

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

No. OA. 352/00001/SKM/2014

Date of Order: 05.12.2016

Present : Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

1. Shri Arun Panchakoti, S/O Lt.
Krishna Bdr. Panchakoti, R/O
Rhenock Chalisay, P.O & P.S.
Rhenock East Sikkim.
2. Shri Ran Bdr. Tamang, S/O
Lt. P.B. Tamang, R/O Tadong,
P.O & P.S. Tadong, Gangtok,
East Sikkim.
3. Shri Suraj Tamang, S/O Late
D. B. Tamang, R/O Tadong
P.O. & P.S. Tadong Gangtok
East Sikkim.
4. Shri Dhan Kumar Tamang, S/O
D.B. Tamang, R/O Upper Samdur
P.O. & P.S. Ranipool, Gangtok
East Sikkim.
5. Shri Gauri Pradhan, S/O Late P.B.
Pradhan, R/O Lower Syari, P.O & P.S.
Deorali, Gangtok, East Sikkim.
6. Shri Sher Bahadur Pradhan, S/O
Bishnu Bahadur Pradhan, R/O
Lower Syari, P.O & P.S. Deorali
Gangtok, East Sikkim.
7. Shri Devi Bahadur Chettri, S/O
H.B. Chettri, R/O Middle Syari
P.O & P.S. Deorali, Gangtok
East Sikkim.
8. Shri Ganga Chettri, S/o M. B.
Chettri, R/O Middle Syari, P.O



& P.S. Deorali, Gangtok, East Sikkim.

9. Shri Lalit Pradhan, S/O R. B. Pradhan, R/O Lower Syari, P.O. & P.S. Deorali, Gangtok East Sikkim.
10. Shri Phurba Tamang, S/O Late D.B. Tamang, R/O Tadong, P.O & P.s. Tadong Gangtok, East Sikkim
11. Shri Ghanashyam Siwakoti, S/o M.L.Siwakoti, R/O Tadong, P.O & P.S. Tadong Gangtok, East Sikkim.
12. Shri Bir Bahadur Subba, S/o late J.B.Subba, R/O Biring, P.O & P.S. Pakyong, East Sikkim.
13. Shri Lall Bdr. Pradhan, S/O R.B. Pradhan, R/O Lower Syari, P.O & P.S. Deorali, Gangtok, East Sikkim.
14. Shri Bijay Chettri, S/O K. B. Chettri R/O Tadong, P.O & P.S. Tadong Gangtok, East Sikkim.
15. Shri Prem Kumar Chettri, S/O K. B. Chettri, R/O Middle Syari, P.O & P.S. Deorali, Gangtok, East Sikkim.


.....Applicants.

-versus-

1. Union of India, through the Secretary, Ministry of Defence Govt. of India, 101, South Block, New Delhi.
2. The Principal Secretary, Ministry Of Defence, 101, South Block, New Delhi.



3. The Chief of the Army Staff, Govt. of India, Army Head Quarter, New Delhi
4. The Joint Secretary (Supplies) Ministry Of Defence, 96 A, South Block, New Delhi.
5. The Major General, Head Quarter, Eastern Command (ST), Fort William, Kolkata-700021, West Bengal.
6. The Director General Supply & Transport Directorate General of Supplies & Transport Integrated HQ of Ministry of Defence (Army) New Delhi 110105.
7. The D.D.S.T. Head Quarter, 33 Corps, Sukna Cantt. C/o. 99 A.P.O. Siliguri, West Bengal.
8. The General Officer Commanding Head Quarter, 17 Mountain Divisions, New Military Station, Gangtok, East Sikkim
9. The Station Commander, Station Head Quarter, Libing Gangtok, East Sikkim.
10. The Officer Commanding 383 Company ASC Supply Type 'A' C/O 99 A.P.O.
11. Shri Vijay Mahato, S/O Bindeshwar Mahato (Permanent Labour) R/O New Cantt Libing Tadong P.O. & P.S. Tadong, Gangtok East Sikkim.
12. Md. Tahir Alam, Working as permanent Labour 383 Company, ASC Supply Type- A C/o 99 APO.
13. Amit Kumar, Working as permanent Labour 383 Company, ASC Supply Type-A C/o 99 APO.
14. Ravi Kumar Rajak working as permanent Labour, 383 Company, ASC Supply Type -A, C/o 99 APO.
15. Chuden Lepcha, Working as permanent Labour, 383 Company, ASC Supply Type -A C/o 99 APO.



.....Respondents.

For the Applicant : Mr. B.C. Sharma, Counsel
Mr. R.P. Sharma, Counsel
Mr. D. Roy, Counsel

For the Respondents : Mr. LK Chatterjee, Counsel
Mr. UP Bhattacharyya, Counsel

ORDER (ORAL)

JUSTICE VISHNU CHANDRA GUPTA, JM

Heard Mr B. C. Sharma, learned Sr. Counsel assisted by Mr R.P.Sharma and Mr D.Roy for the applicants and Mr L. K. Chatterjee and Mr U.P. Bhattacharyya, learned counsel for the respondents. None presents for private respondents.

2. The applicants were engaged as ***daily rated mazdoors*** in between 1998 to 2010 in the 383 Coy ASC (Supply) Type A at Gangtok, Sikkim. They were discontinued from their engagement by a notice dated 22.02.2013, which is extracted herein below:

"NOTICE

It is intimated that as per Para 292 of ASC regularizations, with effect from 22 Feb 2013 No hiring of Casual Labourers (Daily Wage Workers) will be carried out by FSD Gangtok till further Notice."

3. Though this notice was not personally served, however, it was pasted on the wall of the main gate of the office. Earlier to this all the applicants approached this Tribunal before the Circuit Bench at Gangtok having O.A.2 (SKM/2011. The said O.A was disposed of on 12.10.2012 wherein directions



were issued as contained in para 20 and 21 of the O.A. In pursuance thereof speaking order has been passed on 15.02.2013, whereby the claim of the applicants for regularisation as well as equal pay for equal work and enhancement of pay/wages at the minimum of the grade plus D.A for work of 8 hours a day was declined. Thereafter, the notice of disengagement was issued on 22.02.2013. Aggrieved by the aforesaid disengagement and also against the speaking order the applicants filed the present O.A. In this O.A the applicants claimed the following reliefs:

"Under the above facts and circumstances, it is, therefore, prayed that this Hon'ble Tribunal may be pleased to admit this application, call for the records of O.A. 2/SKM/2011 from the Hon'ble Central Administrative Tribunal at Calcutta bench, call for records of W.P. (C) No. 16 of 2013 (Arun Panchakoti & Ors. V. Union of India & Ors.) from the Hon'ble High Court of Sikkim and also the records as disclosed in para XVIV above from the Respondents and issue Rule calling upon the respondents to show cause as to why reliefs herein below shall not be allowed.

Commanding/directing the Respondents authorities to:-

- a. Regularize the services of the Applicants,*
- b. To direct the Applicants to be inducted in temporary status alternatively,*
- c. Order for payment of back wages at the rate of 1/30th of the pay scale till their services are inducted in the post of temporary status and regularization,*
- d. Order for continuation of the services even after 21st February, 2013 and order for payment of entire arrear wages,*
- e. Order for regularization of the services of the applicants those who have fulfilled the criteria and in alternative order for induction of the applicants in the temporary status those who do not fulfill the criteria for regularization at present.*
- f. Order for quashing the appointment list i.e. annexure – P-12 and order for termination of respondents No. 11 to 15.*



g. To quash the entire proceedings of retrenchment order or any order or orders retrenching the Applicants by declaring such action as null and void and Applicants be allowed to continue with their respective works by paying the entire wages during this period and in the meantime this Hon'ble Tribunal may kindly be pleased to call for the entire official noting pertaining to retrenchment order and after considering the same to kindly quash the retrenchment order and declare that applicants are still in service with all back wages.

h. To declare the retrenchment order to be null and void in terms of section 25 F of Industrial Disputes Act and Article 311 of the Constitution of India and declaring the Applicants are continuously in the job.

4. The respondents have filed their reply supporting the orders passed by the authorities in compliance with the earlier order of this Tribunal and also supporting the order of discontinuance of service of the applicants. The applicants are not working at all after notice of disengagement. So the other relief for payment of equal pay for equal work to the minimum of pay scale and allowances or with regard to regularisation cannot be considered, unless the correctness of the order of disengagement is found contrary to law.

5. Learned counsel for the respondents relying upon the Para 292 of Army Service Corps Regulation 1950, which contains that the competent authority can engage the labour to the extent of needs of the work and dispensed with the services of labour engaged as soon as the work is over. The order of disengagement is within the powers of the authority who engage the applicants.

6. It is not in dispute that all the 15 applicants are working with respondents in between 1998 to 2010. They were initially engaged as a casual labourer. So, all of them cannot be placed on same footing. It has been contended that 18 posts are available against which the applicants can be accommodated after

[Signature]

regularisation and may be regularised against the existing vacancies and can be given temporary status. It is also contended that the job which the applicants are performing are equal to those who are regular employee working on the post. It has also been contended by learned counsel for the applicant that they are working against the sanctioned post. The engagement is also in accordance with rules. Hence their claim for regularisation cannot be denied and on such strength they are entitled to equal pay for equal work.

7. So far as the notice of disengagement is concerned, the perusal of the same clearly speaks that their continuance was due to existence of para 292 of ASC Regulation, but with effect from 22.02.2013 no hiring of casual labourers/daily wages workers will be carried out by FSD Gangtok till further notice. Para 292 of the Regulation has been placed before us, which reads as under :

"292. Officers commanding ASC depots and installations must ensure that the number of labourers employed by them is the absolute, minimum essential for the efficient functioning of the depots according to the scales laid down for various types of work. Officers responsible for engaging, distributing and supervising labour must ensure that each labour is usefully employed during working hours. When unexpected extra load has to be undertaken, every effort must be made to pool the existing resources of labour within the installation before engaging extra labour. Supervisory staff is provided in the establishments for the specific purpose of ensuring that persons do their legitimate scales of work, and if this is done; expenditure on labour will be reduced appreciably."

The aforesaid paragraph 292 of the Regulation does not contain the mandate as mentioned in the notice of disengagement and that too from 22.02.2013 as mentioned in the notice. The letters of appointment relating to the applicants were neither placed by the applicants nor by the respondents before this Tribunal. Admittedly, before disengagement no notice has been served upon the



applicants. It is also not denied that the applicants worked for more than 240 days in a year and as such they are entitled to be protected under the Industrial Disputes Act and recruitment could be followed only in accordance with the Industrial Disputes Act. The question of retrenchment if not followed in accordance with rules, the same cannot be given effect.

8. We have considered the submissions of the learned counsel for the parties and perused the record.

9. Whether the applicants fall within the definition of '*workman*' under the Industrial Disputes Act (ID Act)? Or the department where the applicants were serving fall within the definition of '*Industry*' under the ID Act? The applicants are governed by ID Act has not been admitted by the respondents. Whether the applicants are covered under the ID Act is a question of fact which requires an enquiry about factual scenario of the case. This plea has been raised for the first time in the O.A.

10. The learned counsel for the applicants at this juncture pointed out that labour laws are not in force in Sikkim except Payment of Wages Act. It is also contended that application of ID Act is also not extended in the State of Sikkim. If it is so the benefit of Industrial Disputes Act cannot be extended to the applicants.

11. Consequently, the order/notice of disengagement has to be looked into on its own in the light of the existing laws. It is not in dispute that provisions of **Army Corps Regulations** are applicable to the applicants. Regulation 292 has been applied by the respondents against the applicants. It is not the case of the

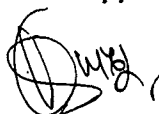
applicants that these regulations are not applicable in the case in hand.

Therefore, we have to look into the order in the light of regulation 292, which has been referred to in the disengagement order/notice.

12. Perusal of regulation 292 reveals that it does not contain any ban for hiring of labour from 22.03.2013 onward. No such notification or instructions issued by the competent authority has been brought on record. It is well settled principle of law that if order has been passed by an executive authority relying upon certain ground the correctness of those ground should have been taken into consideration and the authority shall not be allowed to substitute any ground by ignoring the ground mentioned in the order itself and relying upon any other ground to support the order. Hence we are of the view that the order which has been passed dispensing with the services of the applicants does not fall within the ambit of regulation 292, as stated in the order. Therefore, the order of disengagement/retrenchment cannot be allowed to sustain.

13. So far as the question of regularisation is concerned, the learned counsel for the applicant emphasised that there was a policy of regularisation in the department which is still continuing with effect from 1993 but such policy of regularization has not been brought on record by the applicants. However, it is not the case of the respondents that any such scheme is applicable with regard to the regularization.

14. So far as the question of equal pay for equal work is concerned; it has no connection with regularisation, as held in ***State of Karnataka Vs. Uma Devi, (2006) 4 SCC 1*** as well as in a recent judgment of the Apex Court in ***State of Punjab & Ors. Vs. Jagjit Singh & Ors. In Civil Appeal No.213 of 2013*** decided on



26.10.2016. It is also held in Jagjit Singh case (Supra) that minimum of the pay scale at the most can be granted as held in paragraph 58 of the judgement which reads as under;

"58. In view of the position expressed by us in the foregoing paragraphs, we have no hesitation in holding, that all concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay scale(- at the lowest grade, in regular pay scale) , extended to regular employees, holding the same post."

But of course, it will depend upon the fact whether the applicants were discharging the similar duties which the regular appointees/post are discharging. The order which has been passed by the authorities regarding disengagement does not have any relation with law propounded in **Jagjit Singh's case** (supra).

15. So far as the claim of regularisation is concerned, if 1993 policy is applicable to the present department, the benefit may be claimed by the applicants if they are covered under the scheme. It has been contended that if the policy of 1993 is not applicable the policy of regularisation prevailing in Ministry of Defence of dated 5.5.2008 would apply. Learned counsel for the respondents is not aware whether any such policy is in force in the State of Sikkim or not?.

16. Consequently, we set aside the speaking order passed on 15.02.2013 declining the claim of applicants for enhancing the pay equal to minimum of the scale in the lowest grade as well as regularisation. Therefore, so far as the question of regularisation and payment of equal pay for equal work is concerned, we are of the opinion that the matter should be remanded back to the authorities.



17. So far as the question of disengagement is concerned, we are of the view that the order of disengagement is not strictly in accordance with regulation 292 as stated in the order of disengagement. It is well settled proposition of law that adhoc or temporary employee should not be replaced by another adhoc or temporary employee; he must be replaced by a regularly selected employee because this is necessary to avoid arbitrary action on the part of appointing authority as held by the Apex Court in State of *Haryana Vs. Piara Singh and others (1992) 4 SCC 118*. The private respondents has not contest the case in spite of service and if they are appointed in place of the applicants it only reflect that at least the work is still continuing which the applicants were performing. We are not informed whether private respondents are regularly appointed or not and that too against permanent post in the cadre after adhering due procedure as per recruitment rules so we refrain ourselves to make any comment on the status of private respondents. If there is any order of 22.02.2013 the same has not been brought to our notice. Hence, we have left with no option except to set aside that order/notice impugned of disengagement. The applicants shall allow continuing to work unless an order in accordance with law is passed dispensing with service of the applicants keeping in view the aforesaid observations made by us. However it would subject to availability of work.

18. With these observations we partly allow the O.A with the following directions to the respondents.



(i) That question of equal pay for equal work should be disposed of in the light of latest judgment of the Apex Court in **State of Punjab & Ors. Vs. Jagjit Singh & Ors., in Civil Appeal No.213 of 2013** decided on 26.10.2016.

(ii) So far as the question of regularisation is concerned, if the applicants are covered under the so called Scheme of year 1993 or of dated 05.05.2008, the respondents shall consider the case of the applicants for regularisation in the light of such scheme and pass a reasoned and speaking order keeping in view the aforesaid observations made by us in this judgement within a period of 3 months from the date of communication of this order.

19. As we are finally deciding this case today hence with the consent of the parties cost imposed of Rs.10000/- against the respondent on an earlier occasion is waived. There shall be no order as to costs.

(Jaya Das Gupta)
Administrative Member

(Justice V.C. Gupta)
Judicial Member

27/2016

pg