

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



No. O.A. 350/01618/2018
M.A. 350/00099/2019

Date of order: 14.1.2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Swapan Santra,
Son of Late Nityananda Satra,
Aged about 40 years,
Residing at H-136,
Bayashnabghata,
Patuli,
Kolkata - 700 094,
West Bengal.

... Applicant

- - V E R S U S -

1. The Union of India,
Through Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 1.
2. Deputy Secretary to the
Government of India,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 1.
3. Deputy Director (Administration),
Directorate General of GST,
Intelligence,
Kolkata Zonal Unit,
4/2, Karaya Road,
Kolkata - 700 017.

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. S. Paul, Counsel

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ORDER (Oral)**Per Dr. Nandita Chatterjee, Administrative Member:**

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

"Office Order No. DGCFI.F. NO. 34/KZU/KOL/LABOUR/2011/5504 dated 27.8.2018 issued by Deputy Director in respect of the applicant cannot be sustained in the eye of law and same may be quashed."

2. Heard rival contentions of both Ld. Counsel, examined pleadings and documents on record.

3. Ld. Counsel for the applicant would submit that he was initially engaged as contingent labour with the respondent authorities, namely, office of the Director General, Central Excise Intelligence, (redesignated as Director General, Goods & Service Tax Intelligence) and, that, he had received his wages upto the month of June, 2018. Although the applicant continued to attend such office, he was neither allowed to continue with his duties nor was paid the wages for the following months.

In accordance with Office Memorandum dated 4.12.2008 of the Ministry of Finance, Department of Revenue, all offices coming under the administrative control of the Department of Revenue have been directed to refrain from engaging any new person on a casual/daily wage basis for carrying out any type of work. The only exception shall be in continuing to engage on casual/daily wage basis those persons who are already engaged on a continuous basis for a substantial period of time. As the applicant has been continuing to work on casual basis with the respondent authorities since 1998, he came within the purview of the exception.

Ld. Counsel would further aver that although there are other offices under the administrative control of the Department of Revenue, namely, Central Excise and Service Taxes and Department of Customs, other

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casual workers working for a long period of time have not been disturbed, while the applicant has been singled out for discriminatory treatment.

That, on 27.8.2018, a notice was issued by the respondent authorities whereby it was stated that as the P.A.O. is not releasing contingent labour bills, under OE head, as per Rule 198 of GFR 2017 (Procurement of Non-consulting Services), payments could only be released to outsourced agencies, and, that contingent labourers were requested to register with outsourcing agency in order to continue their services in such office.



The applicant has approached the Tribunal in the instant O.A. challenging the said notice dated 27.8.2018 as he apprehends that if he joins the service provider he would forfeit his claim for future regularization with the respondent authorities.

According to the applicant, while the O.M. of Ministry of Finance, Department of Revenue dated 22.5.2008 clarifies that payment to casual labourers regularly engaged for many years would be met from the expenditure head of "wages", those engaged through service provider would be paid through expenditure head of "office expenses", and, accordingly, the applicant's payments should be released from the expenditure head of "wages" which was violated by the respondent authorities in requesting the PAO to release payments for the months upto June, 2018 according to the existing system, and, thereafter to switch over to the service provider system contemplated by the authorities.

The applicant would advance the following grounds in support of his claim, namely,

Ans.

- (i) That, the Ministry of Finance, Department of Revenue O.M. dated 22.5.2008 clearly provides that casual labourers are to be paid through wages and the respondent authorities committed an error in requesting for payment under head 'office expenses' applicable to service providers.
- (ii) That, as per Office Order dated 22.5.2008, the officer concerned should have requisitioned for necessary budgetary provisions under the expenditure Head of Wages instead of referring the matter to the office of PAO.

4. The respondents, per contra, would counter the claim of the applicant while submitting as follows:-

- (i) That, the applicant is a daily paid worker, who was never given any appointment by the respondent authorities and despite the claim made by the applicant in Annexure A-1 to the O.A., no certificate was ever issued by the concerned respondent authorities in favour of the applicant.
- (ii) The functioning of the Commissionerate and the Directorate General of Central Excise Intelligence (renamed as Directorate General of Goods and Service Tax Intelligence) are distinct. The Directorate does not have an expenditure head 'Wages' as compared to the Commissionerate Office which does have an expenditure head of 'Wages'.
- (iii) The applicant was paid upto June, 2018 with provisions under "office expenses" and as directed by the Tribunal, his payment related to July and August, 2018 were also processed.

The applicant has worked only upto August, 2018, and not thereafter.

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- (iv) The Pay & Accounts Office have objected to the practice of making payments to the applicant from "Office Expenditure" head and has advised the department to engage such workers through a service provider, if required.
- (v) As the applicant is called to work "as and when required", the question of termination of his appointment does not arise as he had never been appointed by the respondent authorities.

5. The applicant has, prima facie, challenged the notice dated 27.8.2018 (Annexure A-4 to the O.A.) in this O.A.

The notice reads as follows:-



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GOVERNMENT OF INDIA
DIRECTORATE GENERAL OF GST INTELLIGENCE
KOLKATA ZONAL UNIT, 4/2 KARAYA ROAD
KOLKATA-700 017
PHONE: (033) 22891959-22891958

DGGEI No. 34/KZU/Kol/labour/2011

Dated: 27.8.2018

NOTICE

This is for your kind information that PAOs are not releasing the contingent labour bills under OE head, as per Rule 198 of GFR 2017 (Procurement of Non-consulting Services). Payment should be made under Agency, i.e. through outsourcing. To comply with this instruction, and as being repeatedly conveyed by this office verbally, the contingent labour who are not being paid through Service Provider, are requested to register themselves under outsourcing agency immediately if they want to continue their service in this office.

This issues with the approval of ADG, DGGEI KZU, Kolkata.

(Signature)
AJEET KUMAR
DEPUTY DIRECTOR

To: Shri. Swapan Kr. Santra

The provisions of such Rule 198 of GFR is reproduced below:-

“Rule 198. Procurement of Non-consulting Services - A Ministry or Department may procure certain non-consulting services in the interest of economy and efficiency and it may prescribe detailed instructions and procedures for this purpose without, however, contravening the following basic guidelines.”

Rule 198 of GFR 2017 (Procurement of Non-consulting Services) makes it clear that non-consultancy services are only to be procured

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through service provider and payments be made through such service provider.

We also understand from the submissions of the respondents that the Office of the Directorate of Goods & Service Tax Intelligence does not have a budget head of 'Wages' but only 'Office Expenditure' under which payment is mandated (under O.M. dated 22.5.2018) only to a service provider. Consequently, if the applicant is to continue to work as and when required with the respondent authorities, his services which are "non consultancy" in nature can be paid from "office expenses" through a service provider. It is also given to understand that the applicant, although engaged on "as and when basis" was receiving his payments from 'Office Expenses' which is no longer applicable for payment of casual workers after the introduction of Rule 198 of GFR, 2017.

Hence, as long as the applicant would continue to perform his duties on "as and when required" basis, there is no option for him but to register with the service provider and the respondents may direct such service provider to provide the services of the applicant concerned whenever required in the interest of official work of the respondent authorities.

We, therefore, do not find any infirmity in the notice dated 27.8.2018 of the respondent authorities and refrain from interfering therein.

6. During hearing, the applicant would admit that after March, 2019 his services had no longer been utilized by the respondent authorities, who, on the other hand, would argue that he was not asked to perform any duties from August, 2018.

Be that at it may, the applicant should be paid for the period during which he has performed his duties, and, thereafter, in case,

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respondents wishes to reengage him, it should be through a service provider as required.

7. This O.A. is disposed of with the above directions. No costs.

M.A. No. 350/00099/2019, praying for deletion of the name of respondent No. 1, namely, Secretary, Ministry of Finance, Department of Revenue, is disposed of accordingly.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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