

(2) (10)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK.

Original Application No.374 of 1989.

Date of decision : February 8, 1990.

Gajendra Kumar Nayak ... Applicant.

Versus

Union of India and three others ... Respondents.

For the applicant ... M/s. Devanand Misra,  
Deepak Misra, R.N.Naik,  
A.Deo, B.S.Tripathy, &  
U.S.Agrawal, Advocates.

For the respondents ... Mr.P.N.Mohapatra,  
Addl. Standing Counsel (Central)

C O R A M:

THE HON'BLE MR.B.C.MATHUR, VICE-CHAIRMAN

A N D

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

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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.

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(21)

JUDGMENT

N.SENGUPTA, MEMBER (J) The applicant herein has prayed for regularisation of his services in the post of Farash in Group 'D', in the Office of the Deputy Collector (P & E), Collectorate of Central Excise & Customs, Bhubaneswar, for a direction not to fill up the post of Farash by fresh candidate and for appropriate orders directing the respondents to pay him the differential amount of wages.

2. The applicant's case is that he has been working as a Farash on casual basis from May, 1988 continuously and is being paid Rs.10.00 per day of 8 hours work. Prior to that he had also been working on such casual basis in the year 1987 but to that he does not like to make a reference as they were intermittent periods. It is his case that the respondents are going to throw him out of employment by saying that he is a casual worker and has no right to continue and he is not being paid remuneration which is payable to persons in the lowest rung of the Government service. He has averred that Respondents 3 & 4 have requisitioned the Employment Exchange to send a list of candidates for appointment as Farash and that has afforded him a cause of action for this application. To his application he has annexed an office memorandum dated 26.10.1984 which says that if any casual worker had put in 206 days of service during each year for two successive years he is to be absorbed and another office memorandum dated 7.6.1988 which bears on the subject of engagement of persons on daily wage

basis and the rate on which payments are to be made and his grievance is that the instructions in the Office memorandum dated 7.6.1988 have not been respected by the respondents in this case. In fine, the grievance of the applicant is that he is entitled to be absorbed having worked for two years or at least for more than one year and he is entitled to be paid at the rate of 1/30th of the minimum of the <sup>monthly</sup> pay prescribed for Group 'D' posts per each day of his work.

3. The respondents in their counter have maintained that the applicant is not exactly a casual labour, but he is a contract labour and as such cannot lay a claim for absorption as made in his application. They have also denied the allegation of the applicant that he has been working as a Farash since 1986 though they have admitted that he has been working continuously since May, 1988, ofcourse as a contract casual labour. Their case further is that the applicant was not sponsored by the Employment Exchange and according to the Office memorandum of the Ministry of Personnel, & Training, Administrative Reforms and Public Grievances No. 49014/18/84-Estt. (C) dt. 7.5.1985 unless a person is sponsored by the Employment Exchange he cannot be appointed even as a casual worker and as the applicant was not appointed through the Employment Exchange, his working as a contract casual labour was invalid from its very inception. Therefore, he cannot claim any right on the strength of such working. They have also averred that as the applicant is a contract casual worker, he cannot be paid on prorata basis the salary of a regular Group 'D' employee.

*See Page*

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. P. N. Mohapatra, learned Additional Standing Counsel (Central) for the respondents. The admitted position that emerges is that the applicant has been working continuously from May, 1988 and he has been continuing to work since after 19.9.1989 on the strength of an interim order. Therefore, we would confine our consideration to the position as it was on the date of filing of this application i.e. 19.9.1989. It is also undisputed that the applicant is being paid Rs. 10.00 a day as his wages. Learned counsel for the applicant, Mr. Deepak Misra, has sought reliance on the decision of the Hon'ble Supreme Court in the case of **Daily Rated Casual Labour** employed under P & T Department through **Bharatiya Dak Tar Mazdoor Manch v. Union of India** and others reported in AIR 1987 SC 2342 and has contended that the case of the applicant is fully covered by this decision. On the other hand, Mr. P. N. Mohapatra has urged that there is an essential difference between the facts of the reported case and those of the one under consideration and that is, in the reported case, the persons who were working on casual basis against some posts of the Department, whereas in the instant case, the applicant has not been working against any post, but is a mere casual contract labour. In developing his argument Mr. Mohapatra has cited the examples of such seasonal casual workers, such as are employed to sprinkle water over the Khaskhas ~~xxxxxx~~ or to supply water etc. and he has urged that such persons do not, and cannot claim for continuance in that job. We are unable to accept this analogy or argument of Mr. Mohapatra in this

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regard. Because, as has been stated above, the applicant has been working continuously since at least May, 1988 and even though it might have fallen short of two years, but definitely spreads over more than one year. A work which continues for such a long period cannot be said to be a seasonal work or requirement. Mr. Mohapatra being asked as to how the services of the applicant were utilised, has not been able to cogently answer our question. He has simply stated that he was being employed in doing odd jobs during this period. A post is created for getting some work done, may be the work may vary according to the requirements of different times but that is not to say that there is no work. Mr. Mohapatra has further contended that all that the applicant could ask for was to deal his case under section 25 F of the Industrial Disputes Act, 1947 and cannot ask for absorption or regularisation. Once again we must say that we are unable to accept this contention of Mr. Mohapatra. Section 25 F of the Industrial Disputes Act envisages a situation where a particular person due to want of further work becomes surplus but in the instant case, in view of the counter, it can safely be said that it is not a case of non-availability of work.

5. Mr. Mohapatra has harped much on the office memorandum dated 7.5.1985 to say that the applicant cannot be absorbed. Apart from the fact that this office memorandum was issued before the decision of the Hon'ble Supreme Court in the case referred to above, even assuming that the instructions in the office memorandum were not

*Memorandum*

complied with by those agents of the Government who were entrusted with making appointments, the applicant cannot be made to suffer. We would therefore, in accordance with the principles enunciated in AIR 1987 SC 2342 direct that a scheme be prepared for absorption of casual workers if they are more than one and the seniority of such workers having regard to the periods of their employment should be determined and thereafter steps for absorption as and when vacancy in Group 'D' posts occurs be taken.

6. With regard to the claim of the applicant for arrear wages, Mr. Mohapatra has contended that a part of it is barred by limitation being beyond one year from the date of filing of the application, and also for the reason that the applicant is not entitled to be paid at the rate of a regular employee in Group D cadre.

As regards the second part of the argument of Mr. Mohapatra we need not dilate much because in the decision of the Supreme Court it was ruled that the Government should be a model employer. Therefore the classification of employees into regularly recruited employees and casual employees rendering the same kind of service which is being rendered by regular employees for the purpose of paying less amount than the minimum pay payable to employees in the corresponding regular cadres particularly in the lowest rung of the Department where the pay scales are the lowest would not be tenable. Such being the dictum laid down by the Supreme Court, we would say that the applicant is entitled to wages at the rate of 1/30th and-a-day of the

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minimum monthly salary payable to a Group 'D' employee.

7. With regard to the question of limitation it has been urged by Mr. Deepak Misra that since a period of 6 months is allowed to a person to wait for result of his representation and a further period of one year to make an application, the actual period of limitation would be 1½ years and not one year. This contention of Mr. Deepak Misra we are unable to countenance because under section 21(1) (b) of the Administrative Tribunals Act, 1985, a period of six months is limited only in cases where an appeal or representation as mentioned in sub-section (2) of Section 20 of the Act was made and not finally disposed of, which is not the case here.

8. It has next been urged by Mr. Deepak Misra that in fact there is no other limitation except the general law of limitation relating to periods and for this he has drawn our attention to the language used in clause (a) of sub-section (1) of Section 21 of the Administrative Tribunals Act which refers that the starting point of limitation would be when a final order was made by the Government or other authority or the officer competent to pass such order and in the instant case, no such order could be passed. Therefore, the case would not come within the mischief of Section 21 of the Administrative Tribunals Act, 1985. This argument also does not appeal to us. Because if really there is no order against which a grievance is being made in this application, the application cannot be entertained but in

*Mr. Surya*  
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our opinion, the relevant order is the one relating to the rate on which daily wages are to be paid to the applicant. The claim for salary being recurring claim, the applicant would be entitled to the differential amount from 19.9.1988 till he is paid at the rate of 1/30th of the minimum monthly salary payable to a Group D staff.

9. In the result, the applicant succeeds in part. The respondents are to prepare a scheme for the casual workers engaged by them and absorb the applicant according to his seniority in the list of casual workers and availability of posts in Group 'D' category. They are also to pay the difference between what has already been paid to him and what he ought to have been paid at the rate of 1/30th of the monthly minimum salary of Group 'D' employee per day from 19.9.1988. All these be done within a period of two months.

No costs.

*Devaraj*  
..... 8/2/90

Vice-Chairman

*Re: [Signature]*  
..... 8/2/90

Member (Judicial)

