

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

Original Application No. 330/00435 of 2014

Dated: This the 05th day of April 2019.

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Piyush Kant Srivastava son of R.S.J Bahadur, C.P. Coolie,
Divisional office of Postal Department, Ghazipur.

... Applicant

By Adv: Shri A.K. Singh

V E R S U S

1. Union of India through its Ministry of Communications,
Department of Post Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Allahabad.
3. Superintendent of Post Offices, Ghazipur Division, Ghazipur.

... Respondents

By Adv: Shri R.P. Singh

O R D E R

1. The present Original Application has been filed by the applicant seeking following reliefs:-
 - (a) To quash the order dated 11.2.2014 passed by the respondent No.3.
 - (b) To direct the respondents to grant temporary status to the applicant and all other consequential benefits in

terms of the circular dated 12.4.1991 and communication dated 30.11.1992 as contained in Annexures 1 & 2 to compilation II with effect from 05.12.1997.

- (c) To grant other reliefs for which the applicant might be found eligible and entitled to.
- (d) To award of this application against the respondents.

2. The facts, in brief, in this O.A. are that applicant was appointed on the post of C.P Coolie in the Divisional Office Ghazipur against the vacant post on casual basis on 04.09.1997 (Annexure A-4). The appointment of applicant was on the risk and responsibility of his father and after his retirement, a fresh order has been issued by the SPOs, Ghazipur Division, Ghazipur on 25.7.1997 appointing the applicant on the said post in temporary and adhoc capacity. Applicant, however, continued to work w.e.f. 09.04.1997 (Annexure A-6). The Divisional Superintendent issued another order on 19.7.2000 (Annexure A-7) to the effect that the applicant has completed more than three years of service, he shall continue to work on the said post.

3. It is further averred in the O.A. that the Divisional Superintendent of Post Offices, Ghazipur vide his order dated 24.11.2005 (Annexure A-10) awarded temporary status to 30 casual employee of Group 'D'. The applicant made several representations to the respondents but respondents did not take any decision on the representation of the applicant. Aggrieved against the inaction of respondents, respondents filed O.A. No. 1151 of 2013 for awarding him temporary status,

which was finally disposed of vide order dated 31.10.2013 (Annexure A-11) with a direction to the respondent No.3 to consider and decide the representation of the applicant and pass detailed and speaking order. Respondent No.3 rejected the representation of the applicant on flimsy ground vide impugned order dated 11.2.2014 (Annexure A-1).

3. In the counter affidavit, the respondents have narrated the following brief facts of the present case, which is reproduced as under:-

- (i) The post of CP Coolie was sanctioned vide letter dated 19.06.1979 along with another post of Wireman.
- (ii) The District Employment Officer, Ghazipur was requested on 19.4.1994 to sponsor the names of suitable candidates for recruitment to the post of CP Coolie. The District Employment Officer, Ghazipur sponsored following names of candidate.

 - (a) Shri Ravindra Nath Ram.
 - (b) Shri Ashok Kumar
 - (c) Shri Hardev Ram
 - (d) Shri Atahar Abbass.
 - (e) Shri Rakesh Singh Yadav.

All the above candidates were requested to submit their applications for the appointment along with required certificates vide office letter dated 09.06.1994. Applications of candidate No. 1, 2 and 5 were received in this office in time but application of

Shri Hardev Ram was received delayed and application of Atahar Abbass was not received.

- (iii) After approval of DPC for appointment of CP Coolie, the name of Shri Rakesh Singh Yadav was approved and Shri Rakesh Singh Yadav was appointed and started working satisfactorily. He was confirmed temporary status of Group 'D' since 07.07.1994.
- (iv) Shri Rakesh Singh Yadav requested for his transfer from Ghazipur to Raibarely. His application was accepted and after approval of competent authority, he was relieved for Raibarely Division. The post of CP Coolie became vacant.
- (v) Having a lot of problems occurred due to transfer of Shri Rakesh Singh Yadav, applicant was engaged as an outsider candidate to the vacant post of CP Coolie on the risk and responsibility of Shri R.S.J Bahadur.
- (vii) For fill up the above post, the District Employment Exchange Officer, Ghazipur was requested to sponsor the name of eligible candidates and District Employment Exchange Officer, Ghazipur sponsored the following names of candidate vide officer letter dated 19.7.1997:-
 - (a) Sri Preetam Kumar
 - (b) Shri Piyushkant Srivastava
 - (c) Shri Mahendra Singh Yadav
 - (d) Shri Lavkush Ram.

(viii) As per direction received from Regional Office, Allahabad, the applicant was engaged temporarily till the decision of Tribunal in OA No. 109/1996, which was filed by Shri Hardev Ram with strict conditions, which is as below:-

"He should clearly understand that his engagement is completely provisional and he could be dismissed from service to the above post any time".

(ix) The above condition was admitted by the applicant endorsing to this office vide his letter dated 25.07.1997.

(x) The O.A. No. 109/1996 was dismissed by this Tribunal and Post Master General was again requested for directions and orders about regular appointment of applicant. Many complaints against the applicant was received in the office.

(xi) Applicant filed OA NO. 1151/2013 before this Tribunal for granting temporary status and the Tribunal finally disposed of the OA vide order dated 31.10.2013 (Annexure A-11) with a direction to the respondent No.3 to consider and decide the representation of the applicant and pass detailed and speaking order. The representation of the applicant was rejected by the respondents by a reasoned and speaking order.

(xii) That the contents of paragraph No. 4 (ii) and 4 (iii) of the original application are admitted. But it is also added than after judgment dated 18.10.1996 rendered in OA No. 1735/1996 by Hon'ble CAT Principal Bench New Delhi, a letter by Directorate New Delhi Department of Posts INDIA numbered as 1-1/2001-PAP

dated 09.09.2004 in which it is stipulated in para No. 05 of the said letter that the Hon'ble Supreme Court in Union of India and others Vs. Mohan Pal etc. (JT 2002 (Suppl. 1) SC 314) has held that "we do not think than clause (iv) of the scheme envisages it as an ongoing scheme. In order to acquire temporary status the casual labourer should have been in employment as on the date of commencement of the Scheme and he should have also rendered a continuous service of at least one year."

Hence, the Casual workers in employment after 29.11.1989 are not entitled to get the benefits of the said scheme.

(xiii) The applicant was not entitled to get the benefits of the scheme of temporary status of Group 'D' as per directions contained in Directorate letter No. 45-95/87-SPB-I dated 12.4.1991 and further directions as amended from time to time.

4. In the rejoinder, the applicant has submitted that the scheme of 1991 does not envisage any other condition than 240 days of service as a casual employee for the benefit of the scheme. There is no departmental Rule or instruction laying down procedure for appointment of casual labour. No procedure was followed in the appointment of 30 casual employees who were conferred with temporary status.

5. I have heard Shri A.K. Singh learned counsel for the applicant and Shri R.P. Singh learned counsel for the respondents and gone through the pleadings on record.

Both the learned counsels for the parties have reiterated the pleas taken by them in their respective pleadings.

6. Learned counsel for the applicant submitted that in terms of Circular dated 12.04.1991 issued by Government of India, Ministry of Communications Department of Post, Casual Labourers (Grant of Temporary Status and Regularisation) Scheme was framed and a consequential communication dated 30.11.1992 was issued by ADS (SPN), Department of Posts, New Delhi to all Heads of Postal Circles etc (Annexure A1 and A2 to compilation II) which provides that Temporary Status would be conferred upon on the casual labourers who continue in employment and have rendered continuous service of at least one year during which they must have been engaged for a period of 240 days. It is the further argument of learned counsel that applicant can be granted temporary status as he was worked more than 3 years in the department and relies upon the Order dated 18.10.1996 of Central Administrative Tribunal, Principal Bench in O.A. No. 1735 of 1996 (Annexure A3 to compilation II) which held that the benefit of the Scheme shall be given to the casual labourers also who were taken into service after the Scheme came into operation. The representation of the applicant was rejected by the respondents on the flimsy ground and applicant's name has also sponsored by the Employment Exchange, Ghazipur.
7. On the other hand, learned counsel for the respondents argued that Scheme of 1991 categorically lays down that temporary status would be conferred on the casual

labourers in employment as on 29.11.1989 and this is a condition not fulfilled by the applicant who on his own showing was initially appointed on 04.09.1997.

8. It was further argued by learned counsel for respondents that the aforementioned condition of conferring temporary status on a casual labourer in employment as on 29.11.1989 is similar to the condition laid down in Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Government of India, 1993. In the Scheme of 1993, it is specifically laid down that "Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week)" As per, learned Counsel, this clause was interpreted by the Hon'ble Apex Court to mean that in order to acquire temporary status, the causal labourer should have been in employment as on the date of commencement of the Scheme. The same interpretation applies to the present Scheme of 1991 and the applicant was not in employment as on 29.11.1989, he is not entitled to be conferred 'Temporary Status'.
9. Reference may be made of Union of India v/s Mohan Pal, AIR 2002 SC 2001, wherein the Apex Court has held that temporary status can be granted when concurrently the twin conditions – (a) that the casual labourer should have been on the rolls as on 10-09-1993 and that he should have completed 206 days in a year. This scheme

has been held as a onetime scheme, not to be extended further. The Hon'ble Apex Court has held as under:-

"The first question is to be decided on the basis of the interpretation of clause 4 of the Scheme. As already noticed, the Scheme came into effect from 1-9-1993. Clause 4(1) of the Scheme reads as follows:

"temporary status.—(1) 'temporary' status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days' week)."

5. Clause 4 of the Scheme is very clear that the conferment of "temporary" status is to be given to the casual labourers who were in employment as on the date of commencement of the Scheme. Some of the Central Administrative Tribunals took the view that this is an ongoing scheme and as and when casual labourers complete 240 days of work in a year or 206 days (in case of offices observing 5 days a week), they are entitled to get "temporary" status. We do not think that clause 4 of the Scheme envisages it as an ongoing scheme. In order to acquire "temporary" status, the casual labourer should

have been in employment as on the date of commencement of the Scheme and he should have also rendered a continuous service of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. From clause 4 of the Scheme, it does not appear to be a general guideline to be applied for the purpose of giving "temporary" status to all the casual workers, as and when they complete one year's continuous service. Of course, it is up to the Union Government to formulate any scheme as and when it is found necessary that the casual labourers are to be given "temporary" status and later they are to be absorbed in Group 'D' posts.

10. In Civil Appeals Nos. 3168, 3182, 3179, 3176-78 and 3169 of 2002 arising out of SLPs (Civil) Nos. 2224 of 2000, 13024, 1563 of 2001, 17174-76 and 2151 of 2000, the respondents have been given "temporary" status, even though, they did not specifically fulfil the condition in clause 4 of the Scheme. Some of them were engaged by the Department even after the commencement of the Scheme. But these casual labourers had also rendered service for more than one year and they were not given "temporary" status pursuant to the directions issued by the Court. We do not propose to interfere with the same at this distance of time. However, we make it clear that the

Scheme of 1-9-1993 is not an ongoing scheme and the "temporary" status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in clause 4 of the Scheme, namely, they should have been casual labourers in employment as on the date of the commencement of the Scheme and they should have rendered continuous service of at least one year i.e at least 240 days in a year or 206 days (in case of offices having 5 days a week)."

10. The above decision was followed in the case Director General, Doordarshan v/s Manas Dey (2005) 13 SCC 437 wherein the Hon'ble Apex Court held as under:

".... the department had circulated by OM No. 51016/2/90-Estt.(C) dated 10-9-1993 a scheme for grant of temporary status and regularisation of casual workers. The Scheme is called the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Government of India, 1993. The said Scheme came into force with effect from 1-9-1993. The Scheme envisaged grant of temporary status to casual labourers who had worked at least 240 days in a year (206 days in the case of offices observing 5 days a week).

9. Clause 4 of the Scheme is very clear that the conferment of temporary status is to be given to the casual labourers who were in employment

as on the date of commencement of the Scheme. The Tribunal has taken the view that this is an ongoing scheme and as and when casual labourers complete 240 days of work in a year or 206 days (in case of offices observing 5 days a week), they are entitled to get temporary status. We do not think that clause 4 of the Scheme envisages it as an ongoing scheme. In order to acquire temporary status, the casual labourer should have been in employment as on the date of commencement of the Scheme and he should have also rendered a continuous service of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing five-day a week. From clause 4 of the Scheme, it does not appear to be a general guideline to be applied for the purpose of giving temporary status to all the casual workers, as and when they complete one year's continuous service. Of course, it is up to the Union Government to formulate any scheme as and when it is found necessary that the casual labourers are to be given temporary status and later they are to be absorbed in Group D posts."

11. So, the Scheme of 1991 and Scheme of 1993 contain similar worded clause that Temporary Status can be granted to a casual labourer if he fulfills the condition of being in employment on a particular date i.e. in the present case being "in employment as on 29.11.1989". In the present case, the facts of

the case and the settled principle of law, it is clear that applicant was not in employment casual labourer on 29.11.1989, as such, the Scheme of 1991 would not be applicable to him and 'Temporary Status' cannot be conferred upon the applicant.

12. It is the case of the applicant that while ignoring his claim other similarly situated person's services have been regularized even though they were appointed after 29.11.1989 or were junior to him. The learned counsel for the applicant contended that when the other casual labourer have been granted Temporary Status in conditions similar to that of the applicant, the same benefit should also be extended to the applicant.

13. The contention of applicant for granting him similar treatment cannot be accepted. Article 14 of the Constitution of India is not to perpetuate illegality and it does not envisage negative equalities. Merely because some persons have been granted benefit illegally or by mistake, it does not confer right upon the applicant to claim equality.

14. It would be profitable to refer to Union of India v/s M.K.Sarkar, (2010) 2 SCC 59 wherein the Hon'ble Apex Court observed that :

"If someone has been wrongly extended a benefit, that cannot be cited as a precedent for claiming similar benefit by others. This court in a series of decisions has held that guarantee of equality before law under Article 14 is a positive concept and cannot be enforced in a negative manner; and that if any illegality or irregularity is committed in favour of

any individual or group of individuals, others cannot invoke the jurisdiction on courts for perpetuating the same irregularity or illegality in their favour also, on the reasoning that they have been denied the benefits which have been illegally extended to others."

And it was further held that "A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may be not entitled to the relief has been given relief illegally is not a ground to grant relief to a person who is not entitled to the relief."

15. In the instant case, the applicant cannot be extended the benefit of the Scheme of 1991 since he was not employed as a casual labourer on 29.11.1989, and therefore claim parity with

persons who have been given the benefits illegally in violation of law.

16. In view of the facts and circumstances of the case and principles of law, I am of the view that no case has been made out by the applicant for acceptance of the O.A. The O.A. being meritless is dismissed. No order as to costs.

(Rakesh Sagar Jain)

Member (J)

Manish/-