

10
CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS. 81 & 82 OF 1998
Cuttack, this the 12th day of May, 2000

Pratap Kumar Sahu (in OA 81/98)
P.C.Sethi (in OA 82/98) ... Applicants

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.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS. 81 & 82 OF 1998
Cuttack, this the 12th day of May, 2000

CORAM:

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

In OA 81/98

Pratap Kumar Sahu, son of Bishnu Charan Sahu, vill-Purana, P.O-Ashramapatna, District-Jagatsinghpur (present address c/o S.K.Das, advocate, Neela Kumuda, Keonjhar Colony, Cuttack-753008

In OA 82/98

Purna Chandra Sethi
son of Bairagi Charan Sethi
village Jota, P.O-Alanahata,
District-Jagatsinghpur
(present address - C/o S.K.Das, Advocate
Neela Kumuda, Keonjhar Colony, Cuttack-753 008
.....
Applicants

Advocates for applicants - M/s S.K.Das(1)
P.K.Samanta
singhar

Vrs.

In Both the cases

1. Union of India, through Director General, Archaeological, Survey of India, Janpath, New Delhi-11.
2. Superintending Archaeologist, Archaeological Survey of India, Bhubaneswar Circle, Old Town, Bhubaneswar-751 002.
3. Conservation Assistant, Archaeological Survey of India, Cuttack Sub-Circle, Barabati, Cuttack
.....
Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

These two O.As. have been heard separately. But the two applicants are similarly situated and they have filed almost identical O.As. The respondents have filed identical counters in both the cases opposing the prayer of the applicants and the points for decision in both the cases are the same. Therefore, one order will cover both

the cases. Facts of the two cases are however set out separately.

2. In OA No.81 of 1998 the applicant has prayed for a direction to the respondents to grant temporary status to him in accordance with the scheme dated 1.11.1993 and Office Memorandum dated 10.9.1993. His case is that from 18.5.1993 he is working as casual labourer in the establishment of Superintending Archaeologist, Bhubaneswar (respondent no.2) on daily wage basis. Initially he worked at Bhubaneswar Mahadev Temple, Bhabanipur till 15.3.1994 and was retrenched on 26.3.1994. Again on 7.5.1994 he worked till 25.3.1995. His next spell of work was 20.4.1995 to 25.3.1996. He continuously worked for three years for more than 240 days in a year and he got bonus in February 1996. From April to November 1996 he worked at Bhubaneswar Mahadev Temple and thereafter he was asked to join the Special Repair Work at excavated site at Barabati Fort where he worked from 15.12.1996 to 26.3.1997. From 15.5.1997 his working days were reduced from six days a week to five days a week. Other casual labourers were allowed to work for six days in a week. The applicant has given a tabular statement showing that he worked for 253 days in 1993-94, 270 days in 1994-95, 282 days in 1995-96, 267 days in 1996-97 and 193 days in 1997-98. The applicant has stated that he is eligible to be conferred with temporary status in accordance with the scheme at Annexure-2 and in the context of the above facts he has come up with the prayers referred to earlier.

3. The applicant in OA No.82 of 1998 has prayed for grant of temporary status to him in accordance with the scheme and the O.M. referred to earlier. His case

is that he joined as casual labourer under Superintending Archaeologist, Bhubaneswar on 22.7.1994 at Haripur Garh Archaeological Site. Thereafter he worked at Udaygiri Site in Jajpur District where his name was included in the Muster Roll. After that he worked at Singhnath Temple near Baidesar in Cuttack District where his name was included in the Muster Roll. Thereafter he worked at Udaygiri Site upto 26.3.1996 and again from 14.4.1996 to 18.6.1996. Thereafter he worked at Jajpur Site in Jajpur District from 19.6.1996 to 23.6.1997. Then he went to Cuttack Office of Archaeological Department where he worked from 1.7.1997 to 31.12.1997. He was transferred to Chaudwar Site under Special Repair Project of Kedarswar Temple where he was asked to work for five days a week. The applicant has stated that he worked for 192 days in different months in 1994-95, 309 days in 1995-96, 264 days in 1996-97 and 236 days in 1997-98. It has been stated that some persons who joined along with the applicant as casual labourers were given temporary status and some of them were appointed in group-D post as Watchman. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

4. The respondents, as earlier noted, have filed identical counters. In their counter filed in O.M. No. 81 of 1998 they have opposed the prayer of the applicant by stating that the applicant was engaged as a casual labourer as and when he was required and for such work he was paid minimum wages as notified by the competent authority in the order at Annexure-R/1. They have stated that the work done by the applicant is different from the work done by the regular employees and therefore the applicant is not entitled to the benefit of getting one-thirtieth of the

minimum of the pay scale of Group-D post. They have further stated that as the applicant was not initially recruited through the Employment Exchange he was not entitled to be granted with temporary status. They have stated that in the order dated 1.11.1993 at Annexure-2 the O.M. dated 10.9.1993 for granting of temporary status and regularisation of casual workers has been circulated. These guidelines state that while following the scheme the existing guidelines contained in O.M. dated 7.6.1988 may be followed. This O.M. dated 7.6.1988 is at Annexure-R/1. The clarification to this O.M. has been issued in Department of Personnel & Training's circular dated 12.7.1994, the gist of which has been printed in Swamy's Compilation and has been enclosed at Annexure-R/3. The respondents have stated that as the applicant has not been recruited initially on his name being sponsored from Employment Exchange, he is not entitled to be granted temporary status.

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 5. In the counter filed by the respondents in OA No.82 of 1998 the stand taken is the same as in the counter in the earlier case and the prayer of the applicant in this OA has been opposed on the same grounds that at the time of initial appointment of the applicant his name was not sponsored by the Employment Exchange and as such he is not entitled to be conferred with temporary status. It is necessary to note however that in their counter to OA No.82 of 1998 the respondents have made no averment with regard to the assertion of the applicant that other casual labourers who joined along with the applicant were granted temporary status and some of them have been given permanent post as Watchman.

5. In both these petitions the applicants have filed rejoinder and additional rejoinder. In both the cases rejoinders and additional rejoinders filed by the applicants are identical. In these they have reiterated some of their averments made in the OAs, with regard to non-sponsoring of the names of the applicants from the Employment Exchange. It has been submitted that the applications of the petitioners were accepted by the departmental authorities at the time of their initial appointment along with their Employment Exchange Registration Numbers and they were given to understand that the departmental authorities will intimate the Employment Exchange about their engagement as casual labourers. In the additional rejoinders the applicants have given a list of names of large number of other casual labourers who were also engaged without getting their names sponsored through the Employment Exchange. The applicants have stated that some of them have also been granted temporary status.

7. We have heard Shri S.K.Das-I, the learned counsel for the petitioners and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have also perused the records.

8. It has been submitted by the learned counsel for the petitioners that the Hon'ble Supreme Court have laid down in the case of The Excise Superintendent, Malkapatnam, Krishna District, Andhra Pradesh v. K.B.N.Visweshwara Rao and others, 1995(7)Supreme 201, that while filling up the posts, along with persons whose names were sponsored from Employment Exchange, other candidates who apply in response to a public notice should also be considered and the consideration for appointment should not be limited to persons sponsored by the Employment Exchange

alone. This decision of the Hon'ble Supreme Court has been followed by the Hon'ble High Court of Orissa in the case of Susanta Kumar Kar v. Registrar (Judicial), Orissa High Court, Cuttack, 83(1997) CLT 335. In view of this it has been urged that the fact that the names of the two applicants have not been sponsored by the Employment Exchange would not disentitle them from getting the benefit of being conferred with temporary status.

9. Before proceeding further it has to be noted that the learned counsel for the petitioners has relied on another decision of the Hon'ble Supreme Court in the case of Secretary, Haryana State Electricity Board v. Suresh and others, etc.,etc., AIR 1999 SC 1160. This case relates to Contract Labour (Regulation and Abolition) Act, 1970. Facts of that case are widely different from the present petitions and therefore this decision has no application to the facts of the present cases.

10. From the above pleadings of the parties it is clear that from Annexure-2 enclosed by the applicants to their OAs it is clear that while the "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993 came into force from 1.9.1993, in the forwarding letter dated 10.9.1993 it was clearly mentioned that the existing guidelines contained in O.M. dated 7.6.1988 may continue to be followed. This O.M. has been enclosed by the respondents at Annexure-R/l of the counters to both the O.As. This circular dated 7.6.1983 deals with various facilities which should be allowed to casual labourers who are doing the same nature of work as Group-D employees of the Department. It is laid down that in such cases casual labourers will be entitled to the

wages at the rate of one-thirtieth of the pay at the minimum of the pay scale of Group-D employee plus D.A. for eight hours of work a day. In this circular dated 7.6.1988 there is no condition that the facilities sought to be allowed to the casual workers under this circular should be allowed only to such casual labourers who have been engaged initially on being sponsored through Employment Exchange. This has been clarified in circular dated 12.7.1994 which is at Annexure-R/3 of the counters. In this O.M. certain points have been clarified. Against item no.1 the point raised is whether the casual employees who were not initially engaged through employment exchange are entitled to the benefit of temporary status. In this circular dated 12.7.1994 it has been clarified that since it is mandatory to engage casual employees through Employment Exchange, the appointment of casual employees without employment exchange is irregular and hence such casual employees cannot be bestowed with temporary status. The first point to be noted in this connection is that this circular came only on 12.7.1994 and even though in this circular it has been so mentioned, it is clear from a reading of the earlier circular dated 7.6.1988 that this is a new condition which was imposed and like all executive instructions it can only be prospective in nature unless it is either specifically or by necessary implication given retrospective effect. In that view of the matter the circular dated 12.7.1994 must be taken to be of prospective operation and this condition of engaging casual labourers only after their names are sponsored by Employment Exchange must be taken to have come into force from 12.7.1994. The applicant in OA No.81 of 1998 has been engaged for the first time as a

casual labourer on 18.5.1993 and the applicant in OA No.82 of 1998 has been engaged, according to his statement, for the first time on 22.7.1994. Thus one of the applicants has been engaged prior to coming into force of this circular dated 12.7.1994 and the other was engaged after ten days by which time the circular might not have reached the office of respondent no.2. It is also relevant to note that the applicants in their petitions have given details of the number of days of their engagement in different years and these details have not been contested by the respondents in their counter. From these details it appears that the applicant in OA No.81 of 1998 has worked for more than 240 days in 1993-94, 1994-95, 1995-96 and 1996-97. The applicant in OA No.82 of 1998 has stated that he has worked for more than 240 days in 1995-96 and 1996-97. It is also to be noted that the respondents admittedly have engaged the applicants as casual labourers for number of years and in a year for number of days as mentioned above. In view of this after passage of so many years the respondents cannot deny the eligibility of the applicants to be granted temporary status on the ground of their names not having been sponsored through the Employment Exchange at the time of their initial engagement. Both the applicants have stated that at the time of their initial engagement they were registered in the Employment Exchange and they had produced their Employment Registration Numbers and Cards at the time of their initial engagement. Hon'ble Supreme Court in the case referred to earlier have also held that the consideration for employment under Government should not be limited to candidates sponsored by the Employment Exchange alone. In view of this, we hold that the applicants are

19
 entitled to be considered for being granted temporary status strictly in accordance with the Scheme which came into force from 1.9.1993 in spite of the fact that at the time of their engagement their names were not sponsored by the Employment Exchange.

11. In view of the discussions above these two O.As. are disposed of with a direction to respondent no.2 to consider granting of temporary status to the applicants strictly in terms of the scheme at Annexure-2 of the O.A. This exercise should be completed within a period of 90 (ninety) days from the date of receipt of copy of this order.

12. In the result, the Original Applications are allowed in terms of the observation and direction above. No costs.

Sd/- G.Narasimham
 Member (Jud)
 MEMBER (JUDICIAL)

Sd/- Somnath Som
 Vice-Chairman
 VICE-CHAIRMAN