

UNION OF INDIA AND ANR.

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v.

MOHAN PAL ETC. ETC.

APRIL 29, 2002

[D.P. MOHAPATRA AND K.G. BALAKRISHNAN, JJ.]

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Labour Laws:

Casual labourers—Temporary status—Grant of:

1993 scheme of the department of Personnel and Training of the Government of India—Clause 4—Interpretation of—Under clause 4 temporary status would be conferred on all casual labourers who are in employment on the date of commencement of the scheme—Further the scheme is not an ongoing scheme and casual labourers are not entitled to temporary status when they complete 240 days of work in a year or 206 days (in case of offices observing 5 days a week).

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Clause 7—Dispensing with the services of casual labourers acquiring temporary status by employers as if they were regular casual labourers—Whether permissible—Held, since object of 1993 scheme is to regularise all causal workers, their services can be dispensed with for misconduct or violation of service rules and cannot be on whims and fancies of the employer.

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The question that arose for consideration is whether the conferment of temporary status is a one time programme as per the Scheme formulated by the Department of Personnel and Training of the Government of India or is an ongoing Scheme to be followed by the Department; whether the casual labourers are to be given 'temporary' status as and when they complete 240 days of work in a year (206 days for the offices observing 5 days a week) and whether the services of casual labourers who had been given 'temporary' status could be dispensed with as per clause 7 as if they were regular casual labourers.

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Disposing of the appeals, the Court

HELD: 1. Under clause 4 of the Scheme formulated by the Department of Personnel and Training of the Government of India the

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- A conferment of 'temporary' status is to be given to the casual labourers who were in employment as on the date of commencement of Scheme and 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. Clause 4 of the Scheme
- B does not envisage 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. Clause 4 of the Scheme does not appear to be a general guideline to be applied for the purpose of giving 'temporary' status to all the casual workers. It is up to the Union Government to formulate any scheme as and when it is
- C found necessary that the causal labourers are to be given 'temporary' status and later they are to be absorbed in Group 'D' posts. However 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.

[617-E-G; 619-D]

- D 2. By conferment of 'temporary' status, the casual labourers acquire certain rights. Clause 7 of the Scheme makes it clear that despite the conferment of 'temporary' status, the services of a casual labourer may be dispensed with by giving one month notice in writing. This clause would certainly give the employer the right to terminate the services of casual labourers who have been given 'temporary' status. Having regard to the general scheme of 1993, the casual labourers who acquire 'temporary' status cannot be removed merely on the whims and fancies of the employer. If there is sufficient work and other casual labourers are still to be employed by the employer for carrying out the work, the casual labourers who have acquired 'temporary' status shall not be removed from service as per clause
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- F 7 of the Scheme. If there is serious misconduct or violation of service rules, it would be open to the employer to dispense with the services of a casual labourer who had acquired the 'temporary' status. [618-A, C, E-G]

T. Rajakili and Ors. v. Union of India and Ors. etc. etc., W.P. (C.T.) No. 86/99 decided by the Calcutta High Court, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3168 of 2002.

From the Judgment and Order dated 22.9.1999 of the Delhi High Court
 H in C.W. No. 963 of 1998.

WITH

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C.A. Nos. 3182, 3179, 3176-78, 3169, 3181/2002 and 3170-71, 3172-73, 3174-75 and 3180 of 2002.

Mukul Rohtagi, Addl. Solicitor General, B.A. Mohanti, S. Wasim A. Qadri, C. Radhakrishnan, Ajay Sharma, B.V. Balram Das, Ms. Rekha Pandey, Ms. Varuna Bhandari, D.S. Mehra, T.C. Sharma, P. Permeswaran, Ms. Kavita Wadia, Ms. Pratibha M. Singh for Maninder Singh, Ashok K. Srivastava, P. Permeswaran, B.K. Prasad, C.S. Ashri, Vijay Kumar, Yatinder Sharma, Prashant Kumar, Ajay Majithia, Y.P. Dhingra, K.B. Sounder Rajan, R.K. Gupta, K.K. Gupta, Ms. K. Sarada Devi and Rani Chhabra for the appearing parties.

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The Judgment of the Court was delivered by

K.G. BALAKRISHNAN, J.

Leave granted.

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In all these appeals, common questions of law arise for consideration and hence they are being disposed of by a common Judgment. In one set of appeals, the Union of India is the appellant and in another set of appeals, Lt. Governor (Andaman & Nicobar Islands) is the appellant. The matter relates to the grant of 'temporary' status to the casual workers working in some of the departments of the appellants. The Department of Personnel & Training of the Government of India formulated a scheme for the grant of 'temporary' status and regularisation of the services of casual labourers working in the various departments under the Government of India. The Scheme came into effect from 1.9.1993. Clause 3 of the Scheme stated that it would apply to all casual labourers in employment of the Ministries/Departments of Government of India and their attached and subordinating offices, and that this Scheme may not apply to Railways and Telecommunications Departments. The Scheme envisaged conferring of 'Temporary' status on all casual labourers who had worked for at least 240 days in a year (206 days in the case of offices observing 5 days a week). The main features of the Scheme are as follows:-

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- (1) Conferment of 'temporary' status on casual labourers would not involve any change in their duties and responsibilities and the engagement will be on daily rates of pay on need basis.

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A (2) The 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.

B (3) The wages and wage rate will be fixed at the minimum of the pay scale for a corresponding regular Group 'D' official including D.A., H.R.A. and any other welfare measures.

C (4) Benefits of increments at the same rate applicable to a Group 'D' employee would be taken into account for calculating pro rata basis and the leave entitlement would also be on a pro rata basis, viz., one day for every 10 days of work.

D (5) Maternity leave to lady casual labourer would be permissible on par with Group 'D' employees.

(6) It is also made clear that 50% of the service rendered under the 'temporary' status would be counted for the purpose of retirement benefits after regularisation.

E (7) 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 General Provident Fund, and they would also be eligible for the grant of Festival Advance, Flood Advance on the same conditions as are applicable to Temporary Group 'D' employees.

F (8) They would be entitled to Productivity Linked Bonus/Ad hoc Bonus only at the rates applicable to casual labourers.

G It was also made clear that apart from these benefits, that may accrue to the employees on conferment of 'temporary' status, the casual workers working in the Industrial Establishment may be entitled to any additional benefits that may be admissible to them under the provisions of the Industrial Disputes Act. Clause 7 specifically states that despite the conferment of 'temporary' status, the services of a casual labourer may be dispensed with by giving a notice of one month in writing and the casual labourer with 'temporary' status can also quit service by giving a written notice of one month. The wages for the notice period will be payable only for the days on which such casual worker is engaged on work. While filling up the vacancies H in group 'D' post, some preference is given to the casual labourers who have

been conferred 'temporary' status. Two out of every three vacancies in Group 'D' cadres in respective offices where the casual labourers have been working would be filled up as per extant Recruitment Rules and in accordance with the instructions issued by the Department of Personnel and Training, from amongst casual workers with 'temporary' status. A

In these appeals, the question that arises for consideration is whether the conferment of 'temporary' status is a one time programme as per the Scheme or is this an ongoing Scheme to be followed by the Department and whether the casual labourers are to be given 'temporary' status as and when they complete 240 days of work in a year (206 days for the offices observing 5 days a week). Another question that came up for consideration is whether the services of casual labourers who had been given 'temporary' status could be dispensed with as per clause 7 as if they were regular casual labourers. B

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 1.9.1993. Clause 4(1) of the Scheme reads as follows:- C

'temporary' status—(1) 'temporary' status would be conferred on all *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 a week). D E

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 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, F G H

A 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.

The second question that arises for consideration is whether the casual labourers who have been given 'temporary' status can be removed from

B service by giving notice as per clause 7 of the Scheme. It is true that by conferment of 'temporary' status, the casual labourers acquire certain rights. Their daily rates of wages will be on the pro rata basis of salary and allowances payable to the employees working under the Group 'D' posts. They are also eligible for the casual and other kinds of leave. On completion of 3 years' continuous service after conferment of 'temporary' status, they would be admitted to the General Provident Fund. They are entitled to get Festival Advance and Flood Advance and other welfare measures applicable to the Group 'D' employees. Clause 7 of the Scheme makes it clear that despite the conferment of 'temporary' status, the services of a casual labourer may be dispensed with by giving one month notice in writing. This clause would certainly give the employer the right to terminate the services of casual labourers who have been given 'temporary' status.

The Division Bench of Calcutta High Court in Writ Petition (CT) No. 86/99 (*T. Rajakili and Ors. v. Union of India and Ors., etc. etc.*) held that

E Clause 7 must be read in a manner in which it does not render it unconstitutional. The employers cannot at their whims dispense with the services of the casual labourers who have acquired 'temporary' status. The entire object of 1993 Scheme was to regularise all casual workers. To allow such uncanalised power of termination would also defeat the object of the Scheme. Dispensing with the services of a casual labourer under clause 7 in our view, could be for mis-conduct etc.

Having regard to the general scheme of 1993, we are also of the view that the casual labourers who acquire 'temporary' status cannot be removed merely on the whims and fancies of the employer. If there is sufficient work and other casual labourers are still to be employed by the employer for

G carrying out the work, the casual labourers who have acquired 'temporary' status shall not be removed from service as per clause 7 of the Scheme. If there is serious misconduct or violation of service rules, it would be open to the employer to dispense with the services of a casual labourer who had acquired the 'temporary' status.

H In Civil Appeals Nos. 3170-3171, 3172-73, 3174-75 and 3180/2000

arising out of SLP (Civil) No. 6738-6739/2000, SLP (Civil) Nos. 6740-41 and 6742-43/2000 and SLP (Civil) No. 970/2001, the Division Bench of the High Court of Calcutta held that the termination of the services of the employees was not legal and was based on various extraneous grounds. We do not propose to interfere with the same. A

In Civil Appeals Nos. 3168, 3182, 3179, 3176-78, 3169 of 2002 arising out of SLP (Civil) No. 2224/2000, SLP(Civil) No. 13024/2001, SLP(Civil) No. 1563/2001, SLP(Civil) No. 17174-17176/2000, SLP(Civil) No. 2151/2000, 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. B
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The appeals are disposed of accordingly.

N.J.

Appeals disposed of.