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Date of decision : 29th August, 1990.

Niranjan Mallik

- Versus -

Union of India and others

For the applicant : Mr. Antaryami Rath, Advocate

For the Respondents : Mr. P.N.Mohapatra, Standing Counsel for the Respondents.

C O R A M:

THE HONOURABLE MR. B.R. PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

B.R.PATEL, VICE-CHAIRMAN, The applicant is a Casual Mazdoor of the Telegraphs Department. He had earlier approached this Tribunal in T.A. No. 204 of 1986 (O.J.C. No. 2689 of 1984) which was decided by order dated 31.7.1986. In that case the Tribunal have held as follows:

" In the circumstances stated above, we cannot accede to the request of the learned counsel that the respondents would be directed to absorb the petitioner as regular Mazdoor".

But in view of the hardship involved in the case the Tribunal before concluding the case have observed that:

" In view of the past services of the petitioner rendered to the Department, we think the authority should take a compassionate and sympathetic view in absorbing him as a Casual Mazdoor on payment of such wages according to Rules and this sympathetic consideration of the authorities would be put into **action** after the petitioner files an application before the concerned authorities to the above effect".

(the line has been underlined for emphasis)

2. The applicant has requested the Tribunal to issue orders to the Respondents (i) to retain the applicant in service as a Casual Mazdoor till he is absorbed in regular service; (ii) to fix his wages in terms of the scheme dated 15.5.1980 vide Annexure-4 taking into account

his past service as Casual Mazdoor from December, 1972 to 12.7.1980; (iii) to pay his arrear wages in the enhanced rates for the period from 1.5.1980 to 12.7.80 i.e. at the rate fixed in the Circular at Annexure-4.

3. The Respondents have maintained in their counter affidavit that the casual employment of the applicant was terminated as there was no work and that the circular dated 15.5.1980 (Copy of which is at Annexure-4 to the application) is applicable to those casual Mazdoor who are working for a reasonably long period and on continuous basis and as such is not applicable to the applicant as there was a criminal case against the applicant and the applicant remained absent from duty from 14.7.1980 on his own accord and that the earlier application of the applicant had been dismissed by the Tribunal on 31.7.1986. The applicant's prayer to Review the judgment in the aforesaid case has also been dismissed by the Tribunal on merit and hence the application is barred by res-judicata.

4. We have heard Mr. A.Rath learned counsel for the applicant and Mr. P.N.Mohapatra, learned Standing Counsel for the Respondents and perused the relevant documents. Mr.Rath vehemently contended that the termination of the Casual employment of the applicant in the past was not due to ~~his~~ ^{the} unwillingness to work or his absence from the work but due to the orders of the Respondents terminating the employment. Mr. Mohapatra has countered this argument

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on the ground that all this had been urged before the Tribunal in T.A. No. 204 of 1986 and it is no longer open to the applicant to raise them again before this Court. He has therefore, pleaded that the judgment of the Tribunal in T.A. No. 204 of 1986 should be the starting point for consideration of the case of the applicant for appropriate wages and also his eventual absorption in a regular Group 'D' posts. He has further, averred that as required by the Tribunal in their order dated 31.7.86, he ~~was~~ employed again as a Casual Mazdoor with effect from 23.8.1986. In this connection he drew our attention to the order of the S.D.O, Telegraph, Cuttack dated 23.8.86, a copy of which is at Annexure-1 to the application. This order reads as follows:

" In obedience to the decision of the Hon'ble Central Administrative Tribunal, Cuttack Bench on 31.7.1986, you are appointed as afresh Casual Mazdoor and wages will be paid as admissible to a Casual Mazdoor newly recruited. Your past services will not be counted for any purposes, like fixation of wages, seniority and absorbing as regular Mazdoor".

Mr. Mohapatra has, therefore, urged that the applicant is not entitled to any more wages than what is given to ~~the similar~~ ^{such} Mazdoors in the Department.

5. On perusal of the judgment of the Tribunal in T.A. No. 204 of 1986 (Annexure-2), we have found in

paragraph-3 as follows:

" In the present case, the petitioner being admittedly absent from his work for more than 240 days per year and more than 480 days covering a period of two years, the petitioner is not entitled under the rules for absorption as a regular Mazdoor and no circumstance, the respondent can give any benefit to the petitioner in view of the above mentioned rules".

6. This clearly shows that the past employment of the applicant did come up for consideration in T.A. No.204 of 1986 and as such we agree with Mr. Mohapatra that it should not be raised again. Mr. Rath averred that though the applicant has been given employment on 23.8.1986 as per Annexure-1. But wages have not been fixed. In this connection he drew our attention to sub-para-iii of paragraph-2 of D.G., P & T letter dated 15.5.1980 vide annexure-4 in which the President has been pleased to decide that the rates of daily wages labour employed in Telecom Wing of P & T will be at rates as follows:

" Casual labour who has been working in the Department from 1.4.1975 or earlier and has completed 1200 days of service as on 1.4.1980. Daily wages equal to 1/30th of the minimum of the Group 'D' time scale plus 1/30th of the admissible D.A.".

7. In this connection Mr. Rath also drew our attention to the judgment of the Hon'ble Supreme Court reported in A.I.R. 1986 SC Page 584 in the case of

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Surinder Singh Vs. Engineer in Chief C.P.W.D. This judgment was delivered in January, 1986 and squarely applied to the case of the applicants. Without, therefore, going into the question of applicability of the letter of the DG, P & T at Annexure-4 to the case of the applicant we, on the basis of the aforesaid judgment of the Hon'ble Supreme Court, would direct that the wages to be paid to the applicant ⁱⁿ which should be determined according to the direction of Hon'ble Supreme Court in the aforesaid case. There is no doubt that the applicant was employed as a Casual Mazdoor at ~~the~~ different periods in the past. Due to non-availability of work and other factors, there was break in his employment. We would direct that the seniority of the applicant as a casual Mazdoor should be determined taking into account his past employment and his case should be considered for absorption in a regular Group 'D' post as and when one is available and his turn comes.

8. The case is accordingly disposed of leaving the parties to bear their own costs.

M. C. Mohanty
.....29.8.90
MEMBER (JUDICIAL)



R. Mohanty
.....29.8.90
VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/29.8.90/
K. Mohanty.