

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Applications Nos.200/01022/2016, 771, 787 & 1008/2017

Jabalpur, this Tuesday, the 2nd day of July, 2019

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

1. Ajay Shrivas son of Shri Vrindadeen Shrivas,
Aged about 48 year, Residence of Lata Pandey Ka Bageecha
No. 98, Gorabazar Ward No. 2, Cantt. Jabalpur (M.P.)-482001
2. Narayan Tiwari, son of Shri Madhav Prasad Tiwari,
Aged about 31 year, Residence of Military Dairy Farm Poultry,
Ward No. 2, Gorabazar, Cantt. Jabalpur (M.P.)-482001
3. Vishnu Prasad Kushwaha son of Late Shri Bihari Lal Kushwaha,
Aged about 45 year, Residence of Military Dairy Farm, Ward No.
2, Gorabazar, Cantt. Jabalpur (M.P.)-482001
4. Kishan Lal Gontia, Son of Shri Babulal Gontia, aged about 42
year, Residence of Military Dairy Farm, Ward No.2, Gorabazar,
Cantt. Jabalpur 482001 The applicant are working as permanent
Establishment staff (temporary status) at Military Farm Jabalpur

-Applicants in O.A. No. 200/01022/2016

1. Govind Singh, S/o Khilan Singh, Aged about 45 years,
Working as Casual Labore, at Military Farm, Jabalpur Pin 482001
2. Mathura Prasad, S/o Ram Avtar, aged about 43 years,
Working as Casual Labore at Military Farm, Jabalpur, Pin 482001,
Mob. 9303955809
3. Rakesh Kumar, S/o Sundarlal, Aged about 40 years,
Working as Casual Labore at Military Farm, Jabalpur,
Pin 482001

-Applicant in O.A. No. 200/00771/2017

1. Santu Yadav, S/o Banshilal aged about 45 years, Working as
Casual Labore at Military Farm Jabalpur, Pin 482001
2. Rakesh Kumar, S/o Kansraj aged about 40 years,
Working as Casual Labore at Military Farm,

Jabalpur, Pin 482001, Mob. 9131232995

3. Rajesh S/o MIshrilal, aged about 40 years,
Working as casual labore, Military Farm,
Jabalpur, Pin 482001 **-Applicants in O.A. No. 200/00787/2017**

1. Sunil Kumar, S/o Hakim Singh, Aged about 44 years,
Working as Casual Labore at Military Farm,
Jabalpur, Pin 482001

2. Rajman Kushwaha S/o Ramsharan Kushwaha,
aged about 43 years, Working as Casual Labore at
Military Farm, Jabalpur, Pin 482001

3. Horilal S/o Channelal, aged about 46 years,
Working as Casual Labore at Military Farm,
Jabalpur, Pin 482001 **-Applicants in O.A. No. 200/01008/2017**

(By Advocate –**Shri S.S.Chouhan**)

V e r s u s

1. The Union of India, through its Secretary,
Ministry of Defence, New Delhi-110001
South Block New Delhi

2. The Deputy Director General
Military Farm, Head Quarter, Block III,
R.K.Puram, New Delhi-110001

3. The Director, Military Farms, Central Command,
Lucknow (UP) 226019

4. The Officer-in-charge, Military Dairy Farms,
Jabalpur (M.P.), Pin-482001 **-Common Respondents in all the OAs**
(By Advocate –**Shri D.S.Baghel**)

(Date of reserving the order:-25.03.2019)

O R D E R

By Ramesh Singh Thakur, JM:-

All the Original Applications are being taken together as the similar issue regarding the regularization of the applicants are involved.

2. For the lead case, the facts of Original Application No. 200/771/2017 is being referred.

3. The applicants are challenging in action of the respondents, whereby they have not regularized as per norm, inspite of the facts that the applicants are continuously working with the respondent department for more than 20 years.

4. The applicants have sought for the following reliefs in these Original Applications.

“8. Relief Sought:-

8.1 Summon the entire relevant record from the respondents for its kind perusal.

8.2 Directed to the respondents authority regularized to the applicants as per norms.

8.3 Direct the respondents to regularize to the applicants with all consequential benefits.

8.4 Any other order which this Hon'ble Court deems fit proper and award cost of the litigation in favour of the applicant.”

5. Brief facts of the case are that the applicants initially joined the service of the respondents at Military farm, Jabalpur as back as in the year 1990,1991 and 1993 as is evident from the list of casual labourers. A copy of the seniority list is annexed as Annexure A-1.

6. The applicants who joined the service are working sincerely, devotionally, honesty and satisfaction of the superior authority and never communicate adverse remarks till date.

7. The applicants are working as Gwala, Calfmen & Lab attendant being technically trained for the purpose of the respondents themselves. The respondents had also desired their regularization after their satisfactory performance. The applicants have attained all right to be regularized having attained 20 years' experience. Copy of the circular dated 21.09.1984 is annexed as Annexure A-2.

8. That all the applicants are working as casual laborers on muster roll in the establishment of Military Farm Jabalpur. The applicants have filed Original Application No. 616/1998 before the Tribunal for their regularization in the service, during the said period, the other counter parts of other employee have preferred W.P. No. 6085/2000 (Shiv Kumar & others vs. Union of India). The aforesaid petition decided by the Hon'ble Court on 22.01.2003 whereby, specific direction were issued to the respondents regarding the regularization of their service as also protecting their interest to remain in the employment. The Tribunal has also passed the order in O.A. No. 616/1998 on 17.12.2003 with specific direction to the respondents to consider the case for regularization applying the principals as laid down in Para 7 & 8 of the order dated 22.01.2003 along with the order dated 17.12.2003. The respondents department have not complied with the order of the

Tribunal and the Contempt Petition NO. 77/2004 was preferred whereby the respondents have given undertaking for consideration for regularization when suitable vacancies arise. A copy of the order dated 19.05.2005 is annexed as Annexure A-4.

9. The respondents sent a letter regarding compliance of the order of this Tribunal for regularization but unfortunately, till date they are not regularized by the respondents. A copy of the letter dated 30.04.2004 is annexed as Annexure A-5.

10. The case of the applicant is that as per letter dated 16.01.2015, it is crystal clear that number of posts are vacant, in spite of numbers of vacant post they are not regularized till date and has taken work of casual laborer continuously. A copy of the letter dated 16.01.2015 is annexed as Annexure A-6.

11. The respondents have not taken any action for regularization in spite of undertaking and numbers of vacant post, again the applicant filed Contempt Petition No. 60/2016 before this Tribunal. The aforesaid Contempt Petition was dismissed on the ground of limitation. A copy of the order dated 26.07.2017 is annexed as Annexure A-7.

12. The applicants are fulfilling the criteria for regularization on the said post as they have completed more than 20 years as labour on the basis of daily wager. In spite of vacant post of labour and

being excellent performance they have not regularized by respondents against the vacant post.

13. The respondents have filed their reply. In the preliminary submissions the answering respondents have submitted that this Original Application is not maintainable. It has been submitted by the replying respondents that the applicants at some point of time were engaged for purely seasonal job as irrigation labourer for repairing of fencing in cultivation and stack yard area, cleaning of nalah as well as cutting of green fodder as per requirement and paid minimum wages. All such jobs fluctuated on purely daily need basis.

14. The applicants had filed O.A. No. 616/1998 before this Tribunal for regularization of their services with other benefits and the said O.A. was disposed off by the Tribunal vide order dated 17.12.2003 with a direction that, "if the applicants are working under the respondent continuously for a period of 240 days in a year and if they have complied with the conditions of the scheme for regularization, the respondents shall consider their case for regularization applying the principle laid down by this Tribunal in O.A. Nos. 769 of 1998 and O.A. No. 770 of 1998 decided on 20.07.2000 and also the orders of Hon'ble High Court dated 22.01.2003 passed in W.P. No. 6085 of 2003 especially the

observations of the Hon'ble High Court in Para 7 & 8 of the order, within a period of three months from the date of receipt of copy of this order. In compliance of the order of the Tribunal also applying the principle passed in orders dated 20.07.2000 in OAs Nos. 769 & 770/1998, the name of the applicant have not been considered for regular appointment during next three years from the date of passing orders dated 20.07.2000 due to non availability of regular vacancy in Military Farm Department. However, some vacancies have been raised during the year 2016 and individuals who are senior to the applicants and have already been granted temporary status, their services have been regularized in compliance of the order of Hon'ble High Court dated 22.01.2003.

15. In Para-wise reply, the replying respondents has submitted that in view of the observations made by the Hon'ble High Court in Writ Petition No. 6085 of 2000 especially the observations in para 7 & 8 of the order, applicants have been engaged as contract labour and still working on the same status. Accordingly, the speaking order dated 30.04.2004 also issued to the applicants stating that, their service will be regularized, as and when suitable vacancy arises in the department.

16. It has been specifically submitted by the replying respondents that the applicants were engaged as contract labour

and still working in the same status and have not been granted permanent status.

17. The applicants have filed rejoinder to the reply filed by the respondents. The applicants have reiterated its earlier stand as taken in the Original Application. It has been submitted by the applicants that in spite of vacancies being there across the nation the applicant's being working regularly they are not being regularized. It has been specifically mentioned in the rejoinder that juniors are being considered i.e. Shankar Rao and Shakun Bai and have been regularized with effect from 16.04.2016 at Military Farm, Jabalpur. The seniority list is annexed as Annexure A-8. So the Original Application deserves to be allowed.

18. The replying respondents have filed their additional reply on 30.01.2018 to the rejoinder filed by the respondents where they reiterated its earlier stand taken in the main reply.

19. Another additional reply has been filed by the replying respondents on 14.02.2019 and some new material facts brought on record which could not be brought on earlier. It is submitted by the replying respondents that the applicant has discharged his duties under the respondent establishment since 1989 till 1997 as a casual seasonal labour which is evident from document vide Annexure A-1. Later on after the year 1997, the applicants is discharging his

duty on outsourcing job basis under labour contractor time to time. The contract period is renewed time to time after a period of every one year. A copy of license of contractor who has supplied the labour to the Military Farm Establishment is annexed as Annexure R-1.

20. As per Govt. of India letter dated 28.07.2017 with a direction to close all 39 Military Farms and due to closer of all there is no work for employment to the casual labour/CLTS, hence at present the Military Farm Establishment is closed down and all animal of Military Farm under the Head Quarter have already been transferred to the State Govt., hence at present there is no work in the Military Farm Establishment. In this regard a letter dated 22.01.2019 was written to the Military Farm, Jabalpur which is annexed as Annexure R/2.

21. Since the applicant is working under the contract as engaged by the contractor, therefore he is outsource labour, therefore he does not come under the purview of casual labour or temporary labour. Therefore, this Original Application is misconceived and without any substance.

22. Another additional reply has been filed by the respondents on 26.02.2019 whereby it has been submitted by the respondents that Basorilal, Shankar Rao and Shakun Bai have been engaged as

casual labour and they worked against permanent establishment on vacant post and continuously working for more than three years. Therefore, these persons were granted temporary status in the year 1996. The applicant and other persons were retrenched with effect from 01.09.1998 and all other casual labour have also been retrenched on 01.09.1998 due reduction of permanent establishment of Military Farm Jabalpur. All the seasonal work temporary employees carried out on outsourcing basis with effect from 01.09.1998. The service of Basorilal, Shankar Rao and Shakun Bai along with other CLTS have been regularized by the Military Farm Jabalpur in compliance of order of this Tribunal as well as order of Hon'ble High Court vide order dated 22.01.2003 passed in Writ Petition No. 6085/2000 and order passed in Writ Petition No. 4742/2000 dated 08.03.2016.

23. Heard the learned counsel for the parties and have also gone through the averments made in the pleadings.

24. From the pleadings it is clear that the applicants are working as Gwala, Calfmen & Lab attendant as casual labourers on muster roll basis. It is also admitted fact by both the parties that the applicants have filed Original Application No. 616/1998 before this Tribunal for their regularization. It is also admitted fact that other counter parts of employees had preferred Writ Petition No.

6085/2000 (Shiv Kumar & Ors. vs. Union of India) and the said Writ Petition was decided by the Hon'ble High Court on 22.01.2003 whereby, specific directions were issued to the respondents. The relevant portion of Writ Petition reads as under:-

“7. We have been apprised by Mr. D'silva that certain persons have been given work on contract basis but the petitioners are not given the same. Mr. Mrigendra Singh ahs seriously disputed the same. It is also noticeable that the Department has not assailed the order of the Tribunal. However, it is submitted by Mr. D'Silva that a review petition has been filled. Mr. Mrigendra Singh has submitted that review petition has been dismissed by the Tribunal. Keeping in view the entire scenario we are inclined to direct as under:

- (a) The petitioners shall be offered the contract employment by the respondents within a period of eight weeks from today.
- (b) The petitioners shall not grudge to undertake any kind of work which is to be performed in the Military Farm. We may mention here that Mr. D'Silva submitted that seasonal jobs, namely, sowing of crops, cutting of fodder, irrigation of field, cleaning of channel, loading/uploading of manure/manuring of fields, stacking of hay/bhoosa during flush season, issue of bhoosa/fodder, thatching of hay, chaffing of fodder and removal of bushes are given on contract basis and the petitioners shall be liable to do these kind of jobs. We have been apprised that apart from these jobs nothing is done on the contract basis. It is submitted by Mr. Mrigendra Singh that milking is also done on contract basis after retrenchment of petitioners. If it is done by the permanent staff we have nothing to say but if it is done by the contract basis it should be stopped immediately.

- (c) The petitioners shall be paid salary keeping in view the daily wage structure as presently prevalent.
- (d) All possible steps shall be taken to regularize the petitioners whenever vacancy arises in any part of India.
- (e) By virtue of contract employment the temporary status of the petitioner shall not be modified and they shall enjoy the same status for the purpose of claim of regularization as directed by the Tribunal.
- (f) No other contract employees shall be appointed till the petitioners are appointed as mentioned in Item No. (a)
- (g) Any contract labourer so employed by the respondents if is senior to the petitioners shall not be terminated.
We may clarify that at times there may not be regular posts but it does not necessarily mean that the employer can take recourse to avoid above directions.

We have issued the aforesaid directions as the Union of India has not assailed the order passed by the Tribunal.

8. With the aforesaid direction the Writ Petition stand disposed of without any order as to costs.”

25. It is also admitted fact that this Tribunal in Original Application No.616/1998 also vide notice dated 17.12.2003 with specific direction to the respondents to consider the case for regularization applying the principles as laid down in Para 7 & 8 of the order of the Hon’ble High Court.

26. The contention of the applicant is that the respondent department has not complied with the order of the Tribunal and the judgment of the Hon’ble High Court whereby the respondents have

given undertaking for consideration for regularization when suitable vacancies arise.

27. The next contention of the applicant is that the respondents have not taken any action for regularization in spite of undertaking and numbers of vacant post inspite the fact that the applicant has completed more than 20 years as labour on the basis of daily wager.

28. On the other side, the respondent department has raised the preliminary submission regarding the maintainability of the Original Application on the ground that the applicant at some point of time were engaged for purely seasonal job as irrigation labourer for repairing of fencing in cultivation and stack yard area, cleaning of nalah as well as cutting of green fodder as per requirement and paid minimum wages. The replying respondents have specifically submitted that the name of the applicant have not been considered for regular appointment during next three years from the date of passing of order dated 22.01.2003 due to non-availability of regular vacancy in military farm department. Thus, some vacancies have been raised during the year 2016 and individuals senior to the applicant and have already been granted temporary status, their services have been regularized in compliance of the order of Hon'ble High Court dated 22.01.2003. It is specifically submitted

by the replying respondents that in view of the observations made by the Hon'ble High Court in Writ Petition No. 6085 of 2000 especially the observations in para 7 & 8 of the order, applicants have been engaged as contract labour and still working on the same status. Accordingly, the speaking order dated 30.04.2004 also issued to the applicants stating that, their service will be regularized, as and when suitable vacancy arises in the department.

29. The respondent department by way of additional reply has brought on record the new facts and has submitted that the applicant has discharged his duties under the respondent establishment since 1989 till 1997 as a casual seasonal labour which is evident from document vide Annexure A-1. Later on after the year 1997, the applicant is discharging his duty on outsourcing job basis under labour contractor time to time. The contract period is renewed time to time after a period of every one year. A copy of license of contractor who has supplied the labour to the Military Farm Establishment is annexed as Annexure R-1.

30. It has been specifically submitted by the replying respondents that as per Govt. of India letter dated 28.07.2017 there is a direction to close all 39 Military Farms and due to closer of all there is no work for employment to the casual labour/CLTS, hence at present the Military Farm Establishment is closed down and all

animal of Military Farm under the Head Quarter have already been transferred to the State Govt., hence at present there is no work in the Military Farm Establishment. In this regard a letter dated 22.01.2019 was written to the Military Farm, Jabalpur which is annexed as Annexure R/2. So since the applicant is working under the contract as engaged by the contractor, therefore he is outsource labour, therefore he does not come under the purview of casual labour or temporary labour.

31. The counsel for the respondents has relied upon the judgment passed by our Co-ordinate Bench at Allahabad in Original Application No. 331/01555/2017. The Co-ordinate Bench has relied upon the judgment of the Hon'ble Apex Court in the matters of **Surinder Prasad Tiwari vs. U.P. Rajya Krishi Utpadab Mandi Parishad**, 2006 Vol.7 SCC 694. The relevant para of the said O.A. reads as under:-

“(A)In view of the clear and unambiguous constitutional scheme, the courts cannot countenance appointments to public office which have been made against the constitutional scheme. In the backdrop of constitutional philosophy, it would be improper for the courts to give directions for regularization of services of the person who is working either as daily-wager, ad hoc employee, probationer, temporary or contractual employee, not appointed following the procedure laid down under Article 14, 16 and 309 of the Constitution. In our constitutional scheme, there is no room for back door entry in the matter of public employment.

(B) P.U. Joshi vs. Accountant General Ahmedabad and Ors., 2003(2) SCC 632 the Hon'ble Supreme Court again

observed that:- “Creation and abolition of Posts and Regularization are a purely Executive Function, hence, the Court/Tribunal cannot create a post where none exists. Also, we cannot issue any direction to absorb the respondents or continue them in service or pay them salaries of Regular employees, as these are purely Executive functions. This Court/Tribunal cannot arrogate to itself the powers of the executive or legislature. There is broad separation of powers under the Constitution and the judiciary too, must know its limit.”

32. In the instant case, as per pleadings the applicants were engaged on daily wage basis but in the year of 1998 as per policy of Govt. of India they were engaged on contract basis through out source, which is clear as per Annexure R-1 & R-2. Moreover, at present as per Govt. of India letter dated 28.07.2017, there is a direction to close all 39 military farms and due to closer of farm there is no work for employment to the casual labour and all the animals have been transferred to State Govt.

33. The law is well settled that the daily wagers are not holding the substantial post and the daily wage employees are not employees either permanent, or temporary, inasmuch as, their employment is for a day and accordingly, commence in the morning and comes to end in the evening. As the farm as been closed down, which is a policy matter of the govt. So the instant case is fully covered by the judgment passed by the Co-ordinate Bench at Allahabad in Original Application No. 331/01555/2017.

34. In view of the above, we do not find any reason to interfere with the action of the respondent department. Resultantly, the Original Applications are dismissed. No order on costs.

(Ramesh Singh Thakur)
Judicial Member

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(Navin Tandon)
Administrative Member