

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 114 of 1989

Date of decision : May 2, 1989.

1. Jayaram Naik, aged about 29 years
son of Shri Akuli Naik
Village-Bramahana Para,
P.O. Biral, P.S. Tangi,
Dist. Cuttack. Applicant

-Versus-

1. Union of India, represented by its
Secretary, Department of Posts,
Dak Bhavan, New Delhi
2. Postmaster General, Orissa Circle,
At/P.O. Bhubaneswar, Dist. Puri.
3. The Superintendent, Postal Stamps Depot,
At/P.O. and District-Cuttack.

.... Respondents

For the Applicant	M/s. Deepak Misra, R.N. Naik A. Deo & B.S. Tripathy, Advocates
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For the Respondents	..	Mr. A.B. Misra, Sr. Standing Counsel (Central)
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C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN

AND

THE HON'BLE MR. K.P. ACHARYA, 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.

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J U D G M E N T

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to command the respondents to regularise the services of the applicant and to pay the applicant on prorata basis from the date of his appointment.

2. Shortly stated, the case of the applicant is that he was appointed as a casual Mazdoor in the Office of the Superintendent, Postal Stamps Depot, Cuttack on 2.4.1984 and despite long service rendered by him, as yet, the services of the applicant have not been regularised. Hence, this application with the aforesaid prayer.

3. In their counter, the respondents maintained that as and when work is available, the applicant is given work as Casual Mazdoor and therefore, the prayer of the applicant to regularise his services is misconceived and the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. A.B. Mishra, learned Senior Standing Counsel (Central) at some length. In this connection, we think that judgment of the Hon'ble Supreme Court reported in AIR 1986 SC 584 (Surinder Singh and another v. The Engineer-in-Chief, C.P.W.D. and others) should be referred to. Their Lordships were pleased to observe as follows :

" We also record our regret that many employees are kept in service on a temporary daily-wage basis without their services being regularised. We hope that the Government will take appropriate action to regularise the services of all those who have been in continuous employment for more than six months. "

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In another case reported in AIR 1987 SC 2342 (Daily Rated Casual Labour employed under P & T. Department through Bharatiya Dak Tar Mazdoor Manch-V-Union of India and others). Their Lordships of the Supreme Court have been pleased to observe as follows:

" The allegation made in the petition to the effect that the petitioners are being paid wages for less than the minimum pay payable under the pay scales applicable to the regular employees belonging to corresponding cadres is more or less admitted by the respondents. The respondents, however, contend that since the petitioners belong to the category of casual labour and are not being regularly employed, they are not entitled to the same privileges which the regular employees are enjoying. It may be true that the petitioners have not been regularly recruited but many of them have been working continuously for more than a year in the Department and some of them have been engaged as casual labourers for nearly ten years. They are rendering the same kind of service which is being rendered by the regular employees doing the same type of work. Clause (2) of Article 38 of the Constitution of India which contains one of the Directive Principles of State Policy provides that "the State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations". Even though the above Directive Principle may not be enforceable as such by virtue of Article 37 of the Constitution of India, it may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination. It is urged that the State cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. We are of the view that such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starving wages. It may be that the casual labourer has agreed to work on such low wages. That he has done because he has no other choice. It is poverty that has driven him to that state. The Government should be a model employer. We are of the view that on the facts and in the circumstances of this case the classification of employees into regularly recruited

employees and casual employees for the purpose of paying less than the minimum pay payable to employees in the corresponding regular cadres particularly in the lowest rungs of the department where the pay scales are the lowest is not tenable. The further classification of casual labourers into three categories namely (i) those who have not completed 720 days of service; (ii) those who have completed 720 days of service and not completed 1200 days of service; and (iii) those who have completed more than 1200 days of service for purpose of payment of different rates of wages is equally untenable. There is clearly no justification for doing so. Such a classification is violative of Articles 14 and 16 of the Constitution. It is also opposed to the spirit of Article 7 of the International Covenant on Economic Social and Cultural Rights, 1966 which exhorts all States parties to ensure fair wages and equal wages for equal work. We feel that there is substance in the contention of the petitioners.

7. In *Dhirendra Chamoli v. State of U.P.* (1986) SCC 637 this Court has taken almost a similar view with regard to the employees working in the Nehru Yuvak Kendras who were considered to be performing the same duties as Class-IV employees. We accordingly direct the Union of India and the other respondents to pay wages to the workmen who are employed as casual labourers belonging to the several categories of employees referred to above in the postal and Telegraphs Department at the rates equivalent to the minimum pay in the pay scales of the regularly employed workers in the corresponding cadres but without any increments with effect from 5th of February, 1986 on which date the first of the above two petitions, namely, Writ Petition No. 302 of 1986 was filed. The petitioners are entitled to corresponding Dearness allowance and Addl. Dearness Allowance, if any, payable thereon. Whatever other benefits which are now being enjoyed by the Casual labourers shall continue to be extended to them."

Similar view has also been taken in the case reported in A.I.R. 1988 SC 517 (*U.P. Income-Tax Department Contingent Paid Staff Welfare Association v. Union of India and others*). Their Lordships of the Supreme Court have been pleased to observe as follows:

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" The facts and circumstances of the present case are similar to the facts and circumstances of the case relating to the daily rated labour in the P. and T. Department. We have carefully considered the plea in the Counter-affidavit. The Government orders providing for the absorption of the contingent paid staff are hedged in by a number of conditions. We also find that many such employees have been working on daily wages for nearly eight years and more. We are not satisfied with the scheme which is now in force. We are, therefore, of the view that in this case also we should issue the same directions as in the above decision for the reasons given by the Court in the above decision. 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 I.T. 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 1st December, 1986. Such workmen are also entitled to corresponding Dearness Allowance and Addl. ~~allowance~~ 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 to contingent paid staff of the I.T. Department who have been continuously working for more than one year as class IV employees in the I.T. Department."

We hope and trust the Departmental authorities would seriously take into consideration the observations of Their Lordships of the Supreme Court in the aforesaid judgements and prepare a scheme and seniority list of all the Casual Mazdoors and take steps and act according to the directions contained in the aforesaid judgments. In the past we have also followed the dictum of Their Lordships in several cases and we also do not find any reason to take a different view than the view taken by us in the cases disposed of. We further direct that till

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regularisation, the applicant should be given work as and when ~~is~~ a vailable.

4. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

K. S. Sarangi
..... 2.5.89
MEMBER (JUDICIAL)

B. R. PATEL, VICE-CHAIRMAN

I agree.



K. S. Sarangi
..... 2.5.89
VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
2nd May, 1989/Sarangi