

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

1. OA No. 3203/2002
2. OA No. 47/2003

(9)

New Delhi this the 21st day of February, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

OA No. 3203/2002

1. Pintoo Kumar
S/o Sh. Dharamvir Sharma
R/o Village Dunda Hera
P.O. Khekra, Tehsil Khekra
Distt. Bagpat
(U.P.)
2. Mahesh Singh
S/o Sh. Prithvi Singh
R/o H.No.115, Gali No.2
Shanti Marg, Mandawli Fazalpur
Delhi.
3. Sh. Gulab Singh
S/o Sh. Kalyan Singh
R/o H.No.348, Block-E
Shakur Pur, Anand Vas
Delhi - 110 034.
4. Sh. Ombir Singh
S/o Sh. Sardara
R/o Back Side of H.No.2
Gali No.1, Amar Colony
East Gokul Pur
Delhi - 110 094.
5. Dinesh Kumar Saini
S/o Sh. Des Raj Saini
R/o H.No. 129, Village Lampur
P.O.Narela, Delhi - 110 040.

(By Advocate Shri S.K. Gupta, proxy of Sh. B. S. Gupta) *✓*

-Applicants

-Versus-

1. Union of India
through Secretary
Ministry of Home Affairs
North Block, New Delhi.
2. Secretary
Ministry of Personnel & Training
Dept. of Personnel & Training
North Block, New Delhi.
3. Secretary
Liberhan Ayodhya Commission of Enquiry
(Ministry of Home Affairs)
Vigyan Bhawan Annex
New Delhi - 110 011.

-Respondents

(By Advocate Ms. Rinchen Ongmu Bhutia)

OA No. 47/2003

Km. Bimla Rani,
44/1104, DDA Flats,
Kalkaji,
New Delhi-110019.

-Applicant

(By Advocate Shri Deepak Verma)

-Versus-

1. Union of India
through Secretary
Ministry of Home Affairs
North Block, New Delhi.
2. Secretary
Ministry of Personnel & Training
Dept. of Personnel & Training
North Block, New Delhi.
3. Secretary
Liberhan Ayodhya Commission of Enquiry
(Ministry of Home Affairs)
Vigyan Bhawan Annexe
New Delhi - 110 011.

-Respondents

(By Advocate Ms. Rinchen Ongmu Bhutia with Sh. Neeraj Goyal proxy
of Sh. Adish C. Agarwal)

ORDER

By Mr. Shanker Raju, Member (J):

As these OAs involve identical questions of law and facts, they are being disposed of by this common order.

2. On demolition of the Ram Janam Bhoomi Babri Masjid at Ayodhya, a Commission of Inquiry known as Liberhan Ayodhya Commission of Inquiry (LACI) was set up on 16.12.92. Though the initial tenure of the Commission was three years but due to various complications and the goal of the Commission was not completed its term has been extended from time to time.

3. Applicants, five in number, in OA-3203/2002 have been engaged temporarily on ad hoc basis by the Commission on contractual basis. Applicant No.1 was engaged on 16.8.94, applicant No.2 on 1.3.94, applicant No.3 on 3.3.94, applicant No.4 on 16.8.94 and applicant

No.5 on 20.6.2001. As co-terminus with the extension of Commission's tenure, adhoc appointments of applicants have been extended from time to time, after giving a break of few days, with the stipulation that their services are liable to be terminated without assigning any reasons and they would have no claim for regular absorption.

4. Applicants have been working as peons/LDCs. By an order dated 27.4.2002 regarding continuation of ad hoc appointments in LACI after consultation with the DOPT and in the light of OM dated 23.7.2001 as there has been a ban on engagement of persons on ad hoc basis from open market a proposal has been made to replace applicants with ad hoc deputationists from offices of the Central/State Governments/Undertakings after the expiry of the extended period upto 10.12.2002. Apprehending termination applicants approached this Court and by an order dated 9.12.2002 status quo has been ordered.

5. Whereas in OA-47/2003 applicant was appointed as a LDC on ad hoc basis in 1994 and in the light of the letter dated 27.11.2002 her services have been dispensed with and further extension has been denied. Learned counsel of applicants Shri S.K. Gupta, by taking resort to the decision of the Division Bench in OA-1167/94 - Ashok Kumar & Others v. Union of India & Others decided on 1.4.97, contended that on account of long continuation on ad hoc, directions have been issued to treat applicants therein as a special category and against available vacancies after relaxation of age and requirement of sponsorship through employment exchange to be regularised, giving preference over outsiders and freshers. In this

backdrop it is stated that applicants are also similarly circumstanced and in all four and their claim is covered by the aforesaid ratio and moreover by an order passed on 4.7.97 in RA No.144/97 in OA-1167/94, not only the directions have been made applicable to group 'D' but also to group 'C' posts. Shri Gupta further stated that appointment was made through DOPT as such there is no back door entry of applicants and in view of the decision of the Apex Court in State of Haryana v. Piara Singh, (1992) 4 SCC 118 an ad hoc employee should not be replaced by another ad hoc employee and long officiation on ad hoc vest on applicants a right to be considered for regularisation. In so far as eligibility is concerned; it is stated that applicants are fully eligible to be regularised as such.

6. Shri Gupta further stated that dispensing with the services of applicants on expiry of last term, i.e., on 10.12.2002 has jeopardised their right of regularisation and respondents have not allowed the law to take its own course. Moreover, it is stated that concept of ad hoc deputation is alien to service jurisprudence. In this backdrop it is stated that so long as the work of ad hoc nature is available in LACI or any other Commission applicants have a right to continue.

7. Shri Deepak Verma, learned counsel for applicant in OA-47/2003 contended that whereas one D.R. Saini who was appointed in 2001 and was junior to applicant by virtue of the status quo in OA-3203/2002 is still continuing whereas applicant who was appointed on 11.11.94 her services have been dispensed with. It is stated that if the appointment is made through written orders

termination should also take place through a written order and for this reliance has been placed on a decision of the High Court of Delhi in Mahipal Singh v. Trade Fair Authority of India, 1993 (1) SLR 335.

8. It is further stated that respondents have misrepresented the facts as applicant had preferred a representation on 15.1.2003, but the same has not been taken into consideration. Junior of applicant is working which smacks of discrimination which is violative of Articles 14 and 16 of the Constitution of India.

9. On merits he has adopted the contentions made by Shri S.K. Gupta, learned counsel for applicants in OA-3203/2002.

10. On the other hand, respondents counsel strongly rebutted the contentions of applicants and stated that LACI was a time bound Commission to give report on demolition of Ram Janam Bhoomi Babri Masjid. As their assignment could not be completed the tenure of the Commission was extended from time to time and as the project is near completion, services of applicants are no more required. It is stated that applicants have been temporarily engaged on contractual basis for a limited duration and it was made clear in the appointment letter that the same is adhoc for a limited period without giving any rise to right of regularisation. Due to extension of Commission their appointments were also extended from time to time. Applicants have accepted the terms and now it is not open for them to seek their regularisation.

11. At the outset, learned counsel for respondents Ms Rinchen Ongmu Bhutia contended that respondents are not replacing applicants with other ad hoc deputationists and as the Commission's working has come to an end the same is to be wound up and the services of applicants would have to be dispensed with.

12. In so far as merits are concerned, it is stated that all appointments were made for a limited period and were co-terminus with the tenure of the Commission. The Commission was formed for a specific, temporary and limited purpose, as such engagement of applicants was also for a short period.

13. It is also stated that applicants were never engaged through Employment Exchange and due to uncertainty of the Commission and urgency they had been randomly picked up from the open market without requisition and stressing upon registration with the employment exchange.

14. In so far as decision in OA-1167/94 is concerned, the same is stated to be distinguishable as applicants therein continued in two long spells and were covered by a definite scheme for regularisation. However, it is stated that the contempt petition filed in this OA has been withdrawn, as applicants have not accepted the offer of engagement. It is stated that if the persons appointed in Commission are to be regularised it would seriously disturb the existing staff available and service conditions.

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15. Ms Bhutia has relied upon the following decisions of the Apex Court to contend that regularisation is not a mode of recruitment and merely serving for long years is not a valid reason for regularisation and would result in unhealthy practice of back door entry:

- i) M. Raamanatha Pillai v. State of Kerala, AIR 1973 SC 2641.
- ii) R.N. Nanjundappa v. T. Thimmaiah and Ors., AIR, 1972 SC 1767.
- iii) K.C. Joshi v. Union of India, AIR 1991 SC 284.
- iv) Dr. Arundahti A. Pargoankar v. State of Maharashtra, AIR 1995 SC 962.

16. Lastly, it is contended that applicants have been engaged to work for a specific work whose life was short and with the winding up of the Commission their engagement would also come to an end and as the applicants are not selected through the prescribed procedure and not sponsored through employment exchange they have no indefeasible right or lien to the posts.

17. I have carefully considered the rival contentions of the parties and perused the material on record. It is not disputed that appointments of applicants were in group 'C' and 'D' posts and made on ad hoc basis for limited period with a stipulation that their services are liable to be terminated at any time and the

appointments would not bestow upon them a right for regular appointment in Government service. It is also not disputed that the appointments of applicants were made in LACI which was initially constituted for three years but continued due to non-achievement of its goals continued from time to time. Along with the extension of term of commission co-terminus appointments of applicants on ad hoc basis were continued and as the Commission has completed its tenure their services are dispensed with and not further extended due to non-availability of work.

18. Apex Court in Piara Singh's case (supra) with regard to time bound projects held as follows:

"37. So far as temporary or time-bound schemes are concerned, the matter is exhaustively dealt with and pronounced upon in Delhi Development Horticulture Employees' Union v. Delhi Administration. We need not add to it. In any event, the direction given by the High Court with respect to this category has not been assailed before us."

19. Further Apex Court in Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi and Others held as follows:

"21. Viewed in the context of the facts of the present it is apparent that the schemes under which the petitioners were given employment have been evolved to provide income for those who are below the poverty line and particularly during the periods when they are without any source of livelihood and, therefore, without any income whatsoever. The schemes were further meant for the rural poor, for the object of the schemes was to start tackling the problem of poverty from that end. The object was not to provide the right to work as such even to the rural poor much less to the unemployed in general. As has been

pointed out by the Union of India in their additional affidavit, in, 1987-88, 33 per cent of the total rural population was below the poverty line. This meant about 35 million families. To eliminate poverty and to generate full employment 2500-3000 million man-days of work in a year, was necessary. As against that, the Jawahar Rozgar Yojna could provide only 870 million man-days of employment on intermittent basis in neighbourhood projects. Within the available resources of Rs.2600 crores, in all 3.10 million people alone could be provided with permanent employment, if they were to be provided work for 273 days in a year on minimum wages. However, under the scheme meant for providing work only 80-90 days work could be provided to 9.30 million people.

22. The above figures show that if the resources used for the Jawahar Rozgar Yojna were in their entirety to be used for providing full employment throughout the year, they would have given employment only to a small percentage of the population in need of income, the remaining vast majority being left with no income whatsoever. No fault could, therefore, be found with the limited object of the scheme given the limited resources at the disposal of the State. Those employed under the scheme, therefore, could not ask for more than what the scheme intended to give them. To get an employment under such scheme and to claim on the basis of the said employment, a right to regularisation, is to frustrate the scheme itself. No court can be a party to such exercise. It is wrong to approach the problems of those employed under such schemes with a view to providing them with full employment and guaranteeing equal pay for equal work. These concepts, in the context of such schemes are both unwarranted and misplaced. They will do more harm than good by depriving the many of the little income that they may get to keep them from starvation. They would benefit a few at the cost of the many starving poor for whom the schemes are meant. That would also force the State to wind up the existing schemes and forbid them from introducing the new ones, for want of resources. This is not to say that the problems of the unemployed deserve no consideration or sympathy. This is only to emphasise that even among the unemployed a distinction exists between those who live below and above the poverty line, those in need of partial

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and those in need of full employment, the educated and uneducated, the rural and urban unemployed etc."

20. Moreover the Apex Court in Raiender v. State of Rajasthan, (1999) (2) SCC 317 held as follows:

"13. In our opinion, when the posts temporarily created for fulfilling the needs of a particular project or scheme limited in its duration come to an end on account of the need for the project itself having come to an end either because the project was fulfilled or had to be abandoned wholly or partially for want of funds, the employer cannot by a writ of mandamus be directed to continue employing such employees as have been dislodged because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have the funds available for the purpose. The decision taken by the respondent-State to abolish the posts was a bona fide decision taken after due application of the mind by appointing an Expert Committee which went deep into all relevant considerations and made recommendations in the interest of rationalisation. The decision is based on administrative and financial considerations. There is nothing wrong in the Societies having acted on the policy decision of the State Government. Really speaking, there was hardly anything left to be done by the DRDA Societies at their own end. Inasmuch as the Societies did not have any funds of their own, independent of those made available by the State Government, how could the Societies have continued with the posts and the incumbents thereon though they were left with no means to pay salaries attaching with the posts?

21. If one has regard to the rulings of the Apex Court the decision in Piara Singh's case (supra) would not apply to these cases, as the issue regarding regularisation of ad hoc appointees in temporary or time bound scheme has already been laid at rest in Horticulture's case (supra).

Merely because applicants have continued for about 8-9 years, as in the present cases, the question of regularisation of their cases would not arise, as they have been appointed in a time bound Commission whose tenure has been extended from time to time. Their appointments were co-terminus with the life of the Commission and as the Commission's tenure has come to an end on account of non-availability of work cases of applicants cannot be considered for regularisation. Issuing of any mandamus would amount to requisitioning of certain posts though not required by the employer and would also be not practicable due to non-availability of funds available for the purpose. Moreover, at random applicants have been picked up from open market without being subjected to sponsorship through employment exchange or without following any rules for appointment. Their appointments were de hors the rules due to urgency and uncertainty of the life of the Commission.

I also find that the respondents also stated at the Bar that they are not replacing applicants with other ad hoc appointees, as such there is no violation of the ratio laid down by the Apex Court in Piara Singh's case (supra).

22. Moreover, regularisation cannot be a mode of recruitment which would be an exercise in futility and would be violative of Article 309 of the Constitution of India. The engagement of applicants was temporary on contractual basis with certain terms and conditions which have been agreed to by the applicants and on acceptance they are bound by the terms of the contract. The employment was not permanent and was till the tenure of the Commission. The Commission is in the process of winding up and its life span is also coming to an end and applicants

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who have not been selected through regular selection process without sponsored through employment exchange and merely because they continued on ad hoc basis would not confer upon them an indefeasible right to be regularised as their cases are distinguishable and in cases where employment is limited for time bound Scheme or Project the same is co-terminus and comes to an end with the winding up of the Scheme or Project.

23. Shri Gupta further relied upon a decision of the Apex Court in Manager, Govt. Branch Press v. D.B. Balliappa, AIR 1979 SC 429 to contend that termination of service without any reasons vitiates the order. I have also considered this decision. The same is distinguishable as the termination resorted to is on account of closure of the Commission and the reasons are apparent on the face of it.

24. Having regard to the decisions cited above, applicants have no valid legal claim for regularisation. Termination resorted to is simple without casting any stigma and is also not founded on any misconduct of applicants. As per the terms and conditions the same has been resorted to. The OAs are accordingly found bereft of merit and are dismissed. No costs.

25. Interim order passed in OA-3203/2002 is vacated.

Let a copy of this order be placed in the case file of each case.

(Shanker Raju)
Member (J)

'San.'

Shanker Raju
B. K. JUNEJA 21/7/2003
Section/Court Officer
Central Administrative Tribunal
Principal Bench, New Delhi