

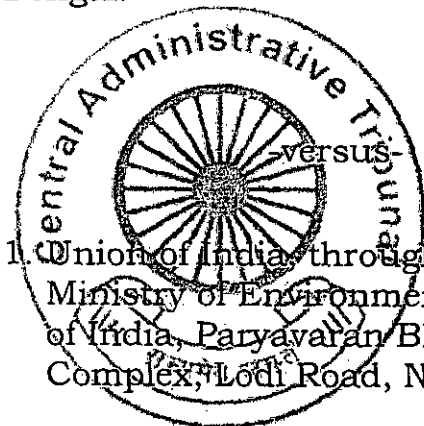
CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA. 350/1244/2014

Present :Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Hare Krishna Halder, son of late Jogesh Chandra Halder, aged about 58 years, working as Casual Labour with Temporary status in the office of the Zoological Survey of India (Govt. of India) Pranivigyan Bhavan, M-Block, New Alipore, Kolkata- 700053, residing at 151/A, Basu Nagar, Gate No. 1, Madhyamgram, Kolkata- 700 129, West Bengal.

.....Applicant.



1. Union of India through the Secretary, Ministry of Environment and Forest, Govt. of India, Paryavaran Bhawan, C. G. O. Complex, Lodi Road, New Delhi- 110003.

2. The Director, Zoological Survey of India, Pranivigyan Bhavan, M-Block, New Alipore, Kolkata- 700053.

.....Respondents.

For the Applicant : Mr. T. K. Biswas, Counsel

For the Respondents : Mr. S. K. Ghosh, Counsel

Heard on: 25.09.2019

Date of Order: 4.11.19.

ORDER

Per Ms. Bidisha Banerjee, JM:

The applicant in this OA has sought for following reliefs:

"10.(a) An order do issue directing the respondents to ante-date, the date of attendant of temporary status with effect from 1.9.1993 and to grant all consequential benefits thereof;

(b) An order directing the respondents to issue the regularization order in favour of the applicant without any further delay along with all consequential benefits;

(c) Any other order or orders as to this Hon'ble Tribunal may deem fit and proper."

2. At hearing, ld. Counsel for respondents took a preliminary objection of *res-judicata* on the ground that the applicant on an earlier occasion preferred OA 832/2007 for the selfsame cause of action and therefore the present OA was barred by *res-judicata* and hence not maintainable.

3. We had called for the record of OA 832/2007 to find out whether in fact the applicant has approached this Tribunal with the same prayer as in the earlier OA.

4. We discern that in the earlier OA the applicant had sought for following reliefs:

"8.(a) for pass an appropriate order directing upon the respondents to quash and set aside the impugned order dated 12.9.2007 as well as the guideline and issued by the Ministry of Environment and Forest, New Delhi, vide No. 02/02/2007 CSZ dated 08.08.2007 being annexure 'A-6' of the present application.

(b) for pass an appropriate order directing upon the respondents to resume the applicants in their respective duties which they were performing on or before acquiring temporary status with all consequential benefits.

- (c) for pass an appropriate order directing the respondents to produce all relevant records at the time of hearing.
- (d) Leave be granted to move one single application jointly under rule 4(5)(a) of Central Administrative Tribunal Procedure Rules, 1987.
- (e) to impose cost.
- (f) any such further order/orders, direction/directions as your Lordships may deem fit and proper for the ends of justice."

The OA was disposed of having recorded as follows:

"By this OA the applicants seeks quashing of Ministry of Environment and Forests letter 08.8.07 directing respondent No. 2 to withdraw the order conferring temporary status and also to terminate, their service and also subsequent orders issued by respondent No. 2 terminating their service.

2. The facts lie in a narrow compass:-

(a) (i) Annexure A/1 series in respect of applicant No. 1 Memorandum dated 05.6.82 titled offer of temporary appointment shows that this is for three years but will confer no right for continued employment or permanent absorption and that he will not be treated as a Central Govt. employee. The subsequent letter formally appoints him on consolidated attendant ship. There is also a certificate that he has worked for six years on the AICRP Ethno Biology project at Zoological Survey of India sanctioned by MAB.

(ii) Annexure A/2 series is of four sheets in 2000. They are regarding typing charges, cleaning up of godown, comparison of publication.

Annexure A/3 series (Part) is in respect of typing charges paid to Shri T.K. Burman at 5 per page.

Another part of Ann A/3 series is regard payment to Shri Chitta Maity for casual labour charges in 2006.

(iii) Annexure A/4 (pg-47) is note of dealing hand dt 03.7.06 (with OS on leave) endorsed by A.O. and H.O.O. which is approved as a special case and order dt 31.7.06 issued conferring temporary status w.e.f. 01.8.06. Another note is put up on 13.12.06 for regularizing their services.

(b) MOEF letter dt 08.8.07 reads:

"I am directed to refer to your letter No. FI7-n7/Genl/2000/11556 dated 27.6.2007 on the above mentioned subject and to say that the matter has been examined in the light of existing rules and it has been decided to withdraw the temporary status of the all the three casual/contingent labourers and terminate their services as casual labour with immediate effect."

(c) Pursuant there to identical orders have taken issued under Rule 5(1) of CCS (TS) Rules. The orders issued in respect of applicant No. 1 reads:

"In pursuance of the Proviso to sub-rule (1) of rule 5 of the Central Civil Services (Temporary Service) Rules 1965, 1, Dr. Ramakrishna, Director In-charge hereby terminate forthwith the services of Sri H.K.Haidar, Casual Labour, HQ's office, Kolkata, and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rate at which he was drawing them immediately before the termination of his service or as the case may be for the period by which such notice falls short of one month.

The services of Sri H.K.Haldar, is terminated in compliance with the guidelines issued by Ministry of Environment & Forests, New Delhi, Vide No. 02/02/2007-CSZ Dated 08.08.2007."

3(a) The case of these applicants in brief is that they were engaged in the year 2000 in order to perform urgent nature of duties after following the rules. They were/conferred temporary status. They have performed their duties satisfactorily. The orders have been passed without putting them to notice and without assigning any reason.

(b) Rejoinder is filed. It is reiterated that they have completed 240 days working in 2000. Reliance is placed on the decision in **UOI & Another -VS- Mobari Pal & Ors. (2002 SCC (L&S) 5771.**

4. Attention is drawn to the order of appointment issued in favour of applicant No.1 in 1982. It is submitted that applicant No.1 was engaged as contingent labour in publication section in 2000, while applicant No. 2 & 3 were engaged in 2000 & 2004 in Digha Office to perform urgent nature of work from time to time on daily rate basis. It might have been possible that some persons might have been engaged repeatedly for appointment. When after conferment of temporary status the proposal was put up for grant of minimum pay scale a subcommittee was set up to examine all papers and a report sent to Government. The orders received in this regard have been implemented.

5. We have heard the learned counsels.

6. We note at the outset that applicant No.1 and applicant No. 2 & 3 have been engaged different offices under the respondents.

7. The following questions arise in the OA :

(a) Whether benefits of 1993 scheme can be extended to the applicant;

(b) Is the applicant entitled to benefits of para 7 of the 1993 scheme and whether the order terminating his services is bad in law for violation of that paragraph;

(c) Is the applicant even otherwise, eligible to continue as casual labour.

8. The learned counsel for the applicant has placed reliance on the decision in *UOI & Anr., -vs- Mohan Pal & Ors.* [2002 SCC (L&S) 577]. The Apex Court held

"Clause 4 of the Scheme is very clear that the conferment of 'temporary' status is to be given to the casual labourers who were in employment as on the date of commencement of the Scheme. Clause 4 does not envisage it as an ongoing scheme. In order to acquire 'temporary' status, the casual labourer should have been in employment as on the date of commencement of the Scheme and he should have also rendered a continuous service of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. From clause 4, it does not appear to be a general guideline to be applied for the purpose of giving 'temporary' status to all the casual workers, as and when they complete one year's continuous service.

Clause 7 of the Scheme certainly gives the employer the right to terminate the services of casual labourers who have been given 'temporary' status. However, having regard to the general scheme of 1993, it has to be held that the casual labourers who acquire 'temporary' status cannot be removed merely on the whims and fancies of the employer. If there is sufficient work and other casual labourers are still to be employed by the employer for carrying out the work, the casual labourers who have acquired 'temporary' status shall not be removed from service as per clause 7 of the Scheme. However, if there is serious misconduct or violation of service rules, it would be open to the employer to dispense with the services of a casual labourer who had acquired the 'temporary' status."

9. A Three Judge Bench of Apex Court in *Controller of Defence Accounts, Dehradun & Ors. -vs- Dhani Ram & Ors.* [2008 (1) SCC (L&S) 1101] has held as under:

"Clause 4 of the Scheme is very clear that the conferment of 'temporary' status is to be given to the casual labourers who were in employment as on the date of commencement of the Scheme. [The High Court seems to have taken] the view that this is an ongoing scheme and as and when casual labourers complete 240 days of work in a year of 2006 days (in case of offices observing 5 days a week), they are entitled to get 'temporary' status. [Clearly Clause 4 of the Scheme does not envisage it as an ongoing scheme.] In order to acquire 'temporary' status, the casual labourer should have been in employment as on the date of commencement of the scheme and he should have also rendered a continuous service of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. From Clause 4 of the Scheme, it does not appear to be a general guideline to be applied for the purpose of giving 'temporary' status to all the casual workers, as and when they complete one year's continuous service. Of course, it is up to the Union Government to formulate any scheme as and when it is found necessary that the casual labourers are to be given 'temporary' status and later they are to be absorbed in Group 'D' posts.

This position as highlighted in Mohan Pal case SCC pp 576-77, para 6 was reiterated in *Union of India v. Gagan Kumar and Director General, Doordarshan v. Manas Dey.*"

10. It is the case of the applicants that they were engaged for the first time in 2000. In view of the three Judge Bench decision in Dhani Ram (supra) and para 4 of the decision in Mohan Pal the scheme is not applicable to the case of these applicants.
11. When these applicants could not have been conferred temporary status, under the 1993 scheme the subsequent question of regularization under that scheme does not arise.
12. The question that arises is as to whether having conferred temporary status and regularized their services these orders could have been withdrawn.
13. It is well settled that an administrative error can be corrected. The Apex Court in Aligarh Muslim University & Ors. -VS- Mansoor Ali Khan, [(2000) SCC (L&S) 965], has held:

"The principle that in addition to breach of natural justice, prejudice must also be proved has been developed by the Supreme Court in several cases. Since K.L. Tripathi case, the Supreme Court has consistently applied the principle of prejudice in several cases.

K.L. Tripathi v. State Bank of India, (1984) 1 SCC 43 : 1984 SCC (L&S) 62, State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364 : 1996 SCC (L&S) 717; Rajendra Singh v. State of M.P. (1996) 5 SCC 460, relied on. Wade : Administrative Law (5th Edn.), pp. 472-75, referred to

The 'useless formality' theory is an exception. Apart from the class of cases of 'admitted or indisputable facts leading only to one conclusion' as discussed in S.L. Kapoor v. Jagmohan, there has been considerable debate on the application of that theory in other cases. In the ultimate analysis the applicability of the theory would depend on the facts of a particular case."

14. When the 1993 scheme does not apply the regularization in terms of that scheme is not valid in the eyes of law. In the facts of this case the service of notice would have made no difference. This could have been therefore withdrawn.
15. The last question that arises is as to whether even after termination of their regular service these applicants were required to be continued as Casual labour on the same terms & conditions as before conferment of temporary status. The decision in para 7 of Mohan Pal shows that CL with TS cannot be removed on whims and fancies when work is available. The 3 Judge Bench in State of Haryana -VS- Piara Singh [(1992) 4 SCO 118], had amongst others held that casual labours cannot be substituted by another set of casual labours. This part of the Judgment is approved in State of Karnataka -VS- Uma Devi (3) [(2006) 4 SCC 11]. In view of this we are of the view that these applicants are required to be continued on similar terms & conditions, if work was available.
16. In conclusion the challenge to order withdrawing conferment of temporary status and Regularization fails. The applicant will however, be continued as casual labour on earlier terms and conditions of work is available."

5. We note that in the earlier round this Tribunal had noted that the applicants could not have been conferred with temporary status under 1993 scheme and consequently rejected the claim for temporary status and regularization of their services under the scheme and upheld withdrawal of such order. In the present OA we are asked once again to decide whether having conferred temporary status and having regularized their services, such orders could have been withdrawn, which is practically challenging the withdrawal orders that was substantially in issue in the earlier OA and stood decided and rejected on merits.

Having once accepted grant of temporary status from 2006 and having not challenged the earlier order of this Tribunal, particularly with reference to the observation as in paragraphs 11 & 12 therein, we feel that in fact in the present OA the bar of *res-judicata* would operate.

6. Hence, the OA fails and is dismissed.


(Dr. Nandita Chatterjee)
Member (A)


(Bidisha Banerjee)
Member (J)

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