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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 27 of 1991

Date of Decision: 21.1.1993

Bhramarbar Jena & Others Applicants

Versus

Union of India & Others Respondents

For the applicants

M/s.C.V.Murty
C.M.K.Murty,
S.Kr.Rath,
Advocates

For the respondents

Mr.Ashok Mohanty,
Standing Counsel
(Central Government)

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C O R A M:

THE HONOURABLE MR. K.P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MR. S.R. ADIGE, MEMBER (ADMINISTRATIVE)

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

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JUDGMENT

MR. K. P. ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioners pray that the orders contained in annexures 13 series terminating the services of the petitioners may be quashed and directions be issued to the opposite parties to allow the petitioners to continue in service.

2. Shortly stated the case of the petitioners (six in number) is that they were initially appointed as work charged Khalasis since 1978, 1982 and 1983 under the Executive Engineer Central Water and Power Commission (OP No.3). Vide Annexure-10 dated 8.2.1986, their services were extended until further orders and vide Annexure-11 dated 23.4.1988, the same nature of order was passed in favour of the petitioners who were working as workcharged khalasis. Vide Annexure-12, some of the petitioners were employed as Typists under OP No.3 due to non-availability of regular incumbents. Vide Annexure-13 dated 24.1.1991, services of all the petitioners have been terminated for which this application has been filed with the aforesaid prayer.

3. In their counter the opposite parties maintain that due to nonavailability of posts of ^{and workcharged khalasis} typist, the services of the petitioners have been dispensed with. It is further maintained that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. C. V. Murty, learned Senior Counsel appearing for the petitioner and Mr. Ashok Mohanty, learned Standing Counsel.

5. Mr. C. V. Murty emphatically submitted before us that

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due to the long service rendered by the petitioners as workcharged khalasis, their services should not have been dispensed with, especially when Annexures-10,11 and 12 would indicate that their services have been extended from time to time and ultimately they have been engaged as typists. Therefore, Mr. Murty contended that they should be regularised.

6. Of course the previous judgments beginning from the case of *Dak Tar Mazdoor Sangh, Surinder Singh, Inderpal Yadav* etc. Their Lordships of the Supreme Court have consistently held that once a particular person works continuously for a long period, his/her services should be regularised, but in a later judgment reported in A.I.R. 1992 SC 2070 and A.I.R. 1992 SC 2130 Their Lordships have been pleased to hold that blanket order issued by the Patna High Court directing regularisation is not just and proper. Courts must be cautious before issuing such an order as the Courts are bound to take into consideration ^{the fact of} ~~regarding~~ existence of sanctioned post and as to whether a particular incumbent is suitable to be regularised against such post. Adjudication of suitability of a particular incumbent lies within the province of the concerned executive authority. Therefore before any such order is passed, the Court must look into these aspects very carefully and cautiously. Keeping in view the latest dictum laid down by Their Lordships, we do not feel inclined to issue an order of regularisation of the petitioners. However, in paragraph-7 of the counter it is stated as follows :

"However, the applicants will continue to be engaged in the capacity of seasonal workcharged khalasi as before. Two of the khalasis have been regularised on the basis of compassionate ground."

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In view of such averment finding place in the counter we are surprised as to how the concerned authority recommended juniors of the petitioners for regularisation which was not approved by the higher authorities. However, ~~the judgment~~, keeping in view the law laid down by the Supreme Court in the case of Inderpal Yadav and Surinder Singh, a seniority list must be maintained and as and when vacancy arises according to the seniority, the petitioners should be appointed on regular basis and this view gains support from the judgment~~s~~ passed in Civil Appeal No. 2281, 2285, 2286, 2287, 2282 of 1992 (Managing Director, Orissa Construction Corporation Ltd. and others vs. Shyam Sundar Jena and others). It is necessary to quote the entire order passed by the Hon'ble Supreme Court.

" These appeals are directed against the judgment of a Division of the Orissa High Court. The High Court allowed the writ petition of the respondents - workmen in the following terms :-

We would accordingly direct that the petitioners shall be paid salary and allowances as are paid to their counter-parts in regular establishment with effect from the date they were respectively employed. If in the meanwhile, the scale of pay has been revised, they would also be entitled to the same revised scale of pay. Having considered the contention raised in the counter-affidavit, we also adopt the direction given in the aforesaid decision given in the aforesaid decision of this Court. We direct the Corporation to take services of such of the petitioners who are in continuous service of the Corporation for more than 5 years.

So far as the direction of the High Court regarding payment of salary and allowances is concerned we clarify that the expression "counter-parts in regular establishment" in the quote above means in the project where the workmen are were working.

The Direction given by the High Court regarding regularising the services of the workmen are modified to the extent that the respondent-workmen who have put in five years of service shall continue in the service of the management and their services shall

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not be dispensed with and further the management shall regularise them as and when regular vacancies are available. The workmen may be deputed to work in any of the projects under the control of the management where vacancies are available. These respondents-workmen who have served management for more than five years and whose services, in the meanwhile have been terminated shall be taken back in service with continuity of service.

The appeals are disposed of in the above terms with no order as to costs."

Needless to be said that the ^{said} ~~cases of~~ ^{arise} ~~same~~ against the judgment passed by the Orissa High Court. We hope and trust OP No.3 would strictly adhere to ^{the} ~~the~~ observations made by Their Lordships quoted above and accordingly give benefit to the petitioners. We would further direct that as and when vacancy arises in the post of typist as well as ~~seasonal work charged~~ ~~Khakasis~~ in which the petitioners were working, those out of the petitioners, who are found to be suitable for the post of typist, they should also be given such post whenever vacancy arises according to the seniority list. ^{Till then the petitioners} ~~should be employed as work charged Khakasis~~ 6. Thus the application is accordingly disposed of leaving the parties to bear their own costs.

R. S. Saha
MEMBER (ADMINISTRATIVE) 20.1.93

K. S. Saha
VICE-CHAIRMAN 20.1.93

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 20.1.1993/ B.K.Sahoo

