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**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.1347/2003
M.A.No.222/2007

Thursday, this the 8th day of February 2007

**Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Smt. Neena Ranjan, Member (A)**

Shri Brahama Singh s/o Shri Raja Ram Singh & others

..Applicants

(By Advocate: Shri SS Tiwary)

Versus

The Chairman, CWC
Sewa Bhawan, New Delhi & another

..Respondents

(By Advocate: Shri AK Bhardwaj)

1. To be referred to the Reporters or not? yes
2. To be circulated to other Benches of the Tribunal or not? yes

S. Raju
(Shanker Raju)
Member (J)

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Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Smt. Neena Ranjan, Member (A)

1. Shri Brahma Singh s/o Shri Raja Ram Singh
2. Kartar Singh s/o Shri Sardar Singh
3. Rajinder Singh s/o Shri Ram Kishan
4. Om Prakash s/o Shri Rameshwar Rail
5. Khub Lal s/o Shri Budh Ram
6. Karan Singh s/o Shri Nathu Singh
7. Shahzad s/o Shri Naushad Ali
8. Raj Kumar s/o Shri Surjan Lal
9. Rambir s/o Shri Brahma Singh
10. Krishan Murari s/o Shri Jaswant Singh
11. Pramod Kumar s/o Shri Bhim Singh
12. Satish Kumar s/o Shri Chamaru Ram
13. Jitender Ram s/o Shri Rameshwar Ram
14. Puran Singh s/o Shri Balbir Singh
15. Randhir Singh s/o Shri Prithi Singh
16. Vijay Kumar s/o Shri Jagdish Prasad
17. Narender Kumar s/o Shri Khushi Ram
18. Radhey Shyam s/o Shri Sadhu Ram
19. Nand Ram s/o Shri Goverdhan
20. Virender Singh s/o Shri Gaddar Singh
21. Jai Prakash Singh s/o Shri Shyam Bahadur
22. Sheikhar s/o Shri Subhan
23. Shri Suraj Dev Yadav s/o Shri Chandma Yadav

24. Shri Sanjay s/o Shri Satbir

25. Shri Maha Lal s/o Shri Ram Bahadur

All working as Casual Labourers
Under Director, PCP Directorate
Central Water Commn.
RK Puram, New Delhi-66

26. Mahinder Singh s/o Shri Mohan
working under Casual Electrician
under the same officer as mentioned above

..Applicants

(By Advocate: Shri SS Tiwary)

Versus

1. The Chairman, CWC
Sewa Bhawan, New Delhi

2. Shri Director, PCT Directorate
CWC, RK Puram, New Delhi

..Respondents

(By Advocate: Shri AK Bhardwaj)

O R D E R (ORAL)

Hon'ble Shri Shanker Raju, Member (J):

Heard the learned counsel for the parties.

2. Controversy with regard to regularization of casual labourers was put at rest in **Union of India & another v. Mohan Pal & others**, (2002) 4 SCC 573 wherein it is ruled that the DOPT Scheme promulgated on 10.9.1993 is only one time measure and not as an on-going scheme and only those casual workers, who were possessing eligibility as on 1.9.1993, are entitled for consideration for regularization.

3. Keeping in light the above, the brief factual matrix of the present case transpires that the applicants had earlier approached the Tribunal by filing OA-1623/2000, which was disposed of on 9.11.2000, wherein it was directed to grant temporary status to them

under the DOPT scheme of 10.9.1993 and further consideration of regularization. This has been done on the premise that the High Court of Delhi in CW-963/98 vide order dated 22.9.1999 held the aforesaid scheme to be an on-going scheme. As a result thereof, a writ petition preferred against the order of this Tribunal was dismissed on 10.4.2001 and CA-638/2002 on 27.9.2002, which has attained finality. As a result thereof, applicants were accorded temporary status with all consequential benefits.

4. An order passed in March 2003 withdrew the benefits of temporary status from the applicants on the ground that the claim was only a one-time measure and not being an on-going, as such they are not entitled for the relief claimed. Accordingly, the present OA filed by the applicants to challenge the aforesaid order of the respondents was earlier dismissed on 16.10.2003 by the Tribunal holding that DOPT scheme being one-time measure as upheld by the Apex Court, withdrawal of temporary status does not suffer from any legal infirmity.

5. Against the aforesaid order, a writ petition was preferred by the applicants, i.e., CW-7036/2003 before the High Court of Delhi wherein an order passed on 12.4.2005 remanded back the matter to the Tribunal to take up the matter afresh interpreting the paragraph 11 of **Mohan Pal's** case (supra).

6. In this view of the matter, Shri SS Tiwary, learned counsel for applicants contended that the only interpretation, which could be accorded in its literal and grammatical sense to paragraph 11 of **Mohan Pal's** case (supra), though the decision of the Apex Court

cannot be interpreted, like a statute, yet the ratio *decidendi* of the aforesaid would clearly transpire that there is no distinction between the casual workers, who had been accorded the temporary status on the assumption of an on-going scheme by the respondents themselves *suo moto* or the temporary status accorded by the Tribunal or the Courts on this assumption. Accordingly, what has been protected in **Mohan Pal's** case (supra) without any explicit distinction between classes of temporary status is that it has to be implied that all those, who have been accorded temporary status on the assumption of on-going scheme, would not have to be stripped of the temporary status.

7. In such view of the matter, the learned counsel for applicants has referred to a decision of the Tribunal in **Yog Raj & others v. Union of India & another** (OA-144/2004) decided on 5.2.2004 wherein the aforesaid issue when dealt with this aspect of the matter that the decision according temporary status in that case when affirmed by the High Court and also in the decision in **Mohan Pal's** case (supra), as per paragraph 11, laid down the ratio as to protection of temporary status of casual workers, who had been conferred the temporary status on assumption of on-going scheme. Accordingly, interpreting paragraph 11 of the aforesaid decision, respondents have been observed to be obligated to consider paragraph 11 and temporary status granted, cannot be stripped of in their cases.

8. A reliance has been placed in **Yog Raj's** case (supra), which has passed based on the decision of the Apex Court in **Rupa Ashok Hurra v. Ashok Hurra**, (2002) 4 SCC 388 wherein it has been held that the law declared by the Apex Court is the law of the land and is binding

precedent for all Courts and Tribunals. The aforesaid decision when carried out by the respondents before the High Court of Delhi was upheld in WPs-22959-60/2005 on 29.8.2006 with the following observations:-

"Learned counsel for the respondent Mr. Tiwari has brought our attention to order passed by the Hon'ble Supreme Court in Civil Appeal No.7795/2003, titled as "Union of India & Anr. Versus Raj Kumar & Ors.". He submits that the present case is purely covered by the said decision. In the present case temporary status had been granted on 14th September, 2001 in pursuance of the order passed by the Tribunal. Following the judgment of the Hon'ble Supreme Court in the above Civil Appeal No.7795/2003, the temporary status granted to the respondents who had rendered continuous service for atleast 240 days can't be stripped of."

The present writ petition accordingly, is dismissed.

The temporary status of the respondents therefore subsists."

9. CA-7795/2003 preferred against the order passed by the High Court has also laid down the findings of the Tribunal to finality vide order dated 27.4.2006 with the following observations:

"The respondent having granted temporary status w.e.f. 14.9.2001 vide order dated 31.10.2001, in terms of the judgment of this Court in Union of India and Anr. Vs. Mohan Pal and Ors- (2002) 4 SCC 573, the respondent should not be deprived therefrom. Para 11 of the said judgment states as follows:-

In Civil Appeals Nos. 3168, 3182, 3179, 3176-78, 3169 of 2002 arising out of SLP (Civil) No. 2224/2000, SLP (Civil) No. 13024/2001, SLP (Civil) No. 1563/2001, SLP (Civil) No. 17174-17176/2000, SLP (Civil) No. 2151/2000, 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). We also make it clear that those who have already been given 'temporary' status on the assumption that it is an ongoing Scheme shall not be stripped of the 'temporary' status pursuant to our decision."

The appeal is dismissed accordingly."

10. In the light of above, learned counsel would contend that once this issue has been finalized by the Apex Court, the decision rendered would be a binding precedent under Article 141 of the Constitution of India and any decision of the subordinate Courts, including that of Full Bench of High Court, would have to give way and would be impliedly stood overruled.

11. On the other hand, Shri AK Bhardwaj, learned counsel for respondents stated that specifically in the present case the High Court has remanded back the OA for interpretation of paragraph 11 of **Mohan Pal's** case (supra) to the Tribunal and has contended that in CWP-1448/2002 on 10.5.2002 the Full Bench of the High Court dealt with the issue as to withdrawal of temporary status and in such view of the matter, referring to paragraph 11 of the decision in **Mohan Pal's** case (supra), the following observations have been made:-

"However in the present case the petitioner had not granted the 'temporary' status to the respondent. The respondent had approached the learned Tribunal which gave the directions to this effect in the impugned judgment. The petitioner has challenged the same on the ground that the Scheme in question was not an on going one. Therefore it is not a case where temporary status is granted to the respondent on the assumption that it was an on going scheme. Rather the impugned judgment of the Tribunal is under challenge in this petition and therefore direction contained therein has not attained finality. Rather this Court had stayed the operation of



the impugned judgment and therefore no orders are also passed by the petitioner, on the basis of impugned judgment, giving temporary status to the respondent therein.

This writ petition is accordingly allowed and the impugned judgment is set aside. No costs."

12. Learned counsel for respondents taking resort to the aforesaid would contend that as it has been interpreted that the only protected clause in **Mohan Pal's** case (supra) is for those to whom the temporary status has been conferred on the assumption of on-going scheme and would not include the casual workers, who had been accorded temporary status on the directions of the Tribunal. As such, the decision of the Full Bench of High Court, which has been affirmed in review, i.e., RA-6886/2002 by an order dated 26.7.2002 has attained finality and being binding on the Tribunal, the only interpretation, which has to be given to paragraph 11 of **Mohan Pal's** case (supra) would be the interpretation of the decision of the Full Bench of High Court and accordingly, he prays for dismissal of the OA.

13. We have carefully considered the rival contentions of the parties and perused the material on record.

14. It is trite that decisions rendered by the higher forum, including the decision of the Apex Court are not statutes. These cannot be interpreted as if the statute applying the principles of interpretation or rules made thereunder. It is only the ratio *decidendi* of a decision, i.e., the legal issue decided is relevant for the purpose. However, the High Court while remanding back the case to us took cognizance of the fact that in **Mohan Pal's** case (supra) the ratio that those who have been conferred temporary status on assumption that the said scheme is an on-going scheme, would not be stripped of the temporary status

and the decisions relied upon therein culminated into a finding as to these decisions are to be interpreted and a final decision to be arrived at by the Tribunal as to this question of law and as the earlier decision was rendered by a Single Member Bench, a pure question of law has to be dealt with by a Division Bench. Accordingly, the directions that while interpreting and considering the decision the Tribunal shall not in any manner be influenced by any of the views and observations expressed in the order, which is being set aside, leaves it upon to the Tribunal to render and arrive at its own conclusion on an independent reasoning and finding thereon recorded.

15. In compliance thereof, we find that the decision of the Full Bench cited by the learned counsel for respondents is dated 10.5.2002. Clause 4 of the scheme, which allows on eligibility conferment of temporary status upon a casual worker as on 1.9.1993, makes it a one-time measure and not an on-going concession.

16. Insofar as the persons who on the assumption of on-going concession have been conferred temporary status is concerned, the question whether this has to be stripped of from them or not, the relevant paragraph 11 of **Mohan Pal's** case (supra) is quoted below:-

"11. In Civil Appeals Nos. 3168, 3182, 3179, 3176-78, 3169 of 2002 arising out of SLP (Civil) No. 2224/2000, SLP (Civil) No. 13024/2001, SLP (Civil) No. 1563/2001. SLP (Civil) No. 17174-17176/2000, SLP (Civil) No. 2151/2000, 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). We also make it clear that those who have already been given 'temporary' status on the assumption that it is an ongoing Scheme shall not be stripped of the 'temporary' status pursuant to our decision."

17. In the light of above, what has been observed by the Full Bench of the High Court is that the respondents before the Full Bench had approached the Tribunal, which gave direction to the effect to the impugned judgment. However, when a challenge has been made on the ground that the claim is not an on-going one, it was concluded that it is a case where temporary status is granted to the respondents on the assumption that it was an on-going concession, rather the judgment of the Tribunal, which is challenged in the writ petition was yet to attain finality. In such view of the matter, in the review application filed by the aggrieved party, it has been clarified by the Full Bench of the High Court that the temporary status when not granted *suo moto* in terms of the scheme, as has been noticed in the judgment and is granted in pursuance of the directions issued by the Tribunal, no interference is called for reviewing the orders. In such an event, the High Court has given us liberty and as the decision remanding back the case to us by the High Court is post-Full Bench, the Full Bench decision not taken into consideration the remand back case is a *per incuriam* decision. However, as binding directions, we have now to interpret paragraph 11 of the decision in **Mohan Pal's** case (*supra*), which is quoted hereinabove, wherein the Apex Court has taken into cognizance the fact that those respondents before them, who were not granted temporary status, did not fulfill the condition in clause 4 and some of them were even engaged after the

commencement of the scheme but casual workers, who had rendered service for more than one year but not accorded temporary status pursuant to the directions issued by the Court, the interference in such cases has not been called for. It implies that where the person had already been granted temporary status on the assumption of on-going concession, his right is to be protected but what is not protected is the claim of those persons, who have been seeking the temporary status on assumption of on-going scheme and their cases have been turned down by the Tribunal.

18. Accordingly, the further observation, which makes it clear that the scheme is not an on-going scheme and those, who have been in possession on 1.9.1993 having fulfilled the eligibility criteria, are only entitled for grant of temporary status, is the rule. However, on reiteration, the Apex Court ruled that those, who have already been accorded temporary status on the assumption that it is an on-going scheme, shall not be stripped of the temporary status.

19. Assumption of on-going scheme can be *suo moto* or can be an assumption in law in pursuance of directions of the Court. Had there been the intention of the Apex Court to create a class within the class, i.e., the casual workers, who had been accorded temporary status on the assumption of on-going scheme and one who had been granted temporary status *suo moto* by the respondents as a mistake or had been accorded the benefit as an implication and implementation of the directions of the Tribunal, there would have been a specific finding to this effect in the judgment passed by the Apex Court. As a class general, when it is ruled that those casual workers, who had been accorded temporary status on the assumption of on-going scheme would connote and would be inclusive of both classes, i.e., the casual workers irrespective of grant of temporary status *suo moto* or by the

directions of Courts and in such view of the matter, if it is on-going scheme assumption, their right and temporary status shall have to be protected.

20. The High Court of Delhi in Full Bench has not interpreted paragraph 11 of the decision in **Mohan Pal's** case (supra) but in the order passed in review, an observation as to assumption of on-going scheme would be vis-à-vis those to whom temporary status has been conferred *suo moto*, is contrary to the decision of the Apex Court subsequently.

21. In **Yog Raj's** case (supra), the Tribunal as well as High Court of Delhi have interpreted aforesaid paragraph 11 and in a similar circumstanced case protected the temporary status.

22. The Full Bench decision of the High Court has also taken into cognizance the fact that when the temporary status was granted by the Tribunal on the assumption of on-going scheme, the same being assailed in the High Court has not attained finality. But in **Yog Raj's** case (supra), the issue has attained finality by rejection of writ petition and also rejection of CA by the Apex Court. Even in the present case, earlier the decision of the Tribunal when carried to the High Court and ultimately to the Apex Court has attained finality. Any decision of the Apex Court, which adversely affected the right, would have to be always prospective in nature as to the prescription of prospective ruling. It is the underlined object and the principle, which has culminated into a direction of the Apex Court to protect the right of the person to whom the temporary status has been conferred. Accordingly, when the matter of **Yog Raj** had come up before the Apex Court, the directions issued making it clear by reiterating the direction in **Mohan Pal's** case (supra) to the effect that those casual

workers, who had already been accorded temporary status on the assumption, i.e., it is an on-going concession, when not accompanied by distinction on assumption of on-going scheme either by the Department itself or by an implication of the Court's direction. In such view of the matter, reading or interpreting the Apex Court's decision in any other manner would amount to an offence to the doctrine of precedent under Article 141 of the Constitution of India. By interpreting, though we cannot interpret the decision of the Apex Court, yet when an interpretation goes contrary to the *ratio decidendi*, it would amount to contempt of the Apex Court under law.

23. As the decision of the Apex Court in **Union of India & another v. Raj Kumar & others** (CA-7795/2003) decided on 27.4.2006 has impliedly overruled the finding of the Full Bench of the High Court, we hold that the applicants, who had been accorded temporary status on the assumption of on-going scheme on the directions of the Tribunal and its implementation are the protected class of casual workers to whom the temporary status once conferred, has been ordered not to be stripped of. Accordingly, the above is our understanding and finding in respect of the *ratio decidendi* in paragraph 11 of the decision of the Apex Court in **Mohan Pal's** case (supra).

23. In the result, for the foregoing reasons, OA is allowed. Impugned order is set aside. Consequential benefits to follow in accordance with law. No costs.

NRanjan
(Neena Ranjan)
Member (A)

S. Raju
(Shanker Raju)
Member (J)