UNION OF INDIA

v.

GAGAN KUMAR

JULY 27, 2005

[ARIJIT PASAYAT AND H.K. SEMA, JJ.]

Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1993—Clause 4—Nature of scheme—Held: It is not an ongoing scheme—For grant of "temporary" status, the casual labourer should be in employment as on the date of commencement of the Scheme and also should have rendered a continuous service of at least one year.

Respondent, a casual labourer filed O.A. claiming grant of temporary status under Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1993 on the ground that he had completed 240 days in the year 1998. Tribunal allowed O.A. holding that it 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. Union of India challenged the same by filing Writ Petition before High Court, which was dismissed without assigning any reason for dismissal.

In appeal to this Court, grievance of Union of India was that the Tribunal was not justified in its view and the High Court by a cryptic non-reasoned order has dismissed the writ petition.

Allowing the appeal, the Court

HELD: The Clause 4 of Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1993 states 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. Clause 4 of the Scheme does not envisage 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. [827-G; 828-A, B]

Union of India and Anr. **v.** *Mohan Lal and Ors.,* **[2002] 4 SCC 573, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1026 of 2003.

From the Judgment and Order dated 23.8.2002 of the Delhi High Court in C.W.P. No. 4427 of 2002.

Beno Bensigar, Ms. Vimla Sinha and B.V. Balaram Das for the Appellant.

Jitendra Mohan Sharma for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. The Union of India calls in question legality of the order passed by a Division Bench of the Delhi High Court dismissing the writ petition filed by it. By the impugned order the High Court summarily dismissed the writ petition and in effect affirmed the view expressed by the Central Administrative Tribunal, Principal Bench, New Delhi (in short 'the Tribunal'), though it did not specifically refer to it.

Factual background needs to be stated in brief:

Respondent filed an original application before the Tribunal claiming that he was engaged as a casual labourer for quite sometime and has been disengaged by verbal order on 31.12.2000. According to him, he had completed the requisite period of service for grant of temporary status. According to him his case is clearly covered by the Scheme circulated by Department of Personnel & Training (in short "DOPT") in the Government of India, Ministry of Personnel, P.G. and Pensions. It was claimed that the department had circulated by O.M. NO. 51016/2/90-Estt.(C) dated 10.9.1993 a scheme for grant of temporary status and regularization of casual workers. The scheme is called Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993. The said scheme came into force with effect from 1.9.1993. The scheme envisaged grant of temporary status to casual labourer who had worked at least 240 days in a year (206 days in the case of offices observing 5 days a week). According to the respondent he had completed the

requisite period in the year 1998 and, therefore, was eligible for grant of temporary status. Present appellant took the stand before the Tribunal that the scheme was not on-going scheme but was applicable to those casual labourers who were in the employment on the date of issue of the O.M. and had rendered continuous service of the requisite period. The Tribunal accepted the employee's stand and directed that the employee be accorded temporary status from 1998 when he had completed the requisite period of 206 days engagement. Direction was given to grant consequential benefits (including the minimum of the appropriate scale) as his emoluments and for consideration of the case of regularization. The appellant filed writ petition before the Delhi High Court and questioned correctness of the order. The High Court by its impugned order dismissed the writ petition. The High Court recorded practically no reason for the dismissal except noting that the workman had worked as casual labourer from 1995 to 2000.

In support of the appeal, learned counsel for the appellant submitted that the Tribunal was not justified in its view and the High Court did not take note of the submissions made, and by a cryptic non-reasoned order has dismissed the writ petition.

Learned counsel for the respondent on the other hand submitted that undisputed position being that in 1998 the respondent had rendered service for more than 206 days, no exception can be taken to the orders of the Tribunal and High Court.

The controversy can be resolved 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:

> "4. *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' 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. Tribunal has taken 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

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 B 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 C labourers are to be given "temporary" status and later they are to be absorbed in Group 'D' posts.

A similar controversy was examined by this Court in *Union of India and Anr.* v. *Mohan Lal and Ors.*, [2002] 4 SCC 573 and a similar view was expressed in paragraph 6 of the judgment.

D

That being so, the Tribunal's order is clearly untenable. The High Court unfortunately did not examine the real issue involved and by a very cryptic order summarily dismissed the writ petition. The order of the High Court is accordingly set aside.

E At this juncture it is relevant to take note of the submissions made by learned counsel for the respondent. According to him the case of the respondent-employee is covered by the observations in paragraph 11 of *Mohan Lal's* case (supra).

There is no substance in this plea. The observations in paragraph 11 F were rendered in a different factual background and content and have no application to the facts of the present case.

The appeal is allowed without any order as to costs.

D.G. Appeal allowed.