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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2415/2003

New Delhi, this the 28th day of June, 2004

Hon'ble Shri S.K.Naik, Member(A)

Dharamveer Singh and
27 others as per details given
in the OA

.. Applicants

(Shri L.C. Goyal, Advocate)

versus

1. Director
National Bureau of Plant Genetic
Resources, ICAR, Pusa, New Delhi

2. Director General
Indian Council of Agricultural
Research, Pusa, New Delhi

.. Respondents

(Shri V.K.Rao with Shri Satish Kumar, Advocates)

ORDER

Applicants, 28 in number, had earlier filed OAs individually bearing OA No.1185/2003 to 1212/2003 seeking regularisation of their services. These OAs were disposed by a common order with the following observation:

"4. I think these OAs can be disposed of at this initial stage itself without issuing notice to the respondents with a direction to them to examine the case of the applicants for regularisation. If the applicants can be regularised in accordance with the scheme dated 7.6.88, they should pass a reasoned and speaking order therein.

5. For this purpose, let these OAs be treated as representation of the applicants and same be sent alongwith the copy of this order to the respondents who are directed to pass a reasoned and speaking order thereon within a period of 3 months from the date of receipt of a copy of this order and to see to it that applicants can be regularised within the framework of the scheme. OAs stand disposed of."

Thereafter all the applicants made representations. In pursuance thereof, respondents have passed a detailed order dated 7.8.2003 to each applicant individually

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stating therein that it is not possible for them to regularise their services against Group D post when there is no vacancy but they would be considered to be engaged in terms of the seniority list, as and when need arises at Issapur Farm. Applicants have now assailed this order seeking direction to the respondents to regularise their services w.e.f. from the date of their initial appointment or from 1.10.1998 when they ought to have been granted temporary status in terms of 1993 Scheme, with all consequential benefits.

2. Since the facts of the case with regard to applicants' initial engagement as Beldars in Issapur Zone on casual basis under respondent-department and continuation thereof have already been discussed in the aforesaid OAs, I do not deem it necessary to reiterate the same here.

3. Counsel for the applicants referring to the OM dated 7.6.1988 which enunciated the policy with regard to recruitment of casual workers and persons on daily wages, contends that as per the said policy persons on daily wages should not be recruited for work of regular nature. Further as per the said scheme respondents were required to have discharged the workers 'no more required' within a period of six months. However, the fact that the applicants were not discharged and on the contrary continue to be engaged over the years goes to prove that the work with the respondents is of perennial nature. Referring to the judgement of the Supreme Court in the following cases, he has vehemently pleaded that by virtue

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of being in continuous engagement for a long period, the applicants should be accorded temporary status as per the 1993 Scheme:

- i) Mahatma Phule Agri. University Vs. Nasik Zilla Sheth Kamgar Union 2001(7) SCC 346
- ii) Gujarat Agri. University Vs. Rathod Labhu Bechar 2001(3) SCC 574
- iii) Dharendra Chamoli V. State of UP 1986(1) SCC 637
- iv) Ratan Lal V. Lt. Governors & Ors. 1992(4) SCC 117
- v) Naidar & Anr. V. Delhi Admn. 1992(4) SCC 112
- vi) Surinder Singh & Anr. V. Engineer-in-Chief, CPWD 1986(1) SCC 639

4. Needless to state, respondents have contested the case. Counsel for the respondents has raised a preliminary objection, in that he contends that National Bureau of Plant Genetic Resources is an autonomous body and is not a government department. Its governing body has not adopted either 1988 scheme or 1993 scheme with regard to grant of temporary status/regularisation to casual labours. This Tribunal has no jurisdiction in the matter. He further contends that since the representations of the applicants have already been considered as directed by the Tribunal earlier and replied to by a reasoned, speaking and detailed order, nothing survives in the present and the same be dismissed.

5. On merits of the case, the learned counsel has contended that the Bureau being an institution engaged in research, casual labours are engaged on "as and when required" basis. Their requirement varies as per the

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progress of the research and dictates by the scientific community which can neither be predicted nor does it entail the same volume of work. He further contends that all the same as directed by the Tribunal earlier in July, 1993, respondents have prepared a panel of labourers and have engaged them as casual labours as and when the demand arises in accordance with their turn in the panel. Payment of wages is also being made as per the direction of the Tribunal at par with regular Group D employees. In this background of the matter, the counsel contends that, there are no sanctioned posts or vacancies for the purpose of research as by its very nature engagements have to be on casual/seasonal basis as per requirement of the scientists. Besides, the counsel contends that Government of India has imposed a ban on filling up of vacant posts. Also Ministry of Finance has ordered 10% cut in sanctioned strength, which has resulted in abolition of 18 posts in different categories. In the absence of any sanctioned post, the question of regularisation does not arise, the counsel contends.

6. The counsel goes on to contend that although the applicants are working since long, they do not fulfil the criteria for grant of temporary status under the scheme of 1993. They continue to work as casual labourers on as and when required basis. The counsel submitted that as and when subsequent amendment with regard to grant of temporary status to the like of 'on and off' casual labourers are issued by the appropriate Ministry, respondents would have no hesitation in implementing the scheme. According to the respondents the decisions of the Supreme Court cited by the applicants are not

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applicable in the facts of the case when there are no sanctioned posts or vacancies. However, the applicants have been informed that their names are in the seniority list and they shall be considered as and when vacancies arise.

7. Thereupon counsel for the applicants has drawn my attention to the judgement of the Chandigarh Bench of the Tribunal dated 28.7.2003 in OA 60/2002 and other connected cases touching upon the subject of regularisation of casual labours including that of Beldars to which category the present applicants belong. In this judgement, after referring to as many as 33 decisions of Supreme Court and other courts, it was directed that respondent-department shall consider the question of creation of a requisite number of posts to regularise the services of all the applicants therein. The counsel contends that a similar direction be given in the instant case also.

8. I have heard the learned counsel for the parties and perused the records of the case.

9. The main thrust of argument advanced by the learned counsel for the applicant has been on the point of regularisation, failing which, atleast on conferment of temporary status even though in the prayer clause many other reliefs such as service benefits etc. have been sought for. The contention of the learned counsel for conferment of temporary status, as has been stated earlier, is based on their engagement over the years for long periods and also on the ground of there being

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availability of large number of vacancies in Group D posts with the respondents. On this point, respondents have clearly stated that even though the applicants have been working since long, they do not fulfil the criteria for grant of temporary status under the Government of India Scheme-1993. The Scheme lays down certain criteria such as minimum period of engagement and persons being on the roll of respondent-department on the specific date, etc. I find no such averment in the OA that the applicants were on the roll of the respondent-Bureau on the crucial date and for the minimum period prescribed therein to be entitled to the benefit of conferment of temporary status, as per the Scheme. The prayer for temporary status, therefore, cannot be allowed.

10. I further find from the impugned order that the request for regularisation had been considered by the Tribunal earlier in July, 1993 and it had directed the respondents to prepare a panel of labourers and engage them as casual labourers if vacancies exist, in accordance with their turn in the panel. Respondent-Bureau has clearly stated that they have prepared such a panel and the members of the panel are being engaged by them as and when required. They have further stated that in keeping with the policy laid down by the DoPT in their OM dated 7.6.1988 and the relevant orders issued from time to time, payment of wages to such casual labours is also being made at par with regular Group D employees.

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11. Respondents have further stated that they do not have any vacancy for regularisation of the casual labours on their panel at present. They have referred to certain administrative instructions for down-sizing of the bureaucracy and austerity measures, which resulted in the curtailment of sanctioned posts and non-availability of regular vacancies. Even though the learned counsel for the applicants has referred to a large number of judgements (supra), I am afraid, they would not help his cause since none of the judgements states that the Tribunal or Court should issue any direction for creation of posts, which is purely within the domain of the executive. There is therefore no need for me to discuss the judgements so cited.

12. In so far as the judgement in Surinder Singh & Anr. Vs. Engineer-in-Chief, CPWD AIR 1986 SCC 584 is concerned, I find that the issue involved therein was that of 'equal pay for equal work'. This will not be applicable to the facts of the present case, especially keeping in view the fact that respondents have stated that the applicants on the panel, as and when being engaged, are being paid at par with Group D employees. The case of Bhagwati Prasad V. Delhi State Mineral Development Corpn. (1990)1 SCC 361 is an unconnected matter of minimum educational qualification of daily rated workers and it is not relevant.

13. In the result, in view of the fact that there are no sanctioned posts available with the respondent-Bureau and their commitment that the applicants would be continued to be engaged in terms of the seniority list as and when

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need arises at Issapur Farm, there is precious little to give any further direction in this regard. For that matter, the impugned order cannot be set aside to the disadvantage of the applicants

14. Thus, I find no merit in the present OA and the same is accordingly dismissed. No costs.

S.K. Naik
(S.K. Naik)
Member(A)

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