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

% *Judgment Dated: 9th February, 2017*

+ W.P.(C) 5564/2002

UNION OF INDIA

..... Petitioner

Through Ms. Saroj Bidawat, Advocate

versus

MUNNI LAL & ORS.

..... Respondents

Through Mr. O.P. Kalshian, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J (ORAL)

1. Rule D.B. was issued in this matter on 03.09.2002.
2. Challenge in this writ petition is to the order dated 01.05.2002 passed by the Central Administrative Tribunal (in short the '*Tribunal*'), by which the application, O.A. No. 1806/2001, has been allowed.
3. Five applicants/respondents herein had approached the Tribunal seeking a direction for being conferred temporary status from the dates on which they completed 240/206 days in a year and grant of one paid holiday on completion of six days' continuous work in accordance with the OM dated 07.06.1988.
4. The respondents claimed to be working as Casual Labourers with the petitioner having joined on various dates between 1984 to 1993. All the applicants claimed to have completed the requisite period of 206/240 days of service in an year. Denial of grant of temporary status led to the filing of the OA which was allowed by the Tribunal by an order dated 01.05.2002, which has led to the filing of the present petition.
5. Ms. Bidawat, counsel for the petitioner, submits that the Tribunal has

failed to take into consideration that the entire case of the applicant before the Tribunal was based on a Scheme which came into force on 01.09.1993. However, as per para 4 of the scheme, temporary status is to be conferred on all casual workers who are in employment on the date of the 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 (206 days in case of offices observing five days' week). The counsel contends that in the present case, prior to 1993 the respondents had not completed the requisite 240 days and thus, they could not have been granted benefit of the scheme. The learned counsel for the petitioner has also drawn the attention of the Court to paragraph 4.4 of the O.A., copy of which was handed over in Court to show that admittedly, it is the case of the applicants that they had completed more than 206/240 days in the year 1999-2000 which was after the scheme. She submits that the scheme was not an on-going scheme as has been held by the Supreme Court in the cases of ***Union of India v. Mohan Pal etc. etc.*, 2002 (2) ATJ 215: (2002) 4 SCC 573** and ***Union of India v. Gagan Kumar*, (2005) 6 SCC 70**. She has also drawn the attention of this Court to an OM dated 26.02.2016, which we shall deal with later.

6. While learned counsel for the respondent is unable to dispute that the Supreme Court has held that the scheme of 1993 is not an on-going scheme and the applicant had not completed 206/240 days on the date of the scheme; but strong reliance is placed on para 44 in the case of ***Secretary, State of Karnataka and Others v. Umadevi and Others*, 2006 (4) Scale 197**. Learned counsel for the respondent has strongly urged before this Court that the persons have been working continuously since 1984-93 onwards and their appointments were not illegal, but may have

been irregular and thus, cannot be deprived of granting the temporary Grade 'D' post.

7. However, learned counsel for the petitioner submits that prior to be considered as Grade 'D' post, the employee first is to be given the temporary status which has not happened in this case.
8. We have heard the learned counsel for the parties and perused the material placed on record. Upon going through the order of the Tribunal, it is clear that the Tribunal had treated the Scheme of 1993 to be an on-going scheme as the respondents have been granted temporary status on the basis of completion of the requisite period in the year 2000-2001.
9. The Scheme in question, titled Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993, came into effect on 01.09.1993 and *inter alia* granted 'temporary status' to casual labourers upon rendering of service of at least one year, meaning whereby that they must have been engaged for at least 240 days (206 days in the case of offices observing 5 days' work week).
10. Initially there was a difference of opinion between various benches of the Tribunal as to whether the Scheme was an on-going scheme, i.e. casual labourers are to be given temporary status as and when they complete the requisite period of days in a year. Noticing the divergent opinions, the Supreme Court in **Mohan Pal (Supra)** clarified that the Scheme was not an on-going Scheme and “[i]n order to acquire ‘temporary’ status, the casual labourer should have been in employment as on the date of the commencement of the Scheme and he should have also rendered a continuous service of at least one year which means he should have been engaged for a period of at least 240 days in an year of [sic: or] 206 days in case of offices observing 5 days a week.”

11. At the same time, the Supreme Court clarified that labourers who had already been granted temporary status should not be stripped of their temporary status.
12. In *Gagan Kumar (Supra)*, the respondent had been engaged as a casual labourer for quite some time and in the year 1998 had rendered service of more than 206 days, the Tribunal had granted him temporary status which was upheld by the High Court. The Supreme Court in appeal set-aside the orders of the Tribunal and the High Court, once again observing the Scheme of 1993 not to be an on-going one and that the labourer should have been engaged for the requisite period prior to 1993.
13. The OM relied upon by Ms.Bidawat, bearing No. 49014/2/2014-Estt. (C) dated 26.02.2016, is clarificatory in nature and merely recapitulates what has been held by the Supreme Court. Paragraph 8, relied upon by Ms.Bidawat, reads as under:

“8. It is emphasized that the benefit of temporary status is available only to those casual labourers who were in employment on the date of the issue of the OM dated 10th September, 1993 and were otherwise eligible for it. No grant of temporary status is permissible after that date. The employees erroneously granted temporary status between 10.09.1993 and the date of Hon’ble Supreme Court judgment in Union of India and Anr vs Mohan Pal, 2002(3) SCR 613, delivered on 29 April, 2002, will however be deemed to have been covered under the scheme of 10.09.93.”

(Emphasis Supplied)

14. Learned counsel for the respondents has not denied that the respondents had not been engaged for the requisite days in any year prior to 1993. On the contrary, the petitioners have detailed the number of days put in by the respondents in the year 1993 in paragraph 2 of the writ petition, which we extract below for ready reference:

Name	Days
Muni Lal (Respondent No.1)	59
Rajender Kumar (Respondent No. 2)	100
Brajesh Kumar (Respondent No.3)	56
Karan Singh (Respondent No.4)	11
Shiv Singh (Respondent No.5)	33

15. The respondents have not controverted the same. Even in the OA filed before the Tribunal, the applicants/ respondents herein had averred that they had completed the requisite number of days in the years 1999-2000 and 2000-2001. The relevant portion of the OA reads as under:

“4.4 That the applicants specifically aver that they have completed the requisite number of days in the following years:-

	<u>1Apr.99 & 31 Mar 2000</u>	<u>1 Apr.00 & 31 Mar. 2001</u>
No.1 Muni Lal	208	226 + 37
No.2 Rajender Kumar	216	229 + 37
No.3 Brajesh Kumar	216	224 + 37
No.4 Karam Singh	211	213 + 35
No.5 Shiv Singh	192	223 + 37”

16. Therefore, it is clear that the respondents were not engaged for the requisite number of days in an year prior to the implementation of the Scheme, i.e. 01.09.1993, which would entitle them to be conferred with temporary status. We also note that there is a dispute as to the number of days to be engaged (whether 206 or 240?) would be applicable to the petitioner, but since admittedly the respondents had not been engaged for even 206 days in an year prior to 1993, we need not divulge into the issue.
17. Another aspect which is to be seen is whether the respondents can be said to have been erroneously granted temporary status and therefore cannot be stripped of their status? Though the Tribunal had granted

‘temporary status’ by its order dated 01.05.2002, the operation of the said order was stayed by this Court on 03.09.2002. This aspect has already been considered by a Full Bench of this Court in ***Union of India through Secretary & Anr. v. Shri Sanjay Kumar & Anr., W.P. (C) 3113/2001*** dated 10.05.2002 wherein it has been held that when the Tribunal had granted temporary status and the same was under challenge on the ground that the Scheme was not an on-going Scheme, it cannot be said that the order of the Tribunal had attained finality. The relevant paragraph reads as under:

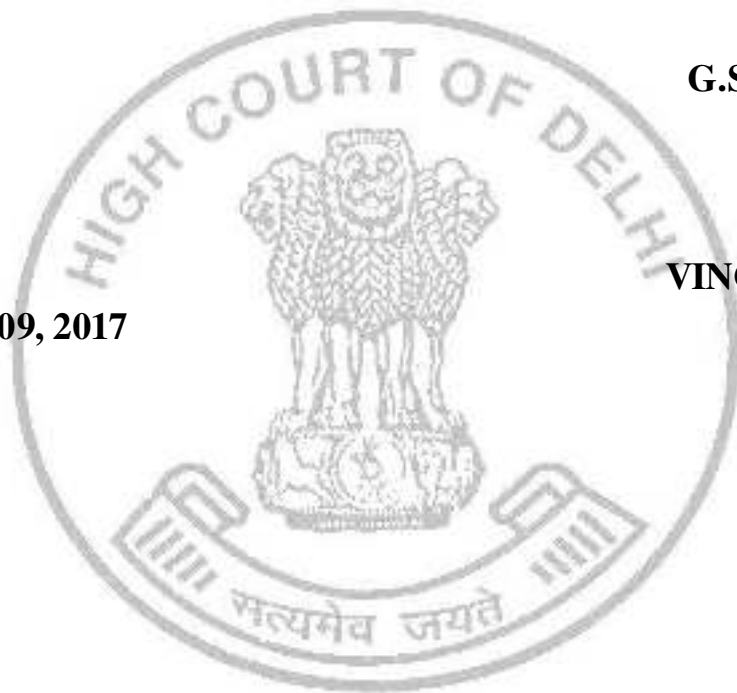
“However in the present case the petitioner had not granted the ‘temporary’ status to the respondent. The respondent had approached the learned Tribunal which gave the directions to this effect in the impugned judgment. The petitioner has challenged the same on the ground that the scheme in question was not on going one. Therefore it is not a case where temporary status is granted to the respondent on the assumption that it was an ongoing scheme. Rather the impugned judgment of the tribunal is under challenge in this petition and therefore direction contained therein has not obtained finality. Rather this court had stayed the operation of the impugned judgment and therefore no orders are also passed by the petitioner, on the basis of the impugned judgment, giving temporary status to the respondent herein. This writ petition is accordingly allowed and the impugned judgment is set aside. No costs.”

(Emphasis Supplied)

18. Therefore, the order of the Tribunal cannot be sustained on this count as well. Thus, the order passed by the Tribunal is set-aside.
19. Mr.Kalshian, learned counsel for the respondents, has sought to urge before us that the respondents are entitled to benefit of paragraph 44 of ***Umadevi (Supra)***. Be that as it may, we are unable to venture into the submission as the same was neither alleged before the Tribunal nor has been urged in the counter affidavit filed in this Court. On the contrary,

the respondents had relied upon the Scheme of 1993 before the Tribunal and sought to rely upon ***Mohan Pal (Supra)*** in addition to the Scheme before us.

20. In case a representation is made before the petitioner seeking benefit of the judgment of the Supreme Court in ***Umadevi (Supra)***, the petitioner shall decide the representation within three months of its receipt, uninfluenced by any observations made by us herein.
21. With these directions, the writ petition is disposed of.



G.S.SISTANI, J

VINOD GOEL, J

FEBRUARY 09, 2017

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