

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.3188/2013
M.A.No.2425/2013
with
O.A.No.3380/2013
M.A.No.2557/2013

Order Reserved on: 20.01.2016
Order pronounced on 25.01.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr.B. K. Sinha, Member (A)

O.A.No.3188/2013:

1. Ajit Singh
S/o Dhiraj Singh
R/o C-145, Albert Square
Gol Market
Near R.K.Ashram Marg
New Delhi.

2. Pappal Kumar
S/o Juge
R/o Village Bisokar
Zila Gaziabad. ... Applicants

(By Advocate: Ms. Harvinder Oberoi)

Versus

1. Union of India
Through Secretary
Ministry of Health and Family Welfare
Nirman Bhavan
New Delhi.

2. Medical Superintendent
 Lady Hardinge College and Smt. S.K.Hospital
 Near Shivaji Stadium, New Delhi.

3. Director
 Directorate General of Health Services
 Lady Hardinge College and Smt. S.K.Hospital
 Near Shivaji Stadium,
 New Delhi. ... Respondents

(By Advocate: Sh. B.L.Wanchoo)

with

O.A.No.3380/2013:

1. Amit
 S/o Sh. Sumri
 R/o Type No.I
 Qtr No.329, Block-E
 Kasturba Nagar
 New Delhi. ... Applicant

(By Advocate: Ms. Harvinder Oberoi)

Versus

1. Union of India
 Through Secretary
 Ministry of Health and Family Welfare
 Nirman Bhavan
 New Delhi.

2. Medical Superintendent
 Lady Hardinge College and Smt. S.K.Hospital
 Near Shivaji Stadium, New Delhi.

3. Director
 Directorate General of Health Services
 Lady Hardinge College and Smt. S.K.Hospital
 Near Shivaji Stadium,
 New Delhi. ... Respondents

(By Advocate: Ms. Ritika Chawla)

O R D E R (Common)

By V. Ajay Kumar, Member (J):

Since the facts and the question of law involved in these two OAs are identical, they are being disposed of by this common order.

2. The applicants filed the OAs aggrieved by the Office Memorandum dated 26.02.2009 whereunder the services of the applicants, who are the temporary status employees, were terminated.
3. Heard both sides and perused the pleadings on record.
4. In the circumstances and for the reasons mentioned in MA No.2425/2013 in OA No.3188/2013 and MA No.2557/2013 in OA No.3380/2013, filed for condonation of delay, are allowed.
5. On completion of 240 days in a calendar year, the applicants, Casual Labourers/daily wagers under the respondents, were conferred with temporary status in terms of the "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993." vide Annexure A3 Office Order dated 06.10.2000. While they are working as such, it is alleged that their services were terminated vide the impugned Annexure A1 dated 26.02.2009, all of a sudden and without giving any prior notice and also in violation of the rights conferred on them under the Annexure A3 Office Order dated 06.10.2000.
6. The impugned Annexure A1 - Office Memorandum dated 26.02.2009, issued by Respondent No.3, reads as under:

"Dated: 26.2.09

OFFICE MEMORANDUM

With Reference to Office Order No.PMS/|Strike/2009 dated 23.2.2009, wherein notice was served on the Temporary Status employees/Casual Labourers regarding termination of their services in case of non joining of duty by them. It is hereby also notified that such of these employees who are in possession of Govt. accommodation (either Hospital Pool or General Pool) would have also to vacate the same immediately, failing which eviction proceedings would be launched against them.

Sd/-
26.2.09
(DR.G.K.SHARMA)
DIRECTOR

Copy to:

All Head of the Deptt.
All Adl. Med.Supdts.
DLWC,LHMC,N.Delhi
CNO/CMO/Estate Cell
All Temp.Status Employees (Through
DLWC.LHMC)"

7. The notice dated 23.02.2009 (Annexure R1) which was referred in the aforesaid impugned Office Memorandum dated 26.02.2009, reads as under:

"F.No.PMS/Strike/2009 OFFICE MEMORANDUM Date 23.2.09

Those employees who are Temp. Status employees/Casual Labourers and have not reported for duty today the first day of the indefinite strike call given by the Gr.C&D employees Union, are hereby served notice under the extant rule (in this regard) that if they do not report for duty by tomorrow by 24.2.2009 their services would be treated as terminated without any further notice.

Sd/-
23/2/09
(DR.G.K.SHARMA)
DIRECTOR

To

All Head of the departments
All.Adl.Med.Supdt.
D.L.W.C.
Notice Board
CNO/CMO
All Temp. Status Employees(Th:DLWC)"

8. It is also relevant to note certain Clauses of Annexure A3, Office Order, dated 06.10.2000, on which the applicant is placing heavy reliance, which read as under:

"Dated: 6th October, 2000

OFFICE ORDER

- The following casual labourers/daily wagers have rendered a continuous service of atleast one year (i.e. atleast 240 days) in a calendar year and still are on the roll of daily wagers ... of the Lady Hardinge Medical College and Smt. S.K.Hospital:-

xx x x x x x x x x xx

51. Pappal Kumar s/o Juge Singh Safaiwala

xxxxxxxxxxxxxx xxxx

61. Ajeet Singh S/o Dhiraj Singh Safaiwala

xxxxxxxxxx xxx x x xx

75. Amt S/o Sumari Safaiwala

Xx x x x x x x x xxxxxx

Therefore, in terms of the Casual Labourers Grant of Temporary Status and Regularisation Scheme of the Govt. of India, 1993 temporary status is conferred on all the above casual labourers with immediate effect.

The conferment of temporary status on the above casual labourers would not involve any change in duties and responsibilities and the engagement will be on daily rate of pay. They will be deployed anywhere within the recruitment unit of LHMC & Hospital on the basis of availability of work.

The above casual labourers will not however, be brought on temporary permanent establishment unless they are selected through regular selection process for Group 'D' posts.

Temporary status would entitle the casual labourers to the following benefits:-

xxx x x x x x x x xx

v) 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularisation.

xxxxxxxx xxxxxxxxx

ix) Despite conferment of temporary status of the services of a casual labourers may be dispensed with by giving a notice of one month in writing. A casual labourer with temporary status can also quite service by giving a written notice of one month. The wages for the notice period will be payable only

for the days on which such casual worker is engaged on work."

9. Mrs. Harvinder Oberoi, the learned counsel appearing for the applicants submits that the Notice dated 23.02.2009 was never served on the applicants. Even, if exhibiting the same in the Notice Boards, as contended by the respondents, is taken as sufficient service on the applicants, the same is invalid and illegal as the same was not followed the mandatory requirement of one month prior notice. Since the impugned orders have violated the mandatory Clause No.(ix) of the Office Order dated 06.10.2000 (Annexure A3) under which temporary status was conferred on the applicants, the same are liable to be quashed with all consequential benefits.

10. The learned counsel for the respondents Ms. Ritika Chawla and Mr.B. L. Wanchoo, appearing for the respondents, though failed to contradict the contentions of the applicants as admittedly the Notice in Annexure R1 is dated 23.02.2009, and the termination order dated is 26.02.2009, i.e., less period than the required prior notice period of one month, however, submits that the termination of the applicants was due to the continuous Demonstration/Dharna/Strike/Call given by the All India Health Employees and Workers Confederation and the invoking of the provisions of ESMA, and the orders of the Hon'ble High Court of Delhi in CS (OS) No.363 of 2009 dated 20.02.2009, and hence, there is no illegality or irregularity in their action.

11. The Order dated 20.02.2009 in CS (OS) No.363 of 2009 of the Hon'ble High Court of Delhi, which was filed against All India Health

Employees and Workers Confederation and others, only indicates that Confederation and its members were restrained from carrying on Dharnas, etc. till further orders. It has not given any sanction to the respondents to terminate the services of the applicants, without following due procedure. Hence, the said order and the Circular dated 14.02.2009 issued in connection with the said Strike or Dharna have no relevance to this case.

12. As rightly contended by the learned counsel for the applicants, the services of the applicants, who are the temporary status employees of the respondents, cannot be terminated without following the procedure provided in the order under which the temporary status was conferred on them.

13. In the circumstances and for the aforesaid reasons, both the OAs are allowed and the impugned orders are set aside, and the respondents are directed to reinstate the applicants in service on the same terms and conditions on which they were working prior to the date of their termination. It is made clear that the applicants are not entitled for any arrears, however, they are entitled for treating the break period, i.e., from the date of termination to the date of reinstatement as a service rendered on temporary status, with all consequential benefits. No costs.

(Dr.B. K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)