

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C.) Nos. 18542/2005 & 22029/2005**
% **Date of Decision: 17th August, 2009**

DIRECTOR GENERAL WORKS, CPWD.
..... PETITIONER
! Through: Mr. Arvind Nayar, Advocate.

VERSUS

\$ EKNATH
.....RESPONDENT
^ Through: Respondent with his counsel Mr. Varun Prasad, Advocate

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J (ORAL)

Both these writ petitions are proposed to be decided by this common order because they both relate to the same employee Mr. Eknath employed with the CPWD as daily wager.

2 Briefly stated the facts of the case relevant for disposal of these writ petitions are that the respondent Mr. Eknath was appointed as Khalasi Beldar as daily wager on muster roll with the CPWD (the petitioner herein) on 12.10.1984. His services were terminated by the petitioner w.e.f. 01.09.2000. At the time of termination of his services, an industrial dispute raised by the respondent workman for his regularization being ID No.82/1995 was pending adjudication before the Industrial Adjudicator. The petitioner did not take approval of the Industrial Adjudicator under Section 33 (2)(b) of Industrial Disputes Act,

1947 for termination of his services w.e.f. 01.09.2000 though an industrial dispute for his regularization was pending adjudication before the Industrial Adjudicator on that date. The respondent, therefore, filed a complaint under Section 33-A of Industrial Disputes Act, 1947 before the Industrial Adjudicator before whom an earlier dispute for regularization vide ID No.82/1995 was pending and claimed reinstatement with back wages.

3 The Central Government Industrial Tribunal-cum-Labour Court vide two separate awards, one dated 07.06.2004 and the second dated 08.06.2004 directed the petitioner to regularize the respondent in its service w.e.f. the date of his initial appointment i.e. 12.10.1984 and further directed the petitioner to reinstate him with full back wages.

4 The respondent, during pendency of these writ petitions, has already received an amount of Rs.2,79,976/- from the petitioner on account of back wages in terms of award of the CGIT referred above.

5 Mr.Arvind Nayar learned counsel appearing on behalf of the petitioner (CPWD) has argued that since the respondent was appointed as daily wager on muster roll, he has no legal right to ask for his regularization. It is contended by him that the impugned award of the Industrial Adjudicator in so far as it direct regularization of the respondent is totally perverse and contrary to the law laid down by the Hon'ble Supreme Court in various judgments.

6 Mr. Varun Prasad learned counsel appearing on behalf of the respondent on instructions from his client present in Court says that he does not want to press the claim of the respondent for his regularization and submits that the Court may set aside the award of Industrial Adjudicator in so far as it direct regularization of the respondent. De hors concession given by the counsel for the respondent, I am even otherwise

of the opinion that the respondent cannot claim regularization as a matter of right because his initial appointment was admittedly as a daily wage on muster roll. His appointment with the petitioner was a back door entry and was made in violation of provisions contained in Articles 14 & 16 of the Constitution of India. The regularization by no means can be a mode of recruitment in any public employment. The regularization cannot give permanence to an employee whose services are ad-hoc or of daily wage in nature. The Hon'ble Supreme Court has repeatedly held in several cases that the Court should not direct regularization of an ad-hoc appointee or a daily wage appointee. It will be relevant to refer to a recent judgment of the Hon'ble Supreme Court on this aspect in **State of Himachal Pradesh & Anr Vs. Ravinder Singh, Civil Appeal No2224 of 2008 (arising out of SLP(C) No.3347/2006)** decided on 28.03.2008 wherein it was held as under:-

“Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his

appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

7 In view of the above clear mandate of the Supreme Court on the right of daily wage appointees, I do not find any hesitation in holding that the impugned award of the Industrial Adjudicator in so far as it direct regularization of the respondent is concerned, it is perverse and contrary to law. Hence the award of the Industrial Adjudicator in so far as it direct regularization of the respondent is concerned cannot be sustained in law and is hereby set aside.

8 In so far as the impugned award of the Industrial Adjudicator directing reinstatement of the respondent with full back wages is concerned, it may be noted that the petitioner had not taken the approval of the Industrial Adjudicator under Section 33 (2)(b) for removal of the respondent from its services though an industrial dispute for his regularization vide ID No.82/1995 was pending on the date of his said termination. This makes the termination of the respondent *non-est*. Therefore, the impugned award of the Industrial Adjudicator in so far as it direct reinstatement of the respondent with full back wages is concerned cannot be faulted with. The impugned award to that extent is upheld as I do not find any perversity or illegality in the said award which direct reinstatement of the respondent with full back wages. However, it is made clear that the continuance of the respondent in the employment of the petitioner during pendency of legal proceedings either before the Labour Court or before this Court will not create any special equity or legal right in his favour to ask for his regularization as the said period was a period of litigious employment. The petitioner will be free to pass fresh orders for continuance of the respondent, if permissible in law or is in terms of its policy, regulation or any standing order applicable to ad-hoc or daily rated employees issued from time to time.

8 For the foregoing reasons, these writ petitions are partly allowed to the extent that the impugned award of the Industrial Adjudicator in so far as it direct regularization of the respondent is concerned is hereby set aside whereas the remaining portion of the award which direct reinstatement of the respondent with full back wages is affirmed. The amount of Rs.2,79,976/- which has already been received by the respondent on account of back wages during the pendency of these writ petitions may be adjusted while working out the remaining back wages to

which the respondent is entitled in terms of the impugned award which direct his reinstatement with back wages. The parties are left to bear their own costs.

In view of the above, both these writ petitions stand disposed of. A copy of this order be kept in the file of both the writ petitions which have been disposed of by this common order.

AUGUST 17, 2009
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S.N.AGGARWAL, J