

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/01166/2014

HYDERABAD, this the 14th day of October, 2020

**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**



1. G.Venkat Babu S/o Yesobu,
Aged about 38 years, Occ : Casual Labour
(Temporary Status), O/o The Commissioner,
Customs, Central Excise & Service Tax,
Guntur Commissionerate, Guntur,
R/o Type-II, Central Excise Quarter,
GT Road, Guntur.

2. B.Muralidhar Rao S/o Bapana Raju,
Aged about 53 years, Occ : Casual Labour
(Temporary Status), Customs, Central Excise
& Service Tax, Guntur Commissionerate, Guntur,
R/o Type-II, Central Excise Quarter,
GT Road, Guntur.

...Applicants

(By Advocate : Mr.J.Sudheer)

Vs.

1. Union of India, Rep by its Chief Commissioner,
Central Excise and Customs, Visakhapatnam
Zone, Visakhapatnam.

2. The Commissioner, Customs and Central Excise
Guntur Commissionerate, Kannavarithota,
Guntur, Guntur District.

....Respondents

(By Advocate : Mr.A.Surender Reddy, Addl.CGSC)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed by the applicants aggrieved by the action of the respondents in denying several benefits for which the applicants are entitled.



3. Brief facts of the case are that the applicants joined the respondents' organisation as Casual labour in the year 1995 and 1993 respectively. They were recruited by the respondents directly and not by any contractor and were paid wages by them. After working for several years, in the year 2014, respondents tried to introduce the system of having a contractor for payment of wages. Resisting the move, applicants filed OA No. 203/2003 contending that they were engaged and paid by the respondents and sought regularization of their services. Tribunal directed on 21.7.2004 not to disengage the applicants nor replace them or force them to get a contractor for payment of wages/ salaries. Regarding regularization it could be considered whenever a new scheme is introduced. However, respondents disengaged the applicants and started paying them through a contractor. Applicants were threatened that in case C.P. is filed their regularization would be at stake. Hence applicants followed the least line of resistance of representing for regularization of services and when their request was rejected, OA No.97/2009 was filed, wherein respondents intimated the Tribunal that applicants were terminated from 03.12.2004. However, taking into consideration that similarly placed persons were given temporary status, this Tribunal allowed OA 97/2009 on 05.04.2010.

Respondents challenged the order of the Tribunal in the Hon'ble High Court and the Hon'ble Supreme Court and when it did not fructify, applicants were granted temporary status w.e.f. 14.11.1995 and 17.3.1993 respectively. While paying arrears of salary, services rendered by the applicants from 1995/1993 till 2004 were alone taken into account and the remaining period from 2004 to 2011 was ignored. Besides, respondents issued proceedings dt. 23.01.2012, wherein, as per 6th CPC casual labourers who have temporary status and are in receipt of wages in the pre-revised scales as on 01.01.2006, are entitled for Pay Band I with GP of Rs.1800/- w.e.f. 01.01.2006. To grant pay band cited, applicants were sent for training and certificates given. Thus, though eligible, respondents denied salary arrears, grade pay, weekly paid off and hence, the OA.

4. The contentions of the applicants are that respondents terminating their services w.e.f. 03.12.2004 is illegal. Applicants were continuously working for the department, but were paid through a middleman/contractor contravening orders of the Tribunal in OA 203/2003. Respondents threatened with retributive action in case contempt is filed and therefore they did not approach the Tribunal to press for implementation of the order in OA cited. On complying with the order of the Tribunal in OA 203/2003, applicants would become eligible for the reliefs sought. They cannot be treated in a manner different from others, who have been extended similar benefits.

5. Respondents, in their reply statement, confirmed that applicants worked in the respondents organization as contingents till 02.12.2004 and their services were terminated on 03.12.2004. Entire work done hitherto by

the contingent workers, has been outsourced to service contractors as per CBEC letter dt. 10.03.2004. Applicants filed OA No. 203/2003, which was disposed directing respondents not to disengage or replace them as long as there was work nor applicants be forced to get a contractor for payment of wages/ salaries. Regularization be considered whenever a scheme is introduced. Applicants represented for regularization of their services which was rejected based on lr dated 31.10.2008, as they were not appointed against sanctioned posts. Accordingly, the applicants were informed on 05.06.2008. Being aggrieved, OA No. 97/2009 was filed, which was allowed on 05.04.2010. Challenge of the order failed in the superior courts and thereby, applicants were granted temporary status vide order dt. 05.03.2011. While issuing orders of temporary status to the applicants, it was made clear that no benefits other than those specified in the order will be allowed to the applicants. Subsequently, applicants filed OA No. 1411/2013 praying for grant of revised pay scale in PB-1 with GP of Rs.1800 w.e.f. 01.01.2006 in pursuance of the DOPT OM dt. 23.01.2012 and for full salary on Saturdays and Sundays as well as arrears of salary. Tribunal directed disposal of the representations of the applicants. Accordingly, representations were examined and rejected on the grounds that services of the applicants were terminated on 03.12.2004 and therefore, the applicants were ineligible for any salary for the period from July 2004 to 06.03.2011. Respondents also submit that, no contract labour was appointed against any sanctioned post in irregular manner in the respondents organization and therefore, judgment of the Hon'ble Supreme Court in Uma Devi would not be of any assistance to the applicants. Coming to grant of Grade Pay of Rs.1800/- w.e.f. 01.01.2006, applicants



are disentitled since their services were terminated on 2.12.2004. Paid weekly off is not permitted for those who work in administrative offices like the applicants.

6. Heard both the counsel and perused the pleadings on record.



7. I. The dispute is about payment of salary arrears, grant of grade pay of Rs.1800 and paid weekly off. There is a long history of the case beginning with applicants approaching the Tribunal in OA No. 203/2003 pleading that they should be allowed to work directly under the respondents organization and not through a contractor for payment of wages. The order of the Tribunal in OA 203/2003, was as under:

“Since the applicants have been engaged by the respondents and they have been working for years together and are being paid by the respondents, respondents shall not disengage the applicants till such time the work is available and they shall not be replaced by any freshers. However, if the applicants do not attend to their duties, the respondents are at liberty to terminate their services. Respondents shall not direct the applicants to get a contractor for payment of wages/ salaries. In so far as regularization of the services of the applicants is concerned, the question of regularization of their services does not arise at the moment and in future, if such scheme is introduced, the applicants shall make a representation to the respondents to consider their case for grant of temporary status and regularization and the respondents shall consider such representation, if it is made by the applicants. ”

The order is clear and succinct that respondents should not disengage the applicants nor force them to obtain a contractor for payment of wages and that they shall not be replaced by any freshers till work was available. Regularization be considered when a new scheme is introduced. When the directions were unambiguous, it is not understood as to how and under what authority, respondents terminated the applicants on 03.12.2014. This is a clear violation of the order of this Tribunal rendering themselves liable for contempt. It is well settled that a Court order whether right or wrong has to



be implemented. Only recourse open was to challenge the order in a superior Court for appropriate remedy. Respondents without taking such action, defied the Tribunal order, which is shocking and we rarely come across such incidents. More particularly from an organization which is bestowed with the critical responsibility of being a model employer. Therefore, the very order of the respondents issued terminating services of the applicant on 03.12.2004 is invalid in the eyes of law. Hence, any order, which is illegal is *void ab initio*. When the order itself is void, then the services of the applicants from the date of termination i.e. 03.12.2004 till 2011, are to be treated as if applicants worked directly under the respondents and accordingly, applicants would become eligible for eligible salary/ wages and grant of grade pay of Rs.1800 w.e.f. 1.1.2006. It is important to note that applicants were working for the respondents during the period 2004 till 2011 but through an intermediary not permitted by the Tribunal. Applicants being afraid that regularisation of services would be jeopardized did not dare to file contempt. At this juncture, we need to adduce that respondents as a model employer are expected to create an atmosphere of trust, so that employees are sure that their trust shall not be betrayed and they shall be treated with dignified fairness to usher in good governance. By disobeying Tribunal orders, they did exactly the opposite. Administrative action should not guillotine legitimate aspirations of employees creating despair. In a way, the number of OAs filed speak about the extent of despair respondents have created by not granting a legitimate entitlements as ordered by the Tribunal. A deliberate disregard of the Tribunal order to frustrate the claims of the employees is rarely seen. Was it because applicants were at the receiving end! It requires no mention that

respondents must conduct themselves with high probity and candour in respect of its employees. The question is did they? They did not, considering the aforesaid facts. In remarking, as at above, we take support of the Hon'ble Supreme Court observations in ***Bhupendra Nath Hazarika & Anr vs State Of Assam & Ors*** on 30 November, 2012 in CA Nos 8514-8515 of 2012 as under:



48. *Before parting with the case, we are compelled to reiterate the oft-stated principle that the State is a **model employer** and it is required to act fairly giving due regard and respect to the rules framed by it. But in the present case, the State has atrophied the rules. Hence, the need for hammering the concept.*

49. *Almost a quarter century back, this Court in Balram Gupta vs Union of India & Anr. [1987 (Supp) SCC 228] had observed thus:*

*“As a **model employer** the Government must conduct itself with high probity and candour with its employees.”*

51. In Secretary, State Of Karnataka And vs. Umadevi And Others [(2006)4SCC1], the Constitution Bench, while discussing the role of state in recruitment procedure, stated that if rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules, for the State is meant to be a **model employer**.

53. We have stated the role of the State as a **model employer** with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a **model employer** should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized. We say no more.

Respondents have not measured up to any of the parameters laid down by the Hon'ble Apex Court as at above, and hence, their decision of terminating the services of the applicants does not stand up to legal scrutiny.



Nevertheless, not losing hope after their services were terminated on 2.12.2004 applicants filed OA 97/2009 wherein respondents were directed to grant temporary status to the applicants and the said order attained finality after the unsuccessful challenge before superior courts by the respondents. Consequently, applicants were granted Temporary status vide order dt.05.03.2011. Thereafter, applicants have been working for the respondents. Later, OA No. 1411/2013 was filed wherein respondents were directed to dispose of the representation made requesting for implementation of the revised pay scale with grade pay of Rs.1800/- w.e.f. 01.01.2006 in pursuance of the DOPT OM dt. 23.01.2012 and full salary on Saturdays/ Sundays. Respondents complied by rejecting requests made, by claiming that applicants were not in a scale as on 1.1.2006 in the respondent organization to be entitled for the said relief. This argument of the respondents is not in the realm of reason in the context of not abiding by the orders of the Tribunal in OA 203/2003. Applicants did not complain by filing C.P. for fear of likely non-regularization of services by the respondents, which is understandable. While understanding the predicament of the applicants, we are at loss to visualize as to how the respondents could take a decision brazenly violating the order of the Tribunal in OA 203/2003. Had the respondents implemented the Tribunal order in OA cited wherein it was clearly directed that applicants shall not be disengaged, they would have been on the rolls on 1.1.2006. That being so, applicants would necessarily have to get the benefit of Grade Pay of Rs.1800 as per recommendations of the VI CPC. It should also be mentioned that applicants were indeed working in a scale in the year 2004 and the denial of the grade pay of Rs.1800/- w.e.f. 01.01.2006 has arisen because of the

illegal action of terminating their service on 03.12.2004 contravening Tribunal order. It was a deliberate disregard of the Tribunal orders by the respondents which is a grave mistake committed by the respondents. Mistake of the respondents should not recoil on to the applicants as observed by the Hon'ble Supreme Court in a catena of judgments as under:



- (i) The Apex Court in a recent case decided on 14.12.2007 (**Union of India vs. Sadhana Khanna**, C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees.
- (ii) In yet another recent case of **M.V. Thimmaiah vs. UPSC**, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.
- (iii) It has been held in the case of **Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363** wherein the Apex Court has held "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."

In view of the above judgments, respondents are duty bound to assume that applicants were directly in the service of the respondents from 2004 to 2011. However, since respondents have forced applicants to work under a contractor to seek wages, the Tribunal is of the view that the applicants are eligible for difference of wages/ grant of grade pay prayed for, from date due.

Lastly, when it comes to the relief sought in regard to the payment of salary for Saturdays and Sundays, applicants are disqualified because they worked in an administrative office, which works for five days a week. Rule provides for paid weekly off to those who work for six days a week. Applicants submitted that similarly placed officials working in Visakhapatnam have been granted paid weekly off for Saturdays and Sundays. Be it as it may, Tribunal cannot force the authorities to perpetuate

the said illegality as observed by Hon'ble Supreme Court in ***Hav (Ofc) Rwmwi Borgoyary vs Union of India*** on 6 December, 2019 in Civil Appeal Nos.8986- 8988 of 2019 (2020 (2) SLR 637 (S.C) as under:



13. Learned counsel for the Appellants contended that non-consideration of the Appellants for appointment as TEO is vitiated by hostile discrimination as two other persons who were similarly situated were appointed as TEOs and are continuing. It is trite law that the right to equality cannot be claimed in a case where a benefit has been given to a person contrary to law. If a mistake has been committed by the authorities in appointing few persons who were not eligible, a claim cannot be made by other ineligible persons seeking a direction to the authorities to appoint them in violation of the instructions. After referring to several judgments, this Court in State of Odisha & Anr. v. Anup Kumar Senapati & Anr.¹ held that there is no concept of negative equality under Article 14 of the Constitution of India. The Appellants cannot, as a matter of right, claim appointment on the basis of two ineligible persons being given the benefit and no direction can be given to the Respondents to perpetuate illegality.

Before, we part, it is pertinent to observe that subsequent to filing OA No. 203/2003, applicants filed OA Nos. 97/2009 and 1411/2013 wherein they did not insist for arrears of salary and other benefits and the OAs were filed with long gaps. In this regard, we observe that applicants have been struggling from the year 2003 for their legal rights. They have been working as casual labour with meager resources and hence, it is understandable that they would have their own apprehension in pressing legal reliefs through contempt proceedings by taking on the mighty respondents with abundant resources at their command. The practical option open to the applicants was to adopt the least line of resistance without offending the might of the respondents. Admittedly, applicants adopted a step by step approach in approaching the Tribunal in seeking reliefs one after the other. Thus, considering the circumstances stated, we observe that relief sought by applicants ought to have been granted by the

respondents as per law and rules on their own volition, but they did not. Tribunal, as the first port of call, cannot ignore injustice done. Any technical lacunae committed by the applicants in not seeking the relief sought at the appropriate time and in the fitting way would not stifle Justice since it is well laid down that substantive justice prevails. The substantive justice is that the applicants are eligible for the relief sought in the instant OA in the light of the orders of the Tribunal in OA 203/2003. While drawing curtains on the dispute, we are reminded of the proverb “Better late than never”. Albeit late, yet applicants cannot be disentitled to pursue the relief for which they are legally entitled.

Thus, keeping the above in view, we set aside the termination of the applicants w.e.f. 3.12.2004 being illegal and consequently, direct the respondents to consider granting relief to the applicants as under:

- i) Respondents shall work out salary/ wages for the period 03.12.2004 till 04.03.2011, to be paid to the applicants as if they were directly working for the respondents, in consonance with the order of the Tribunal in OA No. 203/2003 and then deduct the amount paid to the applicants through the service contractor for the said period. The difference amount has to be thus arrived at.
- ii) Applicants shall be granted Grade Pay of Rs.1800/- along with the relevant scale for which they would be eligible as on 01.01.2006 as per 6th CPC and based on the same, their scale of pay has to be fixed over the years. Arrears accordingly have to be arrived at.

iii) The amount of arrears so worked out as at (i) and (ii) above, shall be restricted to be paid for a period of three years from the date of filing of this OA in terms of para 5 of the judgment of the Hon'ble Supreme Court in Union of India v. Tarsem Singh in Civil Appeal Nos. 5151-5152 of 2008.



iv) Time calendared to implement the order is three months from the date of receipt of this order.

v) With the above directions, the OA is partly allowed. Parties shall bear their own costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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