

19

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK.

Original Application No.13 of 1989.

Date of decision: April 28, 1989.

Sri Gokul Chandra Swain, aged      years,  
son of Jagabandhu Swain, village-Kutarang,  
P.O.Kutarang, P.S.Kendrapara, Dist-Cuttack  
at present working as Instructor, Modern  
Commercial Institute, Nayapally, Bhubaneswar-12  
under the Director, Central Poultry Breeding Farm  
Bhubaneswar-751002, Dist-Puri.      ...

Applicant

Versus

1. Union of India,  
represented by the Secretary in the  
Department of Agriculture & Co-operation,  
New Delhi.
2. Director, Central Poultry Breeding Farm,  
Bhubaneswar-751012.
3. Assistant Director,  
Central Poultry Breeding Farm,  
Bhubaneswar-751012.

...

Respondents.

For the applicant ...      M/s.Devanand Misra  
Deepak Misra,  
Anil Deo, Advocates.

For the respondents ...      Mr.A.B.Mishra,  
Senior Standing Counsel (Central).

Mr.Tahali Dalai, Addl. Standing  
Counsel (Central)

-----  
C O R A M :

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

A N D

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 ? *Y*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays for a direction to be issued to the respondents to regularise the services of the applicant and to direct the respondents to pay a pro-rata pay scale to the applicant from the date of his appointment.

2. Shortly stated, the case of the applicant is that he is at present working as Instructor, Modern Commercial Institute at Nayapally under the Central Poultry Breeding Farm and was selected to the said post on 17.9.1986 vide Annexure-1. According to the applicant, though he has been working in the said post for a long time and has continuously worked for 240 days in a year, still then his services are not being regularised and the pro-rata scale since his appointment is not being paid to him. Hence, this application with the aforesaid prayer.

3. In their counter, the respondents maintained that as and when work is available the applicant was being given work and since there is no work available for the present the applicant's services are to be dispensed with far less to speak of being regularised.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) at some length. In this connection, we would quote the observations of Their Lordships of the Supreme Court reported in AIR 1988 SC 517 ( U.P. Income-tax Department Contingent Paid Staff Welfare Association-v-Union of India and others ). Their Lordships were pleased

to observe as follows :

" 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 pleas 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~~ 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 in 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 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 I.T. Department who have been continuously working for more than one year as Class IV employees in the I.T. Department. "

Earlier judgment of the Hon'ble Supreme Court which was reported in paragraph 5 of the judgment quoted above is 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 were pleased to observe as follows :

" The allegation made in the petitions to the effect that the petitioners are being paid wages far 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 the 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 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 labour 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 Chmoli v- State of U.P.* (1986) 1 SCC 637 this Court has taken almost a similar view with regard to the employees working in the Nehru Yuval 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. "

5. In view of the observations of Their Lordships in the judgments quoted above, we would direct the respondents to prepare a scheme in the light of the observations made by Their Lordships in the judgments quoted above and then take steps to regularise the services of the applicant and others placed in the same situation and absorb them against regular posts according to seniority and after adjudicating their suitability. We would further direct that till finalisation of the scheme for regular absorption, the services of the applicant should not be terminated. He should be given work as contingent labourer as and when there is work available to be entrusted.

24

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

*Reasanghi*  
28/4/89  
.....  
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.

*Ranbir*  
28/4/89  
.....  
Vice-Chairman

Central Administrative Tribunal,  
Cuttack Bench, Cuttack.  
April 28, 1989/Sarangi.

