

Court No. - 39

Case :- WRIT - A No. - 22170 of 2022

Petitioner :- Union Of India And 2 Others

Respondent :- Jawahar Lal And 30 Others

Counsel for Petitioner :- Krishna Agarawal, Sr. Advocate

Counsel for Respondent :- Pradeep Kumar Mishra

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

1. Heard Mr. Krishna Agarwal, learned counsel for the petitioner-Union of India and Mr. P.K. Pandey and Mr. Pradeep Kumar Mishra, learned counsel for the respondents.

2. The present writ petition is directed against the order passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad dated 12th January, 2022 in Original Application No. 330/00305/2014 and Original Application No. 330/00491 of 2014 (Jawahar Lal & 30 Others Vs. Union of India & 2 Others).

3. By that order, the learned Tribunal has issued a positive direction to the petitioner to accord Temporary Status on the private respondents under the scheme in the name and style of "Scheme for Grant of Temporary Status and Regularization of Casual Workers" (hereinafter referred to as the "scheme").

4. While granting that relief, Tribunal has observed as below:

"11. We feel that though the services of the applicants have been outsourced, they are performing their duties even today, without any complaint whatsoever with devotion and from the counter reply it is seen that the respondents have not denied that there is no scheme in existence for grant of temporary status. Therefore, it can be concluded that the schemes are still in vogue. It is also seen in the judgment of the Hon'ble Madras High Court in Writ Petition No. 20004/2011 that the respondents have granted temporary status to the applicants in 2015. In compliance of the order passed in the aforesaid petition, the persons who had been engaged continuously for long period and not covered under the 1993 scheme have been granted the temporary status, While the present applicants in these OAs were in fact fully covered by the 1993 scheme, when their case was recommended by the Commissioner Excise Allahabad in 2013. As it is a fact that the applicants in the present OAs had completed more than

10/15 years even in 2004 before they were shifted under the contractor and that the applicants have served the respondents for more than 20/30 years and accordingly some of them may be nearing the age of superannuation.

12. In the light of peculiar facts of these two OAs, for the reasons stated above, these OAs are allowed and impugned order dated 6/9.9.2013 is quashed, Respondents are directed to grant temporary status to the applicants with retrospective effect under the scheme of "Grant of Temporary Status and Regularization Scheme of Government of India, 1993" with all consequential benefits for which the applicants are entitled within a period of 3 months on receipt of certified copy of this order. It is made clear that the order passed in these OAs shall not be a precedent. No order as to costs."

5. Submission of learned counsel for the petitioner is, the relief granted to the respondents is against their own case referred to in the admitted documents filed in Original Application No. 305 of 2014 (Jawahar Lal & Others Vs. Union of India & Others). Their copies have been brought on record at page nos. 90 and 91 of the paper book.

6. Thus, the first document contains list of 23 applicants and the second document contains list of 8 applicants. Barring respondent nos. 1 to 3, namely- Jawahar Lal, Anil Kumar and Shyam, all other applicants including respondent nos. 4 to 31 are shown to have been first engaged in the year 1995 or thereafter.

7. Referring to clauses (i) and (ii) of the Scheme, it has been vehemently urged, barring the above three applicants/respondents, all other original applicants/respondents were ineligible to claim the benefit of Temporary Status under the scheme. They were neither engaged on 1st September, 1993 nor they could have ever completed 240 days of actual working before that cut off date prescribed under the Scheme. That essential fact and objection, has been ignored or not considered by the learned Tribunal.

8. Second, it has been submitted, in absence of any inherent right with the respondents to be accorded Temporary Status, that right could have been claimed only in terms of Scheme that has a statutory flavour.

9. Since the respondent nos. 4 to 31 were not eligible under the Scheme, they could not be granted any relief on the strength of the internal communication dated 19th May, 2013 written by the Commissioner, Central Excise, Allahabad to the Under Secretary, Government of India. Being an administrative authority, the Commissioner, Central Excise, Allahabad could not provide for grant of Temporary Status to the respondents, contrary to the Scheme. Therefore, that communication is stated to be of no avail.

10. On the other-hand learned counsel for the respondents would contend, the respondents have been working at the petitioner establishment for long years. Practically, they have worked their entire lives for the petitioner-Union of India. Their case ought to be considered sympathetically. Grant of Temporary Status does not lead to automatic regularization in service. It may only lead to conferment of some monetary benefits.

11. Last, it has been submitted, if the grant of Temporary Status is to be declined solely on the technical construction of the Scheme, the respondents may be granted relief of payment of wages equal to the lowest of the scale applicable to the regular employees of the petitioner-Union of India. In that regard, Mr. Agarwal, learned counsel appearing for the petitioner-Union of India would submit, that relief may not be possible to be granted to the respondents, as the entire work of class IV employees has been outsourced, since 2004.

12. Having heard learned counsel for the parties and having perused the record, it is undeniable in law that the Scheme has a statutory flavour. Other than the Scheme, the respondents could never claim a right to be granted a Temporary Status. It is also undeniable that the administrative authority may have acted to give effect to the Scheme but it could not provide for any new law. Seen in that light, the provision of clauses-(i) and (ii) of the Scheme read as below:

“(i) Applicability—The scheme brought into force from 1-9-993 for grant of temporary status is applicable to casual

labourers in employment on 1-9-1993 in Ministries/Departments of the Government of India, but not applicable to casual workers in Railways, Departments of Telecommunication/Posts, who already have their own Schemes.

(ii) Temporary Status-- Temporary Status is confined on all casual labourers in employment on 1-9-1993 and in continuous service of at least one year. This means that they must have been engaged continuously for at least 240 days (206 days in the case of offices observing 5 days week) before 1-9-1993. No change in duties."

13. Clearly, the eligibility under the Scheme would arise to such respondents who may have been engaged on 1st September, 1993 and who may have completed 240 of actual working days before that date.

14. Perusal of the order of the Tribunal does not disclose any consideration made to the above essential qualification. No finding has been recorded, in that regard. The Tribunal appears to have been swayed by the plight of the respondents, who had worked for the petitioner establishment, for very long years.

15. While the appreciation of the plight of the respondents thus made by the Tribunal may remain well founded, it is equally true that conferment of Temporary Status would be governed by the statutory Scheme and not on pure equity consideration. Here it is also not in doubt that the respondents never challenged the eligibility clause of the Scheme and they never sought their inclusion under the Scheme even if though have not been engaged upto 1st September, 1993 i.e. the cut off date, under the Scheme.

16. At the same time there is no cogent finding recorded by the learned Tribunal as to the actual date of engagement of the respondents. The stand of the petitioner- Union of India is also not clear in that regard.

17. In view of the above, we find that the issue of the first engagement of the respondents and compliance of the second condition of having worked for 240 days prior to the cut off date is a fact to be ascertained in each individual case. No presumption was available either to the Union of India or the learned Tribunal, in that regard.

18. Accordingly, we set aside the order of the learned Tribunal and remit the matter to petitioner no.2 to pass a fresh order in the case of each individual respondent as may specify the date of initial engagement of such respondent and the number of days worked as on 1st September, 1993. For the above purpose, petitioner no.2 may first issue notice to individual respondents specifying its proposed view and also disclosing the documents on the strength of which such tentative opinion may arise. Such notices may be issued within a period of three months from today. The petitioner no.2 would grant one month time to the individual respondents to reply to the notices. Thus, the individual respondents would be at liberty to file their replies supported by their personal affidavits and such documents on which they may seek to rely. Subject to such compliance, petitioner no.2 may pass appropriate reasoned orders in each individual case of the respondents, within a further period of two months therefrom.

19. Rights of the parties shall abide by the final orders to be passed by petitioner no.2. Needless to add, such of the respondents who may be found eligible under the Scheme would be accorded Temporary Status within the same period, with prospective effect without any further delay.

20. As to the prayer for grant of minimum of pay-scale, we find the objection raised by the learned counsel for the petitioner to be sustainable, in view of the fact that the arrangement first made by the petitioner-Union of India has undoubtedly undergone the change. If the respondents are not found entitled to the benefits of the Scheme, unfortunately, today their status is of an outsourced employee. Therefore, no relief may be granted in that regard.

21. In any case, the decision to be made by the petitioner may not have any adverse impact on the continuance of the respondents in their status that otherwise exists. Notwithstanding the final orders that may be passed, the present order may itself cause displacement of the respondents.

22. The present writ petition is disposed of subject to the observations/directions made above.

23. There shall be no orders as to costs.

(Shiv Shanker Prasad, J.) (Saumitra Dayal Singh, J.)

Order Date :- 30.11.2023

Sushil/-