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(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 4th day of July, 2012.

HON'BLE MS. JAYATI CHANDRA, MEMBER -A

ORIGINAL APPLICATION NO. 205 OF 2006

1. Yogendra Singh, aged about 40 years, S/o Shri Govardhan Singh, R/o 1451 Sector-7, Avas Vikas Colony, Sinkara Scheme District Agra.
 2. Veeru, aged about 27 years, S/o Shri Ghan Shyam Pahalwan R/o Mohalla Ghosiyan, Near Post Martem House, Lalitpur, District Lalitpur.
-Applicants

VERSUS

1. Union of India through Secretary, Ministry of Finance, Central Board of Direct Taxes, (Department of Revenue), Govt. of India, North Block, New Delhi.
2. The Chief Commissioner of Income Tax, Aay Kar Bhawan 16/19, Civil Lines, Kanpur.
3. The Commissioner of Income Tax (II), Aay Kar Bhawan, Sanjay Place, Agra.
4. Additional Commissioner of Income Tax, Range-6, Office of the Income Tax Aay Kar Bhawan Jhansi.
5. The Income Tax Officer, Office of the Income Tax, Lalitpur.

.....Respondents

Advocate for the applicant: Shri Rakesh Verma
Advocate for the Respondents: Shri Himanshu Singh

ORDER

The applicants - Shri Yogendra Singh and Shri Veeru have filed this O.A. under section 19 of the Administrative Tribunals Act, 1985, initially seeking the relief of a direction to the respondents to give the minimum level of pay of regular Group 'D'

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pay scale along with TA and DA etc. but without annual increments from May 1995 to the applicant No.1 and from January 2006 to the applicant NO.2. The second relief claimed was to issue an order and direction to allow the applicants the productivity linked bonus for the year 2003-2004 and 2004-2005. However, during the arguments, learned counsel for the applicants stated that O.A. is restricted to only first relief prayed for and second relief of payment of bonus is not being pressed. The case is, therefore, restricted to the relief No.1.

2. Applicant NO.1 was initially engaged as Waterman-cum-Farras w.e.f 04.04.1994 in the office of respondent No. 3. He was paid daily wage on voucher basis at the rate of Rs.30/- per day. In November 1995, the respondent No. 5 was allowed by respondent No. 3 to engage Waterman-cum-Farras on the basis of daily voucher payment. Accordingly, applicant No.1 was put to work w.e.f. 07.12.1995 and has since then been working as Casual Labour on daily wage basis and is not getting benefit of TA & DA etc. Applicant NO.2 Veeru was initially engaged as Casual Labour (Safaiwala) w.e.f. 01.01.1995 and has been working since then, but is being paid wages on daily rate basis. The applicants have submitted seniority list of casual workers valid on 27.8.1999 (Annexure A-IV), in which Shri Veeru/Applicant No.2 is shown at Serial No.10 and Shri Yogendra Singh/Applicant No.1 at Sl. No. 12. Copy of the letter dated 5.3.2001 (Annexure A-5) addressed by Income Tax Officer, Lalitpur to The Addl. Commissioner of Income Tax, Range-2, Agra also states that both the applicants

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have continuously been engaged for last 5 years as on 01.01.2001 and that both of them have completed 227 days of work.

3. The applicant NO.1 had joined various other parties to file O.A. NO.1410 of 2001- Avinash Singh and Ors. Vs. Union of India and Ors. seeking temporary status in accordance with departmental scheme but this O.A. was dismissed. The applicant No.1 along with other had filed a writ petition against the orders of the Tribunal but had then withdrawn the same. The relief that is prayed for in the OA is the same as has been upheld by the Hon'ble Supreme Court in the case of **U.P. Income Tax Department Contingent Paid Staff Welfare Association Vs. Union of India and Ors. 1988 Supreme Court Cases (L&S) 344** which has held as under:-

"We accordingly allow this writ petition and direct the respondents to pay wages to the workmen who are employed as the contingent paid staff of the Income Tax Department throughout India, doing the work of Class IV employees at the rates equivalent to the minimum pay in the pay scale of the regularly employed workers in the corresponding cadres, without any increments with effect from December 1, 1986. Such Workmen are also entitled to corresponding Dearness Allowance and Additional Dearness Allowance payable thereon. Whatever other benefits which are now being enjoyed by the said workmen shall continue to be extended to them. We further direct the respondents to prepare a scheme on a rational basis for absorbing as far as possible the contingent paid staff of the Income Tax Department who have been continuously working for more than one year as Class IV employees in the Income Tax Department".

The case of the applicants is exactly covered by the above judgment, but respondents have failed to honour the same.

4. However, during the course of years¹² certain developments had taken place. As per the supplementary affidavit filed by the applicant No.1 dated 8.3.2009, it was stated that in accordance with Regularization Scheme drawn up by the respondents in

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response to the judgment given by the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others - 2006 Supreme Court Cases (L&S)**

753. 88 casual labourers including applicant No. 2 with 10 years or more service as on 24.12.2007 were regularized under Group 'D' sanctioned post. Thus, there is no grievance pending as on date on behalf of applicant No.2. At this juncture, only the grievance which remains unfulfilled is that while the applicant No.2 has been regularized but the applicant No.1 has illegally been left over without any justified reasons (para 9 of supplementary affidavit). However, no amendment was made in the original application to this effect.

5. The respondents in their counter affidavit had stated that applicants were engaged purely as daily wage rate workers. Applicant No. 1 had filed O.A. NO. 1410 of 2001 seeking temporary status, which had been dismissed. The subsequent writ petition was also withdrawn by the applicant No. 1 and his co-applicant. The applicant had prayed for the relief of grant of temporary status through O.A No. 1410/2001. This is effectively the same relief as the grant of minimum level of salary in the regular pay scale along with DA through the wording may be different. Hence the O.A. is barred by the principle of Res-Judicata. In their supplementary counter affidavit, the respondents have averred that the regularization exercise, in which 88 employees were regularized was a one time exercise. The case of the applicant No.1 being included in the list of all casual workers was considered but he was not found fit for regularization on account of being over

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age. Para 9 of the Supplementary counter affidavit dated 18.3.2012 clearly stated that the applicant had initially sought three years age relaxation on account of being treated as OBC but on scrutinization, it was detected that applicant No.1 belongs to General Category, hence he was time barred at the time of regularization.

6. I have heard both the counsel for the parties and seen the records. It is clear that relief claimed in this O.A., i.e. grant of minimum level of salary with T.A and D.A as admissible to the Group 'D' employees is effectively the same is seeking regularization as temporary workers. Moreover, in the case of Uma Devi (Supra) cognizance had been taken of all such casual employees and the Hon'ble Supreme Court had directed formation of scheme whereby all casual persons would be given a chance of getting regularized. As admitted in the supplementary affidavit, both the applicant No.1 and 2 were subjected to process of regularization and that applicant No.2 was regularized. This has been admitted by the respondents. Hence the O.A with regard to applicant No. 2 becomes infructuous.

7. In so far as applicant No.1 is concerned, the present OA is barred by the principle of Res-Judicata as the writ petition withdrawn by him had been filed seeking the effectively the same relief. At the same time, it is true that notwithstanding the prayer of the applicant, the respondents are free at anytime to suo moto consider any case of regularization - which they have done in 2009. Any grievance arising out of the orders passed in the

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regularization case have not been challenged in any way in this present O.A. The present O.A. is, therefore, liable to be dismissed on the ground of res-judicate. O.A. dismissed. No costs.

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Member (A)

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