

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 28th November, 2019

Decided on: 18th December, 2019

W.P.(C) 9202/2014 and CM APPL. 27854/2018 (int. direction)

UNION OF INDIA & ORS Petitioners
Through: Mr. Gagan Mathur, Advocate.

Versus

MANMAN SINGH & ORS Respondents
Through: Mr. U.U.Srivastava, Advocate.
Dr. Ashwani Bhardwaj, Advocate.
Mr. T.N.Singh with Mr. Vikas
K.Singh, Advocates for Applicants in
CM Appl. 27854/2018.

W.P.(C) 11143/2015 and CM APPL. 28943/2015 (stay)

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
& ORS. Petitioners
Through: Mr.Gagan Mathur, Advocate.

Versus

GIRI RAJ SINGH PAL @ GIRI RAJ Respondent
Through: Mr. Jamshed Beg with Mr. Ravi
Shankar Kumar, Ms. Priyambica
M.Jha and Mr. Sanjay K.Mishra,
Advocates.

**CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. Both these petitions raise an identical question of law and are accordingly being disposed of by this common judgment.

2. W.P.(C) No. 9202/2014 has been filed by the Union of India through the Department of Agriculture Research and Education, Government of India, Director General of the Indian Council for Agriculture Research (ICAR) and the Executive Director, National Bureau of Plant Genetic Resources (NBPGR), ICAR Pusa (Petitioner Nos.1, 2 & 3 respectively) against 23 Respondents whose OA Nos. 3003/2012 and 3118/2012 were disposed of by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') by a common order dated 20th May, 2014, directing the Petitioners to grant the Respondents temporary status as Casual Labourers as on 1st September, 1993, irrespective of the availability of regular vacancies in terms of the Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993).

3. It was further directed that they would be paid wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group 'D' official, including Dearness Allowance ('DA'), House Rent Allowance ('HRA') and City Compensatory Allowance ('CCA'). The said payments were to be made within a period of two months.

4. The CAT further directed the Petitioners to make an assessment of the work being done by the regular staff for output and productivity. If it was

found that it was not possible to entrust all the work handled by the casual workers to them, the required number of additional regular posts were directed to be created in terms of the Office Memorandum ('OM') dated 7th June, 1988, issued by the Department of Personnel and Training ('DoPT'). The Petitioners were directed to first regularize such of those Applicants (Respondents herein) to whom temporary status had thus been granted, and against the balance vacancies, the Applicants, who had completed 10 years of service as on 10th June, 2006, would have to be regularized from the respective dates in terms of the judgment of the Supreme Court in *State of Karnataka v. Uma Devi (2006) 4 SCC 1*. The remaining were directed to "be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day as revised from time to time." This direction was also directed to be complied with within a period of four months.

5. The very same three Petitioners have also filed the second W.P.(C) No. 11143/2015 against nine Respondents whose OA No. 4379/2013 was disposed of by the CAT by its order dated 23rd April, 2015, granting the same relief as granted by the order dated 20th May, 2014 in OA Nos. 3003/2012 and 3118/2012. The CAT accordingly quashed the tender notice dated 1st October, 2013 issued by the NBPGR, inviting tenders for various jobs of agricultural operations.

6. The Respondents, in the instance of both petitions, were engaged as casual labour in the NBPGR for many years on a continuous basis beginning in 1977. On 25th June, 1986 the Petitioners sought to discharge some of the

casual labourers after noting that their employment is only for jobs of a casual nature and that their continued employment would be irregular. It was decided that the Institutes functioning under the Ministry of Agriculture should not employ casual workers for a period exceeding 40 days at a time and that the total period should be less than 100 days during the six months' period and less than 200 in a year.

7. Challenging their discharge from service, W.P.(C) No. 2835/1986 was filed by the Respondents in W.P.(C) No. 9202/2014 in this Court. On 5th August, 1992, the same was transferred to the CAT and registered as TA No. 132/1987. That TA was disposed of by the CAT by an order dated 5th August, 1992, holding that the order of the Petitioners dated 25th June, 1986 imposing restrictions on the employment of casual labour was illegal as it would violate Articles 14 and 16 of the Constitution for denying equality of opportunity. The CAT further directed the Petitioners to withdraw and modify the order. It was specifically directed as under:

“5. Analyzing the facts and arguments in this case, we agree that the power to avoid inconvenience does not offend Articles 14 and 16 of the Constitution [*Vevamaler Vaneja Kumari Vs. State of Kerala 1984 (4) 605*]. The respondents can recruit labour but hold instructions to the Director of the Institute under ICAR that they should not employ casual workers for a period more than 40 days at a time and the total period of casual labour should be 100 days during six months or less than 200 days in a year are not just and fair, It would have been a different matter if the delegation to their subordinates for employment of causal workers for a specified period only was made with a view to stressing that casual employment should not continue to lend and where long term need was felt the appointments should be on regular basis. But to say that one

particular casual labour should not be employed for more than 100 days in six months or more than 200 days in a year is illegal in the any such instruction regarding recruitment will deny the equality of opportunity and will offend Articles 14 and 16 of the Constitution. As mentioned earlier, the employment should be according to the need and the period should have nexus with such a requirement. The respondents are, therefore, directed to withdraw their instructions dated 25.06.1986 or modify it.

6. The applicants, however, cannot claim reinstatements or regularization as observed in the case of *Delhi Development Horticultures Employees Union Vs. Delhi Administration and Others [JT 1991(1) SC 391]*. A casual worker, merely because he has completed 240 days of service cannot claim regularization. The right to work is a directive principle of State Policy and this principle has to be applied within the limits of economic capacity and development of the State. The country has not so far attained the capacity to guarantee employment while giving the directions to the State to ensure the right to work, the Constitution makers thought it prudent not to do so without qualifying it.

7. In the circumstances it is not possible to accede to the request of the applicants that they should be reinstated with full back wages and should be regular. The most that can be done for them is to direct the respondents to prepare a panel of workers who have been working in the past and when regular vacancies occur persons in the panel should be given weightage according total number of days served while considering them along with others in accordance with the provisions of the Employment Exchange Act or the relevant recruitment rules subject, of course, to the conditions of screening of the casual workers for adjudging their suitability and performance and medical fitness.

8. With the above directions, the case is disposed of with no order as to costs.”

8. However, since the Petitioners did not prepare the panel of workers in accordance with the above directions, the Respondents again filed OA Nos. 2788-2869/1992. It was pointed out by the Respondents in the said OAs that they had been performing duties associated with that of regular posts, although they had been working as casual labourers/Beldars on daily wages with the Indian Agriculture Research Institutes ('IARI') and the ICAR.

9. By an order dated 4th May, 1993 the said OAs were disposed of with directions to the Petitioners to prepare a panel of casual labourers/ 'Beldars' as expeditiously as possible. The CAT further directed that till such time that the said panel was prepared, the Petitioners would continue engaging the Respondents as casual labourers if vacancies existed, in preference to persons who were juniors or outsiders. Further, the Petitioners were directed to pay the same salary as would be payed on the regular pay scale to Group 'D' employees.

10. Subsequently, the NBPGR issued an Office Order dated 29th October, 1999 conveying the decision of the Competent Authority ('CA') for payment of wages to the existing casual labourers at par with Group 'D' employees.

11. The Respondents in W.P.(C) 9202/2014 again filed OA Nos. 1185-1212/2003 separately seeking regularization of the respective services. Both OAs were disposed of by a common order of the CAT with a direction to the Petitioners to examine the cases of each of the Respondents for regularization in accordance with the scheme dated 7th June, 1988. The

Petitioners were directed to pass speaking and reasoned orders.

12. Pursuant to representations, the Petitioners passed a detailed order dated 7th August, 2003 in each of the individual cases of the Respondents, stating that it was not possible to regularize their services against Group 'D' posts when there was no vacancy but that they would be considered to be engaged in terms of a seniority list, as and when the need would arise.

13. Meanwhile, the DoPT in 1993 issued the 'Casual Labourers (Grant of Temporary Status) Scheme, 1993.'

14. The Respondents in W.P.(C) 9202/2014 filed OA No. 2415/2003 in the CAT for a direction to grant them temporary status and also to regularize their service in due course. The aforementioned OA No. 2415/2003 was disposed of by the CAT by an order dated 28th June, 2004, where it was held that the fact that there was no sanctioned post available with the Petitioners and the Petitioners' undertaking that the Respondents would be continued to be engaged in terms of the seniority list as and when the need arose, obviated the need for any further directions.

15. It was noted by the CAT in the above order that a panel was also prepared and that the members on such panel were being engaged as and when required. The CAT also noted the DoPT's policy dated 11th December, 2006, in terms of which the Respondents were being paid wages at par with the regular Group 'D' employees.

16. The Respondents in W.P.(C) 9202/2014 again approached the CAT with OA No. 22/2011 wherein their grievance was that even after the implementation of the recommendations of the 6th Central Pay Commission (CPC), their pay had not been reviewed and revised. The CAT disposed of that OA by an order dated 1st November, 2011 with the following directions:-

"5. In the given circumstances, we find it appropriate to dispose of this OA with directions to the respondents to consider the matter of appropriate revision of the wages of the applicants in the light of the VIth CPC recommendations. A speaking and reasoned order on the subject is to be passed within a period of three months from the date of receipt of a copy of this order.

The QA is disposed in terms of the above directions. Further it is clarified that the applicants would have a liberty to press their relief regarding regularization as per law, as and when a fresh cause of action in the respect arises".

17. By an order dated 1st November, 2011, the CAT issued a direction to the Petitioners to consider the claim of the Respondents "for appropriate revision of wages in light of the recommendations of the 6th CPC." Here again they were asked to pass a reasoned and speaking order within three months.

18. Pursuant to the above directions, the Petitioners issued an Office Order dated 11th June, 2012. In the said order, it was mentioned that there was a specific revision of the pay scale of casual labourers with temporary status. However, since the Respondents had not granted them temporary status, they were not considered equal with such of those casual labourers who had

been granted such status.

19. Aggrieved by the above Office Order dated 11th June, 2012 the aforementioned OA No. 3003/2012 was filed by 11 of the casual labourers and OA No. 3118/2012, by 12, for directions to the Petitioners to regularise their services in terms of the DoPT OM dated 11th December, 2006, and in terms of the law laid down in *Uma Devi (supra)*. The further prayer was for directions to the Petitioners to pay the Respondent herein wages at the rate of 1/30th of the pay at the minimum of the relevant pay scale; DA for the work of 8 hours a day with effect from 1st January, 2006 i.e. Rs. 5200-20200; and, Grade Pay of Rs.1800/- with arrears in terms of the OM dated 7th June, 1988.

20. In the impugned order, the CAT has traced the history of the present litigation. It has also analysed in some detail the Casual Labourers (Grant of Temporary Status) Scheme, 1993 prepared by the DoPT. The CAT also took note of the immediately preceding round of litigation where the Respondents approached the CAT with OA No. 22/2011, stating that after the recommendation of the 6th CPC, the pay had neither been reviewed nor revised and further that they had still not been regularised against the available Group 'D' posts.

21. It was noticed by the CAT that the impugned office order dated 11th June, 2012 had been issued pursuant to the directions of the CAT in its order 1st November, 2011, disposing of the above OA No. 22/2011. However, the stand taken was that in terms of DoPT OM dated 12th September, 2008, the

Respondents had not been granted temporary status and that, therefore, they could not be paid minimum wages as recommended by the 6th CPC.

22. The Petitioners continued to maintain before the CAT that for want of sanctioned posts, the plea of regularisation could not be accepted. Further, since the Respondents continued to be daily paid labourers and had not been granted temporary status, they were not entitled to even revision of pay scales applicable to casual labourers with temporary status.

23. The CAT noted that the Respondents were engaged as casual labourers from 1977-1990 and were an integral part of the research programme of the NBPGR. The Tribunal discussed the DoPT OM dated 7th June, 1988 at length, as well as the 1993 Scheme. It was also noted that the Petitioners had not undertaken any exercise as envisaged in the said OM dated 7th June, 1988 and rejected the plea of the Respondents on the ground that there were no vacancies against which their services could be regularised against Group 'D' posts and that they would be considered to be engaged in terms of seniority list as and when the need arose.

24. The CAT then discussed the principles laid down in the decisions in *Union of India v. Mohan Pal (2002) 4 SCALE 216*, *Uma Devi (supra)* and the fresh DoPT OM dated 11th December, 2006 which reviewed the earlier OM dated 7th June, 1988. It also took note of the clarification issued by the Supreme Court of its judgment in *Uma Devi (supra)* by a subsequent decision in *State of Karnataka v. M.L.Kesari (2010) 9 SCC 247*. The decision dated 6th November, 2013 of this Court in W.P.(C) No. 6798/2002

(Sonia Gandhi v. GNCTD) was also discussed.

25. In light of the above discussion, the CAT noted that the Petitioners should have prepared the following lists of casual labourers:

“(i) who were in service as on 01.09.1993 and entitled for temporary status irrespective of the availability of posts and

(ii) those who are engaged after 01.09.1993.”

26. The CAT was also of the view that considering that the work being done by the Respondents was of regular nature, which could not be performed by the existing regular work force, the Petitioners should have created sufficient Group ‘D’ posts in terms of the OM dated 7th June, 1988. Accordingly, the following directions were issued by the CAT in the impugned order:

- i. The Petitioners shall grant temporary status to all eligible casual labourers as on 1st September, 1993, irrespective of the availability of regular vacancies in terms of the ‘Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993’.
- ii. They shall also be paid 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. This was to be done within a period of two months from the date of receipt of the CAT’s order.
- iii. Meanwhile, the Petitioners would make an assessment of the work being done by the regular staff for output and productivity and if it was found that it was not possible to entrust all the work handled by the casual worker to them, the required number of additional regular

post should be created in terms of the DoPT OM dated 7th June, 1988.

- iv. The Petitioners should also first regularize those of the Respondents to whom the temporary status has thus been granted and against the balance vacancies, the Respondents who had completed 10 years of service as on 10th June, 2006 would be regularized from the respective dates in terms of the judgment in *Uma Devi's (supra)*.
- v. The rest would be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale and additionally, dearness allowance for work of 8 hours a day, as revised from time to time. This direction was to be complied with within a period of 4 months from the date of the receipt of the CAT's order.

27. The Respondents in W.P.(C) 11143/2015 filed OA No. 4379/2013 *inter alia* challenging the issue of a "Invitation of Open Tenders and Instructions Containing Terms and Conditions Governing the Job Contract for Various Agricultural Operations" dated 1st October, 2013 by the Petitioners.

28. The CAT quashed the invitation letter by the impugned order dated 23rd April, 2015 by extensively referring to its earlier order dated 20th May, 2015 in OA Nos. 3003-3118/2012 (*Manman Singh v. Union of India*). It further issued directions to the Petitioners, identical to those issued in *Manman Singh*, and set out hereinabove. This order has been challenged in the second writ petition here i.e. W.P.(C) No. 11143/2015.

29. When W.P.(C) 9202/2014 was heard on 22nd December, 2014, while directing notice to issue to the Respondents, this Court stayed the operation

of the impugned order of the CAT dated 20th May, 2014. On 9th May, 2017 the Court was informed that the Respondent Nos.2 & 6 in the said writ petition had expired and that steps would be taken to bring their legal representatives on record. Persons similarly placed as the Respondents were allowed to intervene by an order dated 16th April, 2019 in CM APPL No.3799/2019.

30. When W.P.(C) 11143/2015 was first heard on 1st December, 2015, the Court passed the following order:

“Learned counsel for the petitioners submits that while issuing notice in a similar matter, being W.P.(C) 9202/2014, which is also listed today, stay has been granted by this Court.

Issue notice to the respondents to show cause as to why *Rule nisi* be not issued, returnable on 31.3.2016. Notice in the stay application as well for the date fixed.

Till the next date of hearing, operation of the impugned order dated 23.4.2015 passed in OA No.4379/2013 shall remain stayed.”

31. This Court has heard the submissions of Mr. Gagan Mathur, learned counsel for the Petitioner and Mr. U.U.Srivastava, learned counsel for the Respondents.

32. At the outset, it must be recorded that at the hearing of W.P.(C) 9202/2014 on 24th October, 2016, this Court directed learned counsel for the Petitioners to “obtain instructions whether the services of the Respondents are required or whether the Petitioner wants to discontinue their services. In

case the Petitioners want to discontinue the services of the Respondents, it will be stated and confirmed whether the Petitioners would be recruiting new employees in place of the Respondents.”

33. At the subsequent hearing on 16th January, 2017 the following order was passed:

“Learned counsel for the petitioners prays for more time to obtain instructions.

It is the case of the petitioners themselves that the respondents were engaged during the period 1977 to 1990 and they have continued to work till today, i.e., January, 2017. The respondents had on earlier occasions approached the Court and the Tribunal orders were passed.

Be that as it may, in case the petitioners do not take any decision by the next date of hearing, we will have no option but to decide and hear the writ petition on merits.

The respondents will file a chart/table, indicating the dates, on which the respondents were engaged and the number of days of service in each calendar year. The table/chart will also indicate when the respondents had first approached the Court or the Tribunal and will enclose therewith relevant orders passed by the Tribunal/Court from time to time. The aforesaid table/chart will be filed within six weeks from today.

Relist on 6.3.2017.”

34. Pursuant to the above direction, the Petitioners have placed on record a chart/table showing the particulars of the number of days of service of each of the Respondents in W.P.(C) 9202/2014. This is a comprehensive list from 1977 till 2017 i.e. till the date of filing of the chart on 30th November, 2017.

After the Serial number and name, is a third column which sets out their respective dates of engagement. The earliest date of engagement is that of Manman Singh, Respondent No. 1 in W.P. (C) No. 9202/2014, which is 21st July, 1977. The most recent is that of Anita Devi, Respondent No. 23 in W.P. (C) No. 9202/2014, who was engaged on 1st June, 1997. From this chart, which incidentally is not disputed by the Petitioners, it is seen that definitely from 1995 onwards, each of the Respondents has put in more than 240 days a year. From 2000 onwards, they appear to have worked continuously throughout the year, on a year-to-year basis.

35. The Respondents in W.P.(C) 9292/2014 have also placed on record as many as six decisions of the CAT, including the impugned one in the petitions filed by the Respondens from time to time. These details are as under:-

- i. TA No. 132/1987 decided by the CAT on 5th August, 1992
- ii. OA Nos. 2788/1992 & 2869/1992 decided on 4th May, 1993
- iii. OA Nos. 1185/2003 & 1212/2003 decided in the year 2003.
- iv. OA No. 2415/2003 decided on 28th June, 2006
- v. OA No. 22/2011 decided on 1st November, 2011
- vi. OA No. 3003/2012 & 3118/2012 decided on 20th May, 2014

36. During the pendency of the present petition, many of the Respondents continued in service. It is pointed by the intervenors in W.P.(C) 9202/2014 how Review Application No. 165/2018 filed by them before the CAT, seeking review of an order dated 13th July, 2018 in OA No. 1385/2018,

whereby the CAT adjourned the matter *sine die* to await the decision of this Court in *Manman Singh's* case, was dismissed by the CAT on 10th September, 2018.

37. What emerges from the facts placed on record is that the Respondents had indeed been engaged on a continuous basis for more than 20 years as casual labourers. The need for their services is therefore self evident. There appears to be no rational explanation as to why if there is indeed a requirement for their services and they have been continuously engaged, no posts of Group 'D' have been created to regularise their services.

38. The failure of the Petitioners to do so flies in the face of the directions issued both by the Supreme Court in *Uma Devi (supra)* and its subsequent order in *M.L.Kesari (supra)*, as also the detailed directions issued by this Court in *Sonia Gandhi (supra)*. Their refusal to accord temporary status to the Respondents and pay them even 1/30th of the minimum pay scale is clearly arbitrary and unreasonable and violative of Article 14 of the Constitution. The State cannot be exploiting the labour of the Respondents on a continuous basis for over two decades, without so much as adhering to the basic norms. The Court finds no reason to interfere with the impugned orders dated 20th May, 2014 and 23rd April, 2015 of the CAT.

39. The petitions are accordingly dismissed. The pending applications are also disposed of.

40. The Petitioners will implement the directions issued by the CAT not

later than three months from today.

S.MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 18, 2019

mw

