

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1707/2003

New Delhi, this the 14th day of July, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

1. Umrav Singh Rawat,
Casual Labour,
S/o Shri Prem Singh Rawat,
R/o B-214, New Seemapuri,
Delhi - 110 095
2. Rakesh,
Casual Labour,
S/o Shri Misterpal,
R/o Holi-ka-Chowk,
Room No.11,
Village Mahipalpur, New Delhi
3. Mukesh Kumar Singh,
Casual Labour,
S/o Shri Jai Kishore Singh,
R/o A-142, Phase-I, Aya Nagar,
New Delhi
4. Trilok Singh,
Casual Labour,
S/o Late Shri Narayan Singh,
Respondent No. 227, Karn Vihar,
Nangloi, New Delhi
5. Sunil Roa,
Casual Labour,
S/o Shri Manik Rao
R/o F-2075, Netaji Nagar,
New Delhi
6. Suneeta,
Casual Labour,
W/o Shri Rajendra,
R/o Saraswati Camp
Jhuggi No.80, Sector III
R.K. Puram, New Delhi

.... Applicants

(By Advocate : Shri Abinesh K. Mishra)

Versus

1. Union of India through
Ministry of Finance,
Govt. of India,
North Block, New Delhi,
through its Secretary
2. Directorate General of Central Excise
Intelligence, West Block-VIII,
Wing No.VI, 2nd Floor,
R.K.Puram, New Delhi
through its Director General

.... Respondents

(By Advocate : Shri S.M. Arif)





(2)

O R D E R

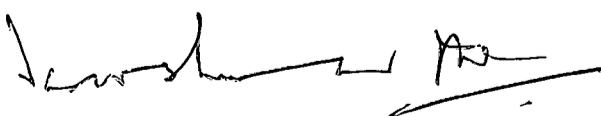
The applicants have filed this OA seeking directions being given to the respondents to consider their case for regularisation/absorption and also to allow them to continue to work till their regularisation. They have also prayed for emoluments being paid to them on the basis of the principles of equal pay for equal work.

2. The applicants have claimed that they have rendered continuous service from 1996, 1997 and 1998 onwards, i.e., for more than 5 years to the respondents' organisation. They were engaged in dusting/cleaning/sweeping work. According to them, the said work is of perennial nature, though their services were utilised as on daily wage/casual basis. It was in the year 1999 when they were asked to sign an agreement which stipulated that their services would be utilised on contract basis and the same would be liable to be terminated at any time without giving any notice. On their refusal to sign the said agreement and on their having been threatened that their services would be terminated, they approached this Tribunal vide OA No.2543/1999 for regularisation of their services. The said OA was decided by the Tribunal with a direction to the effect that they were entitled for grant of temporary status and then for regularisation as per the Scheme on the subject dated 10.9.1993. While this order was upheld by the Hon'ble High Court of Delhi vide their order dated 3.8.2000 in CWP 4229/2000, the respondents preferred an SLP (C) No.11627/2001 against the said order and the same was allowed vide order dated 23.8.2002 giving reference to

the decision of the Hon'ble Supreme Court in UOI vs. Mohan Pal & Ors (2002 4 SCC 573) in which it was held that 'the Scheme of the Government of India dated 10.9.1993 cannot be held to be an on going Scheme'. This led to the temporary status already granted to the applicants being taken away, but they were allowed to continue in their respective services. They are, however, apprehending that their services might be terminated at any time and hence this OA.

3. The applicants have explained that they have been engaged by the respondents against vacant and sanctioned posts. They have, however, alleged that the respondents followed the method of appointments for fixed periods with artificial breaks only to deny them their right to be considered for regularisation of their services. In this connection, they have referred to the decisions of the Hon'ble Supreme Court in the cases of State of Haryana vs. Piara Singh & Ors. and Gujarat Agricultural University vs. Rathod Labhu Bechar & Ors. It was in keeping with the principles as laid down by the Hon'ble Supreme Court in the said cases that their OA No.2453/1999 was allowed by this Tribunal with a direction to the respondents to consider their cases for grant of temporary status and for regularisation as per the Scheme of 10.9.1993, as has been explained in the foregoing paragraphs. The rest of the events which followed are part of the submissions of the applicants.

4. The claims of the applicants for regularisation of their services from respective years after having rendered



services for more than 5 years continuously against jobs which were perennial in nature are essentially based on the decision of the Hon'ble Supreme Court in Piara Singh's case (supra). They have questioned the decision of the respondents to have engaged persons on contract basis when the need is perennial in nature, which, according to them, is an unfair labour practice and also violative of Articles 14, 16 and 21 of the Constitution of India. They have alleged that the action of the respondents in retaining them in their service as on daily/casual basis without regularising their services for several years when the nature of job involved has been perennial is simply arbitrary and unreasonable.

5. The learned counsel for the applicants has also placed reliance on the decisions of the Hon'ble Supreme Court in (i) Dharwad Distt. PWD literate Daily Wage Employees Association vs. State of Karnataka and Ors (1990) 2 SCC 396 in which, among other things, the principle of equal pay for equal work and providing security for service by regularising casual employment within a reasonable period have been referred to as having been unanimously accepted by the Hon'ble apex Court as a constitutional goal to our socialistic polity; (ii) Rattan Lal & Ors vs. State of Haryana & Ors (1985) 4 SCC 43 in which, among other things, it had been observed that ad hoc teachers were subjected to unreasonable and arbitrary hire and fire policy and that such policy of ad hocism followed by the State Government for a long period resulted in breach of Articles 14 and 16 of the Constitution of India; (iii) Karnataka State Private



College Stop Gap Lecturers Assn. vs. State of Karnataka (1992) 2 SCC 29, in which directions were given for continuing the services of such teachers as had been employed on temporary basis and payment to them on par with regular teachers under the principle of equal pay for equal work; (iv) Bhagwati Prasad vs. Delhi State Mineral Development Corpn (1990) 1 SCC 361, in which, among other things, it had been upheld that the question of the applicants possessing minimum qualification would be rather different for appointment but not at the stage of confirmation when workers have gained long practical experience; and (v) Sub Inspector Roop Lal and Anr. vs. Lt. Governor (2000) 1 SCC 644, in which, among other things, it had been held that if deputationists were not to be given benefit of service rendered by them on equivalent posts in their parent department, they should have been informed of it so that they could decide to seek or not to seek permanent absorption.

6. The respondents have, however, claimed that the application is barred by res judicata, as the same applicants had earlier filed OA No. 2453/1999 for similar relief. In this connection, they have cited the provisions of Order 2 under 2 C.P.C. which reads as under:

"Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished."

7. Giving replies to the submissions made in individual paragraphs, the respondents have submitted that



while the Tribunal had decided OA No.2543/1999 on the basis of DOP&T's Scheme of 10.9.1993 vide their order as passed on 23.3.2000, and while the same was upheld by the Hon'ble High Court of Delhi in CWP No.4229/2000 as passed on 3.8.2000, the respondents in the said OA/CWP filed a special leave petition before the Hon'ble Supreme Court, who vide their order dated 23.8.2002 observed that the DOP&T Scheme of 10.9.1993 was not an on going scheme on the basis of law as laid down by the Court in Union of India vs. Mohan Pal and Others and accordingly they withdrew the temporary status granted to the applicants w.e.f. 30.5.2003 in the light of the above decision of the Hon'ble apex Court. They have, therefore, denied that the applicants were in continuous service of the respondents from 1996 to 1998 and that there were no breaks in their service from time to time. They have also referred to the fact that there was a ban on the appointment of casual/daily wagers in terms of Ministry's communication and that was why the applicants were engaged on contract basis from time to time subject to mandatory breaks. Placing reliance on the decisions of the Tribunal in the case of Shri Raj Kamal and Others vs. Union of India delivered on 16.2.1990 in which guide-lines for granting temporary status to the casual labours in the various Ministries/Departments of the Union of India had been laid down and following which the Government of India framed a Scheme known as Casual Labourers (Grant of Temporary Status and Regularisation) of 1993, which came into existence on 10.9.1993, the respondents have maintained that the said Scheme was applicable to such labourers who had rendered one year of continuous service



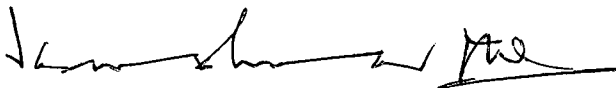
(206/240 days) and according to which it was applicable to the persons appointed prior to 10.9..1993 and which fact has already been upheld by the Hon'ble apex Court in Union of India vs. Mohan Pal Singh's case. Defending the said logic, the respondents have claimed that the applicants in the OA were initially engaged in the year 1996, and they, therefore, do not fall within the aforesaid Scheme. Taking this position, the Hon'ble apex Court, vide their order dated 23.8.2002 in the case of Union of India vs. Umrao Singh Rawat & Others (present applicants) held that, as already mentioned above, that offering temporary status is not an on going scheme. Accordingly, they have pleaded that the present OA is not maintainable for the same relief and, therefore, is barred by the principle of res judicata. In this connection, they have also contended that the fact that the Hon'ble apex Court had very clearly laid down that in order to avail the benefit of DOP&T's Scheme of 1993, one had to render one year continuous service prior to 10.9.1993 and that being the law on the subject no Courts/Tribunal could essentially go against that and record any opinion contrary to that. The other case referred to by the applicants as decided vide OA No.496/2001 by the Bombay Bench of the Tribunal has not been found to be relevant by the respondents in the present context, as the applicant in the said OA had been appointed as a casual labourer during the year 1992 against a vacancy in Group 'D' post and, therefore, fulfilled the requisite conditions of the DOP&T's Scheme dated 10.9.1993. The applicants in the present OA were also not engaged against any vacancy in Group 'D' posts. They have also maintained that respondent No.2, namely,



Directorate General of Central Excise Intelligence had no power to appoint any Group 'D' and 'C' employees, the same being vested with the Director General of Revenue Intelligence. The services of the applicants having been dispensed with w.e.f. 28.8.2003 they were not in service as on 1.9.2003 when the order of status quo was passed by this Tribunal in respect of the applicants.

8. The applicants, however, in their rejoinder to the reply as filed by the respondents have reiterated that they are entitled to be considered for regularisation as per the decisions of the Hon'ble Supreme Court in Mohan Pal's case (supra). They have reiterated the other things already submitted by them including the fact that they were in the service of the respondents as on 10.9.2003 and 15.9.2003. However, the same were dispensed with only after October, 2003 and just before the date of hearing of the present OA as on 10.10.2003 illegally and malafidely.

9. On closer examination of the facts as submitted by both the sides, it is thus observed that while the applicants who were initially appointed as casual labourers in the years 1996, 1997 and 1998 and who were proposed to be appointed on contract basis in November, 1999, as engagement of casual labourers was not permitted vide order dated 19.7.1991 and which offer was rejected by the applicants, the respondents withdrew the temporary status already accorded to the applicants keeping in view the decision of the Hon'ble apex Court in Mohan Pal's case (supra), as the applicants did not fulfil the conditions as laid down in the DOP&T's Scheme of 1993, which



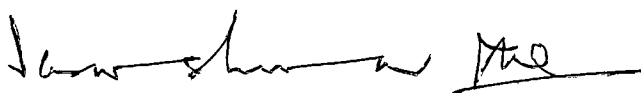
stipulated, among other things, that one has to be engaged prior to 1993, the respondents dispensed with their services. It is also observed that the Hon'ble apex Court has held in Mohan Pal's case (supra) that granting of temporary status and regularisation of services of casual labourers as envisaged in the Scheme of the DOP&T as of 1993 in compliance with the orders of the Hon'ble apex Court in Piara Singh's case is not an on going scheme and accordingly the benefit as envisaged in the said scheme cannot be extended to the applicant. Furthermore, even apart from the fact that the applicants were not employed prior to 1993 and thereby did not fulfil one of the major requisite conditions for grant of temporary status and subsequent regularisation of service, the fact remained that the applicants' services were not continued beyond 28.8.2003. However, even though the DOP&T Scheme is not an on going scheme, the fact that reliance has been placed by the applicants on the decisions of the Hon'ble apex court as referred to hereinabove, it would warrant reconsideration of their case keeping in view the other provisions of the DOP&T's Scheme as well as the decisions of the Hon'ble Courts in similar cases as relied upon by the applicants. It is also observed that the applicants have pointed out that the work that they were rendering to the respondents was of perennial nature and continue to be performed by similar employees. The respondents have not, however, clarified as to what arrangements they have made for looking after the work which the applicants were earlier performing. They have also not said whether they have engaged some freshers for the same job or whether

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they have given the work earlier done by the applicants to contractors.

10. The step taken by the respondents in withdrawing the temporary status already granted to the applicants does not appear to be proper and reasonable. A particular status once granted to the employees should not have been withdrawn simply because the Hon'ble Court took a view that the Scheme of the DOP&T as formulated in September, 2003 for regularisation of casual labourers was not an on going scheme. The respondents have not kept in view the fact that the said decision of the apex Court did not envisage withdrawal of temporary status already granted to the applicants. There are other conditions also laid down in the said Scheme and which are required to be fulfilled by the applicants before they are considered for being accorded temporary status and regularisation of their services and which the applicants have claimed that they have fulfilled. It has also to be borne in mind that on satisfaction of other conditions necessary for grant of temporary status and regularisation of services as laid down in the DOP&T's scheme of 1993, a number of applicants in different OAs/ cases have been allowed the said status and subsequent regularisation of their services. Accordingly, the action taken by the respondents in withdrawing the temporary status already granted to the applicants and not consequentially regularising their services as per the Scheme of the DOP&T and as per other relevant instructions on the subject is not justified. ~

11. In consideration of the facts and circumstances of





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the case and also that the services of the applicants have been dispensed with by the respondents arbitrarily w.e.f. 28.8.2003 after having allowed them to remain engaged with them for more than six years, the OA is allowed with a direction to the respondents to reengage the applicants and to restore the temporary status already granted to them as per the Scheme of the DOP&T and keeping in view the decisions of the Hon'ble Supreme Court in State of Haryana vs. Piara Singh & ORs and Gujarat Agricultural University vs. Rathod Labhu Bechar & Ors and also in Dharwad Distt. PWD literate Daily Wage Employees Association vs. State of Karnataka & Ors and the other cases as relied upon by the applicants as referred to above. The respondents are further directed to implement the said orders within a period of three months from the date of receipt of a copy of this order. No costs.



(SARWESHWAR JHA)
ADMINISTRATIVE MEMBER

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