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CA 273/98

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Copy of counter
not served.DS
11/8/03

Bench

Copy of counter
not served.DS
13/8/03

Bench

Copy of counter
not served.DS
22/8/03

Bench

For hearing
(Rejoinder not filed)DS
11.9.03

Bench

14.8.03At the request made by Shri S. Behera,
call on 25.8.03.Vice-Chairman
Hembar (S)25.8.03Call on 12.9.03 for hearing.
Rejoinder, if any, be filed in the meantime.

Hembar (S)

Order dt. 12.09.2003

The Applicant, a Trained Pharmacist, was undisputedly engaged for 02 days (on 12.5.95 and 13.5.95), 06 days (from 15.5.95 to 20.5.95) and 06 days (from 22.5.95 to 27.5.95) as against the leave vacancy of Sri B. Parida, the Pharmacist (on E.L.) of P & T Dispensary at Cuttack. He was also engaged undisputedly for 05 days (from 5.6.95 to 9.6.95) and for 06 days (from 12.6.95 to 17.6.95) in the leave vacancy of Sri B. Mallick, Pharmacist, who was on E.L. During the year 1996, the Applicant was engaged undisputedly for 12 days (from 19.4.96 to 30.4.96) as against the leave vacancy of Sri N. Ghadai, Store Keeper/ Pharmacist and for 77 days (from 1.5.96 to 16.7.96), for 11 days (from 19.7.96 to 29.7.96) and 06 days (from 9.12.96 to 14.12.96) in the leave vacancy of Sri B. Mallick, Pharmacist of the said Dispensary. As has been disclosed by the Respondents in their counter during the year 1997, the Applicant was engaged as against the transfer vacancy of Sri B. Mallick, Pharmacist for 159 days (from 25.7.97 to 31.12.97) and in the year 1998, he was engaged against the said transfer vacancy (of Mr. Mallick, Pharmacist) for 07 days (from 1.1.98 to 7.1.98), for 82 days (from 9.1.98 to 31.3.98) and for 16 days (from 1.4.98 to 16.4.98). After 16.4.1998, the Applicant was not given any engagements. In the said premises, the Applicant has filed this Original Application (on 20.5.98) under Section-19 of the Administrative Tribunals Act, 1985

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making prayer for regularisation of his services on the ground that he served on casual basis for more than 240 days during 1997-98 i.e., from 01.08.1997 to 16.04.98.

2. While filing this Original Application, the Applicant has made one Sri Dillip Kr. Senapati, as Respondent No.5 ; by making allegation that said Sri Senapati was engaged as Pharmacist on casual basis (in the temporary vacancy that was occupied by him prior to 16.04.1998) by the Respondents illegally and arbitrarily by disengaging the Applicant. By filing a counter, the Respondents have disclosed that the Respondent No.5, who was temporarily engaged, was relieved with effect from 24.8.98; on joining the regular incumbent, Sri B.Mallick, Pharmacist.

3. Although a counter has been filed by the Respondents, no rejoinder has been filed in this case by the Applicant.

4. We have heard Mr.U.C.Mohanty, learned counsel appearing for the Applicant and Mr.S.Behera, learned Addl. Standing Counsel appearing for the Respondent/ Department and perused the materials placed on record.

5. Since the Applicant was engaged, on casual basis, as against a temporary vacancy(following to temporary absence of the permanent incumbent) there is no question of regularisation of the Applicant; as the regular vacancy was ever available to consider a case for being regularly filled up by another man. It appears that the prayer of the Applicant for his regularisation as against the temporary vacancy in Pharmacist post of P. & T. Dispensary at Cuttack is mis-conceived one.

6. That apart, the temporary vacancy, as against which the Applicant was engaged, having been filled up by the permanent incumbent, on his return on 24.8.98, this case has really become infructuous right from that time. None of the parties have placed any material before us to show any further development, of the matter, subsequent to 24.8.98. Although, a temporary hand cannot be replaced by another temporary hand, unless compelling reasons are there, we are not inclined to examine that aspect of the matter; as this case has already become infructuous

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Free copies of final
order dt. 12.9.03 issued
to counsel for both sides.

Prk
SOTJ

16/9/03

right from 24.08.1998.

7. In the aforesaid premises, this
case is hereby dismissed. No costs.

[Signature]
Vice Chairman *ma*
[Signature]
Member (Judicial)