

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

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Sep-05-2005

Reported in : (2006)(91)SLJ282CAT

Judge : M K Gupta

Appellant : Prem Kumar and ors.

Respondent : Union of India (Uoi) and ors.

Judgement :

1. The question posed in the present O.A. is whether casual labourer is entitled to regularization merely on completion of 206/240 days, as the case may be, in two consecutive years, under DOP and TO. Ms. dated 26.10.1984 and 07.06.1988? 2. This is the second round of litigation. On an earlier occasion 4 applicants as in this O.A., instituted O.A. No. 860/2004 and prayed for regularization of their services in terms of DOP and TO.M. dated 26.10.1984 read with O.M. dated 7.6.1988 and also based on the decisions of this Tribunal in the matters of Partnanand v. UOI and Ors.

(T.A. No. 4157 1986), Biswajyoti Ghosh and Ors. v. UOI and Ors. 1994 Vol. 1 ATI 488 and Ashok Kumar and Ors. v. UOI and Ors. (O.A. No.104/2002) wherein it had been held that casual labourers, who had rendered 206 days in two consecutive years, were entitled for regularization. After considering the various contentions raised by the parties, the said O.A. was disposed of vide order at 27.05.2004, with the following observations: 7. On perusal of the facts of the case

it is observed that, while it is a fact of record that the applicants had been in the service of the respondents as casual labourers for a certain period, presently they are serving them on contract basis. It is also apparent that the respondents do not have their own establishment and do not make recruitment of their manpower. Decisions of the Tribunal which have been referred to by the applicants in support of their contention that they be regularized, are relevant in the case of casual labourers of one kind or the other. But the present case relates to contract labour and it is doubtful if similarity can be established with the cases already decided. However, a reference will need to be made to the respondents to clarify whether what has been submitted by the applicants in regard to the nature of their employment is confirmed by their records. The question of regularizing their services in terms of the provisions of the Department of Personnel and Training O.M. dated 26.10.1984 and 7.6.1988 would become relevant only if they fulfilled the conditions of the said O.M. before they became contract labourers employed through contractors.

8. In consideration of the facts and circumstances of the case and also the submissions made by the learned Counsel for the parties. I partly allow this O.A. with a direction to the respondents that they verify the nature of employment and service which has been rendered by the applicants since their initial engagement and whether they had fulfilled the conditions as laid down in the O.M. of the Department of Personnel and Training as referred to by the applicant and whether they could be given the benefit of regularization of their services in terms of the said provisions before they were employed afresh as contract labourers through contractors. If, on verification, it is found that they fulfilled the conditions as laid down in the O.M. of the Department of Personnel and Training as referred to, they may consider giving them the benefit of the scheme. They are also directed to dispose of the matter by issuing a reasoned and speaking order within three months from the date of receipt of this order. No order as to costs.

3. Pursuant to the aforesaid order, the respondents passed an order dated the 8th February, 2005 and stated as under: 5. As you are aware that the Directorate of Standardization does not have a cadre of its own and thus there is no recruitment done by the Directorate. The manpower for these posts are given by various

feeder organizations on deputation/tenure basis. No recruitment is done by the Directorate of Standardization for any of the posts authorized in the Establishment.

6. The DOP and T O.M. dated 07 June, 1988 inter-alia states that the persons on daily wages should not be recruited for work of regular nature and recruitment of daily wagers may be made only for work which is of casual or seasonal or intermittent nature or for work which is not of full time nature, for which regular posts can not be created.

7. Keeping all these facts in view, you do not fulfill the requirements of the DOP and T O.M. dated 07 June, 1988.

The validity of aforesaid communication dated 8th February, 2005 has been question in the present proceedings besides seeking directions to respondents to regularize their services in terms of DOP and T O.Ms, dated 26.10.1984 and 7.6.1988 and also to pay them wages at par with regular Group 'D' employees from the date of their engagement.

4. The grounds taken in this O.A. are that the aforesaid impugned order has been passed without application of mind in as much as the applicants have been working for nearly about 5 years and have now become over-aged for Govt., services; that the impugned order has been passed in contravention of this Tribunal's direction dated 06.04.2004; that the casual labourers working in the Naval HQ, Air HQ and DRDO have been regularized; that admittedly the applicants have worked for more than 206 days as Casual Labourers in two consecutive years and, therefore, they are entitled to the benefit of aforesaid DOP and T O.Ms. dated 26.10.1984 and 7.6.1988; that non-regularizing their services and resorting to their continuation through contractor is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution.

5. Though it was submitted that the applicants have not been paid at par with regular Group 'D' employees, but no such contention was pressed or any arguments advanced during the course of hearing. Mr.

M.K. Bhardwaj, learned Counsel appearing for applicants strenuously contended that the Government's decision to allot certain types of works to contractors and retrenching the Casual Laborers appointed in accordance with law has not been approved by the Hon'ble Supreme Court and reliance was placed on , Union of India v. R.N.Ayare. Reliance was also placed on an order dated 17th May, 2002 in O.A. 2242/2001 Bharoseram v. The Secretary, Ministry of Finance and Ors., particularly Para-5. Further reliance is placed on 2004(1) SLJ 204 Badri and Ors. v. Union Territory, Chandigarh and Ors.

6. The respondents contested the applicants' claim and stated that in terms of law laid down by the Hon'ble Supreme Court in Union of India and Anr. v. Mohan Pal etc. 2002(2) ATJ 215 (SC) holding that the DOP and T Scheme dated 10.09.1993, which came into operation w.e.f.

1.9.1993 is not an ongoing scheme, and the temporary status could be conferred on the casual labourers under the said Scheme only on fulfilling the conditions incorporated in Clause 4 of the scheme, namely, that the casual labourers should have been engaged on the date of commencement of the Scheme and rendered a continuous service of at least one year, i.e., 240/206 days, as the case may be.

7. The respondents also stated that services of Casual Laborers and not Group 'D' employees were required for the work, viz., loading/unloading/transportation of printed documents and transportation of stationery and consumables etc. For this purpose, Government sanction was obtained for conservancy services by engagement of casual workers or on contract basis in the Directorate of Standardization vide communication dated 7.7.2000 (Annexure 'C'). Accordingly, requisition for notification of 4 vacancies of casual labourers was placed and 5 candidates were selected from the list forwarded by the Employment Exchange and 5 candidates were kept on reserve. Applicants No. 1 and 2 were in the reserve list and engaged on requirement basis in the year 2000. Applicant No. 3 was not selected either in the first select list or placed on the reserve list. He was engaged on requirement basis vide letter dated 14.6.2001. Applicant No. 4 was in the reserve list and engaged on requirement basis vide letter dated 3.10.2000. It was contended that the applicants were not appointed against any Group 'D' post

inasmuch as the Directorate of Standardization has no cadre of its own and thus there is no recruitment done by the Directorate. The Directorate has an establishment where the posts are authorized by the Ministry of Defence and it has got 14 Group 'D' posts authorized, for which personnel are provided by the Office of Chief Administrative Officer, Ministry of Defence. All these personnel are posted to the said Directorate on a tenure basis for a period of 8 years. The Directorate had some requirement of casual labourers for loading/unloading/transportation of printed documents and transportation of stationery and consumables. For this purpose, sanction for conservancy services by casual workers was obtained. The applicants were engaged on daily wage basis for cleansing, upkeep and maintenance of service vehicles, loading/unloading/transportation of printed documents and transportation of stationery and consumables.

It was further emphasized that they were not engaged on duties of regular Group 'D' employees and were accordingly paid in accordance with the rates notified by the Govt. of National Capital Territory of Delhi under the provisions of Minimum Wages Act, 1948. The respondents also emphasized that since the Directorate did not have a cadre of its own, no permanent appointment could be made. In January, 2004, the Government sanctioned expenditure for conservancy services on contract basis for a period of one year w.e.f. 1.4.2004 vide letter dated 9.01.2004. Keeping in view the above sanction, the Directorate raised a tender inquiry for conservancy services on contract basis. M/s. Sab Computer Service quoted the lowest rate and, therefore, the contract was awarded to the said agency. It is for the contractor's discretion to employ any personnel for conservancy services in the Directorate of Standardization. The applicants were not employed on continuous basis and since 1st April, 2004, they are being engaged by the contractor.

The claim of the applicants had been considered and rejected since they did not fulfill the criteria/ requirement as laid down under DOP and T vide letter dated 26.10.1984 and 7.6.1988 (reply Grounds-D). The judgments cited by the applicants are inapplicable, also stated the respondents. No vacancy in Group 'D' post has been authorized and no recruitment is done by the Directorate of

Standardization. The work for which the applicants were engaged is not of perennial nature, also stated the respondents.

8. I have heard the learned Counsel for both sides and perused the pleadings carefully.

9. I may note, at the outset, that no rejoinder has been filed by the applicants. Mr. M.K. Bhardwaj, learned appearing for applicants repeatedly contended that they "admittedly worked for more than 206 days as Casual Labourers each year" and, therefore, they are entitled for regularization and in support of such contention reliance was placed on the judgments noted hereinabove. No documents have been produced to show the categorical admission on the part of the respondents about applicants' engagement for more than 206 days in consecutive two years, either in any document or in their reply filed.

10. The O.M. dated 07.06.1988 had been issued in terms of the judgment rendered by the Hon'ble Supreme Court on 17.01.1986 in Surinder Singh v. Union of India, which lays down certain guidelines for recruitment of casual workers on daily wage basis. A perusal of the said O.M. indeed goes to show that it has been emphasized to minimize the number of casual workers and not to engage their service to the extent possible in future. Similarly, the earlier O.M. issued on 26.10.1984, those casual labourers who had been recruited through employment exchange and who have put in at least 240 days (206 days in the case of offices with 5 days week) of service for two years of service as daily wage workers were made eligible to be considered for regular appointment against a Group 'D' post subject to the condition that suitable vacancies to accommodate them were available. Subsequently, based on judgment of this Bench of the Tribunal dated 16.02.1990 in Shri Raj Kamal and Ors. v. UOI, the DOP and T formulated a scheme which was titled "Casual Workers (Grant of Temporary Status and Regularization) Scheme of the Government of India, 1993" and notified the same on 10.09.1993, which also came into operation w.e.f.

01.09.1993. Before proceeding further, it would be expedient to note the contents of DOP and T O.M. No. F-49014/2/86/Est.(C) dated 07.06.1988, the subject matter of which is Guidelines for recruitment of casual workers and persons on daily

wages- Review of policy in view of the Supreme Court's judgment". The said O.M. reads as under: The policy regarding engagement of casual workers in Central Government Offices has been reviewed by Government keeping in view the judgment of the Supreme Court delivered on the 17th January, 1986, in the Writ Petition filed by Shri Surinder Singh and Ors. v. Union of India and it has been decided to lay down the following guidelines in the matter of recruitment of casual workers on daily wage basis: (i) Persons on daily wages should not be recruited for work of regular nature.

(ii) Recruitment of daily wagers may be made only for work, which is of casual or seasonal or intermittent nature, or for work which is not of full time nature, for which regular posts cannot be created.

(iii) The work presently being done by regular staff should be reassessed by the Administrative Departments concerned for output and productivity so that the work being done by the casual workers could be entrusted to the regular employees. The Departments may also review the norms of staff for regular work and take steps to get them revised, if considered necessary.

(iv) Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.

(v) In cases where the work done by a casual worker is different from the work done by a regular employee, the casual workers may be paid only the minimum wages notified by the Ministry of Labour or the State Government/ Union Territory Administration, whichever is higher, as per the Minimum Wages Act, 1948. However, if a Department is already paying daily wages at a higher rate, the practice could be continued with the approval of its Financial Adviser.

(vi) The casual workers may be given one paid weekly off after six days continuous work.

(vii) The payment to the casual workers may be restricted only to the days on which they actually perform duty under the Government with a paid weekly off as mentioned at (vi) above. They will, however, in addition, be paid for a National Holiday, if it falls on a working day for the casual workers.

(viii) In cases where it is not possible to entrust all the items of work now being handled by the casual workers to the existing regular staff, additional regular posts may be created to the barest minimum necessary, with the concurrence of the Ministry of Finance.

(ix) Where work of more than one type is to be performed throughout the year but each type of work does not justify a separate regular employee, a multifunctional post may be created for handling those items of work with the concurrence of the Ministry of Finance, (x) The regularization of the services of the casual workers will continue to be governed by the instructions issued by this Department in this regard. While considering such regularization, a casual worker may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age limit for the relevant post.

(xi) If a Department wants to make any departure from the above guidelines, it should obtain the prior concurrence of the Ministry of Finance and the Department of Personnel and Training.

All the Administrative Ministries/Departments should undertake a review of appointment of casual workers in the offices under their control on a time-bound basis so that at the end of the prescribed period, the following targets are achieved: (a) All eligible casual workers are adjusted against regular posts to the extent such regular posts are justified.

(b) The rest of the casual workers not covered by (a) above and whose retention is considered absolutely necessary and is in accordance with the guidelines, are paid emoluments strictly in accordance with the guidelines.

(c) The remaining casual workers not covered by (a) and (b) above are discharged from service.

2. The following time-limit for completing the review has been prescribed in respect of the various Ministries/Departments:(a) Ministry of Railways ...

2 Years(b) Department of Posts, Department of of Defence Production ...

1 Year(c) AH other Ministries/Departments/Offices ...

6 months Each Ministry should furnish a quarterly statement indicating the progress of the review in respect of the Ministry (proper) and All Attached/Subordinate offices under them to the Department of Personnel and Training in the proforma attached. The first quarterly return should be furnished to this Department by the 10th October, 1988.

3. By strict and meticulous observance of the guidelines by all Ministries/ Departments, it should be ensured that there is no more engagement of casual workers for attending to work of a regular nature, particularly after the review envisaged above is duly completed. Each Head of Office should also nominate an officer who would scrutinize the engagement of each and every casual worker and the job for which he is being employed to determine whether the work is of casual nature or not.

4. Ministry of Finance, etc., are requested to bring the contents of this Office Memorandum to the notice of all the Appointing Authorities under their respective administrative control for strict observance. Cases of negligence in the matter of implementing these guidelines should be viewed very seriously and brought to the notice of the appropriate authorities for taking and suitable action against the defaulters.

11. Similarly, it would be expedient to note the O.M. No.49014/19/84-Estt.(C), dated 26.10.1984, which reads as under: Subject; Implementation of the instructions relating to regularization of services of casual workers in Group 'D' posts, in the organizations observing five day week.

The undersigned is directed to say that as per the general instructions issued by this Department, the services of a casual worker may be regularized in a Group D post, provided, inter alia, he has put in two years as a casual worker, with 240

days or more of service as such, during each year. The number of 240 days was worked out with reference to 6-day week being observed in Central Government offices. It has been brought to the notice of this Department that there are certain organizations, which have adopted the instructions issued by this Department about regularization of services of casual workers, but who are observing a five day week. A question has been raised whether even in the organizations observing five day week, the requirement of 240 days or more of service during each of the two years may be enforced as it is, or whether the requisite number of days may be brought down proportionately.

2. The matter has been considered in this Department and it has been decided that in the organizations observing five day week, casual workers may be considered for regular appointment to Group D posts, if otherwise eligible, if they have put in 2 years of service as casual workers, with 206 days of service during each year (as against the usual 240 days). This may please be brought to the notice of all concerned.

12. I may also note the fact that this Tribunal, on an earlier occasion, had specifically observed that: "The question of regularizing their services in terms of the provisions of the Department of Personnel and Training O.Ms, dated 26.10.1984 and 07.06.1988 would become relevant only if they fulfilled the conditions of the O.Ms, before they became contract labourers" (emphasis supplied). The respondents in their impugned order dated 08.02.2005 particularly in Para-7 have specifically observed that "you do not fulfill the requirements of the DOP and T O.M. dated 07 June, 1988." As noticed hereinabove, no rejoinder has been filed on these aspects and therefore, their repeated utterances that the applicants "admittedly worked for more than 206 days" in consecutive two years, is baseless, mis-conceived and a statement made in exaggeration of facts. The respondents have also stated specifically in their reply Para 4.5 that: "the applicants were not involved in duties performed by other Group 'D' employees which inter alia involve distribution of dak, official documents, letters etc., from one office to another and opening and closing of officers." This aspect also has not been controverted by the applicants.

13. Reliance placed on the judgment of the Hon'ble Supreme Court in Union of India v. R.N. Ayare (supra) is mis-conceived and is untenable in the facts of the present case. On the other hand, I find that the Hon'ble Apex Court in Para-4 held that it was certainly open to the Union of India to formulate its policy in awarding the work to the contractor or get it done through employees engaged by him and not directly. Inconsistent stand in issuing different types of Circulars by the Union of India, was the basic cause for issuing directions by the Industrial Tribunal that the work should not be awarded to contractors.

It is not the ratio of the said judgment that the Union of India cannot formulate a policy for awarding the work to a contractor. Similarly, in the case of Bharoseram (supra) a Single Bench of this Tribunal had dealt with a situation where a person had been working as a Peon with different Departments/Ministries for 17 years and had not been regularized. Such are not the facts in the present O.A. and, therefore, the said order and judgment would have no application. As far as the judgment of Badri (supra) is concerned, I may note that in the said case, the casual labourers were directed to be regularized as the respondents plea that there were no vacancies were found to be camouflage, which is not the facts of the case in hand.

14. I may also note the facts that Para-3 of the impugned order dated 08.02.2005 in specific stated: "the applicants were not engaged on duties normally assigned to Group" D' employees. They were engaged for work for which regular post cannot be created." The aforesaid specific stand indeed goes to show that the applicants were not engaged against any regular posts and, in fact, were engaged purely on casual and daily wage basis and thereafter through contractor from 01.04.2004. It is not disputed by the applicants that the Directorate of Standardization did not have a cadre of its own and no recruitment is made by the said Directorate. Observations on these aspects were also made by this Tribunal on an earlier occasion vide order dated 27.05.2004 in O.A. No.860/2004 filed by the applicants. It was also observed that the present case relates to contract labour and it was doubtful if similarity can be established with the case already decided. In other words, the applicants' claim that they are similarly placed to the officials whose judgments were relied upon was negated by the Tribunal. If the applicants were

aggrieved against the said findings, they were at liberty to take appropriate step, but having chosen to remain silent, the conclusion is irrefutable that the said judgment has attained finality and cannot be challenged even indirectly in the present proceedings.

15. The Hon'ble Supreme Court in R.N. Nanjundappa v. T. Thimmaiah AIR 1972 SC 1762, made strong observation that regularization of appointment cannot be done in utter defiance of the rules as well as that regularization cannot be said to be a "mode of recruitment". It would be expedient to note the following excerpts from the said judgment, which read as under: 23. It was contended on behalf of the State that under Article 309 of the Constitution the State has power to make a rule regularizing the appointment shelter was taken behind Article 162 of the Constitution and the power of the Government to appoint. No one can deny the power of the Government to appoint. If it were a case of direct appointment or if it were a case of appointment of a candidate by competitive examination or if it were a case of appointment by selection recourse to rule under Article 309 for regularization would not be necessary, Assume that Rules under Article 309 could be made in respect of appointment of one man but there were two limitations. Article 309 speaks of rules for appointment and general conditions of service. Regularization of appointment by stating that notwithstanding any rules the appointment is regularized strikes at the root of the rules and if the effect of the regularization is to nullify the operation and effectiveness of the rules, the rule itself is open to criticism on the ground that it is in violation of current rules. Therefore the relevant rules at the material time as to promotion and appointment are infringed and the impeached rule cannot be permitted to stand to operate as a Regularisation of appointment of one person in utter defiance of rules requiring consideration of seniority and merit in the case of promotion and consideration of appointment by selection or by competitive examination.

26. The contention behalf of the State that a rule under Article 309 for regularization of the appointment of a person would be a form of recruitment read with reference to power under Article 162 is unsound and unacceptable. The executive has the power to appoint.

That power may have its source in Article 162. In the present case the rule which regularized the appointment of the respondent with effect from 15th February, 1958 notwithstanding any rules cannot be said to be in exercise of power under Article 162. First, Article 162 does not speak of rules whereas Article 309 speaks of rules.

Therefore, the present case touches the power of the State to make rules under Article 309 of the nature impeached here. Secondly when the Government acted under Article 309 the Government cannot be said to have acted also under Article 162 in the same breath. The two Articles operate in different areas. Regularization cannot be said to be a form of appointment. Counsel on behalf of the respondent contended that regularization would mean conferring the quality of permanence on the appointment whereas Counsel on behalf of the State contended that regularization did not mean permanence but that it was a case of regularization of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules.

The aforesaid judgment has been followed in AIR 1993 SC 1650 : 1993(3) SLJ 6 (SC), State of Orissa v. Sukanti Mohapatra, where the basic question, which came to be considered, was whether the rule which permits relaxation of any of the provisions of Rules could be exercised which tantamount to total shelving of the Rules. The Hon'ble Supreme Court did not approve regularization merely because a person had served for long years. The relevant excerpts of the said judgment reads thus- In the present case also the appointment of the employees whose services are sought to be regularized were de hors the Rules. Rule 14 merely permits relaxation of any of the provisions of the Rules in public interest but not the total shelving of the Rules. The orders do not say which rule or rules the

Government considered necessary and expedient to public interest to relax. What has been done under the impugned orders is to regularize the illegal entry into service as if the Rules were not in existence. Besides the reasons for so doing are not set out nor as it clear how such regularizations can sub serve public interest. Rule 14 has to be strictly construed and proper foundation must be laid for the exercise of power under that rule. The Rules have a limited role to play, namely, to regulate the method of requirement, and Rule 14 enables the Government to relax any of the requirements of the Rules pertaining to recruitment. The language of Rule 14 in the context of the objective of the Rules does not permit total suspension of the Rules and recruitment dehors the Rules. In the present case the recruitments had taken place years back in total disregard of the Rules and now what is sought to be done is to regularize the illegal entry in exercise of power under Rule 14. Rule 14, we are afraid, does not confer such a blanket power; its scope is limited to relaxing any rule, e.g. eligibility criteria, or the like, but it cannot be understood to empower Government to throw the Rules overboard....(SC), Dr. M.A.Haque v. Union of India, the Hon'ble Supreme Court took notice of the fact that there had been constant violation of the Recruitment Rules and back door entry for illegal recruitment without any limits. It was observed therein that: 9. We cannot lose sight of the fact that the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and the by-passing of the Public Service Commission are permitted, it will open a back-door for illegal recruitment without limit. In fact this Court has, of late, been witnessing a constant violation of the recruitment rules and a scant respect for the constitutional provisions requiring recruitment to the services through the Public Service Commission, It appears that since this Court has in some cases permitted regularization of the irregularly recruited employees, some Government and authorities have been increasingly resorting to irregular recruitments. The result has been that the recruitment rules and the Public Service Commission have been kept in cold storage and candidates dictated by various considerations are being recruited as a matter of course....In Dr. Arundhati A. Pargaonkar v. State of Maharashtra the Hon'ble Supreme Court eligibility and continuous working for howsoever long period should not be permitted to over-reach the law. A note of caution was also made by stating that the requirement of Rules of selection

through Public Service Commission/UPSC cannot be substituted by humane considerations.

Law must take its course. In the said case, the appellant had been working without break for 9 years, In such circumstances, the Hon'ble Supreme Court noticed its predicament in the following terms, but dismissed the appeal.

8. Even then, at one stage, the selection and appointment of the appellant by a duly constituted Board against a temporary post in accordance with rules against a permanent post and her continuance for nine years coupled with inaction of the Government to take any steps to fill the post through Commission thus preventing the appellant from availing of any opportunity for regular selection was bothering us. But when the Under Secretary in the Medical Department filed the additional affidavit on direction of this Court what transpired indicated that in fact the appellant has continued partly because of the circumstance that the regularly selected candidate did not join and partly due to interim orders granted by the Court. In *A.K. Bhatnagar v. Union of India* Supreme Court also cautioned the Government not to do something which is contrary to the Rules and emphasized to follow the mandate of the Rule in letter and spirit. It was observed therein that: On more than one occasion this Court has indicated to the Union and the State Governments that once they frame rules, their action in respect of matters covered by rules should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. Very often Government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules, We take serious view of these lapses and hope and trust that the Government both at the Centre and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules.

18. Though the aforesaid judgments are not directly on regularization of casual workers, but the ratio laid therein would squarely apply in the facts and circumstances of the present case. Any mis-placed sympathy shown to casual workers/contract workers who had been appointed in utter violation and defiance

of statutory rules on the said subject if are allowed regularization, this will open pandora-box and back door entry, which is impermissible in law. Merely, because a person is continued, may be for quite some time, would not be a ground to grant any relief as prayed for.(SC), Mahendra L. Jain and Ors. v. Indore Development Authority and Ors., the Hon'ble Supreme Court by placing reliance on another judgment has held that the daily wagers in the absence of statutory provisions in this behalf would not be entitled to regularization. The process of regularization involves regular appointment, which can be done only in accordance with the prescribed procedure.

20. No person appointed illegally or without following the procedure prescribed under law is entitled to claim that he should be continued in service and be regularized. Accordingly, I find no substance in the applicants' claim that they are entitled to regularization. Moreover, the O.M. issued in the year 1984 and 1988 cannot be read in isolation and have to be read along with the Scheme notified by the DOP and T vide O.M. dated 10.09.1993, particularly when the latest scheme is also in vogue on the same subject and which scheme, in fact, has diluted the purport of earlier O.Ms, of the year 1984 and 1988 considerably. I may also note that the validity of the said Scheme of 1993, particularly Para 4.1 has been tested by the Hon'ble Supreme Court in UOI v. Mohan Pal (supra).

21. In my considered view, the O.M. issued in the year 1988 has also to be read as one time measure benefit only at par with the 1993 Scheme as held by the Hon'ble Supreme Court in Union of India v. Mohan Pal. If any attempt is made to read the said O.M. of the year 1988 in isolation and not in conjunction as well as harmoniously with the Scheme of the year 1993 and also keeping in view the law laid down on the said Scheme by the Hon'ble Supreme Court in the aforesaid case of Mohan Pal (supra), this would tantamount to negation of law, which law is binding under Article 141 of the Constitution of India. Such a contention would also be impermissible. It would be unjust to state that though the scheme of the year 1993 was a one-time measure, but a person could be regularized by following the O.Ms, of the year 1984 as well as 1988.

22. Therefore, I am of the considered view that the O.Ms, of 1984 as well as 1988 cannot be read in isolation more particularly when the Scheme for grant of temporary status and regularization has been notified by DOP and T's O.M. dated 10.09.1993 which introduced the concept of Temporary Status before the process of regularization could be undertaken. A cumulative reading of all these O.Ms., namely, 26th October, 1984 and 6th July, 1988 and 10th September, 1993 would indeed go to show that it was not the mandate of the said O.Ms, that whosoever and whenever completing 240/206 days of service in two consecutive years should be regularized, as projected by the applicants. On the other hand, and bare perusal of para-2 of O.M. dated 7.6.1988 would show that if the eligible casual workers could not be adjusted against regular posts and their further retention was not considered necessary, they were to be discharged from service. In other words, the said O.Ms, had been a one time exercise and not an on-going process. It was not the object and purport of the said O.Ms, that as and when a person complete 240/206 days of service in two consecutive years, they would have to be regularized by the Government, as a matter of right.

23. It is also well settled that justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and technicalities and irregularities which would not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. Examining the case from this angle, if the Courts/Tribunal issue a direction to regularize those casual labourers who merely complete 206/240 days of service as the case may be as late as in the year 2005 it would not only amount to injustice between the parties but a premium to those who infringe the rules, for the simple reason that certain officials holding vested interests will keep on engaging casual labourers and somehow will manage that they complete the aforesaid period and ultimately get them regularized though their initial appointment may be completely de hors the Rules or back door entry inasmuch as the other similarly placed candidates were not allowed to compete for such an engagement for one reason or the other. This cannot be the purport and object of any law. Cumulative reading of O.Ms, dated 26.10.1984 and 7.6.1988 would make it abundantly clear that it creates no vested rights for regularization. Rather it

merely enables the organization to consider them for regular appointment to Group 'D' post, if they are otherwise eligible. In other words, it could not be treated as an on going process and has to be restricted to a one time measure alone.

24. In view of the discussions made hereinabove, I find no merit in the O.A. and the same is accordingly dismissed. No costs.

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