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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.230 OF 1995
Cuttack, this the 8th day of December, 1997

Susama Dei Applicant.

Vrs.

Union of India and others Respondents.

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not? Yes.
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

Somnath Som
(SOMNATH SOM) 1997
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.230 OF 1995
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Sushama Dei, aged about 28 years,
wife of Achyutananda Bhoi,
at present residing at Nayapalli(Sahar Sahi),
P.O-Nayapalli,
Bhuaneswar-14, Dist.Khurda Applicant.

Vrs.

1. Union of India, represented by
its Secretary,
Ministry of Agriculture,
Department of Agriculture & Veterinary Services,
New Delhi.
2. Director, Central Poultry Breeding Farm,
At/PO-Bhubaneswar-12, Dist.Khurda.
3. Superintendent, Random Sample Poultry
Performance Testing Centre,
At/PO-Bhubaneswar, Dist. Khurda ... Respondents

Advocates for applicant - M/s R.N.Naik, A.Deo,
B.S.Tripathy, D.K.Sahoo,
P.K.Misra &
M.P.J.Roy.

Advocate for respondents - Mr.U.B.Mohapatra.

O R D E R

Somnath Som
8.12.97.
Vice-Chairman

In this application under Section 19 of
Administrative Tribunals Act, 1985, the applicant has
prayed for a direction to the respondents to regularise the
services of the applicant in a Group-D post.

2. The applicant's case is that she belongs to Schedule Caste and as her husband is not keeping well, she has become the breadwinner for the family. The applicant was working as casual labourer on daily wage basis in Central Poultry Farm, Nayapalli, Bhubaneswar. She worked as such from 11.1.1989 to 28.8.1989 continuously and thereafter she had been working on intermittent basis. The applicant states that she was paid daily wages though she was working as a Group-D employee. The applicant approached the authorities on a number of occasions for regularisation of her services, but no effective steps were taken. The applicant thereafter approached the Tribunal in O.A.No.83 of 1992 which was disposed of in order dated 5.8.1993. The relevant portion of the order is quoted below:

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".....We do appreciate the financial difficulties through which this poor lady has been passing. But at the same time we cannot shut our eyes to the administrative difficulties. Question of regularisation does not arise till a regular post is available. Whenever regular post is available, the authority may consider the case of the petitioner for regular appointment but pending such regularisation, Opposite Party Nos. 2 and 3 are directed to engage the petitioner on casual basis according to the availability of work in their office. First preference should be given to this lady to employ her as casual labourer whenever work is available.".

According to the applicant, the above order was not complied with and the applicant filed M.A.No.678 of 1993 in which the applicant filed an affidavit indicating that the

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respondents have engaged two other persons without considering her case. The respondents filed a rejoinder in that Misc.Application controverting the assertions of the applicant and stating that two other persons were engaged on contract basis. According to the applicant, the Tribunal directed the respondents to give preference to the applicant while allotting work on contract basis. In pursuance of this order, the respondents in order dated 27.6.1994 (Annexure-2) offered some job to the applicant on contract basis. According to the applicant, she filed another M.A.No.376 of 1994, but the Tribunal did not feel it apt and proper at that time to interfere. The case of the applicant is that some vacancy has arisen in Group-D category posts and therefore, the applicant has prayed that her case should be considered for regular appointment in Group-D post. More particularly it has been stated that two posts of Poultry Attendants are vacant and for these posts, no educational qualification is necessary and therefore, she has prayed for regularisation of her services in Group-D post of Poultry Attendant.

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3. Respondents in their counter have submitted that at present there are no vacancies in Group-D posts to regularise the services of the applicant. Respondents have stated that whenever such vacancy occurs, the case of the

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applicant will be considered along with other casual labourers, some of whom have worked for much longer period than the applicant. Respondent no.2 has prepared a seniority list of casual workers and when Group-D posts fall vacant, these casual labourers will be considered according to their seniority and suitability. It is further submitted by the respondents that in order dated 28.12.1992 (Annexure-R/1) Government of India have abolished appointment of casual workers. The work previously done by the casual workers is now given to contract workers. It has been further alleged by the respondents that in accordance with the order passed by the Tribunal in O.A.No.83 of 1992 offer of contract work was given to the applicant in order dated 26.6.1994 (Annexure-R/2), but the applicant did not turn up to do the work on contract basis. Later on, she approached respondent no.2 and was engaged as a contract labourer in September and October 1995. Thereafter no work was available for contract workers and therefore, she had been disengaged and has been advised to contact the authorities from time to time so that she can be again engaged for work on contract basis on availability of work.

As against the applicant's assertion that she has worked on daily wage basis from 11.1.1989 to 28.8.1989, the respondents have been fair enough to admit that she worked

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on daily wage basis for longer period from 13.1.1989 to 19.11.1989. Respondents have stated that the applicant had never worked as a Group-D employee nor has she worked against a Group-D post and therefore, she is not entitled to pro-rata payment for her work. She has also never approached the authorities for payment of her wages on pro-rata basis. As regards the applicant's assertion about two vacancies arising in the post of Poultry Attendant and there being no educational qualification for the post, respondents have pointed out that only one post of Poultry Attendant fell vacant due to promotion of Bhimanada Dehuri to the post of Poultry Trapnester which is a Group-C post. Shri Bairagi Bhoi, who was Poultry Trapnester retired on invalidation ground and according to the Rules, his son was considered for appointment to the post of Poultry Attendant which had fallen vacant. Respondents have also stated that the qualification required for the post of Poultry Attendant is Middle Class pass and the statement of the applicant that there is no educational qualification prescribed for the post is not correct. Respondents have further stated that they have not regularised any other casual workers and therefore, the applicant cannot complain of hostile discrimination against her. On the above grounds, the respondents have opposed the prayer of the applicant.

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4. I have heard the learned lawyer for the applicant and the learned Additional Standing Counsel appearing on behalf of the respondents.

5. Learned lawyer for the petitioner has filed two written submissions with copy to the learned Additional Standing Counsel. In course of hearing as also in the written submissions, the learned lawyer for the petitioner has relied on the decisions of the Tribunal in O.A.Nos. 26 and 134 of 1990. In OA No. 26/90, which was disposed of in order dated 14.8.1990, a direction was issued to the respondents to pay to the applicant, one Sabitri, a casual labourer in the Central Poultry Breeding Farm, on daily wage basis and also to consider her case for regularisation on the availability of a vacant Group-D post. In O.A.No.134/90, which was disposed of in order dated 24.10.1990, the applicant was a casual labourer in Central Poultry Breeding Farm, Bhubaneswar. The Tribunal disposed of the application with a direction to the respondents to prepare a scheme for absorption of casual labourers including the applicant and absorb them in order of their seniority and having regard to availability of work. It was also ordered that the applicant should be paid the

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difference between the amount which ought to have been paid on pro-rata basis at the minimum of scale of pay of Group-D Government servant and the payment actually made for days he worked on or after 20.4.1989. It is submitted by the learned lawyer for the applicant that in terms of the orders passed in O.A.Nos. 26 and 134 of 1990, the applicant should be paid wages on pro-rata basis for the days she has worked under the respondents as casual labourer. With regard to the question of regularisation, the learned lawyer for the applicant submitted that Hon'ble Supreme Court in a series of decisions have expressed the view that all public sector undertakings should function as model and enlightened employers. The Hon'ble Supreme Court have felt that it is not correct to keep employees on daily wage basis for long period without their services being regularised. It was felt that all those casual workers who have been in continuous employment for more than six months should be regularised. The learned lawyer for the petitioner has referred to the decision of the Hon'ble Supreme Court in All Manipur Regular Posts Vacancies Substitute Teachers' Association v. State of Manipur, AIR 1991 SC 2088, in which their Lordships directed the State government to consider the case of regularisation of such substitute ad hoc teachers before making direct appointment. The manner of making regularisation was also

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laid down in the above decision. In view of this, the learned lawyer for the petitioner suggested that the applicant's service should be regularised. In this connection, the learned lawyer for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of State of Haryana and others v. Piara Singh and others, etc., AIR 1992 SC 2130. The learned lawyer for the petitioner has also referred to the case of Chief Conservator of Forests v. J.M.Kondhare (S.C.), 1996(1) C.L.R. 56, in which it was held that where persons have been employed as casual workers for longer period, the need for permanent engagement can be straightaway presumed.

6. I have considered the above submissions of the learned lawyer for the petitioner. The first point to be considered is regarding regularisation of the service of the applicant in a Group-D post. Respondents in their counter have pointed out that there are no Group-D posts vacant and as and when vacancy arises in Group-D post, the cases of casual workers in accordance with their seniority and suitability will be considered and the applicant's case will also be considered at that time subject to her seniority and suitability. As against the applicant's assertion that two posts of Poultry Attendant are vacant, the respondents have pointed out how one vacancy has arisen

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because of some person retiring on invalidation and how according to the Rules they have recommended the son of the invalidated employee for appointment to that post. Besides this, there are no vacant posts and therefore, the applicant's service cannot be regularised straightaway. Moreover, a Group-D post has to be filled up according to the rules of recruitment. Hon'ble Supreme Court in the case of State of Himachal Pradesh v. Suresh Kumar Verma and another, AIR 1996 SC 1565, have held that appointment on daily wages cannot be a conduit pipe for regular appointments which would be a backdoor entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. The Hon'ble Supreme Court have also pointed out that even for Class IV employees, recruitment according to the rules is a pre-condition. In view of the above, the services of the applicant cannot be regularised firstly because there are no vacant posts, secondly because her case has to be considered along with others, and thirdly because Class-IV posts have to be filled up in accordance with the recruitment rules. In consideration of the above, the prayer for regularisation of services of the applicant is held to be without any merit and is rejected.

7. The other aspect is about getting pro-rata payment. This prayer has not been made in the O.A. But at

the time of hearing, the learned lawyer for the petitioner has referred to the decisions of the Tribunal in O.A.Nos. 26 and 134 of 1990 in which direction was given for making payment on pro-rata basis. In the instant case, the applicant has not worked against a vacant Group-D post. She had worked as a casual labourer on day-to-day basis till November 1989. In O.A.No.134 of 1990, the Tribunal in their order took note of the fact that the O.A. was filed on 20.4.1990 and therefore, they allowed payment on pro-rata basis starting from the past one year, i.e. from 20.4.1989. In this case, after November 1989, the applicant has not worked on day-to-day basis as a casual labourer. She herself has stated in the application that she has worked occasionally and intermittently as a casual labourer. No details of such engagement have also been given by her. As such when the application has been filed on 20.4.1995, I hold that no case for payment on pro-rata basis has been made out. On 20.4.1994 the applicant was not under the engagement of the respondents. In order dated 27.6.1994 she was offered some work on contract basis which she did not take up. In view of this, the prayer for payment of wages on pro-rata basis which was not there in the O.A but has been made during the hearing, is also held to be without any merit and is rejected.

*Concurring
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8. In the result, therefore, I hold that the O.A. is without any merit and is rejected, but, under the circumstances, without any order as to costs.

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