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10

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.852 OF 1996
Cuttack this the 23rd day of February, 2000

Narayana Chandra Barik

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to 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)
VICE-CHAIRMAN 23/2/2000

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION No.852 OF 1996
Cuttack this the 23rd day of February, 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Narayana Chandra Barik,
aged about 31 years,
S/o. Alekh Ch.Barik, resident of Dandisahi,
PO: Malikapur, Dist: Jajpur, now working
as Casual Labourer at Jajpur under
Sub-Circle, Cuttack Archaeological Survey
of India

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Applicant

By the Advocates : M/s.Bibekananda Nayak
A.K.Dora
B.B.Mohapatra

-Versus-

1. Union of India
represented through the Secretary,
Department of Culture, Ministry of
Human Resource and Development,
Shastri Bhavan, New Delhi
2. Director General,
Archaeological Survey of India
Janpath, New Delhi-11
3. Superintending Archaeologist
Bhubaneswar Circle, Archaeological Survey
of India, Old Town, Bhubaneswar
Dist: Khurda

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Respondents

By the Advocates : Mr. B.Dash
Addl.Standing Counsel
(Central)

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ORDER

MR.SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to respondents to grant temporary status to him as per the scheme of 1993. He has also prayed for quashing the order dated 13.11.1996 at Annexure-A/4 and for a direction to respondents to extend all benefits retrospectively from the date his juniors have been regularised.

2. The case of the applicant is that he has been working as casual labourer under the respondents from 1.6.1988. He was appointed as such on being sponsored by the Employment Exchange, Bhubaneswar and has been discharging the Watch and Ward duty till now. The Department of Personnel and Training have framed a policy on 7.6.1988 in pursuance of the decision of the Apex Court with regard to engagement and regularisation of casual labourers. This policy has been implemented by the respondents in order dated 26.7.1988 at Annexure-A/1. As per Clause - IV of the said policy, Respondent No.3 has extended the benefit of minimum of pay of Group D employee to the applicant plus usual D.A. in order dated 13.4.1990 vide Annexure-2. The rate of daily wage has been subsequently enhanced. The applicant has worked for more than 240 days in each of the previous years. In order dated 4.4.1994 at Annexure-A/3, the applicant was transferred to Jajpur. It is submitted by the applicant that he was engaged as casual labourer by Res.3, but R.4 without any authority terminated the service of the applicant vide Office Order dated 13.11.1996 at Annexure-A/4. It has also been advised that if he is

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13

13

interested to work under the Head Special Repairs at Jajpur he should contact Res.4. He has also stated that earlier he was doing Watch and Ward duty and he has now been advised to take up the manual work at Jajpur which amounts to change in conditions of service. He has further stated that Department of Personnel and Training has brought into force a Scheme regarding grant of temporary status and regularisation of casual workers in pursuance of the judgment dated 16.2.1990 in the case of Raj Kamal vs. Union of India. This Scheme is at Annexure-A/5. This scheme has already been implemented by the respondents in order dated 1.11.1993 vide Annexure-A/6. Applicant has stated that since he has rendered services for more than 240 days he is entitled to grant of temporary status and consequent upon grant of temporary status he is entitled to all the benefits as per Para-4 of the said Scheme. It is also stated that Res. 3 is not maintaining seniority list of casual workers category-wise. This seniority list has to be maintained divisionwise and as the applicant comes under the Bhubaneswar Division, he should be given Divisionwise seniority and in case of retrenchment/termination, seniority list should be followed. It is further stated that some juniors to the applicant in the rank of casual workers like Shri Anup Kumar Patnaik and four others, whose names have been mentioned at Annexure-A/7 have been regularised in Group D posts ignoring the case of the applicant. In the context of the above facts, the applicant has approached the Tribunal with the prayers referred to earlier.

3. Respondents in their counter have opposed the

14

14

prayer of the applicant. They have stated that applicant was engaged as casual worker from 1.6.1988. He was paid from the funds sanctioned for Annual Repairs and when the funds under this Head were exhausted, applicant along with other casual labourers should have been normally disengaged. But in order to save them from starvation, instructions were issued to the concerned Heads of Sub-Circles to reengage them under Plan Head for paying their wages till the remaining part of the Financial Year upto i.e. 31st March, 1997. Respondents have stated that in accordance with the instructions, 1/30th of basic pay and D.A. have been given to the applicant along with others. It is further stated that the applicant was never sponsored through any Employment Exchange and was engaged on sympathetic consideration after untimely death of his "previous employer" ('Sic') on the basis of request of the then Deputy Superintendent Archaeologist. Respondents have further stated that as per Office Memorandum dated 12.7.1994 casual labourers who have not been sponsored through the Employment Exchange are not eligible to get temporary status. As the applicant was not sponsored by any employment exchange, question of granting temporary status to the applicant did not arise. Respondents have further stated that because of exhaustion of funds under the Head Annual Repairs, the applicant along with others were disengaged in order at Annexure-A/4. Inadvertantly in this order the word 'terminated' has been used instead of 'discontinued'. On the question of the applicant completing 240 days respondents have stated that these are the matters on record. It has been further stated that all the names

mentioned in Annexure-A/7 are seniors to the applicant. Shri Anup Pattnaik was willing to work in Madhya Pradesh and had given his willingness in writing and therefore, he was regularised against a vacancy under Chhatisgarh Region with posting at Jagdalpur. All the others in Annexure-A/7 are working on adhoc basis. On the above grounds respondents have opposed the prayer of the applicant.

3. Applicant has filed an affidavit, in which he has stated that Shri Anup Pattnaik whose name appears at Sl. No.1 in Annexure-A/7 has been regularised from 1993. Shri Ajaya Kumar Pattnaik against Sl. No.2 was appointed as Monument Attendant on adhoc basis in 1996. Shri Antaryami Padhi has been regularised as Monument Attendant from August, 1997. Similarly S/Shri Abhayaram Singh and Shri S.N.Bisoi have been regularised in August, 1997. It is further stated that Shri B.K. Mallia was engaged as casual labourer on 1.6.1989 and has been regularised from August, 1997. It has been further stated that at present the applicant is receiving wages @ Rs.76/- per day.

4. Before going into the matter further it has to be noted that in order dated 25.8.1997 passed by the Tribunal respondents were directed to produce the seniority list, which according to Para-10 of their counter they are maintaining. It was directed that as the seniority list is being maintained there should not be any difficulty in producing copy of the seniority and direction to that effect was issued to produce copy of the seniority list by 8.9.1997. Thereafter several adjournments were given for production of seniority list. On 16.9.1999 it was submitted by the learned

Addl. Standing Counsel Shri B. Das that he wanted further three weeks time to obtain the seniority list. To-day when the matter was taken up for hearing it was submitted on behalf of Shri B. Das that seniority list had not been given to him by the respondents. In view of delay of more than two years for filing a copy of seniority list, which according to respondents is being maintained by them, further time cannot be allowed to respondents to produce the seniority list.

5. I have heard Shri B.N. Nayak, learned counsel for the applicant and Shri B. Das, learned Addl. Standing Counsel appearing for the respondents and have perused the records.

6. Applicant has filed rejoinder to the counter which has been perused.

7. The first prayer of the applicant is for conferment of temporary status on him in pursuance of the Scheme called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India 1993. This scheme which is at Annexure-5 came into force with effect from 1.9.1993. This has also been adopted by the respondents vide Circular dated 1.9.1993 of Director General, A.S.I. (Annexure-6). According to ^{Para} 4.1 of the Scheme temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.M. and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days ⁱⁿ / case of offices observing six days week and 206 days in case of offices observing five days week. It is also mentioned that such conferment of temporary status would be without reference

14

to creation/availability of regular Group D posts. It is further provided that conferment of temporary status would not involve any change in his duties and responsibilities and the engagement will be on daily rated pay on need basis. It is the admitted position between the parties that the applicant was engaged as casual labourer on 1.6.1988. Applicant has mentioned in his Original Application that he had completed 240 days in each year after his engagement, prior to filing of the Original Application. Respondents in their counter have merely stated that these are matters on record. Therefore, it must be held that respondents have not denied that the applicant has completed 240 days of engagement in a particular year prior to coming into force of the Scheme on 1.9.1993. Respondents have opposed the prayer of the applicant for grant of temporary status on the ground that he was not sponsored through any employment exchange at the time of his initial engagement and in accordance with circular dated 12.7.1994, casual labourers who have not been sponsored through the employment exchange are not eligible to get temporary status. I am not prepared to accept this contention of the respondents on the following grounds. Firstly this circular dated 12.7.1994 has not been enclosed by the respondents and therefore, it is not possible to verify if the circular applies to the applicant or not. Secondly the scheme authorising grant of temporary status came into force with effect from 1.9.1993 and the applicant had by that time completed 240 days of work in a year as casual labourer. Therefore, under the scheme he has acquired a right to be granted temporary status. This

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18

right cannot be taken away by the issue of circular dated 12.7.1994, if at all there is such a circular. Such a circular can only operate prospectively. It has been urged by the learned counsel for the petitioner that the scheme does not envisage any disqualification of a casual labourer who has been engaged otherwise than through employment exchange from getting temporary status. This scheme has been brought out in pursuance of decision of the Principal Bench in the case of Raj Kamal vs. Union of India as mentioned in the circular itself. As a matter of fact the scheme as prepared by the Department was submitted to the Tribunal which approved the same and therefore, the benefit sought to be given under the scheme cannot be taken away by imposing another condition subsequently. I find much force in the above submission of the learned counsel for the petitioner. But in view of the fact that I have held circular dated 12.7.1994, if any, is not applicable to the petitioner being prospective in nature, it is not necessary to take a view on the above submission of the learned counsel for the petitioner. In view of this I hold that the applicant is entitled to be considered for grant of temporary status from 1.9.1993. Respondents are therefore, directed to consider the case of the applicant for grant of temporary status to him with effect from 1.9.1993 as he was in engagement on the date of issue of circular dated 10.9.1993 within a period of 120(One Hundred Twenty) days from the date of receipt of this order.

J. Com.

8. With regard to grant of temporary status, applicant has not made any averment that any of his juniors have been granted temporary status. In view of this I also

19

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19

direct that respondents while granting temporary status to the applicant as per the scheme dated 10.9.1993 would be required to consider grant of temporary status to all other casual labourers who are senior to the applicant as per the seniority list maintained by them provided they are also entitled under the scheme for grant of temporary status. This prayer of the applicant is accordingly disposed of.

9. The next prayer of the applicant is for regularisation. The applicant has mentioned that at Annexure-A/7 names of five other casual labourers, who according to him are juniors, have been regularised in the post of Group-D. Respondents have stated in their counter that all those five others whose names have been mentioned at Annexure-A/7 are senior to the applicant. Applicant has filed an affidavit in which he has mentioned that all the persons at Annexure-A/7 are junior to him. For determining this point, seniority list, which according to Para-10 of the counter is being maintained by the respondents was called for. But inspite of passage of more than two years, copy of seniority list has not been produced. In view of this, the prayer for regularisation is disposed of with a direction to respondents that in case any of the persons junior to the applicant as casual labourer in the seniority list as maintained by the respondents has been regularised in Group D posts either on regular or adhoc basis, then respondents should consider inducting the applicant in a Group D post either on regular or adhoc basis from the date his immediate junior has been so inducted.

10. The last prayer of the applicant is for quashing

126

the order at Annexure-A/4. Admittedly applicant has worked as casual labourer and even after grant of temporary status if there is no work his services can be dispensed with subject to the condition that while dispensing with the services of the applicant, respondents should follow the principle of LAST COME FIRST GO. There is no averment made by the applicant that while issuing order at Annexure-A/4 respondents have retained in engagement any person junior to the applicant as casual labourer. In any case, respondents have stated that casual labourers who have been disengaged were offered other engagement under the Head 'Special Repairs' in Jajpur. Applicant was working at Jajpur and there was no difficulty for him to get himself engaged under the Head of Special Repairs at Jajpur. The contention of the applicant that by such engagement his conditions of service are being changed to his detriment is without any merit because, a casual labourer is not a regular employee and has no conditions of service except what has been provided under the Scheme as also under the circular of Deptt. of Personnel & Trg. dated 7.6.1988 enclosed by the applicant as Annexure-A/1. In view of this I hold that there is no case for quashing the order at Annexure-4. This prayer is accordingly rejected.

11. In the result, the application is disposed of in terms of observations and directions made above, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOO