

(2015) 09 RAJ CK 0059
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5721 of 2007

Om Prakash and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25B, 25F, 25G, 25H

Citation : (2015) 09 RAJ CK 0059

Hon'ble Judges : Ajay Rastogi, J; Anupinder Singh Grewal, J

Bench : Division Bench

Advocate : Ashish Joshi, for the Appellant; B.S. Chhaba, Asstt. Solicitor General, Meenu Verma on behalf of S.S. Hasan, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ajay Rastogi, J—Instant petition is directed against order of the Central Administrative Tribunal ("Tribunal") dt. 12.01.2007.

2. The question which requires our consideration & attention in the present petition is that the petitioners who are casual labourers & indisputably had worked for at least 240 days in a year (206 days in the case of offices observing 5 days week) whether are entitled for grant of temporary status in terms of the Scheme introduced by the Department of Personnel and Training namely Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993 effective from 1.9.1993 ("Scheme, 1993").

3. The salient facts which culled out from the record & relevant for our consideration are that the present petitioners who are nine in number indisputably were working as casual labourers when the Scheme, 1993 came into force on 01.09.1993 and had worked for at least 240 days in a year (206 days in the case of offices observing 5 days week), when not conferred with temporary status initially approached to the Tribunal by filing Original Application No. 113/1999 & their grievance was that denial of temporary status as claimed by

them while working as casual labourers is a clear inaction on the part of respondents & in violation of the Scheme & deserves interference and that came to be allowed with direction to the authority to consider their case for conferment of temporary status if they found fit computing the period of 240 days in a year vide order dt. 20.07.2000, operative part thereof being relevant for the present purpose is reproduced ad infra:-

"(i) to consider the applicants for conferment of temporary status, if they found fit, computing the period of 240 days of service in a year pursuant to the judgment of Hon'ble the Apex Court, as referred above, and the instructions issue by the department as mentioned in Annexure A/9

(ii) The respondents are also directed to consider the applicants for regularisation, in case they found fit and subject to the availability of posts."

4. In compliance thereof order came to be passed by the respondents dt. 25.08.2000 stating that in view of the directions of the Tribunal, Jaipur Bench, Jaipur services of the petitioners/applicants are terminated and such action of the respondents was questioned by the petitioners/applicants by filing contempt petition for disobedience of order of the Tribunal dt. 20.07.2000 passed in Original Application No. 113/1999 and that apart they also preferred separate Original Application No. 399/2000 assailing order dt. 25.08.2000 & that came to be decided by Ld. Tribunal vide order dt. 23.11.2000 setting aside order impugned dt. 25.8.2000 being contrary to the directions of the Tribunal contained in the order dt. 20.07.2000 passed in OA-113/1999, operative part of the order dt. 23.11.2000 being relevant is reproduced ad infra:-

"Application is allowed. The impugned order dated 25th August, 2000 is hereby quashed. Meanwhile the respondents shall comply with the direction of this Tribunal issued in O.A. No. 113/99 vide order dated 20-07-2000 within a period of two months from today. The applicants are entitled to be continued till their case is considered as per the directions issued by this Tribunal vide order dated 20-07-2000. This order also dispose of the separate Contempt Petition filed by the applicants in CP No. 42/2000. No costs."

5. In pursuance of the aforesaid directions the respondents vide their letter dt. 22.01.2001 conveyed decision of the committee to the petitioners/applicants stating that they are not eligible for grant of temporary status as they have not completed 240 days in the preceding 12 months w.e.f. 01.09.1992 to 31.08.1993 and without giving any notice to the applicants/petitioners, they were not allowed to mark their attendance, which again became the subject matter of challenge at the instance of the present petitioners by filing Original Application-83/2001 & the learned Tribunal after hearing the parties disposed of the Original Application-83/2001 vide its order dt. 27.03.2002 and observed in para-5 & 7 as under:-

"Para-5:- In any case, the applicants before me were admittedly employed before the Scheme of 1993 came into force. Having said that, I would like to

make it clear that this is not a relevant aspect of the matter to be considered once it stands resolved that the scheme is a continuous affair. The only question for the respondents was to consider whether during any period of 12 months, if any of these applicants has worked for 240 days, that particular person becomes entitled to be granted temporary status. The rationale of reckoning the period only from 1.9.92 to 31.8.93 is absolutely unclear and needs to be thrown overboard. Under the Scheme, the period of 240 days has to be reckoned in a period of any 12 months, it has nothing to do with the calendar year either. The preceding year means the year preceding the date on which a particular casual labour completes 240 days. The Scheme nowhere suggests that it has to be during a calendar year. It only says that the casual labour should have completed 240 days during the year and this year could be a block of any 12 months during which he completes 240 days. The respondents should scrutinise the working period of the applicants and the day any of them had completed 240 days during any span of 12 months, that person must be granted temporary status from that date itself with all consequential benefits thereafter.

Para-7: - In the light of aforesaid discussion this O.A. is allowed. The impugned order dated 22-01-2001 (Ann.A/1) is quashed as being contrary to the provisions of the Scheme for grant of temporary status. The respondents shall scrutinise the working period of each of the Petitioners/Applicants and from the day any applicant has completed 240 days of working in a span of 12, months, he shall be granted temporary status, the Petitioners/Applicants shall also be entitled to all the consequential benefits w.e.f. the date such benefit becomes due to them. Parties are left to bear their own costs."

6. At the outset it may be noticed that the defence of the respondents before the Tribunal was that the petitioners have not completed 240 days in the preceding 12 months hence are not eligible for conferment of temporary status under the Scheme while the Tribunal in O.A. No. 83/2001 in para-5 of its order dt. 27.03.2002 made it clear that the respondent has to consider whether during the period of 12 months, if any of the applicant has worked for 240 days, that particular person becomes entitled to be granted temporary status and the rationale of reckoning the period only from 01.09.1992 to 31.08.1993 which was the solitary defence of the respondent was outrightly rejected by the Tribunal & to strengthen it was further observed that under the Scheme, the period of 240 days has to be reckoned in a period of 12 months and the scheme nowhere suggests that it has to be during a preceding 12 months and it only says that the casual labour should have completed 240 days during the year and this year could be a block of any 12 months during which he completes 240 days and left it open for the respondents to scrutinize the working period of each applicant-petitioners and the date any of them had completed 240 days during a span of 12 months that person must be granted temporary status from that date itself with all consequential benefits. However, order of the Tribunal dt. 27.03.2002 came to be challenged by the respondents by filing D.B. Civil Writ Petition No. 3867/2002 & that was dismissed vide order dt. 24.11.2005 placing reliance on

judgment of the Apex Court in Union of India (UOI) and Another Vs. Mohan Pal, etc. etc., AIR 2002 SC 2001 : (2002) 94 FLR 92 : (2002) 1 JT 312 Supp : (2002) LabIC 1694 : (2002) 2 LLJ 558 : (2002) 4 SCALE 216 : (2002) 4 SCC 573 : (2002) 3 SCR 613 : (2002) 2 SCT 1053 : (2002) AIRSCW 2040 : (2002) 3 Supreme 602 and taking note of Clause 4 of the Scheme the Division Bench was of the view that the scheme nowhere suggests that they should complete 240 days in a particular year or in preceding 12 months and if the casual labourer has completed 240 days of working within a span of 12 months they should be granted temporary status and at this moment we would like to observe that the respondents from the day one are harping with their solitary defence that the casual labourer must complete 240 days in the preceding 12 months to become eligible for grant of temporary status under the Scheme and that was outrightly rejected by the Tribunal & view of the Ld. Tribunal came to be confirmed by the Division Bench of this Court in the judgment (supra) on the writ petition preferred by the respondents vide order dt. 24.11.2005 and thereafter when the matter was considered by the respondents in compliance of order of the Tribunal dt. 27.03.2002 confirmed by the Division Bench of this Court in CWP-3867/2002 vide order dt. 24.11.2005, it is something really very shocking that again order was passed by the respondents dt. 21.06.2006/26.06.2006 turn down/rejecting their claim for grant of temporary status under the Scheme, 1993 on the premise that the casual labourer does not fulfill the required number of days as on 01.09.1993 in the preceding 12 months (1.9.1992 to 31.2.1993) as such is not fit for grant of temporary status and as a consequence thereof they have not been allowed to mark their attendance.

7. It was again the misfortune of the present petitioners that they had to further assail the order dt. 21.06.2006/26.06.2006 as also the procedure adopted by respondents inviting tenders for engaging other casual labourers, by filing Original Application-276/2006 before the Ld. Tribunal and this time to their dismay OA was dismissed by the Tribunal vide order dt. 12.01.2007 which is the subject matter of challenge in the instant proceedings and this time the learned Tribunal while interpreting the Scheme, 1993 took note of the provisions of Sec. 25B of the Industrial Disputes Act, 1947 in examining the definition of "continuous service" as contemplated therein holding that the casual labourer must have rendered service for a period of 240 days (206 days in the offices observing 5 days week) during the period of 12 calendar months counting backward and preceding the relevant date which in the present case being the date of coming into force of the scheme dt. 1.9.1993 and taking into consideration the provisions of Sec. 25F, 25G & 25H of the Act of 1947 dismissed their Original Application under order impugned dt. 12.01.2007 and at this stage we may observe that after four consisting innings the petitioners were still hopeful that justice may come to their rescue and with this last hope they approached to this Court by filing instant petition assailing order of the Tribunal impugned herein dt. 12.01.2007.

8. Counsel for petitioners submits that the scheme of DOPT came into force

w.e.f. 01.09.1993 the period of one year preceding 12 months w.e.f. 01.09.1992 to 31.08.1993 are not the conditions under the scheme and the petitioners who were engaged & were in service on the issuance of OM dt. 01.09.1993 & completed their service for a period of at least 240 days during the span of 12 months (206 days in the case of offices observing 5 days week) they became eligible and should be considered for conferment of temporary status as it is not disputed that the petitioners were in service on the date of issuance of OM dt. 1.9.1993 and engaged for a period of 240 days in a year and the statement which is enclosed & referred to in para 10 of the writ petition has not been disputed by the respondents indicating the period during which petitioners had completed 240 days in a year and are eligible for grant of temporary status under the Scheme and the finding which has been recorded by the Ld. Tribunal under order impugned that casual labourer should have been engaged in 240 days in span of preceding 12 months w.e.f. 01.09.1993 it was neither the intention nor the requirement of Scheme and apart from it once the defence of the respondents of working for a period 240 days in the preceding of 12 months from 01.09.1993 came to be ruled out by the Tribunal vide order dt. 27.03.2002 passed in Original Application No. 83/2001 and confirmed on a writ petition preferred by the respondents No. 3867/2002 on being dismissed vide order dt. 24.11.2005 finding of the Tribunal under order impugned is totally perverse being contrary to the provisions of the Scheme & not sustainable in the eye of law and further submits that the theory of continuous service under the Industrial Disputes Act u/S25B & Sec. 25F, 25G & 25H pertaining to termination of the casual labourers that was neither raised in the OA nor the respondents pleaded and the only question available for consideration before the Tribunal was whether decision of respondents dt. 21.06.2006/26.06.2006 rejecting claim of the petitioners for grant of temporary status on the premise that they had not completed 240 days in the preceding 12 months w.e.f. 01.09.1993 was a valid decision or not and that being settled in an earlier litigation between the parties on the self same question & confirmed by the Division Bench of this Court it was no more open for adjudication and the Tribunal committed grave manifest error in passing order impugned.

9. Counsel for respondents on the other hand while supporting order of the Tribunal impugned herein submits that the orders were passed in compliance of judgments of the Tribunal and that has been extensively examined by the Ld. Tribunal and the order which is impugned in the instant proceedings according to him does not call for interference by this Court under its limited scope of judicial review u/Art. 226 & 227 of the Constitution of India.

10. Before we may proceed it will be appropriate to quote Clause 4 & 7 of the Scheme introduced by the Department of Personnel & Training namely Casual Labourers (Grant of Temporary Status and Regularisation) Scheme which reads ad infra:-

"Appendix

Department of Personnel and Training, Casual Labourers (Grant of Temporary Status and Regularisation Scheme)

1. This Scheme shall be called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993"

2. This Scheme will come into force w.e.f. 1.9.1993.

3. This Scheme is applicable to casual labourers in employment of the Ministries/ Departments of Government of India and their attached and subordinate offices, on the date of issue of these orders. But it shall not be applicable to casual workers in Railways, Department of Telecommunication and Department of Posts who already have their own schemes.

4. Temporary Status:-

(i) 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).

(ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group "D" posts.

(iii) Conferment of temporary status on casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/ territorial circle on the basis of availability of work.

(iv) Such casual labourers who acquire temporary status will not, however, be brought onto the permanent establishment unless they are selected through regular selection process for Group "D" posts.

5. Temporary status would entitle the casual labourers to the following benefits:-

(i) Wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group "D" official including DA, HRA and CCA.

(ii) Benefit of increments at the same rate as applicable to a Group "D" employee would be taken into account for calculating pro-rata wages for every one year of service subject to performance of duty for at least 240 days (206 days in administrative offices observing 5 days week) in the year from the date of conferment of temporary status.

(iii) Leave entitlement will be on a pro-rata basis at the rate of one day for every 10 days of work, casual or any other kind of leave, except maternity leave, will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularisation. They will not be entitled to the benefit of encashment of leave on termination of service for any reason or on their quitting service.

(iv) Maternity leave to lady casual labourers as admissible to regular Group "D" employees will be allowed.

(v) 50% of the service rendered under Temporary Status would be counted for the purpose of retirement benefits after their regularisation.

(vi) After rendering three years" 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 the General Provident Fund, and would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary Group "D" employees, provided they furnish two sureties from permanent Govt. servants of their Department.

(vii) Until they are regularised, they would be entitled to Productivity Linked Bonus/Ad-hoc bonus only at the rate as applicable to casual labourers.

6. No benefits other than those specified above will be admissible to casual labourers with temporary status. However, if any additional benefits are admissible to casual workers working in Industrial establishments in view of provisions of Industrial Disputes Act, they shall continue to be admissible to such casual labourers.

7. Despite conferment of temporary status, the services of a casual labourer may be dispensed with by giving a notice of one month in writing. A 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."

11. We find that the Scheme came to be introduced by the DOPT for conferment of temporary status to the casual labourer in employment of the Ministries/ Department of Government of India and their attached and subordinate offices, on the date of issue of the Scheme w.e.f. 1.9.1993, but shall not be applicable to casual labourer in Railway, Department of Telecommunication and Department of Posts who already have their own schemes. As per Clause 4(i) temporary status shall be conferred to whom who are in the employment on the date of issue of this OM and 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) & that has been noticed by the Ld. Tribunal in earlier litigation initiated at the instance of the present petitioners in OA 83/2001 decided on 27.3.2002 and confirmed by the Division Bench of this Court on a writ petition preferred by the respondents No. 3867/2002 vide order dt. 24.11.2005 and observed that preceding one year or 12 months from the date of OM dt. 1.9.1993 is something originated by the respondent of its own & nowhere contemplated under the Scheme introduced by the DOPT for grant of temporary status to the casual labourers.

12. The Apex Court in the judgment reported in Union of India (UOI) and

Another Vs. Mohan Pal, etc. etc., AIR 2002 SC 2001 : (2002) 94 FLR 92 : (2002) 1 JT 312 Supp : (2002) LabIC 1694 : (2002) 2 LLJ 558 : (2002) 4 SCALE 216 : (2002) 4 SCC 573 : (2002) 3 SCR 613 : (2002) 2 SCT 1053 : (2002) AIRSCW 2040 : (2002) 3 Supreme 602 examined the very Scheme introduced for casual labourer which came into force w.e.f. 01.09.1993 & the question was whether the Scheme which has been introduced by the DOPT for grant of temporary status to the casual labourer is one-time scheme or this is an ongoing Scheme to be followed by the Department and 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 the question further was 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 and both the questions have been answered by the Apex Court in the terms ad infra:-

"6. 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, 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.

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

9. 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 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.

13. We find that the Apex Court while interpreting the Scheme, 1993 observed that it is onetime scheme to consider such of the casual labourer who were in employment on the date of issuance of OM Dt.01.09.1993 and must have been engaged for a period of 240 days (206 days in the case of offices observing 5 days week), however left it open for the respondent formulate any scheme as and when it is found necessary to consider the casual labourer for grant of temporary status at the same time with regard to clause 7 further observed that the casual labourers who acquire temporary status cannot be removed merely on the whims and fancies of the employer but if there is sufficient work and other casual labourers are still to be employed by the employer for carrying out the work, the casual workers who have acquired temporary status shall be given preference and not to be removed from service but 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.

14. Indisputably the present petitioners were the casual labourers & in service on the date of commencement of the Scheme on 01.09.1993 and engaged at least for a period of 240 days and no reasonable justification has come forward from the respondents in their defence in not considering their candidature for grant of temporary status under the Scheme and the reason assigned by the respondents in their communication dt. 21.06.2006/26.06.2006 of not completing the required number of 240 days of service as on 01.09.1993 within a span of preceding one year from 1.9.1992 to 31.8.1993 which has been considered by the Tribunal in the impugned judgment in our considered view such finding is wholly perverse & not sustainable in the eye of law and as we have already referred & taken note of the defence of the respondents which was outrightly rejected by the Tribunal in the Original Application No. 83/2001 decided on 27.3.2002 we are unable to persuade ourselves that after the Tribunal has repelled their defence of working for a period of 240 days in the preceding 12 months w.e.f. 01.09.1993 and rationale of recurring the period only from 01.09.1992 to 31.08.1993 we find no difficulty in holding that after the Ld. Tribunal while quashing & setting aside the impugned order dt. 22.01.2001 directed the respondents in positive terms to scrutinize the working period of

each of the petitioners applicants and from the day any applicant has completed 240 days of working in a span of 12 months, he shall be granted temporary status with effect from that date with other consequential benefits flowing thereof and after this order came to be confirmed by the Division Bench of this Court on a writ petition preferred by the respondents No. 3867/2002 being dismissed vide order dt. 24.11.2005 still the order dt. 21.6.2006/26.6.2006 which has been passed by the respondents rejecting claim of the petitioners for grant of temporary status on the premise that they had not completed 240 days in the preceding 12 months from 01.09.1993 is nothing but a sheer deliberate contempt and disobedience of the order of the Tribunal dt. 27.3.2002 and we do not find any justification as to how the learned Tribunal could have passed such an order rejecting OA of the petitioners under order impugned dt. 12.1.2007 and we find that the Ld. Tribunal has been completely misdirected in examining the Scheme for grant of temporary status & the requirement of provisions of Sec. 25B, 25F, 25G & 25H of the Act, 1947 and the theory of continuous service as defined u/S 25B has no co-relationship with the Scheme, 1993 introduced by the Government of India for the purpose of grant of temporary status to such of the casual labourers who were in service on the date the Scheme was introduced w.e.f. 01.09.1993 and to confer temporary status to such of the applicants who had worked for 240 days in a year and the defence of the respondents of taking the preceding one year into consideration is highly uncalled for and in our considered view the Ld. Tribunal is completely misdirected and the finding which has been recorded is wholly perverse and not sustainable in the eye of law.

15. As regards discontinuance of the petitioners casual labourers is concerned, the Hon'ble Apex Court in Union of India (UOI) and Another Vs. Mohan Pal, etc. etc., AIR 2002 SC 2001 : (2002) 94 FLR 92 : (2002) 1 JT 312 Supp : (2002) LabIC 1694 : (2002) 2 LLJ 558 : (2002) 4 SCALE 216 : (2002) 4 SCC 573 : (2002) 3 SCR 613 : (2002) 2 SCT 1053 : (2002) AIRSCW 2040 : (2002) 3 Supreme 602 while interpreting Clause 7 of the Scheme observed that such of the casual labourers who acquired temporary status cannot be removed merely on the whims and fancies of the employer, however, granted liberty that if any of the casual labourer commits serious misconduct or violates service rules it will be open for the employer to dispense with services of such casual labourer even if he had acquired temporary status.

16. The judgment on which counsel for respondent placed reliance in Union of India (UOI) Vs. Gagan Kumar, AIR 2005 SC 3107 : (2005) 106 FLR 915 : (2005) 6 JT 410 : (2005) 3 LLJ 350 : (2005) 6 SCC 70 : (2005) SCC(L&S) 803 : (2005) 2 SCR 825 Supp : (2006) 1 SLJ 64 : (2005) AIRSCW 3594 : (2005) 5 Supreme 229 may not be of any assistance to him as it was a case where the Tribunal considered to grant temporary status under the Scheme to such of the casual labourer who had worked and completed required period of one year much after the scheme was introduced i.e. in the year 1998 and taking note of judgment reported in Union of India (UOI) and Another Vs. Mohan Pal, etc. etc., AIR 2002 SC 2001 : (2002) 94 FLR 92 : (2002) 1 JT 312 Supp : (2002) LabIC 1694 :

(2002) 2 LLJ 558 : (2002) 4 SCALE 216 : (2002) 4 SCC 573 : (2002) 3 SCR 613 : (2002) 2 SCT 1053 : (2002) AIRSCW 2040 : (2002) 3 Supreme 602 Apex Court observed that this being the one time scheme to consider for grant of temporary status who were in service on the date the scheme came into force on 01.09.1993 and is not on-going scheme since the Tribunal conferred the temporary status to casual labourer who has completed one year requisite period in 1999 much after the scheme was introduced and indisputably such casual labourers were not eligible for conferment of temporary status under the Scheme and further observed that temporary status could not be granted to such of the employees who had not completed 240 days in a year after the scheme was introduced and that is the reason for which the order of the Tribunal granting temporary status which was confirmed by the High Court came to be set aside by the Hon''ble Apex Court in the judgment referred to supra.

17. In the facts of the instant case, indisputably the petitioners were in service when the Scheme for Casual Labourers (Grant of Temporary Status and Regularisation) of Government of India, 1993 came into force w.e.f. 1.9.1993 and have rendered service for at least one year as contemplated under Clause 4 of the Scheme and as they have been engaged for a period of at least 240 days (206 days in case of offices observing 5 days week), under the Scheme, 1993 the period of 240 days has to be reckoned in a period of any 12 months and it has nothing to do with the calendar year either. The Scheme nowhere suggests that it has to be during a calendar year and it only says that the casual labourer should have completed 240 days during the year and this year could be a block of any 12 months during which he completes 240 days. The defence of the respondents which has also been taken note of by the Ld. Tribunal in upholding that it has to be within a period of preceding 12 months i.e. within 1.9.1992 to 31.8.1993 is absolutely unclear and not the requirement of the Scheme, 1993 & that apart has been repelled by the Ld. Tribunal itself while disposing of OA-83/2001 vide its order dt. 27.3.2002 of which we have made a reference and after that view attained finality on the writ petition preferred by the respondents No. 3867/2002 came to be dismissed on 24.11.2005, it was not open for the respondents to still reject candidature of the petitioners for grant of temporary status under the Scheme, 1993 on the premise that they are ineligible for grant of temporary status as they have not completed 240 days in the preceding 12 months i.e. 1.9.1992 to 31.8.1993 and in our view finding of the Ld. Tribunal is in clear contravention of the Scheme, 1993 is wholly perverse and not sustainable in law.

18. In the ordinary course we would have directed the respondents to consider case of the petitioners for grant of temporary status under the Scheme, 1993 but we find in the peculiar facts of instant case that even after fourth round of litigation the respondents still harping with their defence that since the petitioners have not completed 240 days in the preceding 12 months w.e.f. 01.09.1993 as such are not entitled to grant temporary status and that defence has been repelled by the Ld. Tribunal in its earlier order dt. 27.3.2002 & view of

the Ld. Tribunal being confirmed by this court in DB CWP-3867/2002 decided on 24.11.2005 and no other impediment has been highlighted by the respondents which denies the petitioners from grant of temporary status under these facts and circumstances, in case if it is still left to the respondents with their defence to consider case of the petitioners for grant of temporary status, that may not serve the purpose any more and when no such other requirement for compliance exists after judgment of Ld. Tribunal being examined by this Court in its order dt. 24.11.2005 & this view has been affirmed by the Apex Court in the judgment reported in Union of India (UOI) and Another Vs. Mohan Pal, etc. etc., AIR 2002 SC 2001 : (2002) 94 FLR 92 : (2002) 1 JT 312 Supp : (2002) LabIC 1694 : (2002) 2 LLJ 558 : (2002) 4 SCALE 216 : (2002) 4 SCC 573 : (2002) 3 SCR 613 : (2002) 2 SCT 1053 : (2002) AIRSCW 2040 : (2002) 3 Supreme 602 it will be appropriate for this Court to exercise its discretion u/Art. 226 of the Constitution to grant equitable relief to the petitioners required under the law.

19. Consequently, the writ petition succeeds and is hereby allowed. The order of the Ld. Tribunal impugned herein dt. 12.01.2007 & also the decision of the respondents dt. 21.06.2006/26.06.2006 are hereby quashed and set aside. The respondents are directed to pass necessary orders granting temporary status to each of the petitioners from the date the individual petitioner has completed 240 days in a year under the Scheme, 1993 with all consequential benefits flowing thereof. Necessary compliance shall be made within three months. No costs.