

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA-3274/2012
MA-1011/2015**

Reserved on : 15.07.2016.

Pronounced on : 21.07.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)

1. Pancham Singh S/o Sh. Goran Singh
2. Prem Singh S/o Sh. Rohan Singh
3. Chunna S/o Sh. Diwani
4. Vijay Singh S/o Sh. Pooran Singh
5. Gulab Singh S/o Sh. Bhajan Lal
6. Jamuna Prasad S/o Sh. Bhim Sain
7. Kishan Singh S/o Sh. Narain Singh

(All the Long-Terms Daily Wages Employees)
O/o the Director, C.I.R.G., Makhdoom, Post-Farah-281122,
District-Mathura (UP). Applicants

(through Sh. V.K. Sharma, Advocate)

Versus

1. Union of India (through:-The Secretary to the Govt. of India, Ministry of Agriculture, Krishi Bhawan, New Delhi.)
2. The Secretary, Indian Council of Agriculture Research, Krishi Bhawan, New Delhi-110001.
3. The Director, Central Institute for Research on Goat, Makhdoom, Post-Farah-281122 (Distt. Mathura)(UP). Respondents

(through Sh. Gagan Mathur, Advocate)

O R D E R

The applicants were working as daily wage employees with respondent No. 3 since the year 1980. On 19.10.1987, they were dismissed from service

allegedly on the charge of assaulting administrative officer. They faced a criminal trial in which they were acquitted. After acquittal they approached the respondents for reinstating them. When the respondents did not take any action they filed their case before Industrial Tribunal. That Tribunal on 23.10.1996 held that the dismissal of the workman by order dated 19.10.1987 was bad in law and they were entitled for reinstatement. The respondents challenged this order before Hon'ble High Court of Allahabad vide Appeal No. 6149/1997. Hon'ble High Court of Allahabad vide their order dated 01.03.2007 remanded the matter to Labour Court for fresh hearing. Labour Court heard the matter again and passed the final order on 17.12.2007 in which it was held that dismissal of the workman was illegal and each of the worker deserved to be reinstated in service. The respondents again challenged this order before Hon'ble High Court of Allahabad vide Writ Petition No. 28841/2008. This was, however, dismissed on 27.08.2009. On 03.09.2009 the applicant moved a representation before the respondents seeking their reinstatement in service. They were finally reinstated vide order dated 12/13.10.2009. The applicants then made representations between 20.01.2010 to 09.04.2010 for grant of back wages and temporary status. The respondents, however, did not take an action on the same even though respondent No.3 – Director of the Institute had recommended their case. The applicants then filed OA-4240/2011 before this Tribunal. This was disposed of by the Tribunal on 29.11.2011 and directions were given to the respondents to decide their representation by means of a reasoned and speaking order. In compliance thereof, the respondents have passed the impugned order dated 29.03.2012 by which their cases have been rejected. They have now filed this O.A. challenging the aforesaid order and seeking the following relief:-

"(a) That this, Hon'ble Tribunal, may graciously be pleased in the light of order of Hon'ble Labour Court holding their dismissal from service illegal and ordering their reinstatement in service, they are eligible for all service benefits extended to their juniors in evading:-

(i) Grant of Temporary Status and Regularization as per D.O.P.&T. Scheme w.e.f. 01.09.1993 with all consequential benefits including fixation of pay and its arrears etc.

(ii) It has been admitted by Respondents in para-4 of their Impugned order dt. 29.03.2012, that after their dismissal from service 17.10.1987, they were paid wages from 01.04.1998 onwards in implementation of High Court, Allahabad, Judgment. That under provision of F.R. 54(3), and other judicial decisions, the applicants are eligible for back-wages for the entire period of their Removal from Service. The Respondents may, therefore, be directed to pay full back wages at the prescribed rates from time to time for their illegal removal period from service from 17.10.1987 to 31.03.1998.

(iii) That they be placed in the Revised Pay Scale w.e.f. 01.01.2006 and because of their seniority be allowed Grade Pay of Rs.1800/- through their placement on multifarious duties.

(iv) Allow all other service benefits admissible to Temporary Status Employees.

(v) Allow any other and further relief which the Hon'ble Tribunal may deem fit and proper in the circumstances of their case in order to meet the ends of justice.

and

(vi) Allow exemplary costs to each of the applicants individually for the long ordeal suffered by them for the last about 23 years to ward off the illegalities continuously committed against them by the Respondents."

2. Learned counsel for the applicants argued that Fundamental Rule-54-A(3)

regarding reinstatement in service provides as follows:-

"If the Dismissal, Removal or Compulsory Retirement of a Govt. Servant is set-aside by the Court on the merits of the case, the period intervening between the date of Dismissal, Removal or Compulsory Retirement and of reinstatement shall be treated as duty for all purposes and he shall be paid full pay and allowances for the period, to which he would have been entitled, had he not been Dismissed, Removed or Compulsory Retired or Suspended prior to such Dismissal or Compulsory Retirement, as the case may be."

2.1 Further, in the case of **G. Nancharial Vs. The Director of Postal Service, Vijaywada**, 1991(1)ATJ 525 (Hyderabad) the following has been held:-

"The implication of Reinstatement with consequential benefits was thus explained by the Tribunal—"When the Removal order is bad, it means and implies that without taking proper precautions or without examining the case carefully, the respondents removed the applicant. On account of his Removal, the applicant was not able to perform duties under the respondents, when the Tribunal held that the removal is bad, it implies that on account of illegal action of the respondents only, the applicant failed to work under them". The Tribunal in this case directed payment of full back wages from the date of his removal till he was reinstated to duties."

2.2 Hon'ble Bombay High Court in the case of **Chandrapur Dt. Central Corporative Bank Ltd. Vs. Industrial Court, Nagpur and Anr.**, 1995II CLR-735

Bombay H.C. has observed as follows:-

"Once the termination order is held bad in law, illegal, void the consequence would be as if such order never came into existence and as a result of such consequence, the employee would be entitled to all the reliefs as if he was in service, unless a case for exception can be made out."

2.3 This Tribunal in the case of **Maya Devi Dhar Vs. UOI & Ors. (OA-1339/2009)**

decided on 10.05.2011 granted temporary status to the applicant therein with all resultant arrears. This order was upheld by Hon'ble High Court of Delhi. Learned counsel further argued that Hon'ble Supreme Court in the case of **Kishan Kewal Vs. State of Punjab**, AIR 1977 SC 1223 has observed as follows:-

"A declaration that the petitioner continuous in service and the order of termination is void and inoperative means that the termination had no effect on his status. It was inoperative. Reinstatement order is in fact superfluous. In the eyes of law, he is deemed to be in service."

2.4 Further, relying on judgment of Ahmedabad Bench of this Tribunal in the case of **Nanakaram D. Bhambhani Vs. UOI**, ATR 1987(2)CAT-426 learned counsel for the applicants argued that Court can direct payment of arrears of salary to a government servant, whose dismissal has been set aside and such payment was not subject to law of limitation.

3. The respondents in their reply have opposed the submissions of the applicant without denying the facts of the case. According to them the 1993

DoP&T Scheme under which the applicants were seeking temporary status and regularisation was one time Scheme and applicable to only those employees who had completed continuous service of at least one year i.e. they should have been engaged for a period of at least 240 days and should have been in employment on 10.09.1993. They have submitted that the applicants had been terminated in 1987 and reinstated only in 2009. Hence, it cannot be said that they were in service as on 10.09.1993. Thus, benefit of that Scheme cannot be granted to them. The respondents have also submitted that reliance placed by the applicants in the case of **Sh. Narain Singh & Ors. Vs. UOI & Ors.** (2217/2010) decided on 14.07.2011 was misplaced as **Narain Singh & Ors.** had already been granted temporary status and were claiming other benefits. To support their contention that the 10.09.1993 Scheme of DoP&T was one time Scheme and not a continuing one, the respondents have placed reliance on the judgment of Hon'ble Supreme Court in the case of **D.G. Doordarshan Mandi House, New Delhi & Ors. Vs. Manas Dey & Ors.** (Civil Appeal No. 6857/2005 dated 17.11.2005).

4. I have heard both sides and have perused the material on record. Learned counsel for the applicants has cited the provisions of Fundamental Rule as well as certain judicial pronouncements to say that when the termination order has been set aside, the consequence would be as if such an order never came into existence and the employee concerned would be entitled to all reliefs as if he was in service and had been wrongfully prevented from performing his duties. Further, in the case of **M.D. Tamil Nadu State Transport Corporation Vs. Neethivilangan Kumbakonam**, 2001 LAB IC 1801, Hon'ble Supreme Court has held the following:-

"The relationship of employer and employee is not legally terminated till approval of discharge or dismissal is given by the tribunal. In a case where the tribunal refused to accord approval to the action taken by the employer is bound to treat the employee as continuing in service and

given them all the consequential benefits. If the employer refuses to grant the benefits to the employee the latter is entitled to have his right enforced by filing a petition under Article 226 of the Constitution. There is no personal basis for holding that even after the order of dismissal or discharge has been ordered invalid on the tribunal's rejection of the prayer for approval the workman should suffer the consequences of such invalid order of dismissal or discharge till the matter is decided by the tribunal again in an industrial dispute."

5. In my opinion, the case of the applicants is squarely covered by the aforesaid judgment inasmuch as in their case also termination order was held to be bad in law by the Labour Court. The judgment of Labour Court was upheld by Hon'ble High Court and that order has attained finality. Under these circumstances, the applicants shall be deemed to have been continuously in service as if termination order did not exist. It, therefore, follows that they shall be deemed to be in service as on 10.09.1993 also, the date relevant for the purpose of granting temporary status under the DoP&T Scheme. The applicants are, therefore, entitled to not only back wages for the entire period of removal but also consideration for grant of temporary status and regularisation as per the 10.09.1993 Scheme.

6. In view of the above, I allow this O.A. and quash the impugned order dated 29.03.2012. I further direct the respondents to grant back wages to the applicants for entire period of removal and also to consider them for grant of temporary status and regularisation as per the DoP&T Scheme dated 10.09.1993 with all consequential benefits. The respondents are directed to grant these benefits to the applicants within a period of 90 days from the date of receipt of a certified copy of this order. No costs.

**(Shekhar Agarwal)
Member (A)**

/Vinita/