

CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH
KOLKATA



Original Application No.832 of 2008.

Present : Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

Umesh Koiry and others

.....Applicants

-Vs -

Union of India & ors. (Passport office)

.....Respondents

For the petitioner : Mr A.Chakraborty, Counsel

For the respondents : Mr P. Mukherjee, Counsel

Mr Nirmal Roy, Counsel for private respondent.

Date of Hearing : 09.05.2016.

Date of Order : 13-05-2016

ORDER

JUSTICE V. C. GUPTA, JM:

This is an application under Section 19 of the Administrative Tribunals Act, 1985

seeking the following reliefs :

- a) Speaking Order No.KOL/551/8/07 dated 17th September 2007 issued by the Regional Passport Officer, Kolkata is bad in law and as such therefore the same should be quashed.
- b) An order do issue directing the respondents to re-engage and also to absorb the applicants under the respondents and to grant them all consequential benefits.
- c) Leave may be granted to add the other applications jointly in the Original Application under rule 4(5)(a) of the CAT (Procedure) Rules, 1987.

2. The brief facts for disposal of this case are that the applicants were engaged as Casual Labourers with the respondents after inviting the names through Employment Exchange for a period of 3 months i.e. from 22.08.1996 as per appointment letters issued by Regional Passport Officer, respondent No.3. The applicants worked against the initial order of appointment dated 22.08.1996 till 31.12.1996 with an intermittent break

of one day. After 31.12.1996 the applicants were again engaged as Casual Labourers from 01.02.1997 and they worked till 14.08.1997. They were again engaged as Casual Labourers on 19.10.1997 and they worked till 18.04.1998. Therefore, the applicants worked from 22.08.1996 to 18th April, 1998 but with breaks. Thereafter, they were not engaged and some other persons who were made private respondents in this application were engaged as casual labourers. Aggrieved by the action of the respondents the O.A No.1190/1998 has been filed. The reliefs claimed in that application were extracted herein below :

- "a) The applicants be granted leave to file the application jointly under Section 4(5)(a) of CAT (Procedure) Rules, 1987, as they are equally circumstanced.
- b) The respondents be directed to confer Temporary Status on the applicants under grant of Temporary Status and Regulation Scheme with effect from 1-6-97 when the applicants completed 240 days.
- c) The respondents be directed to give all the benefit after conferment of Temporary Status.
- d) The respondents be directed to appoint the applicants in the posts to which they were originally appointed and pay accordingly terminating the services of new recruits if necessary."

The O.A was finally disposed of on 13.12.2006 with following observations and direction to the respondents :

"6. We have carefully examined the averments made by the learned counsel for the applicants and the respondents. The services of the applicants had been discontinued without informing the applicants. When there was necessity of work on casual basis, the applicants should not be terminated. Even the applicants have no legal right when they have not fulfilled the condition. The applicants are not entitled to grant of Temporary Status and regularization. However, the applicants have submitted the representation as per Annexure A16 dated 30-4-97. The respondents are directed to consider the representation of the applicants and engage them in accordance with the scheme and also on the basis of FAX message. The respondents are directed to

consider the representation within a period of 4 months from the date of receipt of this order.

7. With the above observation the OA is disposed of. No costs."

3. The respondents to that O.A dissatisfied with the order filed a Writ having WPCT No.634/2007. The same was decided on 23.07.2007, the order is extracted below :

"We have heard the learned Advocates for the parties and have gone through the impugned order. We find that hardly there is any scope to interfere with the impugned order. Mr. Roy submits that department concerned by act and conduct has taken a decision engaging the petitioners on their intimation noted there by the learned Tribunal. According to him, there is no need to take decision on the representation dated 30th April, 1997.

We are of the view that when a representation has been made and the learned Tribunal has directed to consider the same, we think that a formal decision has to be taken. Accordingly, the application is disposed of allowing the petitioners to take a formal decision in this regard and communicate the same to the respondents if not done formally in writing, within a period of eight weeks from the date of communication of this order.

Urgent Xerox certified copy of this order, if applied for, be given to the parties."

The Respondent Regional Passport Officer, Kolkata then, vide order dated 17.9.2007 decided the representation of the applicant. The same is also extracted below :

I, the understand have gone through the contents of the order passed by the Hon'ble Justice Sri Shantappa and Hon'ble Justice Dr A.R. Basu, Members of the Central Administrative Tribunal on 13.12.2006 directing interalia to consider the representation being Annexed A-16 dated 30.4.7 and engage them in accordance with the scheme and also on the basis of Fax message. The said order was challenged before the Hon'ble High Court Calcutta being WCT No. 634 of 2007 which was heard by Hon'ble Justice Sri Kalyan Jyoti Snegupta and Hon'ble Justice Sri Manik Mohan Sarkar. It was contended by the Department before the Hon'ble Court that the representation dated 30.4.97 was duly considered and you were allowed to work till 18.4.98 on as and when required basis and the said representation dated 30.4.97 was



thus disposed of by the authority to the best of knowledge of all of you. But this fact was not spelt out by you before the Hon'ble Tribunal though you have made statement in para 2(g) of your application before the Central Administrative Tribunal that you worked as casual labourers from 22.8.96 to 18.4.98 with some intermittent breads in service and your service was terminated with effect from 19.4.98. You have also mentioned in para 2 of the application before the Central Administrative Tribunal that you made a joint representation on 30.4.97 for consideration of your name for retention in service beyond 31.5.97 and the authority upon consideration your said representation retained you till 18.4.98. Upon hearing the Division Bench directed to take a formal decision in this regard and communicate the same to the respondents if not done formally in writing within a period of eight weeks from the date of communication of the order.

Accordingly, I dispose of the petition dated 30.4.97 formally as per solemn order of the Hon'ble Court though the same was disposed of prior to 31.5.97 redressing your grievances by allowing you to work till 18.4.98 and thereafter there was no scope for further extension as per the policy of the Government."

After disposal of the representation the applicants filed this O.A seeking the aforesaid reliefs.

4. The official respondents contested the case by filing their reply and stated there that the casual labourer/workers are not engaged against any regular/or vacant post. They were engaged as and when specific need had arisen and after the need is over they were disengaged. The next casual labourers were engaged on the basis of requisition sent to the Employment Exchange in view of Fax message of 15th June 1998. Hence first casual labourers/workers were appointed as per need. It has been further stated that name of Smt Gouri Guin was considered as her name was sponsored along with other candidates by Employment Exchange. Question of discrimination is baseless.

5. It has also been stated that in entire round of litigation the applicants did not challenge the engagement of private respondents so they cannot challenge the same in subsequent application. The applicants thus have no right to claim engagement.

6. Rejoinder was filed by applicants reiterating the averments made in the O.A. no reply or affidavit has been filed by private respondents.

7. We have heard the learned counsel for the parties. It has been submitted by learned counsel for the applicant that Mrs. Gouri Guin was re-engaged who was earlier engaged along with applicants but the applicants were not engaged. The applicants in no way inferior to the subsequent appointees in any respect and they have been discriminated without any basis in giving the employment again by re-engaging them.

8. It has been contended by learned counsel for the respondents that applicants have no legal right to ask the respondents to re-engage them. They have not acquired even the temporary status and they have been engaged as casual labourer and not against any existing post, vacancy. So relief cannot be granted as claimed in this O.A.

9. It is not in dispute that the applicants have not acquired the temporary status. They have not appointed against any clear vacancy or post in the department. They were only engaged as casual labourer and that too as per need of the work. Being casual labourer they cannot claim that in case of re-engagement of casual labourer made by the department they can only be appointed and not any others. We are of the view that in this matter the applicants ~~who~~^h have no legal, fundamental or statutory right to be appointed as a casual labourer. They have not continuously worked for 206/240 days in a year and they have not acquired any temporary status in terms of the Scheme. It is also not in dispute that in earlier litigation the applicants were fully aware that private respondents were engaged by the department but the applicants did not chose to challenge their appointments. Hence in view of the principle contained in Order 2 & 3 CPC the applicants are ~~not~~^h debarred to challenge the appointment of private respondents, that too, after lapse of more than 8 years.



Therefore, application lacks merit and accordingly dismissed. There shall be no order as to costs.

(Jaya Das Gupta)
Administrative Member

(Justice V.C. Gupta)
Judicial Member

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