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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A. NO. 363 OF 1988.

Date of Decision :- May 8, 1990.

Bhramar Mallik Applicant

Versus.

Union of India and others ... Respondents

For Applicant : ... M/s. Devananda Misra,
Deepak Misra,
R.N. Naik, A. Deo,
and R.N. Hota,
Advocates.

For Respondents: ... Mr. Ganeswar Rath,
Sr. Standing Counsel (Central)

C O R A M :

THE HON'BLE MR. R. BALASUBRAMANIAN, MEMBER (A)

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDL.)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

R. BALASUBRAMANIAN, MEMBER (ADMN.). This application has been filed under section 19 of the Administrative Tribunals Act, 1985 by Mr. Bhramar Mallik against the Union of India and two others.

2. The applicant has been working as Part-time Gardener in Cuttack G.P.O. from August, 1955. By an order

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dated 29.12.66 (A-1) the Postmaster, Cuttack G.P.O. required the applicant to put in not less than 7 hours of work every day. The applicant had been continuing in this manner till 29.3.88 when by an order dated 29.3.88 (A-2) the Senior Postmaster, Cuttack G.P.O. reduced the working hours from 7 to 4 and accorded sanction for payment of wages on pro-rata basis. This was stated to be in view of the decision of the Supreme Court regarding payment of wages to casual labourers. The applicant, being aggrieved by the order of the respondent No.3, made a representation vide A-3 to continue him on 7 hours/ day. In the same representation, he also pointed out that he had been paid the pro-rata pay and allowances for only 4 hours/ day from 5.2.86 although he had actually worked for 7 hours / day. He had also represented to the respondents that he should be regularised by virtue of his long service (A-4). In this connection, the applicant has prayed -

- a) seeking a direction to the respondents to give the applicant the pro-rata wages with effect from 5.2.86 on the basis of 7 hour working per day instead of 4 hours/day, and
- b) seeking regularisation of his service in Group 'D' category.

3. The prayer of the applicant has been opposed by the respondents. In their counter, they have stated that in view of the decision of the Supreme Court of India in Writ Petition No.373 of 1986 regarding payment of wages to

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casual labourers, the contingent paid employees were also treated as casual labourers and were remunerated on daily wages on pro-rata basis in the minimum scale of pay of the grade without any increments etc. They have contested the claim of the applicant that he had been working for 7 hours/ day. It is their contention that the duty hours had been correctly fixed at 4 hours / day. They have also contended that the applicant is not eligible for regularisation.

4. We have examined the case and heard the learned counsels for the applicant and the respondents. In the course of hearing, the learned counsel for the respondents submitted that it is not within the jurisdiction of this Tribunal to order the respondents to engage the applicant for 7 hours/ day when in the opinion of the respondents there is work only for 4 hours / day. He also argued that the regularisation scheme as ordered by the Hon'ble Supreme Court was applicable only to the casual labourers and not to the part-time workers paid from the contingencies.

5. That the applicant has been employed for 7 hours per day for well over two decades has not been disputed effectively. After the order dated 29.12.66 (A-1) requiring the applicant to work for 7 hours, the next document available is the one dated 29.3.88 (A-2) fixing 4 hour duty. The D.G. P. & T. standards quoted by the respondents were all there before the issue of the letter dated 29.12.66. When, by a specific requirement he had been asked to work 7 hours/ day, unless ^{it is proved established otherwise} by ~~a well reasoned specific order~~

we have to take it that he had been working for 7 hours/day.

We are of the opinion that he is entitled to payment for 7 hours/ day beyond 5.2.86 (or is it 9.2.86) at the appropriate rates.

6. The respondent decided on 29.3.88 to reduce the working hours of the applicant from 7 to 4 hours. While admitting this original application on 11.11.88 an interim order was passed by this Tribunal stating -

" ... It is further submitted that the applicant is willing to work for 7 hours. The willingness of the applicant is hereby recorded because in case the original application is allowed the applicant will be entitled to financial benefits because of his willingness. Thus, the prayer for interim orders is accordingly disposed of."

and the interim prayer was to stay operation of the order contained in A-2. The question before us is whether, while the applicant actually worked only for four hours per day, he should be paid for 7 hours per day. The applicant was quite willing to continue to work for 7 hours a day and there is work for 7 hours per day as borne out by the fact that for over two decades 7 hours work had been extracted from him. The action of the respondent No.3 suddenly reducing the working hours is arbitrary and cannot be sustained. We, therefore, quash the order dated 29.3.88 of the respondent No.3 reducing the working hours from 7 to 4. Therefore, the applicant is entitled to the wages on pro-rata basis for 7 hours a day from 11.11.88 onwards, i.e. from the day the interim order was passed. During the interregnum between 29.3.88 and 10.11.88 however, he need be paid only for 4 hours/ day since he had worked

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only for that much and the period is not covered by any relief ordered.

7. As for the second prayer regarding regularisation, the contention of the respondents is that the applicant being a part-time worker paid out of contingencies and not being a casual worker does not come within the scope of the scheme for regularisation. The applicant has been working for 7 hours a day for more than two decades and to keep him out of the scheme for regularisation on the plea that he is being paid out of contingencies and not out of funds for casual workers is, in our opinion, not tenable. The respondents, apart from just saying that the applicant not being a casual labourer is not eligible for regularisation have not clearly established as to why the part-time workers are ineligible for the scheme for regularisation. Why then did they revise the wages of contingency labourer also on pro-rata basis when they revised the wages of the casual labourers in the light of the Supreme Court decision? Such a kind of discrimination based on the source from which the wages are paid (whether contingency or otherwise) is not good in law. We, therefore, direct the respondents that the applicant should also be considered for regularisation in his turn if posts of Gardeners are available.

8. In the result, the application succeeds to the extent as indicated below :

a) The applicant shall be paid wages on pro-rata basis @ 7 hours per day from 5.2.86 to 28.3.88;

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b) He shall also be paid the pro-rata wages for 7 hours a day from 11.11.88 onwards ; and

c) He will be considered for regularisation if vacancies in the cadre of Gardeners are available and in his turn as per rules.

Directions (a) and (b) should be carried out within two months of receipt of this judgment.

There is no order as to costs.

Visa Singh
.....
MEMBER (JUDICIAL)

R. Balakrishnan
.....
MEMBER (ADMINISTRATIVE)

