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

Date of decision: 08.05.2024

+ W.P.(C) 12284/2018

SURENDER KUMAR

..... Petitioner

Through: Mr.R.K.Shukla, Adv.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC for
Respondent Nos. 1 & 2.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. The present writ petition under Articles 226 & 227 of the Constitution of India seeks to assail the order dated 14.09.2016 passed by the learned Central Administrative Tribunal (the learned Tribunal) in O.A. No. 2936/2013. Vide the impugned order, the learned Tribunal has rejected the petitioner's claim for payment of wages for the period between 01.10.2005 to 13.05.2012.

2. The sole submission of learned counsel for the petitioner is that the petitioner could not render service during this period only on account of three successive termination orders passed by the respondents; all three orders were quashed by the learned Tribunal by granting liberty to the respondents to initiate appropriate proceedings against the petitioner as per



law. However, after the petitioner supplied the requisite documents to the respondents, they did not initiate any further action against him. He, therefore, contends that the petitioner could not be deprived of wages for this period during which he could not render service only on account of the illegal termination orders passed by the respondents, which aspect, the learned Tribunal has failed to appreciate while passing the impugned order.

3. He therefore, prays that the impugned order be set aside and that reliefs be granted to him in terms of the O.A.

4. On the other hand, Mr. Anurag Ahluwalia, learned counsel for the respondents supports the impugned order and submits that the petitioner's claim for wages for the said period during which he has not rendered any service is unsustainable as the petitioner was a casual daily wager who was required to be paid only for the actual days on which he rendered service. By drawing our attention to paras 4 (III) and 7 of the DoPT's OM dated 10.09.1993 laying down the scheme for grant of temporary status and regularization of casual workers, he contends that the engagement of the casual daily wagers like the petitioner herein is always on need basis and as per the DoPT's OM, such persons are required to be paid only for the days that they actually rendered service.

5. He, therefore, contends that even if the petitioner's plea that his termination between the period 01.10.2005 to 13.05.2012 was unjustified as held by the learned Tribunal, were to be accepted, even then, having not rendered any actual service during the said period, the petitioner cannot be granted any wages for the said period.

6. Having considered the rival submissions of the parties and perused the record including the DoPT's OM dated 10.09.1993, we may begin by noting



the relevant extracts of the impugned order which read as under:

“16. Having regards to the rival contentions of the learned counsel for the parties, the answer must obviously be in the negative in this regard.

17. As is evident from the records that the applicant remained out of job-on account of pointed inquiries and impugned termination orders. He did not actually work as CLTS w.e.f. 01.10.2005 to 13.05.2012. No doubt, he was ordered to be reinstated in service by this Tribunal (Annexure.A-9) as well as by Hon'ble Delhi High Court (Annexure A-2), but to our mind, mere ordering reinstatement in service, ipso facto, is not. A ground, much less a cogent one to hold that the applicant is entitled to the wages for the period, for which he has never actually worked. The applicant cannot claim the wages of the said period during which he has never actually worked on such unsustainable grounds from Government exchequer, which is hard earned money of the public at large, paid in the shape of taxes. Moreover, the competent authority has inherent powers not to pay him salary during the period of his absence on the principle of “no work no pay”.

21. Meaning thereby, it was the applicant, who has himself invited the trouble. It was his conduct that prevented him from performing his duty and kept him out of the service of the respondents. Therefore, we are of the considered view that the mere fact that he was ordered to be reinstated in service on technical grounds would not entitle him to the wages for the period he did not actually work on the principle of “no work no pay”.

7. Since we find that the learned Tribunal has relied on the OM dated 10.09.1993 issued by the DoPT, it would also be apposite at this stage to refer to paras 4 (III) and 7 thereof, on which heavy reliance has been placed by the learned counsel for the respondents; The same read as under:

“4. Temporary Status

III) Conferment of temporary status on a 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/territorial circle on the basis of availability of work.



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7. *Despite conferment of temporary status, the services of a casual labourers 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.”*

8. From a perusal of the aforesaid paras, what emerges is that the DoPT has in its aforesaid OM dated 10.09.1993 made it clear that a casual daily wager, would be paid only for the number of days that he rendered actual service. There is no doubt that the petitioner was only a casual worker, who was required to be paid only for the days he rendered service. This, however, cannot imply that he should be denied wages even for the period, when he was ready to render service but was prevented from doing so on account of the illegal termination orders passed by the respondents.

9. In a case like the present, where the petitioner has been rendering services as a casual daily wager for the last many years and similarly placed casual daily wagers who were engaged alongwith him were permitted to continue and to render service, sans the petitioner who was repeatedly being terminated by the respondents, it cannot be said that there was any fault on the part of the petitioner.

10. Evidently, the fact that all the three previous O.As filed by the petitioner were allowed in his favour by the learned Tribunal by setting aside the successive termination orders passed against him, clearly establishes that the fault lay with the respondents, who passed unjustified termination orders. In fact, we are of the considered view that the learned Tribunal, in the impugned order, has erred in holding that it was the



petitioner himself who had invited trouble. There was no occasion or reason for the said finding.

11. We are therefore of the view that this is a fit case where the petitioner deserves to be paid wages for the period between 01.10.2005 to 13.05.2012.

12. The writ petition is accordingly allowed, by directing the respondents to pay wages to the petitioner for the aforesaid period within a period of three months. In case the payment in terms of this order is not made within three months, the same will carry interest @ 8% per annum.

13. The petition is disposed of in the above terms.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

MAY 8, 2024/So