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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 963 OF 1996
Cuttack this the 28th day of July, 1999

Done

Smt.S. Ramakumari & another

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 Tribunal or not ? *No*

Somnath Som
(SOMNATH SOM)
VICE-CHAI~~TRAN~~
28.6.99

28-6-99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 963 OF 1996
Cuttack this the 28th day of July, 1999
Please,

CORAM:

**THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)**

...

1. **Smt.S.Ramakumari**, aged about 38 years,
D/O. S.Appalanaidu,
At present working as Casual Labourer
P & T Dispensary, Cuttack-753001
2. **Sri Mania Behera**, aged about 34 years,
S/o. Late Sukanta Behera of Village:Balisai
P.O:Jagatsinghpur, Dist: Jagatsinghpur
At present working as Casual Labourer
P & T Dispensary, At/PO/Dist:Cuttack-753001

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Applicants

By the Advocates : **Mr. H.P.Rath**

Versus

1. Union of India represented by the
Secretary to Govt., Ministry of
Communications-cum-Director General, Posts,
Dak Bhavan, New Delhi-110001
2. Chief Post Master General, Orissa Circle,
At/PO:Bhubaneswar, Dist: Khurda
PIN 751001
3. Senior Supdt. of Post Offices,
Cuttack City Division,
At/PO/Cuttack, Dist:Cuttack
PIN 753001
4. Chief Medical Officer,
P & T Dispensary, Cuttack
At/PO:Cuttack, PIN 753001
Dist:Cuttack

...

Respondents

By the Advocate : **Mr.Ashok Mohanty**

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ORDER

MR.G.NARASIMHAM, MEMBER(J): In this application for direction to the Department to treat the two applicants as full-time casual workers of the P & T Dispensary at Cuttack like other categories of staff of that Dispensary and to confer the benefit of temporary status with all consequential benefits from the date of their initial postings, for regularisation of service in Group D cadre, for continuance in the dispensary till they are absorbed in Group D posts, applicant No.1, Smt.S.Ramakumari initially joined in the dispensary on 10.10.1980 as Lady Attendant-cum-Sweepress and applicant No.2, Mania Behera joined on 9.5.1981 as Waterman and subsequently entrusted the work of Farash also. Since then they have been continuing in their respective capacity on contingent basis doing work six hours per day, i.e., the time of functioning of the dispensary. Their aforesaid prayers are based on the scheme dated 12.4.1991 (Annexure-A/10) through which temporary status can be conferred on casual labourers in employment as on 29.11.1989 and who had rendered continuous service of 240 days in a year or 206 days in case of five working days in a week.

2. There is no dispute as to their continuous service on contingent basis from the year 1980 and 1981 respectively in the P & T Dispensary rendering service six hours per day and during Sundays and Holidays two hours per day. It is also not in dispute that these two applicants approached this Tribunal earlier in Original Application Nos.496 and 497 of 1996 and this Tribunal by judgment dated 15.7.1996 (Annexures-18 and 19) directed the department to consider their representations.

However, representations dated 30.7.1996 (Annexures-20 and 21) by the applicants have been turned down. Hence this application. Prayer for filing joint application has been allowed.

Facts are not in dispute. The Department, however, in counter resists the relief claimed by the applicants mainly on the ground that the scheme dated 12.4.1991(Annexure-10) is only applicable to full-time casual workers working for eight hours per day and not for part-time casual workers like the applicants working for six hours. The counter also refers to a purported ruling of the D.G.(Posts) in letter dated 1.3.1993 which disallows such claims. This letter has been marked as Annexure-C wherein it has been mentioned that casual labourers engaged in P & T Dispensary, where the full working hours are less than eight hours daily are not eligible for temporary status.

3. In the rejoinder the applicants while reiterating the facts as averred in the Original Application vehemently pleaded that the work, entrusted to them are of regular nature and not seasonal or intermittent in nature and their appointments were made on the basis of work load in the dispensary. Further, the Government of India in the Ministry of Personnel and Training, Administrative Reforms and Public Grievance in Office Memorandum dated 7.5.1985 (Annexure-26) directed that having regard to the fact that casual workers belonging to weaker sections of the society, termination of their services will cause undue hardship to them, their absorption in Group D cadre can be considered even

if they were recruited otherwise than through employment exchange, provided they are eligible. The fact that the applicants are eligible is evident from the circumstances that the P & T Dispensary, for the last 18 years is still depending on them for the purpose of work. Further the said Ministry in Office Memorandum dated 26.10.1984(Annexure-27) desired that casual labourers with a minimum of 240 days of work or more in a year for a minimum of two years are to be regularised in Group D posts in the offices having six working days in a week. This apart, the Deputy Director General(Medical), Eastern Region, in his inspection note dated 10.9.1997 (Annexure-28) strongly recommended regularisation of services of the applicants.

4. We have heard Sri H.P.Rath, learned counsel for the applicants and Shri Ashok Mohanty, learned senior counsel appearing for the respondents and also perused the records.

5. Annexure-10, i.e. casual labourers(Grant of temporary status and regularisation) Scheme issued by the Ministry of Communication on 12.4.1991, clearly lays down that temporary status would be conferred on the casual labourers in employment as on 29.11.1989 and who continue to be currently employed and have rendered continuous service of at least one year during which year they have been engaged for a period of 240 days(206 days in case of offices observing five day weeks). After rendering three years continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary Group D employees for the purpose of contribution to G.P.F. and other financial benefits

enumerated therein. It is pertinent to mention at this stage that the scheme does not distinguish between casual labourers working for eight hours per day and casual labourers working less than eight hours. The scheme is also silent as to the minimum number of hours for which a casual labourer has to be engaged in a day.

However, in letter dated 16.6.1991 issued by D.G.(Posts) vide Annexure-A/11, it has been mentioned that part-time casual labourers are not covered under the scheme under Annexure-10. At the same time the letter is not clear as to who can be called full-time casual labourers and who, part-time casual labourers. Yet it should not be forgotten that the very same D.G. in an earlier circular dated 10.2.1988(Annexure-8) (not denied in the counter) directed that all the casual labourers are to be paid wages on the basis of minimum pay in the scale of regularly employed workers in the corresponding cadre, but without increment with effect from 5.2.1986 and such casual workers will also be entitled to D.A. and A.D.A., if any. The D.G. further clarified that "casual labourers" would cover full time casual labourers, part-time casual labourers and workers engaged on contingent basis and they may be paid according to pro rata basis. These instructions of the D.G. vide Annexure-11 ^{in letter dt.16.6.91} is, in conflict with the Division Bench decision of the C.A.T., Ernakulam Bench in **M.John Rose vs. Head Record Officer, R.M.S.** In this decision dated 10.9.1991 the Ernakulam Bench interpreting the scheme dated 12.4.1991(Annexure-10) clearly held that casual labourers engaged part time basis for long period ~~can be~~

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can be given temporary status. In this case even the D.G.(Posts) was one of the respondents. In Smt. ~~Seenu~~ Bai case decided by Full Bench of Hyderabad C.A.T. on 7.6.1993 and reported in **KALAR'S Full Bench Judgements 1991-93** at page 18, in para-11 the Full Bench held that the view taken by the Ernakulam Bench in John Rose case(Supra) is just and equitable. During hearing the Full Bench was confronted with the aforesaid letter of the D.G. under Annexure-11. In para-9, the Full Bench made the following observations:

" So far as the letter is concerned it is enough to say that there are judicial pronouncements of the Ernakulam Bench, to which the Director General of Posts is a party in more than one case, holding that the benefits of the grant of temporary status is available to part-time casual labourers as well. The Director General cannot, therefore, arrogate to himself the power of neutralising the binding decisions of the Tribunal by means of issuing a clarification to the earlier order. If the Director General felt aggrieved by the decision rendered by the Ernakulam Bench on the question of grant of temporary status and consequential regularisation of part-time casual labourers, the proper course for him to adopt was to challenge the decision in the Supreme Court or to seek a review as per procedure, if the circumstances of the case so warranted. When we asked the learned counsel for the respondents whether these decisions have been challenged, he clarified that these decisions have neither been challenged in the Supreme Court nor were sought to be reviewed. The learned counsel for the respondents tried to explain to us by saying that the letter was issued in a routine manner and not with a view to nullifying the judgment of the Ernakulam Bench. If that be so, the said letter may be ignored without any comment. Even otherwise it may still be ignored for the reason that no executive authority can be neutralise a binding decision of the Tribunal by means of an executive order."

Thus the Department cannot fall back on this instruction of D.G.(Posts) in letter dated 16.6.1991 (Annexure-11) in support of their contention. At this stage, we are not unaware that through Annexure-C, letter dated 1.3.1993, D.G.(Posts) had taken the view (ruling according to Department) that casual labourers engaged in P & T Dispensaries, where the full working hours are less than eight hours daily are not eligible for temporary status. We are afraid such observation(rulling according to Department) is beyond the jurisdiction of D.G. as observed above by the Full Bench.

If casual labourers working less than eight hours in P & T Dispensaries are not eligible for temporary status, there is no clear cut explanation from the department as to why Shri Brundaban Mallik, 2nd Pharmacist, Chaitanya Mohapatra, casual Dresser and Shri Satpathy, a casual Pharmacist, though worked on casual basis in Cuttack P & T Dispensary, six hours per day like the applicants have been given the benefit of temporary status as mentioned in the representations under Annexures-20 and 21 and not denied in the counter. We understand that these three persons got the benefit by virtue of pronouncement of orders of this Bench under Annexures-24 and 25. In other words, the so called ruling of the D.G. under Annexure-6 when comes in conflict ~~of~~ with the judicial pronouncement, cannot but be safely ignored.

We have, therefore, no hesitation to observe that the benefits under the Scheme dated 12.4.1991(Annexure-10) are to be conferred on the applicants. It is not in dispute that all these years,

right from the years 1980 and 1981 and in each year the applicants though working six hours per day and two hours on Sundays and Holidays without any break. Calculating on this basis, their performance of work in each year would be, if not more, at least equivalent to a casual labourer working eight hours per day, completing 240 days in a year. Even if, there is any dispute on this account, under D.G.1 Post instruction dated 10.2.1988(Annexue-27), a casual labourer completing 240 days of service during any two years would be eligible to take the Department test. This being so, even if the applicants did not complete 240 days in a year by this time the scheme came into force, their working hours for two years prior to that if taken into account would undoubtedly serve the requirement of 240 days for the benefit of that scheme.

For the reasons discussed above ^{which all} ~~that~~ the applicants are entitled to conferment of temporary status with effect from the date mentioned in the scheme under Annexure-10 and consequent service and financial benefits mentioned therein. Accordingly we quash the orders of the department under Annexures-1, 2 and 3 disallowing their claim. The respondents are directed to confer temporary status on the applicants and consequent regularisation and other financial benefits in accordance with the scheme dated 12.4.1991 under Annexure-10 keeping in mind our observations made above, within a period of 90 days from the date of receipt of this order. The application is allowed, but no order as to costs.

Somnath Som
 (SOMNATH SOM)
 VICE-CHAIRMAN
 28.6.99
 B.K. SAHOO

28-6-99
 (G. NARASIMHAM)
 MEMBER (JUDICIAL)