

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.95 OF 2013

Dated this Friday, the 17th day of November, 2017

CORAM: HON'BLE SHRI ARVIND JAYRAM ROHEE, MEMBER (J)
HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)

Dharamvir Mahavir,
 Residing at Chawal Saikrupa Colony,
 Chinchpada gaon,
 Kalyan (East) 421306.
 Office Address- WESTERN NAVAL COMMAND,
 BHAGAT SINGH ROAD,
 Mumbai 400 001.

... Applicant

VERSUS

1. The Commander,
 Command Sports Officer,
 Western Naval Command,
 Shahid Bhagat Singh Road,
 Mumbai 400 001.

2. The Flag Officer Commanding in Chief SO (CP),
 Having its office at Western Naval Command,
 Shahid Bhagat Singh Road,
 Mumbai 400 001.

3. The Chief of Personnel
 Integrated headquarter PF
 Ministry of Defence (Navy),
 Sena Bhavan,
 New Delhi 110 011.

.. Respondents.

Appearances :

Shri G.B.Kamdi, learned Advocate for the applicants.

Smt. H.P.Shah assisted by Shri P.Khosla, learned Advocates for the respondents.

OA filed on 29.10.2012

Order reserved on 07.11.2017

Order delivered on 17.11.2017

O R D E R

Per : Arvind J. Rohee, Member (J)

The applicant aggrieved by the impugned in action on the part of the respondents to consider his claim for regularization in service, on quashing the order of oral termination, approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs :-

“8.a) This Hon'ble Tribunal may be pleased to call for the records and proceeding of the case and after going through the same, be pleased to order and direct the Respondents to reinstate the applicant and regularize the service from his initial dates of appointment with all consequential benefits.

b) This Hon'ble Tribunal may be pleased to hold and declare that the Applicant is entitled to be placed in regular scale of pay w.e.f. initial date of appointment or any other date as this Hon'ble Tribunal may deem fit and necessary and that the applicant is entitled to arrears of salary and fixation of pay, consequent thereof.

c) This Hon'ble Tribunal may be pleased to hold and declare that the Applicant is entitled to count their whole service w.e.f. their initial date of appointment as qualifying service for the purpose of pension and other retirement benefit.

d) This Hon'ble Tribunal may be pleased to hold and declare that the Applicant is entitled for

reinstatement with back wages, since his services have been terminated illegally.

e) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

f) The cost of this original Application be provided for."

2. The applicant was engaged as Casual Labour in the office of the respondent No.2 in June, 1990. He worked as Watchman / Mali / Sweeper at the Sports Stadium on daily wage basis. Thereafter, again he was engaged in the same capacity on 02.01.1995, 20.02.1998 and also in August 1998. According to him, he continuously worked since June 1990 and rendered more than 240 days of continuous service. As such, as per the DOPT's OM of 1993, he is entitled to conferment of temporary status and thereafter absorption / regularization in Group 'D'. He submitted a representation on 16.04.2012 for grant of temporary status to him and regularization as per the scheme of 1993. This was followed by a reminder dated on 16.05.2012. The applicant received payment by way of cheque dated 29.06.2012 for the service rendered by him. The Employees

Association also forwarded a representation for his regularization on 12.08.2012. However, the respondent No.3 illegally disallowed the applicant to render his service and forcibly took away his Identity Card. The applicant preferred representation against the said action on 18.09.2012. However, since no steps were taken by the respondents on his previous representations for conferment of temporary status, regularization and quashing of the termination order, the present OA is filed on 29.10.2013.

3. The reliefs sought in this OA are based on the following grounds as mentioned in paragraph No.5 of the OA. The same are reproduced here for ready reference:-

“5.1. Non regularization of Applicant's services is wrong, illegal and unfair.

5.2. Non regularization of applicant's service is violative of Article 14, 16 and 21 of the Constitution of India.

5.3. Non regularization of Applicant service is arbitrary and malicious.

5.4. Non regularization and termination of Applicant service is whimsical and capricious.

5.5. Applicant has already put 240 days of service in a year under the respondent.

5.6. Non regularization and termination of

Applicant service is unjust and totally unfair.

5.7. *Non regularization and termination of Applicant service is contrary to law.*

5.8. *A Temporary / adhoc employee cannot be replaced by another adhoc / temporary employee.*

5.9. *The applicant has completed 22 years of service on daily wages basis and Termination of applicant's service without any notice.*

5.10. *The respondent has used the unfair practice toward the applicant for termination."*

4. On notice, the respondents appeared and by a common reply dated 06.05.2013 resisted the OA by denying all the adverse averments, contentions and grounds raised therein. According to respondents, the applicant was engaged as Casual Labour on daily wages and he never rendered 240 days of continuous service. His services were sought in short spells as and when required to work in sports stadium. As such, there is no question of conferment of temporary status on him or regularization in Group 'D' post, since he was engaged purely on casual basis and he was liable to be terminated without notice as and when his services are not required or on expiry of the period for which he was so engaged. The OA is,

therefore, liable to be dismissed.

5. It is stated that the applicant's name was not forwarded by the Employment Exchange nor he was paid any salary from Government funds. His appointment order clearly states that his services will be terminated without giving any notice on expiry of the period mentioned therein. The applicant was paid wages from Sports Non Public Funds. As such, there is no question of his regularization in service nor it can be said that his termination was without following due process.

6. The Experience Certificate was issued by the respondent No.3 on his request to get appointment at some other establishment, since it was difficult for him to continue the present job and to attend the duty from Kalyan where he resides to Sport Stadium, which is located in Navy Nagar, Mumbai. It is not that he continuously worked without break from 1990 as alleged by him.

7. In the month of August 2012, the applicant did not render satisfactory service and hence he was rightly terminated. He was then asked to surrender his Identity Card. In any case, there is no question of conferment of

temporary status on the applicant since he never rendered continuous service of 240 days without break in a calendar year. For this reason, there is no question of his regularization in Group 'D', which is the later stage on qualifying the screening test. Since the applicant was engaged purely as Casual Labour on daily wages, there was no need to issue any notice of termination to him. Hence, it cannot be said that his oral termination was illegal or improper. The OA is, therefore, liable to be dismissed.

8. It is also stated that the office of the respondent No.3 on his representation communicated the above factual position to the Chief of the Naval Staff vide office letter No.PSI/1300/3/A/AC dated 08.10.2012 (Exhibit R-1). The OA is, therefore, not entitled to any relief.

9. The parties then filed further pleadings in the form of rejoinder or sur-rejoinder, reiterating the grounds stated in the OA and the reply in support of their rival contentions. The applicant also placed reliance on number of decisions in support of his claim, which shall be considered at later stage.

10. On 10.11.2017, when the matter was called out for final hearing, we have heard the oral submissions of Shri G.B.Kamdi, learned Advocate for the applicant and the reply arguments of Smt. H.P.Shah assisted by Shri P.Khosla, learned Advocates for the respondents.

11. We have carefully gone through the entire pleadings of the parties, the documents relied upon by them and the case law in support of their rival contentions.

FINDINGS

12. The only controversy involved for resolution of this Tribunal in the present O.A. is whether the oral termination of applicant's service as Casual Labour and consequent inaction on the part of the respondents to consider him for regularisation in service on conferment of temporary status is illegal, improper or incorrect and hence liable to be quashed.

13. Although the applicant claims that he was engaged as a Casual Labour on daily wage basis from June, 1990, there is no cogent evidence to this effect produced by him on record such as appointment order, (except certificate issued by

R-2). Perhaps he has stated so since Department of Personnel & Training introduced a Scheme by name "Casual Labourers (Grant of Temporary Status and Regularisation) which came into force on 01.09.1993 and the Casual Labourers then working on that date and have completed atleast 240 days of continuous service are entitled to have conferred with temporary status and thereafter regularisation in Group 'D' post on their screening and medical examination. However, the respondents have admitted the fact that the applicant was engaged in different small spells as Casual Labour on daily wage basis as mentioned below:-

| | |
|------|-----------------------------|
| "(a) | 02 Jan 1995 to 31 Jan 1995 |
| (b) | 02 Feb 1995 to 28 Feb 1995 |
| (c) | 02 Mar 1995 to 31 Mar 1995 |
| (d) | 22 Jun 1998 to 30 Jun 1998 |
| (e) | 04 Aug 1998 to 31 Aug 1998" |

14. The applicant also did not dispute this fact. He has produced pay slips also to show that he was actually rendering service. However, for getting benefit of 1993 Scheme there should be continuous service of atleast 240 days without break. In the present case although it may be

stated that the applicant rendered services as Casual Labour from 02.01.1995 to 31.03.1995 in the first instance, it falls short of 240 days and further service also from 22.06.1998 till 31.08.1998 with break in the month of July, 1998 also cannot be considered for the same reason. It appears that after 31.08.1998 the applicant was not engaged as Casual Labourer on daily wage basis, since no evidence is produced to this effect, except the certificate issued by the respondents that he worked as Casual Labour/Mali and his performance was satisfactory. The period of actual service rendered by the applicant is not given in the certificates produced on record by the applicant. Plausible explanation is given by the respondents for issuance of few certificates as experience certificates to facilitate the applicant to get a job elsewhere. The applicant has produced appointment orders for the period which is not disputed by the respondents. It is not known on what basis the respondent No.1 issued the certificate (Annexure A-1) that the applicant was working in the Command Sport Office as Watchman/Casual Labour/Mali/Safaiwala since

19.06.1990 till date i.e. 29.03.2012 and his performance was satisfactory.

15. In this respect also the respondents have categorically stated that he was not paid wages from the Government funds but was paid from the Sports Non-Public Funds. In the strict sense, it, therefore, cannot be said that the applicant was engaged by the respondents on casual basis and he was paid out of the contingency or out of the office expenses or from public funds and/or from the grant of wages specifically allotted. In such circumstances of the case, it appears from record that the applicant was privately engaged to render his service as Casual Labour on daily wage basis by the In-charge of the Stadium and wages were paid to him from Sports Non-Public Fund.

16. Further considering the terms and conditions mentioned in applicant's appointment orders issued by Sr. Staff Officer (Civilian Personnel) for Flag Officer Commanding-in-Chief for the period from 02.01.1995 to 31.08.1998 to the effect that his appointment is Casual Labour on temporary basis and his services will automatically stand terminated on the expiry of

the period mentioned in the appointment order. It appears that the applicant rendered service during the above period only for which he was paid out of the contingency. However, as stated earlier there is no cogent evidence to show that the applicant was engaged on similar line after 31.08.1998.

17. In this respect it may also be stated that thereafter he may have been engaged privately by the In-charge of the Sports Stadium and he was paid wages from Sports Non-Public Fund. In any case there is no evidence on record to show that the applicant has rendered continuous service of 240 days as Casual Labour with the respondents so as to claim the temporary status as M.R.C.L. (Monthly Rated Casual Labour), in pursuance of the 1993 Scheme. Considering the fact that the very appointment/engagement was as Casual Labourer on daily wage basis, he cannot be termed as temporary Government servant, so that his service/engagement cannot be terminated without issuing one month's notice to him. As stated earlier when his term of appointment / engagement expired he is deemed to have been terminated. In this respect it may be stated that the In-charge of Sports Stadium in

2012 since found that the applicant had not satisfactory rendered service, he was discontinued. In such circumstances of the case, it cannot be said that oral termination is in any manner illegal, improper or incorrect.

18. During the course of arguments the learned Advocate for the applicant placed reliance on the following decisions in support of his claim:-

(i) Jacob M. Puthuparambil and others Vs. Kerala Water Authority & Ors., W.P. (Civil No.112 of 1990) (1990 AIR 2228) (1990 SCR Supl.(1) 562 dated 19.09.1990.

(ii) Ram Sundar Yadav & Anr Vs. The Regional Sports Officers, (1997) 3 UPLBEC 1905 DATED 11.09.1997 (High Court Allahabad).

(iii) S. Govindaraju Vs. K.S.R.T.C. & Anr., 1986 SCR (2) 509.

(iv) Sumla Shankar Chavan Vs. Union of India & others, O.A.747/2011 dated 04.09.2013 of C.A.T., Bombay Bench, Mumbai.

19. We have carefully gone through the above decisions. Although the law laid down therein cannot be disputed, it cannot be said that the

ratio declared therein is applicable to the present case. The position would have been different, had the applicant rendered atleast 240 days of continuous service without breaks as Casual Labour on daily wage basis and in that event the temporary status as per 1993 Scheme will be deemed to have been conferred on him. It is only then the question of regularisation in Group 'D' would arise and that stage has not come. It, therefore, cannot be said that the applicant is entitled to temporary status and regularisation, in the peculiar facts and circumstances of the case.

20. For the above reasons, we do not find any merit in the persent O.A. The same is, therefore, dismissed. Parties are, however, directed to bear their respective cost of this O.A.

(R. Vijaykumar)
Member (A)

(Arvind J. Rohee)
Member (J) .

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