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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 352 of 1991

Date of Decision: 18.8.1993

Bisweswar Dash

Applicant(s)

VERSUS

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? *No*

[Signature]
MEMBER (ADMINISTRATIVE)
18.8.93

[Signature]
18/8/93
VICE-CHAIRMAN

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(10)

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Respondents

For the applicant

M/s. Devanand Misra
Deepak Misra
R.N. Naik, A. Deo
B.S. Tripathy,
Advocates

For the respondents

Mr. Ashok Mishra
Sr. Standing Counsel
(Central Government)

C O R A M:

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

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMIN)

JUDGMENT

MR. K.P. ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner Shri Bisweswar Dash prays for a direction to be issued to the opposite parties to regularise services of the petitioner in Group-D post, and a further direction to be issued to the opposite parties to pay to the petitioner prorata pay scale from the date of his appointment.

2. Shortly stated the case of the petitioner is that he has been working as a Casual Labourer in the office of the Accountant General since April, 1989. His services not having been regularised, this application has been filed with the aforesaid prayer.

3. In their counter the opposite parties maintain that the case of the petitioner being devoid of merit is liable

to be dismissed, because the petitioner's services cannot be regularised without adjudication of suitability of the petitioner against the vacancy arising in future. Therefore, directions, as prayed for by the petitioner, should not be issued - rather, the case should be dismissed.

4. We have heard Mr.B.S.Tripathy, learned counsel for the petitioner and Mr.Ashok Mishra, learned Standing Counsel, appearing for the opposite parties. Law is well settled that automatic regularisation is not permissible. Similar view has been taken by us in several other cases and especially, in Original Application No.234 of 1990 disposed of on 17.8.1993, which has fullest application to the facts of the present case. Therefore, we would direct that a seniority list be prepared in respect of casual labourers employed in the office of the Accountant General, and according to the seniority, as and when vacancy arises in future, cases of the candidates in the waiting list be considered for appointment after adjudication of suitability by the competent authority. We hope and trust that this process, viz. preparation of seniority list will be completed within 60 days from the date of receipt of a copy of this judgment.

5. As regards payment of emoluments, equivalent to the basic pay scale of Group-D employees, Hon'ble Supreme Court in the case of Daily Rated Casual Labour, P.&T. Department v. Union of India reported in AIR 1987 SC 2342. Their Lordships have been 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

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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 the 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 Article 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.*, 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 work men 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 increments with effect from 5th February, 1986 on which date the first of the above two petitions, namely, Writ Petition No. 302 of 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.

6. Therefore, in compliance with the law laid down by Their Lordships of the Supreme Court, we would direct the opposite parties to give emoluments payable to Group-D employees, viz. the basic pay scale, to the casual labourers including the present petitioner employed in the office of the Accountant General, Orissa, Bhubaneswar, within 30 days from the date of receipt of a copy of this judgment. Arrears be calculated and paid to the petitioner from 18.8.1993.

Thus the application is accordingly disposed of. No costs.


MEMBER (ADMINISTRATIVE)
18 AUG 93


VICE-CHAIRMAN
18/8/93

Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 18.8.1993/ B.K.Sahoo

