, Archaeological Survey of India, Jaipur Circle, 70/133-140, Patel Marg, Mansarovar, Jaipur.

... Respondents

(By Advocate: Mr. T.P. Sharma)

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ORDER**PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

The applicant has filed the present OA praying for the following reliefs:-

- "(i) The order dated 28.06.2013 (Annexure A/1) may kindly be declared arbitrary, illegal and same may kindly be quashed and set aside. It may also kindly be held that all the applicants are entitled for regularization under the Scheme of OM dated 10.09.1993 or otherwise on account of rendering services for such a long period, from the date on which the junior persons to them have been granted benefit of temporary status and regularization on Group-D posts with all consequential benefits.
- (ii) Arrears of difference of pay may also kindly be directed to be paid alongwith interest @ 12% per annum.
- (iii) Any other order or direction which this Hon'ble Tribunal deems fit in favour of the applicants may kindly be issued."

2. This is the third round of litigation between the parties. Earlier the applicants have filed an OA No. 196/2010 before this Tribunal. It was decided vide order dated 13.09.2011. A Review Petition against this order was filed by the respondents, which was rejected vide order dated 12.03.2012. Thereafter, the respondents preferred a DB Civil Writ Petition No. 311/2012 before the Hon'ble High Court of Rajasthan at Jaipur Bench, Jaipur. The Hon'ble High Court found that no interference is required in the order passed by the Tribunal. Subsequently the respondents vide order dated 28.06.2013 (Annexure A/1) informed the applicants that none of the applicants was in employment on the date of issuance of the Office Memorandum dated 10.09.1993 nor rendered continuous service of at least 240 days in a year, as such none

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of the applicants fulfills the requirement of OM and, therefore, they are not entitled for regularization in accordance with the provision of the OM dated 10.09.1993. Being aggrieved by this order of the respondents, the applicants have filed the present OA.

3. Brief facts of the case, as stated by the learned counsel for the applicants, are that the applicants were initially appointed as Casual Labourers in the respondents department on different dates from 01.11.1985 to 12.04.1993. All the applicants were posted at different places and they were discharging the duties of monument attendant/ Class IV employee for more than 08 hours a day. The nature of work assigned to them is exactly the same as entrusted to regular employee of the department. Yet regular pay scale is not being paid to them instead wages are being given on daily rate basis. The details of all the applicants with regard to their initial appointment, place of posting have been given in Schedule A.

4. That the Government of India, Ministry of Personnel, PG and Pensions, Department of Personnel and Training enacted one Scheme namely "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993". The aforesaid scheme came into force w.e.f. 01.09.1993. It was mentioned in the aforesaid scheme that temporary status would be conferred on all casual labourers, who are in employment on the date of issue of aforesaid office memorandum dated 10.09.1993 and who have rendered a

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continuous service of at least one year, which means they must have been engaged for a period of 240 days. It was further mentioned in the aforesaid 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 erstwhile casual labourers would be entitled for the benefits mentioned in aforesaid office memorandum dated 10.09.1993 including computation of the 50% of the service rendered under temporary status for the purpose of grant of retirement benefits after their regularization.

5. It was also provided in the aforesaid office Memorandum that after rendering 03 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. The aforesaid office Memorandum dated 10.09.1993 also prescribes procedure for filling up Group 'D' posts and it has been directed that 02 out of every 03 vacancies in Group 'D' cadre in respective offices shall be filled amongst casual workers with temporary status. The aforesaid office Memorandum was further circulated by the Director General of Archaeology Survey of India to all the Heads of the Circles/ Branches in respondent department for immediate necessary action in accordance with the office Memorandum dated 10.09.1993.

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6. The applicants submitted repeated representations to the respondents to grant temporary status to the applicants and then to regularize their services but no action was taken by the respondents on their representation. However, some persons initially engaged as Casual Labourers much after the applicants were given temporary status and subsequently their services have been regularized by the respondent department. The applicants have given examples of Shri Roop Ram son of Shri Hari Singh, Shri Shankar Lal Sharma son of Shri Preetam Sharma and Dal Chand son of Shri Kanahiya Lal. As such the applicants have been subjected to hostile treatment. That while deciding the OA No. 196/2010 filed by the applicants, this Tribunal vide order dated 13.09.2011 has held that applicants nos. 1, 2, 3, 4, 5, 6, 7, 8, 18, 19 and 23 of that OA are admittedly appointed prior to the issuance of the Scheme of 1993 and they are entitled to be considered for regularization pursuant to OM dated 10.09.1993 if otherwise found suitable but the respondents vide order dated 28.06.2013 have rejected their claim without due application of mind.

7. That vide letter dated 31.12.2010, the respondents have provided a list of casual labourers working prior to 10.09.1993. In the aforesaid two lists provided by the respondent department, the names of the applicants have been shown, although the services of some of the applicants were discontinued for a short period. Subsequently on account of intervention of the Court, they were taken in service and even

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the break period was treated on duty (Annexure A/6). Thus it is clear that factually wrong statement has been made by the respondents in their order dated 28.06.2013 to the extent that none of the applicants have been working from the period prior to 10.09.1993 and that the applicants had not completed 240 days or more on 10.09.1993. Thus respondents without verifying the record properly have rejected the claim of the applicants in quite casual and slip short manner.

8. That the applicants nos. 1 to 6 and 8 were appointed much earlier than 10.09.1993 and they were on duty/ deemed to be on duty as on 10.09.1993 and had completed more than 240 days as on 10.09.1993. Hence all of them are entitled for the benefits of temporary status and regularization in view of OM dated 10.09.1993.

9. With regard to applicant no. 7, it has been stated that he had not completed 240 days as on 10.09.1993 but he has been continuously working for more than 20 years without any break with the respondent department. Therefore, in view of the ratio decided by the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and others vs. Umadevi (3) and others, 2006 SCC (L&S) 753**, the applicant no. 7 has also a right of regularization.

10. Therefore, the learned counsel for the applicant prayed that the order dated 28.06.2013 (Annexure A/1) issued by respondent no. 3 be quashed and set aside and the respondents be directed to grant temporary status to the

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applicants as per the provisions of OM dated 10.09.1993 and further the services of the applicants be regularized as the applicants have been working with the respondent department for more than 20 years.

11. On the other hand, the respondents have filed their reply. In their reply, the respondents have stated that applicants were initially engaged as daily rated labourers and were assigned different duties and posted at different places for carrying their duties not more than 08 hours in a day but as per requirement of department, they were asked to work subject to availability of work.

12. The respondents have also stated that the applicants raised their grievance for regularization in the light of OM dated 10.09.1993 but none of them were found eligible as per the direction of the notification dated 10.09.1993. Therefore, their services could not be regularized. They have denied that the applicants have been discriminated against by the respondents. No candidate has been regularized beyond the provisions of OM dated 10.09.1993. None of the applicants in the present OA have rendered at least one year service or for a period of 240 days prior to the issuance of OM dated 10.09.1993. Therefore, none of the applicants are entitled for the benefits of regularization.

13. With regard to the contention of the learned counsel for the applicant that the applicants were engaged between 07.06.1988 and 10.09.1993, the respondents have stated that

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applicants were discontinued from service, therefore, none of them have completed 240 days to fulfill the requirement to get the benefit of regularization.

14. With regard to the case of **Secretary, State of Karnataka and others vs. Umadevi (3) and others (supra)**, the respondents have stated that Hon'ble Supreme Court has held that persons who are not otherwise eligible or entitled to get regularization cannot be considered even though they are working continuously. After the pronouncement of the judgment in the case of **Secretary, State of Karnataka and others vs. Umadevi (3) and others (supra)** all back door entries were stopped. Thus the applicants cannot take the benefit of **Secretary, State of Karnataka and others vs. Umadevi (3) and others's (supra)** case. Therefore, the present OA has no merit and it should be dismissed.

15. Vide order dated 11.11.2014, the learned counsel for the applicant was directed to place Court's order with regard to 11 persons who were discontinued on different period of employment and who were re-engaged as per the Court's Order. The learned counsel vide Additional Affidavit has submitted certain information with regard to the Court's order and payment of wages.

16. Heard the learned counsel for the parties and perused the documents on record.

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17. The respondents vide order dated 28.06.2013 (Annexure A/1) have rejected the claim of the applicants for regularization on the ground that none of them fulfill the requirement of the OM dated 10.09.1993. That none of the applicant have been in the employment of the respondent department for continuous service of at least 240 days in a year. Therefore, the short point for consideration of this Tribunal in the present OA is whether the applicants rendered continuous service of at least 240 days in a year prior to the issuance of the notification dated 10.09.1993. The learned counsel for the applicant has produced a list of casual labourers who were working prior to 10.09.1993 under the jurisdiction of Jaipur Circle, Jaipur at Annexure A/6. The applicants received this information under the Right to Information Act. This information is dated 31.10.2010. These are two lists at Page nos. 45 & 46 of the OA, which are reproduced below:-

List of the Casual Labourers who are working prior to 10.09.1993 under the jurisdiction of Jaipur Circle, Jaipur

Sl. No	Name	Father Name	Date of Birth	Educational Qualification	Date of initial engagement	Remarks
1.	Moolchand	Sh. Dunga Ram	16.07.1968	11th	1.11.1989	Discontinued w.e.f. 1.1.1991 to 15.08.1994 & re-engaged on 16.8.1994 due to intervention of the court. His

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						breaking period has to be treated on duty though he was not on duty on 10.09.1993
2.	Sh. Devi Singh	Sh. Arju Singh	20.12.1972	VIII	1.11.1989	Discontinued w.e.f. 6.4.1993 to 23.8.2003 & re-engaged as per the court's instruction 24.8.2003.
3.	Sh. Lehari Ram	Sh. Bansi Lal	18.07.1967	VIII	01.07.1990	Discontinued w.e.f. 1.1.1992 to 10.07.1994 & re-engaged on 11.7.1994 due to invention of the court as such he was not present on 10.09.1993
4.	Sh. Gopal Lal	Sh. Girdhari Lal Suthar	4.3.1966	X	1.11.1990	Discontinued w.e.f. 5.4.1993 to 10.1.2004 & re-engaged on 11.1.2004 as per the instruction of the Court's order
5.	Sh.	Sh.	10.04.197	M.A.	22.04.1993	He had not

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	Rajeev Nayan Dubey	Nandeshwa r Dubey	2			completed 240 days prior to 10.09.1993
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NOTE: The above Casual Labourers were not engaged through the employment exchange, however names of some of the casual labourers were registered in employment exchange.

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List of the Casual Labourers who are working prior to 07.06.1988 under the jurisdiction of Jaipur Circle, Jaipur

Sl. No.	Name	Father Name	Date of Birth	Educational Qualification	Date of initial engagement	Remarks
1.	Shri Rang Lal Meena	Sh. Tunda Ram	07.11.1965	9th	13.07.1989	Discontinued w.e.f. 1.1.1992 to 29.7.1994 & re-engaged on 30.7.1994 due to intervention of the Court. His breaking period has to be treated on duty though he was not on duty on 10.09.1993.
2.	Sh. Hari Kishan Jatav	Sh. Kundan	01.01.1969	IV	05.02.1982	Discontinued from 1988 to 1992 and re-engaged on 1.10.1993 as per the court's instructions thus he had completed only 52 days

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						in the year 1993.
3.	Sh. Om Prakash	Sh. Kanhiya	22.06.1966		01.11.1985	Discontinued from 1989 to 1993 & re-engaged on 31.07.1994 as per the Court's instructions.
4.	Sh. Madan Lal	Sh. Parsadi Lal	21.03.1969	IVth	14.02.1986	Discontinued from 1988 to 1992 & re-engaged in 1993. though he had completed only 24 days in the year of 1993
5.	Sh. Raghuvir Singh	Sh. Ramsingh Devda	01.07.1972	II	21.5.1987	Discontinued in the year 1988 to 1989 & 1995 to 2003 and re-engaged as per the court's instructions w.e.f. 24.8.2003
6.	Sh. Bhawar Ram Meena	Sh. Hanuman Singh	07.02.1969	Xth Fail	15.04.1988	Discontinued w.e.f. 25.10.1990 to 4.1.1994 & re-engaged on 5.1.1994 due to intervention of the court. His breaking period has to be

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						treated on duty though he was not on duty on 10.09.1993.
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Note: The above casual Labourers were not engaged on Master roll though the Employment exchange however names of some of the casual labourers were registered in employment exchange.

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18. The respondents in their reply have not rebutted of the correctness of these documents and the statement made thereof. From the perusal of these lists, the applicant nos.1 to 6 and applicant no. 8 of the present OA were engaged on different dates as mentioned in the list under column, 'Date of initial engagement'. Thus it is clear that all the applicants except applicant no. 7 were engaged upto 1990. Only applicant no. 7, Rajeev Nayan Dube was engaged on 22.04.1993 and, therefore, he had not completed 240 days prior to 10.09.1993. From the perusal of these two lists, it is clear that seven applicants that is applicants nos. 1 to 6 and 8 were discontinued on different dates but were re-engaged as per the Court's instructions. The learned counsel for the applicant has produced an order of this Tribunal in OA No. 31/1992, 30/1992 and 29/1992 dated 04.03.1994 vide which the termination of services by verbal orders of the applicants, Shri Ranglal Meena (applicant no. 2 of the present OA), Shri Lahri Ram neena (Applicant no. 3 of the present OA) and Shri Mool Chand (applicant no. 1 of the present OA) were set aside. The question of back wages was left to be decided by the Labour Court (Annexure A/7). In compliance of these orders of the

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Tribunal, all the three applicants were engaged as daily wage workers by the respondents. They were given a pay of Rs.750/- + DA divided by 30 (Annexure A/8). Subsequently, vide order of the Labour Court dated 09.02.2001 Rang Lal Meena (Annexure A/9) and order dated 29.04.1997 Mool Chand (Annexure A/10) were also awarded back wages. However, there was no order on file regarding the back wages with regard of Lahri Ram Meena. In the case of Shri Devi Singh (Applicant no. 4 of the present OA), the Labour Court vide order dated 17.07.1998 treated the termination of Shri Devi Singh as illegal. His services were to be treated in continuity and he was given 50% back wages. His wages were calculated vide order dated 26.06.2003 (Annexure A/12). Similar orders were passed by the Labour Court in the case of Shri Gopal Lal (Applicant no. 8 of the present OA). However, Shri Gopal Lal was awarded back wages @ 40% w.e.f. 06.04.1993 to October, 1998.

19. Thus the applicant namely Shri Rang Lal Meena (Applicant no. 2), Shri Mool Chand (Applicant no. 1), Shri Devi Singh (Applicant no. 4) and Shri Gopal Lal (Applicant no. 8) were given back wages and hence their service would be treated in continuity in the chart which is given in Para No. 17 of this order. It has been shown that the breaking period of Shri Mool Chand has to be treated on duty. In case of Ranglal Meena also, it has been stated that his breaking period has to be treated on duty. Similarly the period on which Shri Devi Singh and Gopal Lal were not on duty would be treated as

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period spend on duty. Since all the four applicants have been given back wages by the Labour Court, therefore, the services of these four applicants will be treated as duty during the period on which they were dis-continued by the respondent department. Therefore, the respondents are directed to reconsider the case of these four applicants for granting them temporary status and subsequent regularization in pursuance of the OM dated 10.09.1993.

20. The chart which has been given in Para 17 of this OA shows that Bhanwar Lal (Applicant no. 6 of the present OA), was discontinued w.e.f. 25.10.1990 to 04.01.1994 and re-engaged on 05.01.1994 due to intervention of the Court. His breaking period has to be treated on duty though was not on duty on 10.09.1993. The case of Shri Bhanwar Lal is similar to the case of the above four applicant. Therefore, his case will also be treated at par with these four applicants as mentioned in Para No. 19. Since he is to be treated on duty during 25.10.1990 to 04.01.1994 because of the Court's order, therefore, it cannot be said that he was not on duty on 10.09.1993. Therefore, the respondents are directed to consider his case also in terms of the OM dated 10.09.1993.

21. In the case of Lahri Ram Meena (Applicant No. 3 of the present OA) and Raghuveer Singh (Applicant no. 5 of the present OA), the learned counsel for the applicant has not placed any order of the Labour Court with regard to the back wages. If back wages were allowed to Shri Lahri Ram Meena

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and Shri Raghuveer Singh then they can file a representation to the respondents along with a copy of the order of the Labour Court within two months from the date of this order. In case they file such an order then respondents would consider their case in the light of the OM dated 10.09.1993.

22. The respondents are directed to complete this exercise within a period of three months from the date of receipt of a copy of this order with regard to applicants nos. 1, 2, 4, 6 & 8 and with regard to applicants nos. 3 & 5 from the date when the applicants file copy of the order of the Court regarding payment of the back wages.

23. With regard to applicant no. 7, it is admitted that his case is not covered by the provisions of OM dated 10.09.1993, since he was engaged w.e.f. 22.04.1993, therefore, no directions can be issued with regard to applicant no. 7 to the respondent in this OA. However, he may file a representation to the respondents to consider his case in the light of the judgment of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and others vs. Umadevi (3) and others's (supra)**. If such a representation is filed by applicant no. 7 then the respondents shall consider and decide the same according to the provisions of law within a period of three months from the date of filing of such a representation.

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24. With these directions & Observations, the OA is disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

Abdul