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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH:  
AT CUTTACK

OA No.270/93

Date of Decision: 17.6.1997

BETWEEN:

Gopal Charan Mohanty

.. Applicant

AND

1. Union of India rep. through its  
Director General,  
Council of Scientific & Industrial  
Research, Rafi Marg,  
New Delhi - 110 001.
2. Director,  
Regional Research Laboratory,  
Bhubaneswar-751013, Orissa
3. Suresh Ch. Mohanty, Helper,  
RR Lab., Bhubaneswar.
4. Sarat Ch. Das, Group-C.  
RR Lab., Bhubaneswar.
5. Laloo Prasad, Helper,  
RR Lab., Bhubaneswar.

Counsel for the Applicant: Mr. K.P. Mishra

Counsel for the Respondents: Mr. U.B. Mohapatra

CORAM:

THE HON'BLE SHRI N. SHAH: MEMBER (ADMN.)

THE HON'BLE SHRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.)

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JUDGEMENT

(PER HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.))

Heard Shri K.P. Mishra the learned counsel for the applicant and Shri U.B. Mohapatra learned additional standing counsel for the respondents. The learned counsel for the applicant has also submitted the written brief:

This is an application under Sec.14 of the Administrative Tribunals Act. The application was filed on 26.4.93.

The applicant has sought for the following reliefs in this O.A:-

- (i) Direct/order to the respondent No.2 to regularise the services of the applicant forthwith;
- (ii) Direct/order to the respondents to pay the regular scale of pay to the applicant at par with the regular helpers with effect from 1.4.1990;
- (iii) Pass such other order(s)/direction(s) as may be deemed fit and proper in the bonafide interest of justice.

The case of the applicant is as follows:-

That the applicant was initially engaged as a daily wage worker under the administrative control of the respondent-2 in 1982 that he has been continuing as such with fictional breaks and gaps that the applicant has furnished the details of the number of days he had worked

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between 82 and 92 in Annexure-I that while he was continuing as such on or about 27.12.88 the respondents entered into an agreement with the Regional Research Laboratory Employees Association (in short RRLEA) to regularise those persons who were continuing on daily wage contract basis that subsequently the respondent-2 issued a list of contract workers for the purpose of regularisation, that on 30.4.90 the said policy was reviewed allowing only the 19 contract workers to provide the pay at the minimum in the post of helper in the scale of pay of Rs.750/- + D.A. for a work of 8 hours per day that the same was revised from 1.4.90 that during April 1991 the Secretary, RRLEA addressed a letter to the respondent-2 informing that the list prepared by the administration was not in accordance with the rules that some senior daily wage employees had been ignored and that some unwarranted labourers were enlisted on account of the mismanagement and keeping some ill interests. The Secretary of the Association further requested the management to review the said list through an impartial committee that he also submitted a number of representations to the respondent-2 and to the Hon'ble Prime Minister of India (who is the President of the CSIR). That the representations have evoked no response from the respondents that on 3.3.93 the respondent-2 without considering the case of the applicant directed the 19 employees to furnish their educational testimonials and other certificates that out of the said 19 casual labourers one Daitari Patra is no longer working in the organization that Babuji Patra, Chakradhar Bhoi, Lalu Prasad, Sarat Ch. Das, Dilip Kr. Gaud, Rajkishore Sahoo, Suresh Mohanty, Golakh Mohanty, Y. Mohan Rao, Simanchal Bhoi and Gajendra Bhoi are admittedly juniors to him

are likely to be regularised in the organization that the respondents' inaction in not regularising his services and in not granting the scale pay of the post of Helper to him at par with other are irregular and not sustainable in the law.

The respondents filed their counter stating that there is no cause of action against them, that the application is not maintainable, that the applicant has not worked for continuously 240 days in any of the previous years while he was serving the organization under the respondent-2 that the applicant is not in the job service since 1987 that the engagement of persons on daily wage basis in the organization was discontinued since 1982 vide CSIR letter bearing No.1/34/77-Q&M-II, that the applicant was engaged on job contract basis between 1983 and 87 that even during those years, the applicant had not worked for 240 days in a year which were required for regularisation for the post of helper that as per the discussions between the CSIR and RRL Employees Association held on 1.3.88, it was agreed to regularise all the casual workers who had worked for a minimum period of 240 days in a particular year preceeding 2 years i.e. prior to 1.3.88 were to be identified for regularisation of services as and when admissible, that as a result of this agreement, the organisation approximately identified 28 members, that among them 9 persons were regularised and rest were identified as contract workers that the said contract workers were to be given a minimum of pay of the post of Helper as per CSIR rules, that since the applicant had not completed 240 days in any year prior to 1.3.88 his name was not considered for regularisation that, in fact, the applicant was not in the employment of the respondent-2, after 1987, that the letter

Dt. 2.3.82 marked as annexure R-1 and that the work entrusted to the applicant was on job contract basis, that remaining 19 persons were given minimum scale of pay in the cadre of helper, that, subsequently, those identified 19 contract workers were directed to furnish the particulars regarding their latest educational qualifications to be submitted to CSIR for further action that the case of the applicant could not be considered as he has not worked continuously 240 days in any of the previous 2 years prior to 1.3.88 that it is not a fact that the juniors to applicant got a minimum scale of pay and were regularised ignoring the case of the applicant, that the actual fact is that these contract workers <sup>who</sup> had worked for more than 240 days <sup>prior to 1.3.88</sup> in a year ~~for which~~ their names find place in the list that the application is barred by limitation that the applicant had worked for 66 days during the year 1983-84, for 81 days during 1984-85, 105 days during 1985-86 and for 50 days during the year 1987-88 that the details of the number of days, the applicant had worked have been shown in annexure R-4 that the annexure-2 to the OA is not related to the subject that the certificate is not an official document since he was not the competent authority to issue such a certificate that in the representation dated 2.2.90 the applicant had stated to have been working at least 2 years which is contrary to the averments made in the OA that the applicant in his representation had stated that he was retrenched from duty during 1986 which is also contrary to the averments made in the OA that the representation of the applicant did not contain ~~true~~ facts and that therefore the applicant is not qualified or eligible for regularisation in the organization under the respondent-2.

During the course of arguments the learned counsel for the respondents furnished the records to show that the applicant had worked under the respondent No.2 only on job contract basis between 83-87 and the details are in Annexure R-4.

After considering the various contentions raised by the learned counsel for the parties the following points arise for our determination:

- (a) Whether the applicant was working under the Respondent-2 as a casual labourer as stated by him or as job contract worker as asserted by respondents. When the applicant
- (b) Whether the applicant is to be regulated as casual labourer under R-2.
- (c) Whether the applicant is eligible for any relief
- (d) To what order.

Our findings:

- (a) No. He was working only on job contract basis.
  - (b) No
  - (c) No
  - (d) As under
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The applicant prays for regularisation of his service on the ground that he had worked as casual labourer under the respondent-2 between 1982-1992. On the other hand, the respondents contend that the applicant had worked between 1983-87 on job contract basis, that as per the agreement arrived at between the management and the RRLEA dt.1.3.88 it was agreed to regularise those casual labour employees who had worked for 240 days in any of the preceeding 2 years <sup>prior to 1.3.88</sup> that, likewise, they prepared a list of 28 employees who were eligible for regularisation that nine out of them were regularised and the remaining 19 were given the scale of pay post of helper. It is their case that the applicant had not worked in the establishment after 1987. It is further the case of the respondents that between 1983 and 1987 the applicant had worked purely on job contract basis. In support of their contention they rely upon the Annexure-R4 and Annexure R-9. Annexure R-4 is the details of the work carried out by the applicant between 1983 and 87 and the wages paid.

During the course of arguments the learned counsel for the respondents even produced the payment registers to show that the applicant was paid on completion of the contractual work. Annexure R-9 is a copy of the application Dt.31.1.85 submitted by the applicant to respondent-2. In the said application the applicant had requested the respondent-2 to include his name to provide contractual work as and when necessitated in the Laboratory. He has further stated therein that he had done previously both industrial and domestic clearing in various private and semi-Government organizations.

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As regards the representation dated 2.2.90 which is at Annexure R-6, the respondents submit that there are variations in the averments made in the OA and the submissions made in the representation. From the documents and records produced by the respondents, we are convinced that the applicant was carrying out only the contractual jobs in the laboratory and therefore he is not eligible to be considered as a casual labourer for the purpose of regularisation.

It is an admitted fact that after 1987, the applicant has not worked in the laboratory. The laboratory and the RRLEA entered into an agreement on 1.3.88. In accordance with the said agreement the Laboratory prepared the list of 28 employees who were eligible for regularisation in accordance with the agreement reached. The applicant had not at all worked continuously for a period of 240 days in any of the preceding 2 years prior to 1.3.88. Therefore, it is their case that the applicant did not come within the zone of consideration for regularisation. Moreover he was carrying out the work entrusted to him on contract basis. Therefore we humbly feel that the applicant is not entitled to be regularised.

In fact the Laboratory started regularisation from 1.3.88 onwards. The applicant slept over his rights till 1993. The respondents contend that the applicant had not agitated his rights well in time. After a lapse of nearly 6 years he has filed this OA. We feel that the contention of the respondents is well founded. The applicant was not eligible to be considered for regularisation as he had not worked continuously for a period of 240 days in any of the preceding 2 years prior to 1.3.88. More over the applicant had performed certain contractual work in the laboratory.

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Performance of contractual work in the laboratory does not entitle the applicant to claim for regularisation on par with the casual labour who were working in the laboratory and who fulfilled the conditions in accordance with the agreement reached between the RRLEA and the laboratory on 1.3.88. The applicant was only a job contract worker. He cannot be regarded as a casual labourer.

The respondents further submitted that no employee junior to the applicant was regularised in the scale of pay of helper in the Laboratory.

The learned counsel for the applicant relied upon the following decisions.

AIR 1987 Supreme Court 2342


AIR 1989 Supreme Court 1117

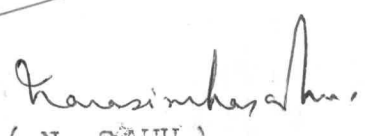
AIR 1990 Supreme Court 371

The principles enunciated in these cases are quite distinguishable and they related to giving certain benefits to the employees who were working on casual basis for a number of years without regularisation. The applicant was only a job contract worker. Hence we feel that the principles enunciated in these decisions are not attracted to the facts and circumstances of the case.

Hence we feel that the applicant is not entitled to any of the reliefs claimed in the OA.

In view of the above the OA is liable to be dismissed. Accordingly the same is dismissed. No order as to costs.

  
(B.S. JAI PARAMESHWAR)  
MEMBER (JUDL.)

  
(N. SAHU)  
MEMBER (ADMN.)

Date \_\_\_\_\_