Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTINGS: INDORE

(1) Original Application No.201/01157/2016
(2) Original Application No.201/01158/2016
(3) Original Application No.201/01159/2016
(4) Original Application No.201/01175/2016
(5) Original Application No.201/01177/2016
(6) Original Application No.201/01178/2016
(7) Original Application No.201/01179/2016
(8) Original Application No.201/01180/2016
(9) Original Application No.201/01181/2016
(10) Original Application No.201/00338/2017
(11) Original Application No.201/00339/2017

Jabalpur, this Wednesday, the 3rd day of July, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Jagjeewan Ram S/o Shri Ramprasad Age 46 years, Occupation Causal Labour, R/o Militry Form Mhow 453441 **-Applicant in O.A. No.201/1157/2016**

Mahesh Kumar S/o Shri Kashiram Sen Age 49 years, Occupation Causal Labour, R/o Militry Form Mhow 433441 **-Applicant in O.A. No.201/1158/2016**

Jagdish S/o Pratap Age 47 years, Occupation Causal Labour, R/o Militry Form Mhow 433441
-Applicant in O.A. No.201/1159/2016

Rajinder S/o Shri Baijnath Age 48 years, Occupation Causal Labour, R/o Militry Form Mhow 433441
-Applicant in O.A. No.201/1175/2016

Hariram S/o Shri Chhadalal Age 50 years, Occupation Causal Labour, R/o Militry Form Mhow 433441
-Applicant in O.A. No.201/1177/2016

Vinod Kumar S/o Shri Rambharose Age 53 years, Occupation Causal Labour, R/o Militry Form Mhow 453441 **-Applicant in O.A. No.201/1178/2016**

Jayram S/o Shri Gangram Age 58 years, Occupation Causal Labour, R/o Militry Form Mhow 453441 **-Applicant in O.A. No.201/1179/2016**

Lalbhihari S/o Shri Madhu Nisshad Age 42 years, Occupation Causal Labour, R/o Militry Form Mhow 453441 **-Applicant in O.A. No.201/1180/2016**

Anil Kumar S/o Shri Bhagwati Prasad Age 42 years, Occupation Causal Labour, R/o Militry Form Mhow 453441 **-Applicant in O.A. No.201/1181/2016**

Deshraj S/o Shri Hanuman Age 47 years, Occupation Causal Labour, R/o Militry Form Mhow Mhow (M.P.) 453441 **-Applicant in O.A. No.201/338/2017**

Ghanshyam S/o Shri Bhagirath Age 45 years, Occupation Causal Labour, R/o Militry Form Mhow 453441 **-Applicant in O.A. No.201/339/2017**

(By Advocate **–Smt. Rachna Dubey**)

V e r s u s

U.O.I. through
1. Secretary, Government of India, Ministry of Defense, 105 South Block, New Delhi 110001

2. Director, Military Dairy Farms Headquarters Army Central Command Usman Marg, Lucknow 226001

3. Office Incharge, Military Farm, Mhow Dist. Indore 453441 - **Common Respondents in all O.As.**

(By Advocate **–Shri Kshitij Vyas**)

(Date of reserving the order:-13.03.2019)

COMMON O R D E R

By Ramesh Singh Thakur, JM:-

All Original Applications Nos.201/01157/2016, 201/01158/2016, 201/01159/2016, 201/01175/2016, 201/01177/2016, 201/01178/2016, 201/01179/2016, 201/01180/2016, 201/01181/2016, 201/00338/2017 and 201/00339/2017 are being dealt with a common order as similar issue is involved.

2. In all the abovementioned OAs, the applicants have challenged the impugned rejection order dated 29.06.2015 (Annexure A/4) wherein the applicants have not been regularized despite the fact that the applicants are working with the respondent-department from the last more than 20 years.

3. For the purpose of reference, the details stated in O.A. No.200/01158/2016 are being referred to, unless specifically mentioned otherwise.

4. The applicant in O.A. No.201/1158/2016 has prayed for the following reliefs:-

"8(a)That the applicant be given the benefits of Absorption and regularization w.e.f.11.09.1989 till the date of retirement.

(b) That the applicant be awarded interest on the dues.

(c) Any other relief which this Hon'ble Court deems fit be also granted."

5. The applicant has been working with the respondent-department as daily wager w.e.f. Sept 1989. The services of the applicant were terminated due to reduction of work by the respondents vide order dated 29.08.1998 (Annexure A-2) and it was also stated in the order that re-engagement would be done on the basis of seniority as and when regular vacancy occurs. The applicant was appointed in the same department on a contractual basis w.e.f.04.10.1998 and has been working on the same post and drawing same salary from the contractor. The respondents are working under the direction of the central government. The termination order clearly states that the employees will be re-engaged as and when regular vacancy occurs. The applicant had worked for more than 20 years and efficient

workers are not taken back which is a clear violation of his rights under article 14 and 16 of Constitution of India.

6. The learned counsel for the applicant submitted that the legal provision which prohibits the unfair practice of contract labour Section 10(2)(b) of Contract Labour (Regulation and Abolition) Act, 1970 reads as under:-

> *"10(2)(b) Whether it is of perennial nature, that is to say, it is sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment."*

So, it clearly shows that the action taken by the respondents is illegal, arbitrary and clear violation of legal and constitutional rights of the applicant.

7. The basic requirements of a contract labour agreement are the registration of the contractor and contractor should have a license granting him the requisite permission. Therefore contract labour agreement is illegal, invalid and void in the eye of law. For the sake of argument if we assume that the Contractor is having a legal license in that situation also the work done by the applicant is not of contractual work because applicant is

doing the same work whole year without break. Therefore, it is unfair labour practice under the Industrial Dispute Act. As per Annexure P/1, which shows that the services of the applicant were retrenched and it was assured that will be given benefit of re-employment as and when regular vacancy occurs. However, it was only an eye wash because w.e.f. 04.10.1998 the applicant were taken in employment through contractor which is obviously an unfair labour practice on the part of the employers as specified in Clause VI of 5th schedule (unfair labour practice) of Industrial Dispute Act. Clause VI reads as under:-

> "*To abolish the work of a regular nature being done by workmen and to give such work to contactors as a measure of breaking a strike."*

8. The applicant serve the respondent-department with a legal notice dated 16.04.2015 (Annexure A-3) and the same had been replied by the respondents on 29.06.2015 (Annexure A-4) stating that all farm work is being carried out by outsource services on contract basis. It clearly

shows that the regular work performed by the applicant has been given on contract and that too in contravention of all statutory provision of Contract Labour (Regulation and Abolition) Act 1970. Hence this Original Application.

9. The respondents have filed their reply. In their preliminary objection it has been submitted by the respondents that the applicant was a causal labourer at Military Farm Mhow and has retrenched the applicant from service with effect from 31.08.1998. It has been submitted by the respondents that the Army Headquarter circulated a policy letter dated 28.07.1998 and letter dated 14.08.1998 by which the authorization of manpower had been reduced and accordingly service of the causal labour under retrenchment scheme w.e.f. 01.09.1998 discontinued and they were paid compensation as per the policy. Copy of letters are annexed as Annexure R/1. The answering respondents retrenched 10 causal labourers which were/are in excess at the Military Farm, Mhow. After the retrenchment, department has sublet the entire work to the

private contractor on contractual basis as per rules and regulation of the Government of India. The contractor engaged the applicant every year as they have a long experience of farm working but in spite of that the applicant has filed the case before the Central Government Industrial Tribunal, Jabalpur bearing case No.CGIT/LC/(A)/3/98 whereby the Tribunal has dismissed his claim vide order dated 22.07.1999 (Annexure R-2). After a lapse of 15-16 years, the applicant has filed this Original Application on the same ground. The respondents have submitted that Annexure A/4 is not an order, it is a reply to the legal notice dated 16.04.2015. It is also submitted that the applicant is working with the contractor not with the answering respondent after retrenchment from service. It has been specifically submitted by the respondents that as per the statement given by the applicant that from the next date he is working with the contractor on same post and same salary, the respondents do not have any record regarding working

of the applicant after the retrenchment and there is nothing on record that the applicant is working continuously with the respondents as they have sublet the entire work on contractual basis which has been done properly under the rules and regulation of the Government of India. It is further submitted by the respondents that there is no violation of Labour (Regulation and Abolition) Act, 1970 as the respondent-department acted as per the policy.

10. The applicant has filed rejoinder to the reply filed by the respondents and has reiterated its earlier stand taken in the Original Application. It has been submitted by the applicant that the relief sought by the applicant is regarding extension of benefits of absorption and regularization. There is no whisper of challenging the order of retrenchment which took place in the year 1998. The applicant has specifically submitted that this is an example of unfair labour practice, as prescribed in Scheme 5 of Industrial Dispute Act, callusion and malafides on the part of the respondent and writ large on the record. The

applicant was retrenched and thereafter he was engaged through a contractor. A perusal of item No.6 of Part 1 of unfair labour practice reads on under:-

> *"to abolish the worker of a regular nature, being done by the workman and to give such work to as contractor".*

11. It has been submitted that if the casual labour were in excess at the Military Farm, then there was no requirement of re-engaging them through a contractor, where as the respondents had again engaged the applicant through the contractor. The respondents have admitted that the employees who were regularly working as casual employees were retrenched and thereafter those very persons were again taken on roll through contractor on contractual basis. The CGIT rejected the application u/s 33A observing that as per Section 33 of I.D. Act there is an agreed condition between the parties and this agreed condition has been changed. The CGIT found that there was no condition of non termination of employment and therefore Section 33A is not attracted. It was not a case in

respect of dispute regarding retrenchment or their engagement through contractor. It is submitted that engagement of applicant through contractor is manipulation and circumvention of the provisions of Contract Labour (Regulation & Abolition) Act 1970. There is no change in place of posting and the nature of work. The Hon'ble Supreme Court in number of cases has held that a person doing the same work cannot be deprived of his right to equal pay for equal work. Employees working at Military Farm are on the roll of respondent are getting benefit of VII Pay Commission and all other attendant benefits, whereas the applicant is only getting meager salary of minimum wages as prescribed by Central Government. The judgment of Hon'ble Supreme Court in the matter of State of Punjab & Others vs. Jagjit Singh and Others has observed that daily wage employees or employee appointed on casual basis is entitled to pay scale along with DA of permanent employees who does such work.

12. It is further submitted by the applicant that under the Act 1970 it is the duty of the principal employer to see the activity of the contractor and to ensure that he is complying with the provisions of the Act and is making payment of minimum wages to its employee and therefore the respondent cannot shun off its obligation and responsibility and liability by giving evasive reply that they are not aware that applicant has worked continuously or not.

13. We have heard the learned counsel for both the parties and also gone through the documents attached with the pleadings.

14. From the pleadings it is an admitted fact that the applicant has been working with the respondent-department as daily wager w.e.f. Sept 1989 and thereafter the services of the applicant were terminated due to reduction of work by the respondents vide order dated 29.08.1998 (Annexure A-2) and as per Annexure A/2 the retrenchment order was issued whereby the applicants

were terminated with immediate effect and one month salary in lieu of notice and compensation @ 15 days salary at current rate for each completed year with 240 days attendance was also paid through cheque. It was also indicated that applicant would be considered for re-engagement as per seniority as and when regular vacancy occurs and applicant may also take up 'Job Basis' work to the extent available. It is also clear from the pleadings that the services were terminated on 29.08.1998. Thereafter the applicants were appointed in the same department on contractual basis w.e.f.04.10.1998 and there are working in the same post and drawing same salary from the contractor. The submission put forth by the applicant is that since the applicants are working for more than 20 years and they are efficient workers and till date they have not been regularized by the respondent-department. Further submission of the applicant that by doing this unfair practice of contract labour under Section 10(2)(b) of Contract Labour (Regulation and Abolition) Act, 1970 and

moreover, the contractor has not procured license which is the basic requirement of the Contract Labour Act. It has been further submitted by the applicants that it is also unfair labour practice on the part of employers as specified in Clause VI of 5th Schedule (Unfair Labour Practice) of Industrial Dispute Act.

15. On the other side, the specific submission taken by the respondents that the applicants are casual labour and has been retrenched w.e.f.31.08.1998. It is specifically submitted by the respondent-department that the Army Headquarter circulated a policy letter dated 28.07.1998 and letter dated 14.08.1998 by which the authorization of manpower had been reduced and accordingly service of the causal labour under retrenchment scheme w.e.f. 01.09.1998 discontinued and the applicants similarly situated persons were paid compensation as per the policy. The respondents have specifically submitted in their reply that the respondents had retrenched 10 causal labourers which were in excess at the Military Farm, Mhow. Further

submission of replying respondents is that after the retrenchment, department has sublet the entire work to the private contractor on contractual basis as per rules and regulation of the Government of India. So, the contractor has engaged the applicant every year as they have a long experience of farm working. The applicants have filed the case before the Central Government Industrial Tribunal, Jabalpur bearing case No.CGIT/LC/(A)/3/98 whereby the Tribunal has dismissed his claim vide order dated 22.07.1999 (Annexure R-2). The respondent-department has also submitted that after a lapse of 15-16 years, the applicant has filed this Original Application on the same ground. So the applicants are working with the contractor not with the respondent-department, after retrenchment from service. It has been specifically submitted by the respondents that as per the admitted facts, the applicant, that from the next date he is working with the contractor on same post and same salary. So, the respondents do not have any record regarding working of the applicant after

the retrenchment and there is nothing on record that the applicant is working continuously with the respondents. So, as per policy of Government of India, the applicants have been retrenched and work has been allotted to the contractor.

16. It is an admitted fact that after September 1998 the work of the Military Farm was entrusted to the private contractor as per policy framed by the department. As per Annexure R/1, the annual PE for the year 1998-99 at Military Farm Mhow has been given and guidelines for employment of manpower after enforcing revised PE, no causal labourers will be employed in lieu of regular staff. It is relevant to mention that Annexure A/2 has been issued in view of the said guidelines. It is also noticed that performa has been prescribed for retrenchment. Resultantly, retrenchment order Annexure A/2 has been issued on these lines. It is also clear from Annexure R/2 that some of the applicants had approached the Central Government Industrial Tribunal-cum-Labour Court,

Jabalpur and the Presiding Officer has rejected the application with the reason that there is no violation of Section 33 of I.D. Act. The relevant portions of the said order are as under:-

> *"7. Section 33 of the I.D. Act would attract where there is an agree condition between the parties and this agree condition have been changed. In the present case the condition of service was casual work. There was no condition for non termination of this employment. Further there was no condition that the applicants will be provided work everyday.*
>
> *8. The management has stated in Para 4(F) of their return that on 31.08.98 there were 80 employees in Category D. The sanction strength is only 70 and 10 were surplus. As per orders of the Director Military Dairy Farms, the last 10 employees have been retrenched.*
>
> *9. The procedure adopted by the management is perfectly valid and legal. There is no violation of Section 33 of I.D. Act. The present petition is rejected. Parties to bear their own costs."*

So, after considering this Annexure R/2, we are of the view that the question of termination by the respondent department was under reference which was pending before the CGIT and during that period the applicants were terminated and they have moved an application under

Section 33 of the Industrial Dispute Act. The Presiding Officer of CGIT has rejected the applicant and has held that the procedure adopted by the respondents was perfectly valid and legal and there is no violation of Section 33 of I.D.Act. Therefore the legal remedy of the applicant should have been to approach proper forum against the order of the presiding officer of CGIT Jabalpur.

17. In the instant Original Application, the applicants have prayed for giving benefits of absorption and regularization w.e.f.11.09.1989 till the date of retirement, it can be safely presumed that applicants were working as daily wager in the year 1989 and are seeking absorption and regularization with effect from initial engagement. It is pertinent to mention that as per Annexure A/2 the applicants have been terminated after due compliance of the provisions of the Act and compensation has been paid in lieu of one months' notice through cheque. The said action of the respondent-department has been held legal and valid by the Presiding Officer of CGIT vide Annexure

R/2. So, it is clear that after 01.09.1998 the applicants were not the employee of the respondent-department. Moreover, the applicants have not challenged the order of the CGIT (Annexure R/2), which has attained finality.

18. From the pleadings it is also clear that applicants were given appointment on contractual basis w.e.f.04.10.1998 by the contractor. The respondent-department has clearly spelt out in their reply that the service of the applicant was retrenched and was not in roll of employment with the respondent-department w.e.f.01.09.1998. It has been clearly spelt in the reply that as the applicants have been engaged by the contractor and has denied the fact the applicants have continuously working with the respondent-department after 01.09.1998 as the answering respondent has sublet the entire work on contractual basis. So the applicants are not employee of the respondent-department and the relation of master and servant has seized w.e.f.01.09.1998. Moreover, the respondent-department has raised the question of

limitation to the fact that the applicants have approached this Tribunal after a lapse of 15-16 years. For that there is no explanation on the part of the applicant. The only explanation given by the applicants are that the applicants are working continuously. However, from the facts itself the applicants are not in service with the respondent-department.

19. In view of the above, we do not find any merit in this Original Application and there is no ambiguity and illegality in the action of the respondent-department.

20. Since other Original Applications, as indicated in Para 1 of this order involves the same question of regularization and the facts are similar. In view of the reasons recorded above, other Original Applications are also liable to be dismissed.

21. Resultantly, all these Original Applications are dismissed. No costs.

(Ramesh Singh Thakur) **(Navin Tandon)**
Judicial Member **Administrative Member**

kc