

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

OA/310/01309/2018Dated Wednesday, the 4th day of March, 2020

PRESENT

Hon'ble Mr.T.Jacob , Member(A)

1. Jeevananda Reddy,
2. P. Velmurugan
3. C. Srinivasan
4. M. Ramamoorthi
5. A. Arunagiri
6. G. Durai

....Applicant

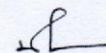
(By Advocate M/s M. Gnanasekar)

Vs

1. Union of India represented by
The Secretary to Government,
Ministry of Culture,
New Delhi.
2. The Archaeological Survey of India,
Rep by its Director General,
24, Tilak Marg,
New Delhi-110 011.
3. The Superintending Archaeologist,
Archaeological Survey of India,
Fort St. George, Chennai – 9.
4. Superintending Archaeologist,
Archaeological Survey of India,
Vellore Circle, Vellore.

....Respondents

(By Advocate Mr. Su. Srinivasan)



OR D E R

(Pronounced by Hon'ble Mr. T. Jacob, Member (A))

The applicants have filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"i. To direct the respondent to continue to engage the applicants under the direct control of the respondent without changing the method of employment and mode of payment and consequently direct the respondents to consider and appoint the applicants on a regular basis as MTS with all consequential monetary and other benefits and

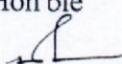
ii. And pass such further orders as are necessary to meet the ends of justice.

iii. Award costs and thus render justice."

2. The brief facts of the case as submitted by the applicant are as follows:

The applicants are casual labourers working under the control of the 4th respondent. The applicants work minimum 8 hours per day and all of them are full time casual labourers. Bank statements of the applicants would show that their salary was paid by the 4th respondent and salary was remitted in the bank accounts of the applicants. The applicants were informed that from the month of June, 2018 their salary will be paid through contractors. Aggrieved by the above, the applicants have filed this OA seeking the above reliefs, inter-alia, on the following grounds:-

i. The applicants have been working on the regular vacancies and are performing the regular nature of work, though appointed as casual labourers. However, the applicants are not paid salary for the work done, nor they are paid wages on par with the workers which is against the principle of equal pay for equal work as enshrined in the Constitution. Recently, the Hon'ble



Apex Court had an occasion to consider the issue of wages paid to the temporary employees. The Hon'ble Apex Court, taking note of the fact that irrespective of their designation, whether they are temporary or regular employees they do the same work and on the basis of the principles of equal pay for equal work, the temporary employees also have to be paid wages as that are payable to the regular employees. Therefore, the applicants submit that the action of the respondents in paying a meagre sum of money for the work they have done is an act of exploitation and also amounting to unfair labour practice under the provisions of Industrial Disputes Act. The applicants have completed 240 days of service in each year and they were not made permanent nor they are paid regular salary.

ii. All the applicants are performing regular nature of work and the action of the respondents in asking the applicants to work now under the control of the contractors is highly illegal and arbitrary.

3. The respondents have filed a detailed reply statement stating that the applicants were engaged as casual workers on daily wages during different years by the 4th respondent (Sr. Conservation Assistant, ASI, Vellore) to perform duties at centrally protected monuments under the jurisdiction of ASI, Vellore Sub circle. They were engaged for the cleaning and maintenance of monument premises whenever required and as per necessity & works position and discontinued time to time and not engaged continuously. They were paid as per the approved local labour rates certified by the local revenue authority. The department cannot be held responsible for their false hopes i.e they would be regularised later. No such assurance was given to the applicants as stated by them in the petition regarding regularisation. Further, the labourers were outsourced for maintenance of monuments at present as per policy

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decision of the Government and hence they cannot be placed in the same position. They were not engaged for work of regular nature contrary to the claim made by them as there was ban on engaging labours by the department directly for the work of regular in nature vide DoP&T OM dated 07-06-1988. They were clearly engaged for work of casual nature and not work against vacancies in regular establishment of the sub circle office subject to the availability of work and hence cannot as a matter of right claim regularisation of services. They were paid meagre sum of money for their work is false. They were paid as per approved labour rates. The department is not compelling them to work under the control of contractors. The engaging of maintenance labourers are outsourced to contractors as per Policy decision and in accordance with the provisions of GFR-2017 and the contractors are providing labourers to the department for various works being undertaken by this department and this department cannot compel the applicants to work under the contractor who is supplying the labourers for various works. Therefore, in the facts and circumstances mentioned above, the daily wages casual labourers engaged by the 4th respondent and later discontinued are not entitled for the grant of regularisation of services. Hence, the respondents pray for the dismissal of the OA.

4. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

5. Learned counsel appearing on behalf of the applicants submitted that he is not pressing for the first relief. He limits his claim to the benefits given to the applicants who are similarly circumstances in OA 90/2018 with OA NO.s 103/2018, 108/2018,

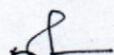


322/2018, 346/2018, 589/2018, 590/2018 & 1306/2017, which was decided by a common order on 04.07.2019 .

6. Learned counsel for the respondents submits that the relief sought by the applicants in the instant OA is not tenable. He submits that the applicants were casual laborers and wages were paid on daily basis. It is pertinent to point out that none of the applicants were engaged against any of the sanctioned post and their engagements with the 4th respondent also not based on any Recruitment Rules or on open invitation seeking engagement among the entitled persons. As per the policy of the Government of India the cleaning and up keeping works in the monuments were outsourced at present. Therefore, it is open to the applicants to get themselves engaged through the outsourced agency. In any event the applicants have no legal right to compel the respondents to regularize them. Their engagement being need basis and accordingly they were engaged and wages were paid and they cannot claim that they have indefeasible right to compel the Government to regularize them. The application is therefore misconceived, not maintainable and the same is liable to be dismissed.

7. On perusal of the pleadings and judgments produced by the applicants, it can be seen that Hyderabad Bench has granted the relief to the applicants therein in O.A. 90/2018 with OA Nos. 103/2018, 108/2018, 322/2018, 346/2018, 589/2018, 590/2018 & 1306/2017, which was decided by a common order on 04.07.2019 which is extracted as under:-

“5. Today, this Tribunal passed a detailed order in



OA350/2018 wherein also similar facts and question of law are involved. Operative portion of the said order, which mutatis mutandis would apply to the present OAs, reads as under:-

“iv) Therefore, keeping in view the Hon’ble Supreme Court observations cited above, respondents are directed to consider giving preference to the applicants to be engaged as Casual Labour as long as the work exists on a daily wage basis, till they are replaced by regular employees after due process, as per the policy of the respondents organization. It is made clear that under the garb of this order, applicants cannot claim temporary status or regularization, unless they are otherwise eligible for the same as per the policy formulations of the respondent organization in the years to come.

With the above directions, the OA is allowed.”

8. In view of the limited relief sought, as admittedly the applicants herein are similarly circumscribed as that of the applicants before the Hyderabad Bench of Tribunal in OA. 90/2018 and batch which was decided on 04.07.2019 (Supra), ends of justice would be met, if the instant OA is disposed of on a similar line as held by the Hyderabad Bench of the Tribunal, which is as under:-

“Respondents are directed to consider giving preference to the applicants to be engaged as Casual Labour as long as the work exists on a daily wage basis, till they are replaced by regular employees after due process, as per the policy of the respondents organization. It is made clear that under the garb of this order, applicants cannot claim temporary status or regularization, unless they are otherwise eligible for the same as per the policy formulations of the respondent organization in the years to come.

9. The OA is disposed of as above. No costs.