

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2383 OF 2003

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1. Union of India,
Ministry of Defence,
Through
Secretary, Ministry of
Defence, South Block,
New Delhi.
2. Government of India,
Ministry of Defence,
Through
The Controller of Quality
Assurance (Vehicles),
Ahmednagar.

... Petitioners...

VERSUS

1. Raosaheb Shankar Kale,
House No. 68, Wagh Galli,
At & Post Nalegaon,
Tq. & Dist. Ahmednagar.
2. Dnyaddeo Waman Salve,
At Burhannagar,
Tq. & Dist. Ahmednagar.
3. Pramod Baban Shinde,
At & Post Bhingar,
Tq. & Dist. Ahmednagar.
4. Tukaram Laxman Gadekar,
At Balevadi, Post Kandgaon,
Tq. & Dist. Ahmednagar.
5. Subhash Gangadhar Kharat,
CQAV Complex,
Ahmednagar.
6. Bharat Ratan Kalokhe,
Vaidya Colony,
At & Post Bhingar,
Tq. & Dist. Ahmednagar.

... Respondents..

...
Advocate for Petitioner : Mr. S.B.Deshpande ASG for
petitioners
Advocate for Respondents 2-6 : Mr. P.S.Dighe h/f Mr.
V.R.Dhorde
Respondent No.1 - served.

...
CORAM : A.V. NIRGUDE & V.K. JADHAV, JJ.

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DATE OF RESERVING THE JUDGMENT : 05.03.2015
DATE OF PRONOUNCING THE JUDGMENT : 13.03.2015
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JUDGMENT :- (Per V.K.Jadhav, J.)

1. The judgment and order of the Central Administrative Tribunal, Bench, Mumbai directing the petitioners/Union of India to consider the respondents/casual labourers for regularization of their services, is challenged herein.

2. Brief facts giving rise to the present Writ Petition are as follows :-

The respondents joined as a casual labourers on daily wages with the petitioners. They were engaged between the period of 1992 to 1998. According to the respondents, they were serving continuously however, artificial breaks were given to them to avoid the liability arises on account of granting permanency benefits to them. It is the contention of the respondents that, nature of the work carried out by them is of permanent nature. Their services, however, came

to be terminated by the respondent No.1 on 16.1.2002. It is also case of the respondents that, they had worked more than 240 days in a year and, therefore, termination of their services without following due process of law is illegal. Even, the petitioners/Union of India have retained the junior workers to the respondents in service. Accordingly, the respondents had approached the Central Administrative Tribunal by filing Original Application No.244/2002.

3. According to the petitioners/Union of India, the respondents/casual labourers were engaged on work requirement days as casual labourers and therefore, question of grant of temporary status or re-engagement does not arise. It has also contended that, none of the respondents/casual labourers had put in 240 days of service in the two preceding calendar of the years 2000-2001. Consequently, they are not entitled to temporary status in terms of the scheme formulated by the 'Department of Personnel and Training Of the Government of India' 'DOPT' dated 10.09.1993 (hereinafter referred to as 'the scheme of 1993'). It is also contended that the scheme of 1993 regarding grant of temporary status and regularization is not a continuing scheme under which persons like the respondents who were engaged later in time of the year 1993 can be considered for

grant of temporary status.

4. The learned Member of the Central Administrative Tribunal by its impugned judgment and order dated 31.12.2002 directed the petitioners/Union of India to re-engage the respondents/casual labourers from the date of termination of their services without back wages and to further consider them for regularization in due course of time. Being aggrieved by the same, the Petitioners / Union of India preferred this Writ Petition.

5. The learned Assistant Solicitor General for the petitioners submit that, scheme of the year 1993 is not a continuous scheme. The respondents were engaged later in period of the year 1993. "Temporary" status can be conferred on the casual labourers under the scheme only on fulfilling the conditions incorporated in Clause No.4 of the Scheme. As per clause No.4 of the scheme, the respondents should have been casual labourers in employment on the date of commencement of the scheme, and they should have rendered continuous service of at least 240 days in a year or 206 days in case of offices having 5 days a week. Learned Assistant Solicitor General further submits that, none of the respondents has put in 240 days of service in the two

preceding calendar years of 2000-2001, respectively. The learned A.S.G. therefore, submits that the learned Member of the Central Administrative Tribunal has not considered this position and passed the impugned order which is incorrect, illegal and improper. The learned A.S.G. in order to substantiate his contention placed reliance on following judgments :-

1. **In the case of Union of India and Another V. Mohan Pal and Others reported in 2002-II-LLJ 302.**
2. **Secretary, State of Karnataka and Ors. V. Umadevi and Ors., reported in AIR 2006 SC 1806.**

6. The learned counsel for respondents submit that, the respondents worked continuously and they had put in 240 days of working in a year to be eligible for grant of temporary status and consequential regularization of service. The learned counsel further submits that, their services came to be terminated while continuing their juniors in the service. The learned counsel further submits that, the petitioners/Union of India have given employment to the freshers and thereby replaced the respondents by further appointing the Ad-hoc employees. The learned counsel thus submits that, the learned member of the Central Administrative Tribunal has rightly passed the order

directing the petitioners/Union of India to consider the respondents/casual labourers for regularization in due course of time, if they fulfill the criteria of 240 days working in accordance with law and rules. The learned counsel also submits that, the learned Member of the Tribunal has rightly directed the petitioners/Union of India herein to re-engage the respondents/casual labourers from the date of their termination of services. The learned counsel for respondents/casual labourers, in order to substantiate his submission, placed reliance on the following judgments :-

1. M/s. U. P. Drugs and Pharmaceuticals Co. Ltd., Appellant V. Ramanuj Yadav and others, Respondents, reported in AIR 2003 SC 3337.
2. M/s. Sriram Industrial Enterprises Ltd. V. Mahak Singh and Ors., reported in AIR 2007 SC 1370.
3. Management of Standard Motor Products of India Limited V. A. Parthasarathy and Another, reported in (1985) 4 SCC 78.
4. Union of India and Another V. Mohan Pal and Others, reported in (2002) 4 SCC 573.
5. Municipal Corpn. Of Delhi (MCD) V. Prem Chand Gupta and Another, reported in (2000) 10 SCC 115.
6. Workmen of American Express International Banking Corporation V. Management of American Express International Banking Corporation, reported in (1985) 4 SCC 71.

7. The Hon'ble Apex Court in a case of **Union of India and Another V. Mohan Pal and Others** (supra) in paragraph No. 4 of the judgment made following observations :-

“4. The first question is to be decided on the basis of the interpretation of Clause 4 of the Scheme. As already noticed, the scheme came into effect from September 1, 1993. Clause 4(1) of the Scheme reads as follows:

“‘Temporary’ status, (1) ‘temporary’ status would be conferred on the casual labourers who are in employment on the date of issue of this OM 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.)”

Clause 4 of the 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 on-going 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."

8. As per clause No.4 of the Scheme of 1993, the temporary status would be conferred on the casual labourers who are in employment on the date of issue of the scheme 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. The Hon'ble Apex Court in the aforesaid case further observed that the scheme of the year 1993 is not an ongoing scheme and temporary status can be conferred under the scheme only on fulfilling the conditions incorporated in Clause No.4 of the Scheme.

9. In the case in hand, the learned Member of the Central Administrative Tribunal in paragraph No.13 of the Judgment has observed that the applicants therein have been engaged between the year 1992 to 1998 and there is no mention as to how many days working was put in by them in

the year prior to 2000 and 2001 since their engagement. It has also been observed by the Tribunal that the applicants (respondents herein) might have put in 240 days working in a year and intermittent artificial breaks were given only to avoid the liability of permanency. The same, thus, cannot come in the way of treating the period as a continuous service. Learned Member of the Central Administrative Tribunal in the same paragraph has further observed that the respondents (petitioners herein) have shown their willingness to consider grant of temporary status and further regularization in respect of the applicant No.2, who, according to them was eligible under the scheme of 1993. The learned Member of the Central Administrative Tribunal, while concluding in the same paragraph No.13 of the Judgment, with an observation that since all the details are not available, directed the applicants(respondents herein) to give a detail representation to the respondents (petitioners herein) bringing out the number of actual days put in by them and further directed the respondents/Union of India to consider their representations and disposed of the same within a specified period.

10. The Hon'ble Apex Court in a case of **State of Karnataka Vs. Umadevi** and others (supra), in paragraph

No.38 of the Judgment, has made following observations :-

“38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”

11. The Hon'ble Apex Court in paragraph No.43 of the said Judgment has made further observations which are as follows :-

“43 Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur vs. The Governing Body of the Nalanda College MANU/SC/0098/1961 : (1962) ILLJ 247 SC. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the

employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.”

12. Such a scheme has been held to be unconstitutional by the Hon'ble Apex Court in Case of **Umarani Vs. Registrar Co.Operative Societies, (2004) 7 SCC 112.**

13. In the case in hand, the respondents/casual labourers claim that they are entitled for the temporary status as they have put in 240 days of the working in a year and they cannot be removed merely on the whims and fancies of the employer. There is sufficient work and other casual labourers are still being employed by the employer for carrying out the work. On the backdrop of these submissions, it appears that there is no mention as to how many days of work was put in by the respondents in the year prior to 2000 since their engagement as casual labourers.

14. The impugned order passed by the learned Member of the Central Administrative Tribunal is stayed by

this Court by order dated 30.6.2003 as an interim relief in terms of prayer clause 'B'. It appears that due to interim order passed by this court, the respondents could not be re-engaged from the date of termination of their services and the same is also a meaningless task after lapse of 12 years.

15. The learned counsel for respondents/casual labourers placed reliance on the cases as mentioned above, however, in view of the specific provisions of the scheme of the year 1993 and the observations made by the Hon'ble Apex Court as reproduced above, the said cases as cited by the learned counsel are not helpful to the respondents.

16. The applicants were engaged as casual labourers on daily wages on different dates from the year 1992 to 1998. In view of specific clause No.4 of the Scheme of the year 1993, the respondents are not entitled to regularization of service since they have not completed actual working of 240 days either in the year 2000 or 2001. In view of the observations made by the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs. Umadevi and others (Supra) and directions issued therein, the impugned judgment passed by the learned Member of the Central Administrative Tribunal does not stand and thus liable to be

set aside. Hence, following order.

ORDER

1. The Writ Petition is hereby allowed.
2. The impugned judgment and order passed by the learned Member of the Central Administrative Tribunal dated 31.12.2002 in Original Application No.244/2002 is hereby quashed and set aside.
3. The Original Application No.244/2002 is hereby dismissed.
4. Writ Petition is disposed of. Rule is accordingly made absolute.
5. In the circumstances, there shall be no order as to costs.

(V.K. JADHAV, J.)

(A.V. NIRGUDE, J.)

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