

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

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TA. 1 of 2011
(WP-1351(W) 2005)

Date of Order: 02.03.2016.

Present :Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. P. K. Basu, Administrative Member

Prithis Kumar Naskar
Vs.
Union of India & Ors. (BSNL)

For the Applicant : Mr. SK Dutta, Counsel

For the Respondents : Mr. S. Panda, Counsel

ORDER

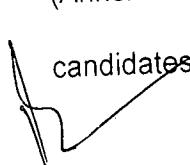
Per Mr. P. K. Basu, AM:-

The Respondents, Department of Telecom had issued a Scheme vide circular dated 12.02.1999 for grant of temporary status to casual labourers who were currently employed as on 01.08.1998 and engaged as on 01.08.1998 and who have rendered continuous service of at least one year out of which they must have been engaged on work for a period of 240 days were eligible for temporary status/regularization. Those who completed 10 years service as casual labour, subject to certain condition may be regularized in a phase and manner.

2. The applicant states that he was a casual labour and he satisfies all the above conditions and therefore the right to be regularized.

3. The respondents state that the applicant has no right to be considered under the scheme as he had not served for 240 days.

4. The applicant's case is that the original date of engagement as casual labour falls in July, 1992 and during the period of July, 1992 to July, 1999, he performed at least 240 days during the preceding 12 consecutive months calculated on yearly basis. It is further stated that the list dated 09.09.2002 (Annexure P-4), published for conferring temporary status, contain names of candidates whose appointments as casual labourers have been shown in the



year 1993 (Srl. No. 52), 1994(Srl. No. 53) and 1997 (Srl. No. 55) but they have been given temporary status, while the applicant, who has been engaged as casual labour since 1992, has not been covered under the scheme.

The applicant states that he had filed a Writ Petition registered as WP No. 10968(W) of 2003 praying for his regularization which was disposed of by an order dated 30.09.2003 with a direction to the respondents to take a decision after giving an opportunity of hearing to the applicant and pass a reasoned order.

5. The respondents passed a reasoned order (Annexure P-6) dated 22.01.2004 in which the applicant's prayer for conferring temporary status and/or regularization on the department was rejected on the ground that he had not rendered continuous service for at least one year. It was also stated that the scheme called as "Casual Labours (grant of temporary status and regularization) Scheme, 1993, which was issued by the Department of Personnel and Training (DOPT) and which came into effect from 01.09.1993, does not apply to casual workers in Railway, Department of Telecom and Department of Post who already have their own scheme.

6. The applicant states that subsequently vide order dated 31.07.2003 the respondents have regularized 11 casual workers who have also worked along with the applicant. It is stated that in their letter dated 16.09.1998, 23.04.1999 and 29.07.2002 the applicant's name has been forwarded along with 10 others for regularization as cases of casual labour to be given temporary status/regularization (Annexure P-3). According to the applicant these annexures collectively demonstrate that he has been continued in service as casual labour from July, 1992 upto the date without any break in service. Being aggrieved by the action of the respondents the applicant prayed for the following:

"to direct the respondents to regularize the applicant's service in regular establishment in terms of 1998 scheme from the date his junior in the status of casual labour have been got in regular service and/or given temporary status in the regular establishment with all consequential benefits."

The applicant also relies on the certificate issued by Calcutta Telephones

in which the following has been shown:

Year	Jan	Feb	Mar	Apr	May	Jun	Jly	Aug	Sep	Oct	Nov	Dec	Total
1992	-	-	-	-	-	-	23	22	21	26	21	26	139
1993	25	27	27	26	21	21	-	-	-	-	-	-	147
1994	-	-	-	-	-	-	-	22	22	26	22	26	119
1995	27	21	-	-	-	-	-	-	-	-	-	-	048
1996	20	19	20	19	20	19	22	21	18	20	20	21	239

{286 days the period from 07-92 to one year}

Based on the above, the applicant claims that he is a full time casual labour. It is stated that he has served more than one year in the period of 1992-93 (for 286 days) which is more than the required 240 days, before the cut off date of 01.08.1998. Along with the supplementary affidavit the applicant has also filed (Annexure E) the details of 286 days month-wise from July, 1992 to June, 1993 i.e. the one year period month-wise. He has also filed internal noting of the department indicating payment due to him starting November, 1992 onwards till June, 1993.

The applicant further points out that vide letter dated 06.07.2001 (Annexure -G of supplementary affidavit) BSNL asked all Area Manager of Calcutta Telephones to send left out cases of regularization of casual labourers and points out that on 09.09.1998 it was indicated by the Department of Telephone in their letter stating that 7 officials including the applicant, will attend office on 12.09.1998 for settlement of pending cases. The applicant, therefore, claimed that he has been a casual labour throughout including on the cut off date of 01.08.1998 and is eligible for regularization under the 1998 scheme.

7. The respondents state that applicant was engaged as casual labour for the period from July, 1992 to December, 1996 in different spells for short periods as and when required from seasonal work. It is stated that he was disengaged in January, 1997 from the Department and thereafter he has been working as job under contract labourer from June, 1999 in pursuant to GM (N)/CTD circular dated 12.12.1996 and also his payment is being made through his contractor. It is stated that the applicant had not been able to produce any documents showing

that he has been paid by the department beyond January, 1997. The respondents thereafter claimed that since he had not completed 240 days work during his engagement period till January, 1997, also the fact that as on 01.08.1998 he was not a casual labour but a contract labourer being a person of a licensed contractor and further that there was no employer-employee relation with the said applicant by the department, the applicant is not entitled to claim the benefits under the 1998 scheme.

It is further reiterated that he was engaged for 139 days in 1992 and 147 days in 1993 for seasonal work as and when required till December, 1996 and thereafter he has worked as job contract labourer under a licensed contractor. Since he was not completed 240 days in a single year during his engagement period from 1992-1996, his claim for regularization is not tenable.

8. It is also clarified that the other cases cited by the applicant where all causal labourers. Hence they got benefits under the said scheme. The applicant worked for a licensed contractor.

9. Heard learned counsels and perused the relevant records.

10. The provisions of the scheme are very specific:

- (i) the candidates should have to be engaged prior to 01.08.1998;
- (ii) they have to be engaged currently i.e. 01.08.1998 as a casual labour; and
- (iii) they have to render continuous service for at least one year during which they must have been engaged on work for a period of 240 days.

On the question of being engaged for one year and 240 days, the applicant states, based on the documents produced that from July, 1992 to June, 1993 he was engaged for total 286 days which is more than 240 days and therefore he satisfied this condition. Per contra, the respondents state that in 1992 he was engaged for 139 days and in 1993 he was engaged for 147 days and therefore in no year he has completed 240 days. The internal noting and documents as produced show that he had received payment for the period from 1992 to June, 1993 but there is not a single document which shows that he has been paid as a casual labourer by the respondents beyond June, 1993 or after January, 1997. The respondents stated that he was discontinued as casual

labourer and worked thereafter for a short period only through the contractor and between the respondent and applicant there did not exist any employer-employee relationship. The letter of 09.09.1998 etc. produced by the applicant does not prove that he was a casual labour. It was only a letter written by the authority allowing the applicant along with 6 others to attend office on 12.09.1998. Therefore, the applicant has not been able to contradict the respondents' stand that beyond 1997 he was only engaged as job contract labour under a licensed contractor and not employed by the respondent directly and paid by the respondents. Thus, even if the dispute whether he actually worked for more than 240 days for a continuous period of one year or not is not gone into, if he was not on the rolls of the department on 01.08.1998 it disentitles him to obtain benefits under the 1989 scheme.

11. From the facts presented we are not satisfied that the condition that he was currently employed i.e. 01.08.1998 as a casual laborer is satisfied. Therefore, he does not become eligible to be considered for the benefits under the 1989 scheme. In view of the above, the OA does not succeed and it is accordingly dismissed. No order as to costs.

~~W.W.~~
(R.K. Basu)
Member (A)

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(Bidisha Banerjee)
Member (J)