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

+ **W.P.(C) 438/2003**

THE SECRETARY B.I.F.R. & ORS.

..... Petitioners

Through: Mr. Manish Mohan and Mr. Ravi
Prakash, CGSC with Mr. Farman Ali
and Ms. Manisha Saroha, Advocates.

versus

DINESH KUMAR & ORS.

..... Respondents

Through: Mr. Rahul Sharma and Mr. Jitender
Ratta, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **18.07.2018**

W.P.(C) 438/2003 & CM APPL. 48031/2016 & 24538/2017 (*for directions*)

The short question which this Court has to decide in this writ petition filed by the Ministry of Finance, Central Government, is whether the order of the Central Administrative Tribunal, Principal Bench, New Delhi (CAT) dated 30.08.2001, which held that the OM No.51016/2/90 Estt.(C) issued on 10.09.1993 which declared, *inter alia*, that those who complied with the conditions spelt out in its appendix were entitled to be treated as temporary government servants.

The CAT negated the Central Government's contention that

the office memorandum put in place a one-time measure and applies only to those, who were in employment as casual employees or as daily rate employees as on the date and had been working till then. The CAT held, on the other hand, that the office memorandum was not a one-time measurement and applied automatically to all the employees subject to their fulfilling the conditions spelt out in the appendix. The controversy in this case appears to have been settled by the judgment of the Supreme Court in '*Union of India and Another vs. Mohan Pal and Others*', (2002) 4 Supreme Court Cases 573. The Court held that the OM was a one-time measurement and did not apply all the time. At the same time they proceeded to direct as follows:-

"11. In Civil Appeals Nos. 3168, 3182, 3179, 3176-78 and 3169 of 2002 arising out of SLPs (Civil) Nos. 2224 of 2000, 13024, 1563 of 2001, 17174-76 and 2151 of 2000, the respondents have been given "temporary" status, even though, they did not specifically fulfil the condition in clause 4 of the Scheme. Some of them were engaged by the Department even after the commencement of the Scheme. But these casual labourers had also rendered service for more than one year and they were not given "temporary" status pursuant to the directions issued by the Court. We do not propose to interfere with the same at this distance of time. However, we make it clear that the Scheme of 1-9-1993 is not an ongoing scheme and the "temporary" status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in clause 4 of the Scheme, namely, they should have been casual labourers in employment as on the date of the

commencement of the Scheme and they should have rendered continuous service of at least one year i.e. at least 240 days in a year or 206 days (in case of offices having 5 days a week). We also make it clear that those who have already been given “temporary” status on the assumption that it is an ongoing scheme shall not be stripped of the “temporary” status pursuant to our decision.”

It is urged on behalf of the Central Government that the respondents/employees/workmen were awaiting regularisation when the judgment, which specifically declared that only those who were employed pursuant to the interpretation (which was finally not accepted) were not to be disturbed, came to be pronounced. The submission therefore was that since the respondents were not given temporary status and in fact were constrained to approach the Court through contempt proceedings, they ought not to be given that benefit as they do not belong to the class specified in para-11 of the *Mohan Pal’s* (supra) ruling.

The present writ petition was filed and an interim order made.

During the pendency of these proceedings, apparently the respondents/applicants have since been terminated from the employment of the Board of Industrial and Financial Reconstruction (BIFR) sometime in 2016.

As far as the main submission of the Central Government i.e. that the respondents/applicants were ineligible on account of the interpretation of para 11 of *Mohan Pal’s* case (supra), is concerned,

this Court is of the opinion that the employees in question conformed to the class that was alluded to. The mere fact that the petitioner did not choose to implement the order did not mean that they ought to be treated as excluded from the class who were to be given the one-time benefit of temporary status, regardless of the Supreme Court's decision – in terms of para 11 of the *Mohan Pal's* case (supra).

For the above reasons, the Court is of the opinion that there is no reason to interfere with the impugned order. The writ petition is accordingly dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 18, 2018

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