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O.A.NO.354 OF 1996

ORDER DATED 18-04-2002.

Applicants (four in number) claim to have worked as Watchman, Sweeper and Bearer of Food etc. in the Office of the Assistant Director (Special Area Game) Water Sports Complex, Jagatpur, Cuttack, under the Respondent No. 3 since 1993, & 1994, till their services were dispensed with on 30.4.1996, on casual/NMR basis. It has been claimed in this Original Application that even though all of them have put in 240 days in a calendar year, the Respondents have neither conferred temporary status on them as per the Scheme prepared by the Government of India nor they have been regularised in their respective posts. It is further stated that without regularising the services of the Applicants, the Respondents have brought the persons from other centres only to oust the Applicants which amounts to violation of Articles 14, 15 and 21 of the Constitution of India. In the above context, they have come up in this Original Application with a prayer to direct the Respondents to confer them temporary status and consequent regularisation in the respective posts.

2. In their counter, the Respondents have admitted the factual matrix of the case. They have, inter alia stated in paragraph 8 of the counter that action was initiated for filling up the vacant posts by calling for names from the local employment exchange and interview was arranged on 10.1.1995 at SAI, SAG, Jagatpur. But due to disturbance caused by local residents, the interview could not be held. Therefore, staffs appointed at other centres

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were transferred to join at Jagatpur but due to resistance of the local people they could not join and returned back to Calcutta; as such, day-to-day work ~~was~~ continued by engaging casual employees <sup>by</sup> and extending their services from time to time. It is averred that as the Applicants were engaged on casual basis and they have not continuously worked for 240 days in a year, the question of engaging them on regular basis does not arise. It has further been stated in the counter that regular appointment can only be given against sanctioned post and all sanctioned posts, as stated above, is not required to be filled up, at present the question of regularising applicants against any sanctioned post does not arise.

I have heard Mr. Mishra, Advocate for the Applicant and Mr. S. Behera, learned Additional Standing Counsel for the Respondents and perused the records.

On a harmonious reading of the Original Application and the averments made in the counter, it is crystal clear that there are sanctioned posts and the Applicants were engaged on casual basis against those posts. On 30.5.1996 while passing orders for issuance of notice to the Respondents, <sup>ad-</sup> this Tribunal as an interim order, directed as follows:

"In view of their past services, Respondents 2 and 3 are directed to engage them in their respective jobs as soon as the vacation of the hostel ends".



It has been admitted in the counter by the Respondents that there is need of work/man power. It is also admitted by the Respondents that there are vacant posts. As such, on the face of the interim order passed by this Tribunal on 30-5-1996, the Applicants might have been working on such casual basis on the principles that one casual labourer can not be substituted by another casual labourer, and might have been completed 240 days in a calendar year by now.

The Hon'ble Apex Court in the case of RATANLAL VRS. STATE OF HARYANA (1985) 4 SCC 43 have deprecated the State Government's practice of appointing a large number of teachers on adhoc at the commencement of the academic year, terminating their services before the next summer vacation or earlier and reappointing them on adhoc basis on the commencement of the next academic session holding that it is unreasonable and arbitrary and a "hiring and firing" police. The court said thereby giving such types of employment, the Government appeared to be exploiting the situation and it is observed that the Govt. is expected to function as a "model employer". After the decision in Ratanlal, in innumerable decisions of the Apex Court, the same view was taken. It is not necessary to go in for an idle parade of familiar knowledge. It would be enough if I refer to the latest decision on this point which is KARNATAKA STATE PRIVATE COLLEGE STOP GAP LECTURERS ASSOCIATION VRS. STATE OF KARNATAKA reported in (1992) 2 SCC 29 wherein about such a practice it was stated that by doing so the Government was acting

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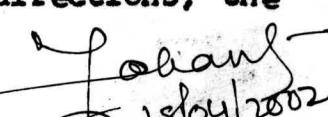
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"more like a private business house of narrow outlook than the Government of a welfare State".

In that view of the matter, liberty is given to the Applicants to make a representation alongwith all documentary proofs, if any, substantiating their working of 240 days in a calender year to be conferred with temporary status within a period of 30 (thirty) days hence and on receipt of such representation, the Respondents/Authorities are directed to give a personal hearing to each of the Applicants and do well on the representation of the Applicants within a period of 30 (thirty) days of receipt of the said representation and on the event of completing such 240 days of work, as aforesaid, the Respondents are directed to confer temporary status on the Applicants and, as a consequence, grant all consequential benefits as required as per the scheme of granting temporary status including regularisation. It is however, made clear that till such time, the posts lying vacant in the category of the Applicants, shall not be filled up by any person other than the Applicant.

With the above observations and directions, the OA is allowed. No costs.

  
18/04/2002  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)