

CONTROLLER OF DEFENCE ACCOUNTS, DEHRADUN AND ORS.

v.

DHANI RAM AND ORS.

JULY 10, 2007

[DR. ARIJIT PASAYAT, P.K. BALASUBRAMANYAN AND D.K. JAIN, JJ.]

*Service Law:*

*Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993: Clause 4:*

*Regularization of services of casual labourers—Regularization Scheme—Applicability of—Held: In terms of Clause 4 of the Scheme, temporary status Could be granted by the Government to the causal labourers who were in employment as on the date of Commencement of the Scheme and completed one year of continuous service—However, it does not appear to be a general guideline to be applied for the purpose of granting temporary status to all the casual workers as and when they complete one year of continuous service—Union Government, as and when it found necessary, could formulate such Scheme to grant temporary status.*

Respondents were engaged as casual labourers in the office of the Controller of the Defence Accounts during the period 1989-95. A Scheme for regularization of casual labourers called “Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993 came into force with effect from 1. 9.1993. The respondents were disengaged as there was no work available for them. They filed the writ petition for directions to the employer for regularization of their services. The High Court disposed of the writ petitions holding that they were to be considered for regularization. A review petition filed by the employer was dismissed by the High Court. Hence the present appeal.

Appellant-employer contended that the High Court’s decision is clearly contrary to the decision of this Court in the matter of *Union of India & Anr. v. Mohan Pal & Anr.*, [2002] 4 SCC 573 and, therefore, unsustainable.

Allowing the appeals, the Court

**A HELD: In order to acquire “temporary” status, the casual labourer should have been in employment as on the date of commencement of the Regularisation 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 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. Under the circumstances, the orders of the High Court are clearly unsustainable.**

**B**

**C [Para 12 and 14] [236-C-E, G]**

*Union of India and Anr. v. Mohan Pal and Ors.*, [2002] 4 SCC 573; *Union of India v. Gagan Kumar, JT* [2005] 6 SC 410 and *Director General, Doordarshan, Mandi House, New Delhi & Ors. v. Manas Dey and Ors.*, [2005] 13 SCC 437, relied on.

**D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2940-2941 of 2007.**

**E From the Final Judgment & Order dated 16.4.2003 and 28.8.2004 of the High Court of Uttaranchal at Nainital in W.P. No. 939 (SB) of 2002 and Rev. Appln. No. 7323/2003 in C.M.W.P. No. 939(SB)/2002.**

**R. Mohan, ASG., SWA Qadri, R.C. Kathia, and Anil Katiyar for the Appellants.**

**F Rajesh K. Sharma and Shalu Sharma for the Respondents.**

**The Judgment of the Court was delivered by**

**DR. ARIJIT PASAYAT, J. 1. Leave granted.**

**G 2. Challenge in this appeal is to the order passed by A learned Single Judge of the Uttranchal High Court in Writ Petition No.939 (SB) of 2002 dated 16.4.2003 and the order on the review petition dated 28.8. 2004.**

**3. Background facts in a nutshell are as follows:**

**H 4. Respondents filed a writ petition before the High Court claiming that they should be considered for regularization and should be paid minimum of**

pay scale. The respondents were engaged as casual labourers in the office of the Controller of the Defence Accounts during the period 1989-95. The nature of the engagement was casual/seasonal depending upon the availability of the work.

5. A scheme called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993 (in short the 'Scheme') was issued by the Government of India, Ministry of Personnel, PG and Pension, Department of Personnel and Training. The Scheme came into force with effect from 1.9.1993.

6. On 6.6.2002, OM No.40011/6/2002/Estt. was issued by the Government of India reiterating that the scheme relating to temporary status was not ongoing scheme and the temporary status can be conferred under the scheme only subject to fulfillment of the conditions as stipulated in clause 4 of the scheme. The respondents were disengaged as there was no work available for them. They filed the writ petition taking the stand that they were entitled to be continued in service as they were working up to 3.7.2002.

7. The writ petition was resisted by the respondents. In the writ petition taking the stand that the writ petitioners were not covered by the scheme of regularization as they did not fulfil the prescribed criteria, they were not entitled to grant of temporary status. The High Court, however, disposed of the writ petitions holding that they were to be considered for regularization. A review petition was filed taking the stand that in view of this Court's judgment in *Union of India and Anr. v. Mohan Pal and Ors.* [2002] 4 SCC 573 the writ-petitioners were not entitled to any relief. The High Court, however, dismissed the review petition.

8. In support of the appeal learned counsel for the appellant submitted that the High Court's decision is clearly contrary to the decision of this Court in *Mohan Pal's* case (supra) and, therefore, unsustainable.

9. Learned counsel for the respondent on the other hand supported the orders of the High Court.

10. Paragraph 4(1) of the Scheme reads as follows:

*"Temporary Status* - Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.M. and have rendered a continuous service of at least one year,

A which means that they must have been engaged for a period of at least 240 (206 days in the cases of offices observing 5 days a week)."

11. The relevant portion of paragraph 3 of the scheme reads as follows:

B "This scheme is applicable to casual labourers in employment of the Ministries/Department of Government of India and their attached and subordinate officer, on the date of issue of these order."

C 12. 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. High Court seems to have 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 week), they are entitled to get "temporary" status. Clearly 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. 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.

F 13. This position as highlighted in *Mohan Pal's* case (supra) was reiterated in *Union of India v. Gagan Kumar*, JT (2005) 6 SC 410 and *Director General, Doordarshan, Mandi House, New Delhi and Ors. v. Manas Dey and Ors.*, [2005] 13 SCC 437.

G 14. Above being the position, the High Court's orders are clearly unsustainable, and are set aside. The appeals are allowed with no order as to costs.

S.K.S.

Appeals allowed.