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**(2005) 12 DEL CK 0180**

**In the Delhi High Court**

**Case No :** Writ Petition (C) No. 2168-81 of 2004

Satish Kumar and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 02-12-2005

**Acts Referred:**

Constitution of India, 1950 — Article 141, 142, 32

**Citation :** (2006) 126 DLT 611

**Hon'ble Judges :** Sanjiv Khanna, J;Dr. M.K. Sharma, J

**Bench :** Division Bench

**Advocate :** A.K.Sinha, for the Appellant; Parbhati Lal, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Sanjiv Khanna, J.—The present writ petitions have been filed by the 14 casual labourers working at Swatantra Sangram Senghralaya, Red Fort, Delhi under the Archaeological Survey of India and is directed against order dated 30th December, 2003 passed by the learned Central Administrative Tribunal dismissing the original application No. 2426/2003.

2. By the impugned order the learned Tribunal dismissed the said original application, inter alia, holding that the same was not maintainable and was barred by principle of res judicata in view of the decision of this Court in W.P.(C) No. 6900/2002 decided vide order dated 6th May, 2002. By this decision, this Court had allowed the writ petition filed by the Archaeological Survey of India and had set aside the earlier order of the Tribunal dated 14.10.2001 passed in O.A. No. 719/2001 holding that the petitioners herein were not entitled to regularisation under the 1993 scheme was framed by the Government of India in view of the decision of the Supreme Court in Union of India (UOI) and Another Vs. Mohan Pal, etc. etc., wherein it has been held that the 1993 scheme was one time scheme and not an ongoing scheme and was, Therefore, applicable only to casual employees who were in employment on the date of commencement of the scheme . The Tribunal has further held that this Court while dismissing W.P.(C)

No. 6900/2002 had only permitted and allowed the petitioners herein to move an application before the Tribunal for consideration of other grounds that were raised and argued before the Tribunal in OA No. 719/2001 but were not decided while disposing of the aforesaid O.A.

3. The learned counsel for the petitioners submitted before us that the petitioners have been working with the respondent for last several years and, Therefore, they were entitled to be regularised in view of the scheme floated by DOPT dated 7th June, 1988, which was/is still in operation. It was further submitted that the petitioners had/have worked as casual labourers for a period of 240 days in a year (206 days in cases of offices observing five days in a week) and, Therefore, order of the Tribunal was contrary to law and liable to be set aside. The counsel for the petitioners also placed reliance on order dated 25th February, 1997 passed by the learned Central Administrative Tribunal in OA No. 2129/1996 titled Shajuk Prasad and Anr. v. Union of India and Anr. It was submitted that in this case, 1993 scheme was held to be an ongoing scheme and the Supreme Court has upheld the order passed by the learned Tribunal in Civil Appeal Nos. 504-505/98 in its order dated 9th August, 2000. The counsel for the petitioners also placed reliance on a memorandum issued by All India Institute of Medical Sciences for regularisation of daily wages staff who had completed 240 working days in a year by applying the 1993 scheme.

4. The learned counsel appearing for the respondent stated that the petitioners would be regularised as and when vacancies arise but in accordance with the relevant recruitment rules and the present writ petition was barred under the principle of res judicata.

5. We have considered the arguments and gone through the paper book.

6. The petitioners had earlier filed OA No. 719/2001 seeking direction that they should be granted temporary status with all consequential benefits in terms of the scheme prepared by DOPT dated 10th September, 1993 on the ground that they had been working for last several years as Museum attendants. The learned Tribunal allowed the said application vide order dated 14th December, 2001 with a direction to the respondent to consider the grant of temporary status with all consequential benefits in terms of the aforesaid scheme within a period of three months from the date of the receipt of the copy of the order.

7. The respondent did not accept the said order and filed W.P.(C) No. 6900/2002 in this Court. This writ petition was allowed and the impugned order passed by the Tribunal directing consideration of grant of temporary status under the 1993 scheme was set aside. It was held by this Court that 1993 scheme was conceived as one time measure and was applicable only on those employees who were working on 10th September, 1993 as held by the Supreme Court in the case of Mohan Pal (Supra). In view of the said decision it was held that the 1993 scheme was not an ongoing scheme. This Court also referred to the submission made by the learned counsel for the respondent that certain other points were argued

before the Tribunal but were not considered and examined as the petitioner's application was allowed on legal grounds. This Court held if that was correct, it was open to the petitioners to move an appropriate application before the Tribunal for consideration of other grounds urged before it and the said application if filed shall be considered by the Tribunal on its own merits.

8. It is admitted by the counsel for the parties that the order dated 6th May, 2003 passed by this Court in W.P.(C) No. 6900/2002 has become final and binding as the same has not been questioned and challenged. This order will obviously operate as *res judicata* between the parties, and the petitioners, Therefore, cannot contend and argue that their case for regularisation/grant of temporary status is covered by the scheme formulated on 10th September, 1993. The petitioners had succeeded before the Tribunal and it was held that they were covered by and entitled to benefit under the 1993 scheme but this Court after examining the case on merits came to a contrary conclusion in its decision dated 6th May, 2003 in W.P.(C) No. 6900/2002. This order would operate as *res judicata* and the petitioners cannot now be heard to contend and argue that they should be granted temporary status/ regularisation in terms of the scheme formulated in 1993. In view of the aforesaid finding, we need not, Therefore, examine the contention of the petitioners that 1993 scheme was an ongoing scheme in view of the decision of the Tribunal dated 25th February, 1997 in case of Shajuk Prasad (*supra*) and upheld by the Supreme Court in Civil Appeal Nos. 504-505/98. As far as the petitioners are concerned, they are bound by the decision of this Court in W.P.(C) No. 6900/2002 dated 6th May, 2003 holding that they are not entitled and covered by the 1993 scheme. It may, however, be stated that the submissions made by the petitioners is contrary to the ratio of the decision of the Supreme Court in the case of Mohal Pal (*Sapra*).

9. The petitioners instead of moving an application in terms of the order dated 6th May, 2003 passed in W.P.(C)No.6900/2002, filed an original application before the Tribunal being OA No. 719/2001 which has been dismissed by the Tribunal. A bare reading of the said original application also shows that the petitioners had relied upon the 1993 scheme to claim grant of temporary status/ regularisation. This plea and stand of the petitioners herein has been rightly rejected by the Tribunal on the ground of *res judicata* as held above.

10. Reliance was also placed on OM dated 7.6.1988 by the learned counsel for the petitioners. It was submitted that the petitioners should be regularised in terms of the said office memorandum. We are unable to agree and accept the said contention of the learned counsel for the petitioners. In paragraph 10 of the 1993 Scheme it has been stipulated that in future, the guidelines contained in the Office Memorandum dated 7.6.1988 should be followed strictly in the matter of engagement of casual employees in the Central Government offices. The Office Memorandum dated 7.6.1988 has been referred to in the 1993 Scheme only to ensure that in future casual employees are engaged only as per the guidelines mentioned in the said Office Memorandum and casual employees are not

engaged contrary to the said guidelines. It is for this limited purpose that the O.M.dated 7.6.1988 has been referred to. Paragraph 10 of the 1993 Scheme does not in any manner permit and allow regularisation of casual employees under Office Memorandum dated 7.6.1988. The above interpretation is fortified by the Office Memorandum dated 6.6.2002, wherein again it has been specifically stated that the existing guidelines mentioned in the Office Memorandum dated 7.6.1988 should be scrupulously observed while engaging casual labour. The 1993 Scheme in fact overrides and supersedes the OM dated 7.6.1988 in all other aspects. The petitioners, Therefore, cannot be regularised under the OM dated 7.6.1988.

11. The contention of the petitioners that they had worked for 240 days in one calendar year and, Therefore, they should be regularised or granted temporary status also has no merit. The Supreme Court in the case of Executive Engineer ZP Engg. Divn. and Another Vs. Digambara Rao etc. etc., has held that mere completion of 240 days continuous service in a year may not be itself a ground for directing regularisation/grant of temporary status in case of employees who were not appointed in accordance with the recruitment rules. The Supreme Court in this case relied upon two earlier decisions in the case of A. Umarani Vs. Registrar, Cooperative Societies and Others, and Pankaj Gupta and Others, etc. Vs. State of Jammu and Kashmir and Others,

12. In the present case it is not the contention of the petitioners that they were appointed in accordance with the recruitment rules after following proper procedure. In the case of Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan, Supreme Court has held that an ad hoc appointee unless his initial recruitment was regularised through prescribed procedure, was not entitled to regularisation even if the ad hoc appointment was made after selection process. In this case the judgment of the Supreme Court in the case of J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., was referred to and quoted. For the sake of convenience paragraph 11 of Dr.Narinder Mohan(Supra), which summaries the legal position may be referred to:-

"11. This Court in Dr. A.K. Jain v. Union of India<sup>1</sup> gave directions under Article 142 to regularise the services of the ad hoc doctors appointed on or before October 1, 1984. It is a direction under Article 142 on the peculiar facts and circumstances therein. Therefore, the High Court is not right in placing reliance on the judgment as a ratio to give the direction to the PSC to consider the cases of the respondents. Article 142 - power is confided only to this Court. The ratio in Dr P.P.C. Rawani v. Union of India<sup>2</sup> is also not an authority under Article 141. Therein the orders issued by this Court under Article 32 of the Constitution to regularise the ad hoc appointments had become final. When contempt petition was filed for non-implementation, the Union had come forward with an application expressing its difficulty to give effect to the orders of this Court. In that behalf, while appreciating the difficulties expressed by the Union in implementation, this Court gave further direction to implement the order issued

under Article 32 of the Constitution. Therefore, it is more in the nature of an execution and not a ratio under Article 141. In *Union of India v. Dr Gyan Prakash Singh*<sup>3</sup> this Court by a Bench of three Judges considered the effect of the order in *A.K. Jain* case and held that the doctors appointed on ad hoc basis and taken charge after October 1, 1984 have no automatic right for confirmation and they have to take their chance by appearing before the PSC for recruitment. In *H.C. Puttaswamy v. Hon''ble Chief Justice of Karnataka*<sup>4</sup> this Court while holding that the appointment "to the posts of clerk etc. in the subordinate courts in Karnataka State without consultation of the PSC are not valid appointments, exercising the power under Article 142, directed that their appointments as a regular, on humanitarian grounds, since they have put in more than 10 year's service. It is to be noted that the recruitment was only for clerical grade (Class-III post) and it is not a ratio under Article 141. In *State of Haryana v. Piara Singh*<sup>5</sup> this Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad hoc or temporary employees by regularly selected employees, as early as possible. The temporary employees also would get liberty to compete along with others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc or temporary employee. Ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee. He must be replaced only by regularly selected employee. The ad hoc appointment should not be a device to circumvent the rule of reservation. If a temporary or ad hoc employee continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. It is to be remembered that in that case, the appointments are only to Class-III or Class-IV posts and the selection made was by subordinate selection committee. Therefore, this Court did not appear to have intended to lay down as a general rule that in every category of ad hoc appointment, if the ad hoc appointee continued for long period, the rules of recruitment should be relaxed and the appointment by regularisation be made. Thus considered, we have no hesitation to hold that the direction of the Division Bench is clearly illegal and the learned Single Judge is right in directing the State Government to notify the vacancies to the PSC and the PSC should advertise and make recruitment of the candidates in accordance with the rules."

13. judgment of the Supreme Court in the case of *State of Haryana v. Piara Singh and Ors.* which has been referred to and relied upon by the counsel for the petitioners in the present matter and has also been examined in the case of *J & K. Public Service Commission (Supra)*. The Supreme Court has held that when due to administrative exigencies ad hoc or temporary appointments are made, efforts should be made to replace such employees by regularly selected

employees as early as possible. The temporary employees should also get opportunity to compete in the regular selection along with others but if not selected, they must give way to the regularly selected employees. However, ad hoc or temporary employees should not be replaced by another ad hoc or temporary employee and should be replaced only by a regularly selected employee. The Supreme Court noticed the observations in Paira Singh's case (supra) with regard to temporary or ad hoc employees who have worked for fairly long spells and it was held that in Paira Singh's case (supra) the Supreme Court did not intend to lay down as a general rule that if an ad hoc appointee has continued for a long time, the rules of recruitment should be relaxed and appointment by regularisation should be made.

14. In view of the above findings, we find no merit in these writ petitions and the same are dismissed. However, we make it clear that the petitioners shall only be replaced by regularly selected employees selected in accordance with the recruitment rules and not by ad hoc/temporary or casual labourers. Further the petitioners will have right to compete along with others for regular selection and if required, they shall be granted age relaxation and due weightage will also be given to the fact that they have worked for considerably long period with the respondent. The respondent shall also abide by the principle "last to come first to go". However, in view of the facts and circumstances of the case, we do not pass any order as to costs.