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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 317 of 1993

Date of Decision: 14.9.1993

B.S. Reddy

Applicant(s)

Versus

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

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


MEMBER (ADMINISTRATIVE)
17 SEP 93

17/9/93
VICE-CHAIRMAN

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Respondents

For the applicant

Mr.B.Nayak
Advocate

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 (ADMN)

JUDGMENT

MR.K.P.ACHARYA, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays for a direction to the opposite parties to regularise the services of the petitioner against which she is now working. Petitioner has been working on daily wages under OP No.3 at Bhubaneswar. Hence this application with the aforesaid prayer.

2. In their counter the opposite parties maintain that the case being devoid of merit is liable to be dismissed.

3. This case came up for admission and hearing to-day. We have heard Mr.B.Nayak, learned counsel for the petitioner and Mr.Ashok Mishra, learned Standing Counsel. We have also heard Mr.S.Maity, Deputy Superintendent, Archaeologist (Chemist) representing Opposite Party No.3

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4. Though it was vehemently urged by Mr. Nayak, learned counsel for the petitioner that one Shri Fagu Behera working since 15.7.1979, much later than the present petitioner; his regularisation in supersession over the present petitioner is illegal, and therefore, prayer of the petitioner should be allowed. On the other hand Mr. Ashok Mishra, learned Standing Counsel submitted with equal vehemence that Shri Fagu Behera was in charge of watch and ward duty and though working on daily wage basis, yet he is bound to get preference keeping in mind the nature of work entrusted to him and the duties rendered by him.

5. We do not propose to enter into these controversial issues including the fact that there was some dispute regarding the date on which the petitioner Smt. B.S. Reddy was engaged in the department. But we find here is a widow (petitioner) who has been sustaining her livelihood due to the ~~gracious~~ and kind act of O.P. No. 3. We very much appreciate the attitude of OP No. 3 in taking this sympathetic view over a poor destitute widow who has been running from post to pillar to sustain her livelihood. While appreciating the sympathetic attitude of OP No. 3, we would request OP No. 3 to extend the same benevolent and sympathetic attitude to the petitioner until she is regularised against a regular vacancy by giving her an engagement on daily wage basis on each and every day (except artificial ^{break} ~~break~~ which should be the minimum and notified holidays) so that she could be able to fill her stomach. In this connection, we feel persuaded to

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mention the observations made by Their Lordships of the Supreme Court in the case of Daily Rated Casual Labour, P. & T. Department V. Union of India reported in AIR 1984 SC 2342. Hon'ble Mr. Justice Venkataramiah speaking for the Court was pleased to observe as follows :

" 6. 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 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 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

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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 1200 days of service; and (iii) those who have completed more than 1200 days of service for 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 Articles 14 and 16 of the Constitution. It is also opposed to the spirit of Article 7 of the International Covenant of Economic, Social and Cultural Rights, 1966 which exhorts all State 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 vs. State of U.P.*, (1986) 1 SCC 637 this Court has taken almost 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 workmen who were employed as casual labourers 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 the corresponding cadres but without any increments with effect from 5th February, 1986 on which date the first of the above two petitions, namely, Writ Petition No. 302 of 1986 was filed. The petitioners are entitled to 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. In view of the aforesaid observations of the Hon'ble Supreme Court, we would direct that the petitioner

should be paid basic scale of pay of a regular Group D employee with effect from the date or dates on which the petitioner has worked after filing of this application i.e. 29.6.1993. Arrears be calculated and paid to the petitioner within fortyfive days from the date of receipt of a copy of this judgment. Thus the application is accordingly disposed of. No costs.


MEMBER (ADMINISTRATIVE)

14 SEP 93


VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 14.9.1993/ B.K.Sahoo