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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

Original Application No. 450 of 1991

Date of decision: January 21, 1993.

Anil Kumar Das Petitioner
Versus
Union of India and others Opp. Parties.

For the Petitioner : M/s Devahand Misra,
Deepak Misra,
R.N. Naik,
A. Deo,
B.S. Tripathy,
P.P. Panda,
Advocates.

For the Opp. parties : Mr. Ashok Misra, Sr. St.
Counsel (Central).

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CORAM:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN
AND
THE HONOURABLE MR. S.R. ADIGE, MEMBER (ADMN.)

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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.

J U D G M E N T

K.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays for a direction to the Opposite Parties to pay the petitioner at prorata basis equal to the basic scale of pay meant for typist and to pay to the petitioner the arrear emoluments to which he is entitled.

2. Shortly stated the case of the petitioner is that he was working as a casual typist in the office of the Opposite Party No.2 from 2.12.1986 to 31.12.1988. During his incumbency as such the petitioner was paid Rs.15.25 as daily wages, whereas the petitioner ~~is~~ entitled to the basic pay scale of a regularly employed typist. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the case of the petitioner should not be entertained as he is a casual worker which does not come within the purview of Section 14 of the Administrative Tribunals Act and therefore on this account the petition should be in limine dismissed. It is further maintained by the Opposite Parties that the petitioner out of his own free will accepted the offer made by the competent authority to pay him Rs.15.25 on actual date of working and therefore, it is no longer open to the petitioner to put forward the present claim.

4. We have heard Mr. Deepak Misra learned counsel for the petitioner and Mr. Ashok Misra learned Senior Standing Counsel (Central) appearing for the Opposite Parties.

5. Mr. Ashok Misra learned Senior Standing Counsel (Central) at the outset submitted that the petitioner being a casual worker and casual workers not having held any civil post, the application of the present petitioner is not maintainable. On this point there was a conflict of opinion and therefore, this aspect was referred to a Full Bench for decision. In the case of Rehmat Ullah Khan Vs. Union of India and others reported in 1989 (2) Services Law Journals 293 the Full Bench has observed as follows:

"In our opinion it would be unfair to deprive such a person from coming to the Tribunal merely on the ground that he does not hold a civil post. If he is rendering service to the union or for the affairs of the union, the nature of his job being civil, we do not see why he should be deprived of a right to approach this Tribunal and seek relief in an appropriate case".

We are bound by the view laid down by the Full Bench. Therefore, we find no merit in the aforesaid contention of Mr. Ashok Misra learned Senior Standing Counsel and we would hold that the petition filed by the present petitioner is entertainable.

6. This view has been approved by the Hon'ble Supreme Court in the case of daily rated casual labourer employed under P & T Department through Bharatia Dak Tar Mazdoor Manch Vs. Union of India and others reported in AIR 1987 SC 2342. Therefore, the aforesaid contention

of Mr. Ashok Misra learned Senior Standing Counsel (Central)

is not tenable.

7. True it is that the petitioner had accepted the offer to work as Casual Labourer on the rate of Rs.15.25p. Poverty had driven him to accept whatever is offered to him to sustain his livelihood. That does not necessarily mean that if he is entitled under the law to receive a higher amount, he should be deprived of the same.

8. In the case of Surinder Singh and another Vs. Engineer-in-Chief, CPWD and others reported in AIR 1986 SC 584, Their Lordships of the Hon'ble Supreme Court considering the same question were pleased to observe as follows:

" One would have thought that the judgment in the Nehru Yuvak Kendra's case (supra) concluded further argument on the question. However, Shri V.C. Mahajan learned counsel for the Central Government reiterated the same argument and also contended that the doctrine of 'equal pay for equal work' was a mere abstract doctrine and that it was not capable of being enforced in a court of law. He referred us to the observations of this Court in Kishori Mohanlal Bakshi Vs. Union of India, AIR 1962 SC 1139. We are not a little surprised that such an argument should be advanced on behalf of the Central Government 36 years after the passing of the Constitution and 11 years after the Forty-Second amendment proclaiming India as a socialist republic. The Central Government like all organs of the State is committed to the directive Principles of State Policy and Art. 39 enshrines the principles of equal pay for equal work. In Randhir Singh Vs. Union of India (1982) 3 SCR 298; (AIR 1982 SC 879), this court had occasion to explain the observations in Kishori Mohanlal Bakshi Vs. Union of India (supra) and to point out how the principle of equal pay for equal work is not an abstract doctrine accepted through the world, particularly by all socialist countries. For the benefit of those that do not seem to be aware of it,

we may point out that the decision in Randhir Singh's case has been followed in any number of cases by this court and has been affirmed by a Constitution Bench of this Court in D.S.Nakara Vs. Union of India (1983) 2 SCR 165: (AIR 1983 SC 130). The Central Government, the State Government and likewise, all public sector undertakings are expected to function like model and enlightened employers and arguments such as those which were advanced before us that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a court of law should ill come from the mouths of the State and state undertakings. We allow both the writ petitions and direct the respondents as in the Nehru Yuvak Kendra's case (Supra) to pay to the petitioners and all other daily rated employees, the same salary and allowances as are paid to regular and permanent employees with effect from the date when they were respectively employed. The respondents will pay to each of the petitioners a sum of Rs. 1000/- towards their costs. We also record our regret many employees are kept in service on temporary daily wage basis without their services being regularised. We hope that the Government will take appropriate action to regularise the services of all those who have been in continuous employment for more than six months".

9. In view of the aforesaid facts and circumstances, we would direct the Opposite Parties to pay to the petitioner the basic pay scale of a typist on prorata basis for the days on which he has actually worked. It is further directed that the arrear emoluments of the petitioner should be calculated and paid to the petitioner within 90 days from the date of receipt of a copy of the judgment.

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

MEMBER (ADMINISTRATIVE)

Central Admn. Tribunal, Cuttack Bench,
Cuttack/21.1.93/K. Mohanty.

21.1.93
VICE CHAIRMAN