

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00585/17

Reserved on : 04/07/2018
Pronounced on : 27/07/2018

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER

Satish Kumar, Son of Sri Madan Mohan Lal, Casual Labour (Group 'D'), Doordarshan Kendra, Chhaju Bagh, Patna, Resident of Village/Mohallah-North Patel Nagar, Besides Nala, P.O.- Keshari Nagar, District- Patna-800024 (Bihar).

..... Applicant.

- By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Secretary, Ministry of Information and Broadcasting, Government of India, New Delhi- 110001.
2. The Director General, Doordarshan, Doordarshan Bhawan, New Delhi – 110001.
3. The Deputy Director (ADMN.), Office of Director General, Doordarshan, Doordarshan Bhawan, New Delhi- 110001.
4. The Chief Executive Officer, Prasar Bharati, P.T.I Building, 2nd Floor, Sansad Marg, New Delhi- 110001.
5. The Deputy Director (Engineering), Doordarshan Kendra, Patna-800001.

..... Respondents.

- By Advocate: - Mr. Bindhyachal Rai

O R D E R

J.V. Bhairavia, J.M.:- The applicant has filed the present OA under Section 19 of the A.T Act, 1985 seeking the following reliefs:-

“ (a) That your Lordships may graciously be pleased to declare the impugned action of the respondents with respect to hostile discrimination in granting Temporary Status and its

eventual absorption as highly discriminatory, arbitrary and in violation of Article 14,16, 21 & 311 of the Constitution of India.

(b) That Your Lordships may graciously be pleased to direct/command the respondents to accord/grant temporary status henceforth in view of their own order as contained in Annexure- A/3 without any further delay from the date others, as has been referred in this Original Application, have been granted.

(c) That Your Lordships may further be pleased to direct them to absorb the applicant also in the Department against Group 'D' post in the similar manner as has been adopted in the case of the persons referred to above with all consequential benefits."

2. The brief facts as stated in the OA and submissions made by learned counsel Shri M.P. Dixit on behalf of the Applicant are as under:-

2.1 The applicant was initially engaged as Casual Labour under the respondents on 23.10.1990. While he was working as Casual Labour, the respondents have sent requisition for recommending/sponsoring the names of eligible persons for appointment in Group – D category. In response to the above the District Employment Exchange, Patna called 37 eligible persons including the applicant to appear before the Employment Exchange on 02.04.1991, along with all relevant documents. The applicant appeared and after screening his name was forwarded to the Doordarshan Kendra, Patna for appointment.

2.3 Thereafter, the applicant was interviewed by the Committee of Doordarshan who finally approved the candidature of the applicant for appointment on 26.04.1991. It is submitted that he was working and received the payments against the work.

2.4 While working against Group 'D' post the applicant came to know that many persons including Shri Braj Kishore Singh, Sri

Raghbir Singh, Shri Raj Kumar, Shri Dipal Kumar and Shri Dilip Kumar, who have been engaged by the respondents as Casual Labour without any interview and without sponsoring their names from the Employment Exchange, have been absorbed against permanent Group 'D' post in between the year 2002-2008, but the applicant is being deprived without any reason though he is on better footing than all the persons including referred to above.

2.5. The applicant then submitted a representation dated 22.04.2015 (Annexure A/2) to the Respondent No. 2 stating the factual aspects of the matter and discrimination made against him.

2.6. The applicant again preferred an application before the Chief Labour Commissioner, Central, Patna in the year 2015 along with a chart of working report from 1990 to 1993 to prove that he has completed more than 240 days in a calendar year and thus eligible for grant of Temporary Status and eventual absorption as per the scheme of Casual Labour (Grant of Temporary Status) 1993 which has also been confirmed by Respondent No. 5 through his letter dated 23.09.2016 (Annexure A/3) in which it was provided in para-IV that though as per Rule Shri Satish Kumar was eligible for grant of Temporary Status and regularization, but it is not clear why his name was not considered by the predecessors and it was requested for early action in the matter as the case was listed for hearing on 27.09.2016 in the DCLC, Patna.

2.7 Thereafter, the applicant sought information under the Right to Information Act with regard to absorption of the aforesaid persons mentioned above which was provided to the applicant vide letter dated 21.03.2017 (Annexure A/4). He came to know from the said information that the persons engaged later on have been absorbed ignoring the rightful claim of the applicant.

2.8 It is submitted that the letter dated 11.07.2017 submitted by the respondents before the Labour Court confirms the working report of the applicant for the period from 1990 to 1993. The respondents in their reply before the Labour Court have stated that the applicant is not fulfilling the eligibility criteria of 240 days which is contrary to their own order as contained in Annexure A/3. It is

submitted that the Department has not given the break-up till 30.09.1993 in the said letter intentionally and when the applicant raised his voice against such discrimination before the Labour Commissioner he has been forced to work under Agency.

2.9. It is also stated that though the reconciliation is not yet completed in the Labour Court due to absence of Presiding Officer, but the respondents have again proceeded to absorb other persons who are otherwise not eligible for grant of Temporary Status and consequent absorption. Hence, this OA.

3. Learned counsel for the applicant has submitted that the action of the respondents is arbitrary, ill motivated unjust, punitive, colourable exercise of power and discriminatory against Article 14 and 16 of the Constitution of India and also contrary to various judicial pronouncements which clearly stipulates that one cannot be deprived of regular absorption once continued in service for more than 10 years whereas the applicant has completed more than 27 years continuous service.

4. Learned counsel for the applicant has produced a letter dated 04.07.2018 issued by Assistant Labour Commissioner (Central) Patna in which it was mentioned the conciliation proceeding for case no. 1/135/2015/ALC-I was closed on 03.08.2017 by way of FOC.

5. The respondents have filed written statement in which they have submitted that the applicant has worked for some time as casual labour and most of the time, he has worked on assignment basis since the year 1990. It is submitted that he had worked for 61 days between 23.10.1990 to 31.12.1990 in three intervals.

Thereafter, in the year 1991 he worked for 73 days between 01.03.1991 to 19.06.1991 in four intervals and for 152 days from 01.01.1992 to 31.05.1992. He again worked for 123 days between the period 01.08.1992 to 31.12.1992. It is also pointed out that during the above period of 123 days he had worked on assignment basis and not as casual worker/contract basis.

6. The respondents have further submitted that prior to introduction of the said scheme dated 10.09.1993 (Annexure R/1) in the year 1993, the applicant had not worked for required minimum working of 240 days as casual labour and as such the applicant does not come under the consideration zone of the said scheme dated 10.09.1993 and subsequent clarification dated 12.07.1994 (Annexure R/2). It is submitted that the applicant was not given temporary status like other employees as he was not fulfilling the requirement as mentioned in the scheme. The respondents have also submitted that the applicant deliberately kept mum for such a longer period of 13 years.

7. The applicant has filed rejoinder reiterating the submissions made in the OA and denying the submissions made by the respondents in their written statement. In the rejoinder the applicant has reiterated that he has completed 240 days in all the calendar years. It is further stated that admittedly the applicant has completed 240 days in the year 1992 and was on roll as on 30.09.1993. Hence, he is fulfilling the eligibility criteria for grant of

TSM and subsequent regularization. The applicant has enclosed letter dated 23.03.1991 (Annexure P/2) to show that the persons engaged with him have been absorbed denying the benefit to the applicant. In the rejoinder, the applicant has also placed on record RTI letter dated 22.09.2017 (Annexure P/1) wherein several letters have been enclosed in support of his working period.

8. Heard the learned counsel for the parties and perused the records.

9. The learned counsel for the applicant during argument placed reliance on the judgments of High Court, Patna dated 07.11.2017 in CWJC No. 14405/2017 and dated 16.01.2017 in CWJC No. 776 of 2016 in support of his case.

10. The learned counsel for the respondents has submitted that the decision was taken before the closure of the Labour Court case.

11. I have also perused the judgments cited by the learned counsel for the applicant and hold that the aforesaid judgments are applicable in the case of present applicant also.

12. It is also observed that vide its order dated 25.09.2017, this Tribunal, taking note of the fact that respondents were regularizing the contractual labourer leaving the applicant to

languish, directed the respondents to consider the case of the applicant with appropriate order, if found eligible.

13. Admittedly, Respondent No. 5 through his letter dated 23.09.2016 (Annexure A/3) clarified that though as per Rule Shri Satish Kumar was eligible for grant of Temporary Status and regularization, but it is not clear why his name was not considered by the predecessors and he has requested for early action in the matter as the case was listed for hearing on 27.09.2016 in the DCLC, Patna. It is observed that the said case in Labour Court has since been closed on 03.08.2017. Hence, the submission of the respondents on this technical point is not tenable. Accordingly, I am of the view that the applicant's case deserves consideration by the respondents as given to the similarly placed persons.

14. In conclusion, the OA is partly allowed. The respondents are directed to consider the case of the applicant for grant of temporary status and subsequent absorption in Group 'D' post and pass a reasoned and speaking order within a period of three months from the date of receipt of this order. No order as to costs.

[**Jayesh V. Bhairavia**]
Judicial Member

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