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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 77 OF 1989

Date of decision: 5.4.1991

Rajkishore Satpathy

: Applicant

Versus

Union of India and others

: Respondents

For the applicant

: M/s S.B.Misra,
B.K.Sahoo,
Advocates

For the Respondents

: Mr.Tahali Dalai,
Additional Standing
Counsel(Central)

CORAM:

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

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

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

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JUDGMENT

B.R.PATEL, VICE CHAIRMAN: The applicant was appointed as a Temporary Lower Division Clerk(L.D.C.) in the office of the Textile Commissioner, Powerloom Service Centre, Industrial Estate, Jagatpur, Cuttack with effect from 8.2.1988 for a period not exceeding 89 days vide Office order dated 15.2.1988. His services was terminated in terms of the appointment order with effect from 6.5.1988 vide order dated dated 6.5.1988 (Annexure-3). He was appointed again for a period of not exceeding 89 days with effect from 10.5.1988 vide Office order dated 10.5.1988. This on and off service of the applicant continued till 3.2.1989 when his service was finally terminated vide Office Memorandum dated 4.2.1989 (Annexure-9) and the officer incharge of the Powerloom Service centre wrote to the District Employment Officer on 1st February, 1989 to sponsore suitable candidates with requisite qualification and experience as mentioned in the requisition form vide Annexure-10. Being aggrieved by the order of the Department the applicant has moved the C.A.T, herein

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after called the Tribunal to quash the order of termination dated 4.2.1984 and the letter dated 1.2.1989 calling for fresh candidates from the Employment Exchange and to absorb the applicant in his post on regular basis.

2. The Respondents in their counter affidavit have explained that the applicant was appointed as an L.D.C. for a period not exceeding 89 days on each occasion for nearly a year as a temporary measure to carry on the clerical work as the Upper Division Clerk(UDC) of the Powerloom Service Centre was transferred to Kanpur on 30.6.1987 and the post remained vacant. It was not possible for them to absorb the applicant ~~in~~ regularly in the post, as regular appointment to the post of Lower Division Clerk can be made only on the recommendation of the Staff Selection Commission(S.S.C.), so far as direct recruits are concerned or of the Departmental Promotion Committee in the case of a Departmental candidate eligible for promotion. As the applicant was neither

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sponsored by the Staff Selection Commission nor he was eligible for Departmental Promotion as provided under the Rules of Central Government services, the applicant could not be absorbed and his services had to be finally terminated when a Departmental candidate namely Mr. P.B.Samudar was available to be appointed to the Post . Shri Samudar was appointed by the Office order dated 10.3.1989 and he joined on 3.4.89. In the circumstances, the Department expressed their inability to either continue the applicant in service on temporary basis from time to time or to regularly absorb him in service.

3. We have heard Mr. B.K.Sahoo, the learned Counsel for the applicant and Mr. Tahali Dalai, the Learned Additional Standing Counsel(Central) for the Respondents and perused the relevant records. Relying on the judgment of the Bombay High Court reported in A.I.R. 1989 Bombay 213, Mr. Sahoo has contended that Temporary employees cannot be kept in suspended animation indefinitely and as the applicant has worked for nearly one year in temporary capacity he should be regularised in service instead of terminating his service. We have gone through the judgment cited by the applicant. The case before the Bombay High Court and present case are not comparable in that, in the case before the Bombay

High Court, the petitioner was appointed as a Peon in a Temporary capacity for a period of one year. On 31st March, 1979 his service were terminated .He was however, appointed again in September, 1 979 and and discharged from service from Ist April, 1980. The petitioner was again appointed in a temporary capacity as a peon in March, 1981 and thereafter he worked without break in service till 19th June, 1986 when his services were terminated. What weighed in the mind of the Bombay High Court was the fact that the petitioner worked as a Peon without break in service right from March, 1981 till 19th June, 1986. A long spell of over five years of continuous service. The Bombay High Court, in para-3 of their judgment have observed that "The very fact that it was not thought necessary to dispense with the petitioner's services for over five long years by itself indicates that his service during these five years cannot be said to be merely temporary . A temporary employee cannot be kept in suspended animation indefinitely". The case before us is clearly distinguishable and in the peculiar circumstances indicated above, the applicant had to be kept on temporary basis for nearly a year till departmental candidate was available to be appointed on regular basis. As soon as they got a Departmental candidate they appointed him in place of the applicant. Mr. Sahoo has averred that for remaining in service for nearly a year the applicant

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has become ~~overaged~~ for Government service and he cannot now apply for any job under the Government. Mr. Dalai has however, countered it by saying that at no time the applicant applied for any post in response to any Circular/Advertisement to be forwarded by the Department. Moreover, as the period of service on each occasion was only for 89 days the applicant was aware that the service was for a limited period terminable at any time. Mr. Dalai has further said that he did not make any such application which would go to prove that he was not interested in any other Government service and as such he cannot have any grievance against the Department, if he has in the meantime crossed the age limit for Government service. After having heard the Counsel at the bar we have come to the conclusion that the action of the Department in engaging the applicant for a short period on each occasion for nearly a year pending regular appointment was unavoidable in the peculiar circumstances of the case. It was only a fortuitous service pending appointment of a candidate selected by the Staff Selection Commission or the candidate selected by the Departmental Promotion Committee. We agree with the Department that the applicant ^{nor was} ~~nor~~ neither sought ^{nor was} ~~nor~~ denied any opportunity of being appointed to any other service under the Government Department, since he made no application for any such

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service.

4. For the Reasons mentioned above, we are unable to accept the plea of the applicant and as such the application is dismissed. There would be no order as to costs.



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MEMBER (JUDICIAL)

B. Mohanty
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5.4.91.)
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VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench; Cuttack: K. Mohanty.