HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 14655/2022

1. Shambhu Lal S/o Birdilal, Aged About 64 Years, R/o C/o O.p. Khandelwal, 1-C, 18, Talwandi, Raj. Housing Board Colony, Kota, Rajasthan. (Ex. Complier Of Deputy Director Of Census Operation Kota, Rajasthan) Group C

   Ashok Kumar S/o Surajmal, Aged About 52 Years, R/o Village Telha, Tehsil Digod, District Kota, Rajasthan. (Ex. Class Ivth / Daily Wages Employee Of Deputy Director Of Census Operation Kota, Rajasthan) Group D

3. Dan Mal S/o Dhanna Lal, Aged About 60 Years, R/o Near Govt. Primary School, Shivpura, Kota, Rajasthan. (Ex. Complier Employee Of Deputy Director Of Census Operation Kota, Rajasthan) Group C

----Petitioners

Versus

1. Union Of India, Through Secretary Ministry Of Home Affairs, Govt. Of India, North Block, Central Secretariat, New Delhi-110001

2. Director Of Census Operation Rajasthan, 6 B, Jhalana Doongari, Jaipur

----Respondents

For Petitioner(s) : Mr. Sampat Lal Songara

HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

J U D G M E N T

17/05/2023

(PER HON'BLE ANIL KUMAR UPMAN, J.)

(REPORTABLE)

Heard.

Challenge in this writ petition is against the judgment dated 12.07.2022 passed by Central Administrative Tribunal, Jaipur Bench,

Jaipur (hereinafter referred to as 'the Tribunal') vide which, Original Applications ('OAs') filed by the petitioners assailing their verbal termination orders dated 30.06.1992/01.07.1992 were dismissed.

Learned counsel for the petitioners submits that the Tribunal has mitted grave error of facts and law in rejecting the claim of the ioners. He further submits that the action of the respondent loyer was malafide as the advertisement dated 23.03.1991 was issued for recruitment on different posts for short term on sanctioned posts and it cannot be considered as contractual employment. He further submits that before terminating services of the petitioners, no prior notice was served upon the petitioners. The petitioners had worked more than 240 days in twelve preceding calendar months. He further submits that the posts were available upto 31.12.1993 and thus, termination of services of the petitioners prior to 31.12.1993 is illegal. He placed reliance on the following judgments:-

1. Harjinder Singh vs Punjab State Warehousing Corporation : 2010 CDR 401 (SC),
2. H.P. Housing Board vs Om Pal & Ors.: AIR 1997 Supreme Court 2685,
3. Rashtriya Chaturth Shreni Railway Majdoor Congress (INTUC) vs UOI & Ors. : AIR 1997 Supreme Court 3492, and
4. K. Anbazhagan & Anr. vs. Registrar General High Court of Madras & Anr. : AIR 2018 Supreme Court 3803.

The case in hand has chequered history. In pursuance of advertisement dated 23.03.1991, the petitioners were appointed for census work by the Director, Census, Rajasthan, Jaipur on consolidated salary. They served in the Department from the month of July,

1991/September, 1991 upto June, 1992. Their services were terminated by verbal orders dated 30.06.1992/01.07.1992 without giving any prior notice to them. This is the third round of litigation as firstly in the year 1992 itself, the aforesaid verbal termination orders were assailed by way of filing writ petition No.4295/1992. The said petition was disposed of vide order dated 09.05.1997 and the petitioners were allowed to avail alternative remedy. In pursuance of the liberty so granted by the learned Single Bench, an industrial dispute was raised by the petitioners on which a reference was made to the learned Labour Court. Statement of claim was submitted by the petitioners before the learned Labour Court which was replied by the respondent Department and after taking evidence of both the sides, the reference was answered negative vide award dated 21.11.2012. Learned Labour Court, while rejecting the claim of the petitioners, held that appointment of the petitioners were contractual in nature and their services automatically got terminated at the end of the contract period. The said award was assailed by the petitioners by way of filing writ petitions and all these writ petitions were also dismissed vide common order dated 19.07.2017 by holding that there exists a contract in between the petitioners and the Department and under that contract, they had worked upto June, 1992. It was further held that perusal of the contract goes to show that appointment of the petitioners was for a fixed term basis under the contract and after the period of contract, their services were dispensed with. It was also considered while rejecting the writ petitions that posts which were available upto 31.12.1993 were related to the posts of permanent nature and which were continued upto 31.12.1993 and thereafter, such posts were also abolished. The order passed by the learned

Single Bench was further assailed by filing special appeals before the Division Bench of this Court. While disposing of these appeals vide order dated 03.04.2018, the Coordinate Bench of this Court granted liberty to the petitioners to take remedy for assailing the order of ıination. In the garb of aforesaid liberty, Original applications were by the petitioners before the Tribunal which were dismissed by mon judgment dated 22.07.2022. Being aggrieved and dissatisfied with the impugned judgment dated 22.07.2022, this writ petition has been filed.

The judgments relied upon by the learned counsel for the petitioners are not applicable in the present case as those were passed in different factual matrix and in those cases, issue of regularization or violation of provisions of Industrial Disputes Act, 1947 was involved but in the present case, termination of the services of the petitioners is in question. While deciding the OAs filed by the petitioners, the Tribunal has rightly held that the petitioners have admitted the fact that their services were terminated verbally so there is no order available on record which could be challenged under Section 19 of the Administrative Tribunals Act, 1985. We are also in agreement with the finding recorded by the Tribunal that the Tribunal has no jurisdiction to entertain OAs only on the basis of liberty granted by the Division Bench of this Court vide order dated 03.04.2018 which is being reproduced hereinbelow for the sake of ready-reference:-

> "The learned counsel for the appellant made detailed arguments on the issues raised in the appeals, but he court not clarify as to how Census Department fall in the definition of "Industry" as per the Section 2(j) of the Industrial Disputes Act, 1947 (in short 'the Act of 1947'). Learned Labour Court has given

reference to the judgment in the case of Mohd. Rajmohammad Vs. Industrial Tribunal cum Labour Court Varangal & Ors. reported in 2003 (2) LLJ 1149 to hold that Census Department does not fall in the definition of "Industry".

At this stage, learned counsel for the appellants submits that if Census Department does not fall in the definition of "Industry", as given under the Act of 1947, he may be permitted to seek remedy by maintaining a writ petition or any other remedy by withdrawing the present litigation. It is, however, stated that, initially, a writ petition was filed but it was dismissed holding availability of the remedy under the Act of 1947 and special appeal thereupon was also dismissed though aforesaid remedy was not available in view of the fact that Census Department does not fall in the definition of "Industry" as given under Section 2(J) of the Act of 1947.

In view of the statement of the learned counsel for the appellants, we do not want to interfere in the award passed by the Labour Court in reference to the alleged violation of Section 25-F of the Act of 1947 or for application of Section 2(oo) (bb) of the Act of 1947, rather, the appellants are given liberty to take remedy for assailing the order of termination. The impugned award as well as the judgment of learned Single Judge would not come in their way for the aforesaid.

With aforesaid, the appeals are disposed of. In view of the disposal of the appeals, no contest has been made on the applications for condonation of delay. Accordingly, the applications are allowed and the delay in filing the appeals is condoned.

A copy of this order be placed in each connected appeals."

From bare perusal of the aforesaid order, it appears that the petitioners are at liberty to take remedy for assailing the order of termination which does not mean that the Tribunal should entertain their OAs. We find from the record that engagement of the petitioners

was under the contract for a specific period and the said contracts were produced before the Tribunal as Annexure R/1 and Annexure-R/2. As per the contracts, the appointment of the petitioners was for a fixed term basis on fixed salary and their services matically got terminated at the end of contract period and these racts were signed by the petitioners and they were aware of the ıs of these contracts. In our considered view, a contractual employee has no vested right to continue on the said post after expiry of the period of contract and cannot claim, as a matter of right, extension of contract.

We fortify our view from the judgment passed by Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and Ors. vs. Umadevi and Ors, (2006) 4 SCC 1 (Constitution Bench)** wherein it was observed as follows:

"45. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain — not at arms length — since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not

possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

In the case of **Batala Coop. Sugar Mills Ltd. vs. Sowaran Singh, (2005) 8 SCC 481,** the legality of the judgment rendered by the Division Bench of the Punjab & Haryana High Court dismissing the writ petition filed by the management and upholding the award made the Presiding Officer, Labour Court was called in question. The kman, in this case, made a grievance before the State Government his services were illegally terminated by the management. Reference was made by the State Government under Section 10(1) of the I.D. Act for adjudication. The Labour Court was of the view that though the stand of the employer was that the respondent workman was employed on casual basis on daily wages for specific work and for a specified period, yet evasive reply was given in respect of the workman's stand that he was appointed in April, 1986. The Labour Court held that there was violation of Section 25-F of the Act. Direction was given to reinstate the workman with 50% back wages. The employer filed a writ petition which was dismissed by the High Court. It was held that there was no legal or factual infirmity in the award. In support of the appeal, counsel for the management submitted that both the Labour Court and the High Court fell in grave error by acting upon factually and legally erroneous premises and that the stand of the appellant was that the workman was engaged on casual basis on daily wages for specific work and for a specific period and that the details in that regard were undisputably filed. Therefore, the provisions of Section 2(oo) (bb) of the Act are clearly applicable. In addition, the onus was wrongly placed on the employer to prove that the workman had not worked for 240 days in 12 calendar months preceding the alleged date of termination and no material was placed on record by

the workman to establish that the workman had offered himself for a job after 12.02.1994. The Apex Court, after referring to Morinda Cooperative Sugar Mills Ltd. v. Ram Kishan & Ors. : 1995 SCC (5) 653 and Anil Bapurao Kanase v. Krishna Sahakari Sakhar Karkhana : 1997 SCC 599 held that the relief granted to the workman by the ...our Court and the High Court cannot be maintained. The Apex ...t also held that so far as the question of onus regarding working for more than 240 days is concerned, as observed in Range Forest Officer vs. S.T. Hadimani : (2002) 3 SCC 25, the onus is on the workman and the appeal filed by the management was allowed.

In the wake of the discussions made hereinabove, we do not find any case favouring the petitioners. This writ petition is sans merit. Consequently, the instant writ petition stands dismissed as being devoid of merit.

(ANIL KUMAR UPMAN),J (MANINDRA MOHAN SHRIVASTAVA),ACTING CJ

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