

CASE NO.:
Appeal (civil) 2940-2941 of 2007

PETITIONER:
Controller of Defence Accounts, Dehradun and Ors

RESPONDENT:
Dhani Ram & Ors

DATE OF JUDGMENT: 10/07/2007

BENCH:
Dr. ARIJIT PASAYAT P.K. BALASUBRAMANYAN & D.K. JAIN

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NOS. 2940-2941 OF 2007
(Arising out of S.L.P. (C) Nos. 23142-43 of 2005)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
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:
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 on-going 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, 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:

"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."

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.

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).

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.

JUDIS