

Manoj Kumar and ors. Vs. Union of India (Uoi) and ors.

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Nov-22-2004

Reported in : (2005)(3)SLJ18CAT

Judge : M A S.K.

Appellant : Manoj Kumar and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Mr. A.K. Bhardwaj

Advocate for Pet/Ap. : Mrs. Rani Chabra

Judgement :

1. As the controversy involved in both the O.As. is the same, these are being disposed of by one common order. For the sake of convenience, the particulars, given in O.A. No. 1951/2000 are being mentioned in this order.

There are four applicants in this O.A. who have approached the Tribunal with the request that the respondents should be directed to confer temporary status upon them in accordance with the Scheme evolved by DOP&T in 1993, from the date they became eligible, after completion of one year of continuous service, along with all consequential benefits.

3. The four applicants in this O.A. were engaged in the years 1992 and 1993 as casual labourers in the respondent Department. It has been contended that they

have been working with the respondent Department for the past eight years and in each year they have completed 240 days.

In 1993, the DOP&T framed a Scheme known as "Casual Labourer (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993" which came into force on 1.9.93 and this Scheme was applicable to all casual labourers working in various Ministries/Departments of Government of India. After coming into force of this Scheme, the temporary status was conferred on many casual labourers who had completed 240 days of service in a year ignoring the claims of the applicants. The relevant Para 4(i) of the Scheme is reproduced below for the purpose of reference: (1) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.M. and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week)." 4. A copy of Scheme which was circulated with the O.M. dated 10.9.93 is at Annexure P-3. As all the four applicants have completed 240 days in the year 1992-93, they are eligible for conferment of temporary status on them in accordance with the Scheme. They approached the department with their representation. However, this benefit has been denied to them despite the fact that they fulfil all the required conditions.

This action on the part of the respondents is thus illegal, unjustified and unconstitutional.

5. The respondents have filed a counter reply. They have taken the stand that as per Para 4(i) of the Scheme introduced by DOP&T vide O.M.dated 10.9.93 reproduced above, all the casual labourers who were in employment on 10.9.93 and who had rendered a continuous service of at least one year as on 10.9.93, were eligible for conferment of temporary status. All the applicants in the present O.A. were engaged in October/ November, 1992 and January, 1993 and as such they had not completed one year as on 10.9.93. Therefore, they were not eligible for conferment of temporary status according to the above Scheme. They have denied that any casual labourer who did not fulfil the requirements as mentioned in the Scheme, has been conferred temporary status or regularised.

Besides, the Scheme introduced by the DOP&T was one-time measure and was not an ongoing Scheme as held by the Hon'ble Supreme Court in the case of UOI and Anr. v. Mohan Pal and Ors., . The Scheme cannot be made applicable to all those casual labourers who would have rendered continuous service of one year after the crucial date of 10.9.93. As none of them had completed one year on the crucial date 10.9.93 as per details given in Annexure R-1, they are not entitled for the benefits of temporary status. According to them, even if some of the applicants had completed 240/206 days of service on 10.9.93, they are not eligible for benefits under the Scheme unless they fulfil the basic condition of one year of continuous service as on 10.9.93.

6. I have heard Mrs. Rani Chabra, learned Counsel for the applicants and Mr. M.K. Bhardwaj, proxy for Mr. A.K. Bhardwaj, learned Counsel for the respondents and have also gone through the pleadings on record.

7. The date of engagement of the applicants is this O.A. as casual labourers as indicated in Annexure R-1 is as under: 8. The learned Counsel for the applicants stated that the applicants in this O.A. were working in an Office which had five working days in a week. As such these casual labourers are required to complete 206 days in a year for conferment of temporary status under the DOP&T's Scheme issued vide O.M. dated 10.9.93. Even according to the information furnished by the respondents, all the applicants except Shri Manoj Kumar had completed 206 days as on 10.9.93. She, however, conceded that none of the applicants had completed one year of continuous service as on 10.9.93 but three of them at Sl. No. 2 to 4 had completed more than 206 days on the crucial date. According to her, the instructions on the subject in Para 4(i) of O.M. dated 10.9.93 are very clear. An employee should have rendered atleast one year of continuous service, which means he should have been engaged atleast for 206 days. She was of the opinion that completion of 206 days was the important requirement for conferment of temporary status, even though the employee may not have completed one year of service on 10.9.93. This point was vehemently opposed by the learned Counsel for the respondents. He was of the view that both the conditions of continuous service of at least one year and 206 days are required to be fulfilled for conferment of temporary status. The first condition to be fulfilled according to the Scheme is

continuous service of one year during which the employee should have worked for atleast 206 days. In respect of all the four applicants, the pre-requirement of continuous service of one year is not met and as such they are not eligible for the benefits under the Scheme.

9. The only point to be decided in this O.A. is whether the completion of 206/240 days as on 10.9.93 is enough to fulfil the condition for conferring temporary status under the Scheme the employee should have also completed one year of continuous service on that date. The close reading of the instructions contained in Para 4 (i) dated 10.9.93 reproduced in Para 3 above reveals that the temporary status can be conferred only on those casual labourers who were in employment on the date of issue of O.M. dated 10.9.93 and who had rendered a continuous service of at least one year. The period of "one year" has further been qualified in this para, by stating that it means that the employee must have been engaged for a period of at least 206/240 days. The most important condition as atleast one year of service; which should not be less than 206/240 days in a year.

10. It is difficult to accept the plea put forth by the learned Counsel for the applicants that since the applicants had completed 206 days, they deserve to be conferred temporary status, notwithstanding the fact whether they had completed one year service or not on the crucial date of 10.9.93. If this argument is accepted, it may lead to a situation where an employee may have been in the service only for say 8-9 months but may have completed 206 days of service. Conversely there could be a case where an employee may have completed one year of service but not 240/206 days. Will it be in order to confer temporary status in such cases? It is evident from the Scheme that it was not the intention of the Govt. that one of the conditions i.e. one year of service or engagement for 240/206 days in a year should be fulfilled for conferment of temporary status. If it was so, the Scheme would have mentioned that for conferring temporary status, the employee should have completed either one year of service or should have been engaged for 240/206 days. But this is not so. The first condition to be fulfilled is one year's service. "One year" has further been qualified by stating that one year means 240/206 days of employment. Thus, both the conditions of one year of service and engagement for 240/206 days are required to be fulfilled to be eligible for

conferment of temporary status. It can happen that an employee may have one year of service on 10.9.1993 but may not have completed 240/206 days in a year. In such a case also, the temporary status cannot be granted. In my considered opinion, therefore, the first requirement to be fulfilled is one year's of service and within that one year the employee should have worked for atleast 240/206 days. Even if he had worked for more than 240/206 days but had not completed one year of service as on 10.9.1993, he will not be eligible for conferment of temporary status. Both the conditions are required to be fulfilled. Admittedly all the four applicants in this O.A. have not completed one year of service and as such, they are not eligible for any benefit under this Scheme.

11. In so far as the second O.A. No. 1952/2000 is concerned, there are two applicants. Both of them were engaged as casual labourers in the respondent Department in the years 1997 and 1998 respectively. They were thus not in employment of the respondent Department on 10.9.93.

The learned Counsel for the applicant frankly conceded that they are not covered by the Scheme, which is not an on-going Scheme, as held by the Hon'ble Supreme Court in the case of Mohan Pal (supra). They are, therefore, not eligible for conferment of temporary status under the DOP&T's Scheme circulated vide O.M. dated 10.9.93.

12. The learned Counsel for the applicants, however, made an alternative prayer stating that in case the applicants were not eligible for conferment of temporary status under the 1993 Scheme, they should be considered for regularisation under the instructions dated 7.6.1988 issued by DOP&T. The learned Counsel for the respondents opposed this plea by stating that this prayer has not been made in the O.A. and as such cannot be raised at this stage. Besides, the question whether the instructions dated 7.6.1988 are applicable for conferment of temporary status or not, has been considered and dealt with in the order dated 29.10.2004 passed by this Tribunal in O.A. No. 981/2004 in the case of Titu Ram and Ors. v. UOI and Ors. in which a view has been taken that there is no scheme after 1993 under which a casual employee who has been engaged after 10.9.93 can be regularised or conferred temporary status. In view of the above, the

learned Counsel for the applicants stated that she will not like to pursue this prayer in so far as the applicants in O.A. No. 1952/ 2000 are concerned.

13. In view of the above, both the O.As. turn out to be devoid of any merit and the same are dismissed, without any order as to costs.

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