* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on April 18, 2013
Judgment Delivered on April 26, 2013

\+ **W.P.(C) 6176/2012**

UNION OF INDIA AND ORS ..... Petitioners
Represented by: Mrs.Avnish Ahlawat, Adv. with Ms.Latika Chaudhary and Mr.Vaibhav Misra, Advocates

versus

VIJENDER SINGH AND ORS ..... Respondents
Represented by: Mr.K.S Rana, proxy counsel

W.P.(C) 6194/2012

UNION OF INDIA AND ORS ..... Petitioner
Represented by: Ms.Avnish Ahlawat, Adv. with Ms.Latika Chaudhary and Mr.Vaibhav Misra, Advocates

versus

SH. LAXMAN PRASAD AND ANR ..... Respondent
Represented by: Mr.K.S Rana, Proxy Counsel

W.P.(C) 7818/2012

UNION OF INDIA AND ORS ..... Petitioner
Represented by: Mr.Bheem Sain Jain, Proxy Counsel for Mr. Baldev Malik, Advocate

versus

ASHOK KUMAR ..... Respondent

Represented by: Mr.K.S Rana, Proxy Counsel

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. Since these Writ Petitions No. 6176/2012, 6194/2012 and 7818/2012 involves identical issues and two writ petitions 6176/2012 and 6194/2012 pertain to Original Applications which have been disposed of by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) by common order dated 05.07.2012 (impugned before this court) in O.A 3951/2011 and O.A 3952/2011 and the third Writ Petition No. 7818/2012 pertains to another Original Application disposed of by the Tribunal on the basis of the order dated 05.07.2012, we are disposing of the three petitions by this common order.

2. The respondents, five in number, in the three writ petitions, were engaged on contract basis on 23.12.1991, 26.03.1993, 22.07.1992, 21.01.1991 & 02.01.1991 respectively, for performing the duties of Motor Lowry Drivers (MLD) under the Superintending Engineer, Planning Flyover, MSO Building, New Delhi. They had earlier filed O.A. No. 78/1998 (respondents in Writ Petition No. 6176/2012), O.A. No. 264/1998 (respondent in Writ Petition no. 6194/2012) and O.A No. 1443/1998 (respondent in Writ Petition No. 7818/2012). The said O.As were disposed of by the Tribunal along with fourth O.A 1354/1998, which was filed by similarly placed person, vide a common order dated 23.07.1999. While allowing the O.A.s, the Tribunal had relied upon the judgment of Supreme Court in SLP(C) No. 17385/1984 *Lalji Ram vs. Union of India & Anr.*,

decided on 28.02.1995. The Tribunal in the concluding para of its order 23.07.1999, had held as under:

> *"I have carefully considered the submissions of all the counsel present for both the sides. The nature of work performed was that of a Driver. There was no third party contractor. In all these cases the applicants are both the contractors and executors. They worked with the vehicle and they are paid their wages, euphemistically known as a contract amount. It is a clear camouflage for employing a daily rated worker as a daily mazdoor for driving a Car regularly year after year. In view of the Apex Court's decision in the case of Lalji Ram (supra) I hold that the applicants are entitled to consideration for temporary status which orders shall be passed by the respondents within a period of four weeks from the date of receipt of a copy of this order in accordance with the Scheme. Thereafter, if there is any post vacant to be filled up the applicants shall be considered along with others. In considering the applicants; either or a Group 'D' post or for a Driver post, the earlier experience of the applicants shall be considered and given weightage. Age relaxation shall be fully provided.*
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> *All the OAs are disposed of. No order as to costs. Let a copy of this order be placed in all the above OAs."*

3. The petitioners herein filed Writ Petitions No. 436/2000, 437/2000, 568/2000 and 3369/2000 challenging the order dated 23.07.1979 in the aforementioned O.As. This court stayed the operation of the order on the assurance that the respondent shall be allowed to continue to work as drivers under their respective contract. The writ petitions were finally disposed off by this court on 20.07.2010. The relevant portion of this order is reproduced as under

"We are thus of the considered view that the case of the private respondents would have to be examined by the petitioner in terms of the said parameters to consider which of such persons are entitled to be given benefit of the scheme.

Learned counsel for the petitioner did contend that the private respondents are working in category 'C' posts as Drivers while the benefit of the OM of giving temporary status is available only to category 'D' employees.

We, however, find from the operative portion of the impugned order that the option has been given to the petitioner to give temporary status for a group 'D' post or for a Driver post and thus it is for the petitioner to consider as to whether the private respondents are to be absorbed or not in the Driver posts failing which they can be absorbed even on a temporary status in category 'D' post as per the OM.

Learned counsel for the private respondents urges before us that persons who were deployed much after the respondents have been permanently absorbed and in fact had not even been given temporary status. This position is denied by learned counsel for the petitioner. Be that as it may, we make it clear that if contract labour employed after the date from which the private respondents were deployed and have been given permanent status in any department of the CPWD, then, on parity, such benefit should also be made available to the private respondents and this aspect also be examined by the petitioner.

We may note that two of the private respondents have passed away and thus the benefit cannot be made available to them.

We thus direct that the petitioners will carry out the necessary exercise sympathetically taking into consideration the long period of service of the

respondents, within a maximum period of three months from today and communicate the reasoned decisions to the private respondents".

4. During the arguments, before this court, it was contended by the learned counsel for the petitioners that consideration of grant of temporary status to the respondents is based on O.M. dated 10.09.1993, which was given effect to from 01.09.1993. Reliance was also placed on the judgment of the Supreme Court in the opinion reported as 2002 (4) SCALE 216 *Union of India & Anr. vs. Mohan Pal etc. , a*s per which, the temporary status is to be given only to those of employees who were in place when the O.M. came into force and the conferment of temporary status is not an ongoing process. Relevant portion of the judgment is reproduced hereinunder :

"Clause 4 of this 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. Some of the Central Administrative Tribunals took the view that this is an ongoing Scheme and as and when casual labourers complete 240 days of work in a year or 206 days (in case of offices observing 5 days a week), they are entitled to get 'temporary' status. We do not think that clause 4 of the Scheme envisages 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."

5. Pursuant to the order of this Court dated 20.07.2010 in the four writ petitions, reference of which is given above, the petitioners herein considered the cases of the respondents and passed identical orders dated 14.06.2011 and 16.06.2011, 20.06.2011 and 21.06.2011 whereby they conveyed their decision that the respondents, working against Group C, are not entitled for grant of temporary status under the provisions contained in the Scheme for granting temporary status issued by DOP&T and therefore the department cannot absorb them on the post of MLD as no other contract labour was deployed after the date, from which the respondents have been deployed, in any department of CPWD.

6. The aforesaid orders were challenged by the respondents herein, in three O.As Nos. 3951/2011, 3952/2011 and 3959/2011. The first two O.As were disposed of by a common order dated 05.07.2012 (impugned in writ petitions no.6176/2012 & 6194/2012) whereas the third O.A was disposed of by a separate order dated 31.07.2012 (impugned order in writ petition no. 7818/2012) by the Tribunal placing reliance on the order dated 05.07.2012 in O.A Nos.3951/2011 and 3952/2011.

7. In the impugned orders dated 05.07.2012 and 31.07.2012, the Tribunal has concluded as under:

"However, it is seen from the impugned orders passed by the respondents dated 14.06.2011, 16.06.2011 and 20.06.2011 are totally contradictory to the aforesaid order of this Tribunal as the Hon'ble High Court of Delhi. Even though the respondents have stated in their orders that they have considered the cases of the applicants sympathetically, the sympathy remained only

in paper and not in action. In any case, the applicants on their merit are entitled to be considered for grant of temporary status and regularization in service in terms of the aforesaid Scheme as held by this Tribunal and affirmed by the Hon'ble High Court.

In view of the above facts and circumstances, we allow these O.As. We reiterate that the initial engagements of the applicants on contract basis were nothing but a camouflage but they were daily rated workers/casual labourers and performing the duties of Car Drivers belonging to Group `C' category. They should, therefore, be considered in terms of the Casual Labour (Grant of Temporary Status and Regularization) Scheme, 1993 and grant them the temporary status from the dates they became eligible for it. They shall also be considered for regularization in terms of the aforesaid Scheme and grant them from the respective due dates with all consequential benefits. They may also be given due weightage for appointment as Car Drivers against any existing or future vacancies with the respondents."

8. Contempt petitions were filed by the respondents herein alleging non compliance of order dated 20.07.2010 passed by this court in the four writ petitions. The contempt petitions were disposed of on 27.04.2011, whereby this Court observed as under:

"After some hearing in the matter, it is agreed that the respondents will re-consider the case of the petitioners in the light of judgment of CAT and Division Bench within a period of eight weeks and thereafter passed a reason order in accordance with law."

9. The petitioners passed orders dated 14.06.2011, 16.06.2011, 20.06.2011 & 21.06.2011. The same was challenged by the respondents herein by filing the O.A Nos. 3951/2011, 3952/2011 & 3959/2011 before

the Tribunal, which culminated in the orders impugned in this writ petitions.

10. Mrs.Avnish Ahlawat, learned counsel for the petitioner submits that the Tribunal could not have given direction to consider the cases of the respondents for grant of temporary status by holding that the respondents belong to Group 'C' Category. According to her, the Temporary Status Scheme, 1993, is meant only for persons engaged for Group 'D' Work. She also submits that if the respondents are not eligible for temporary status under the Scheme of 1993, there is no question of regularizing them. As the Scheme stipulates such casual labourers will not be brought on the permanent establishment unless they are selected through regular selection procedure.

11. We have perused the record of the case including the order passed by this court on 20.07.2010 in the earlier writ petitions.

12. The mandate of the order of this court can be seen from the following paragraph:

> *"Learned counsel for the private respondents urges before us that the persons who were deployed much after the respondents have been permanently absorbed and in fact had not even been given temporary status. This position is denied by learned counsel for the petitioner. Be that as it may, we make it clear that if contract labour employed after the date from which the private respondents were deployed and had been given permanent status in any department of CPWD then on parity such benefit should also be made available to the private respondents and this aspect also be examined by the petitioner".*

13. It is seen while considering the case of the respondents through the office orders dated 14.06.2011,16.06.2011, 20.06.2011 & 21.06.2011, the petitioners have followed the mandate of the order of this court dated

20.07.2010.

14. The respondents have not named any person(s) who has/ have been deployed after the respondents herein and has/ have been given permanent status in any department of CPWD. In the absence of any name, it can be inferred that no person(s) has/ have been deployed after the respondents herein and granted the permanent status. We don't find any infirmity in so far as this aspect is concerned. In this regard, the following paragraph of the judgment of the Supreme Court reported as 2006 Vol.4 SCC1, *Secretary, State of Karnataka vs. UmaDevi* is relevant to be reproduced:

> *"While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable*

citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India."

15. We now consider the direction of the Tribunal to consider the case of the respondents for grant of temporary status under the Scheme of 1993 as has been granted/ to be granted to those belonging to Group 'C' category. Such a direction is contrary to the scheme of 1993 as the same is applicable to persons engaged for Group 'D' work. This aspect is clear from the following clauses in the grant of Temporary Status Scheme,1993.

Department of Personnel and Training, Casual Labourers (Grant of Temporary Status and Regularization) Scheme

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4. (iv) Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.

5. Temporary status would entitle the casual labourers to the following benefits

(i) Wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group 'D' official including DA, HRA and CCA.

(ii) Benefits of increments at the same rate as applicable to a Group 'D' employee would be taken into account for calculating pro rata wages for every one year of service subject to performance of duty for at least 240 days (206 days in administrative offices observing 5 days week) in the year from the date of conferment of temporary status.

(iii) XXXXXXXXXX

(iv) Maternity leave to lady casual labourers as admissible to regular Group 'D' employees will be allowed.

(v) XXXXXXXXX

(vi) After rendering three years' continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group 'D' employees for the purpose of contribution to the General Provident Fund, and would also further be eligible for the grant of Festival Advance, Flood Advance on the same conditions as are applicable to temporary Group 'D' employees, provided they furnish two sureties from permanent Government Servants of their Department.

16. The direction as such is contrary to the Scheme of 1993 itself. We agree with the submission of Ms.Ahlawat that this direction of the Tribunal needs to be set aside. We do so and hold that the direction of the Tribunal to the extent that the petitioner should consider the cases of respondent for grant of temporary status as belonging to Group 'C' category is not tenable being contrary to the Scheme of 1993. As the respondents are not entitled to temporary status as Group 'C' employees, no question arises for considering the respondents for regularization in terms of the said scheme. Even this direction is liable to be set aside and we do so accordingly.

17. The writ petitions are allowed. The O.As no. 3951/2011, 3952/2011 & 3959/2011 filed by the respondents before the Tribunal are dismissed.

18. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

APRIL 26, 2013
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