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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 258 OF 1999
Cuttack, this the 26th day of November, 1999

Shri Hrusikesh Jena Applicant

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, 1999

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.
ORIGINAL APPLICATION NO. 258 OF 1999
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CORAM:

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

.....
Shri Hrusikesh Jena, a ged about 23 years, son of Harekrushna Jena, resident of village/PO-Chanarpur, Via-Alanahat, District-Jagatsinghpur, Orissa, at present working as Peon on ad hoc basis, O/O Regional Reference Standard Laboratory, PO-Khandagiri, Bhubaneswar, Orissa.

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Applicant

Advocates for applicant - M/s K.C.Kanungo
S.Behera.

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1. Union of India, represented through Secretary, Government of India, Ministry of Food Consumer Affairs, Krishi Bhawan, New Delhi.
2. Under Secretary Ministry of Food & Consumer Affairs, Department of Consumer Affairs, Krishi Bhawan, New Delhi-1
3. Director, Legal Metrology, Ministry of Food & Consumer Affairs, Department of Consumer Affairs, 12-A, Jamnagar House, New Delhi.
4. Deputy Director, Department of Consumers Affairs, Regional Reference Standard Laboratory, PO-Khandagiri, Bhubaneswar, Orissa....

Respondents

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

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to regularise the services of the petitioner in the post of Peon, or in the alternative to allow him to participate in the recruitment test by condoning his overage and taking his experience into account. He has also prayed for quashing the order

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dated 26.5.1999 at Annexure-3 indicating that services of the petitioner are no longer required with effect from 31.5.1999. The next prayer is to modify the order dated 7.4.1999 at Annexure-2 allowing the applicant to continue till regular incumbent joins the post of peon. The last prayer is for a direction to the respondents to pay to the applicant one-thirtieth of the salary of the post of Peon from 10.10.1995 till 8.12.1998 on the principle of equal pay for equal work.

2. The applicant's case is that he was initially appointed as daily wager peon with effect from 10.10.1995 excluding weekly off days and holidays. Copy of one such order dated 18.1.1996 is at Annexure-1. But he was not paid his dues from January 1997 till 8.12.1998 even though he worked during this period as daily wager Peon. In order dated 8.12.1998 at Annexure-2 he was appointed as Peon on temporary and ad hoc basis for a period of three months or till the regular incumbent joins whichever is earlier. Such appointment as ad hoc and temporary Peon was extended for another three months from 1.4.1999 till 30.6.1999 in order dated 7.4.1999 enclosed to Annexure-2 series. Subsequently, in order dated 26.5.1999 at Annexure-3 his services were terminated with effect from 31.5.1999. The applicant has stated that he is eligible to be appointed as Peon, having passed VIIth class. He has also stated that having worked against a vacant post he has earned a prescriptive right to hold the post till the regular incumbent is appointed. He has also claimed one-thirtieth of the minimum of the pay scale of Peon from 10.10.1995 till 8.12.1998.

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3. By way of interim relief the applicant prayed for staying the order at Annexure-3 terminating his service with effect from 31.5.1999. In order dated 31.5.1999 by way of interim relief it was directed that the applicant should be allowed to continue till 30.6.1999, i.e., upto the period he was originally appointed. On 28.6.1999 the prayer of the applicant for a direction to the respondents to give him further ad hoc appointment beyond 30.6.1999 was rejected.

4. The respondents in their counter have stated that the applicant was initially appointed as a daily wager on 10.10.1995 and was continued upto December 1996. He was paid remuneration for this period. The Pay & Accounts Officer of the Ministry objected to the bill for payment to the applicant on the ground that sanction from proper authority was necessary for further coontinuance. Accordingly, the Ministry was requested to issue sanction for daily wage worker, but the Ministry did not agree for that. So it was not possible to continue the applicant as daily wager beyond December 1996. The respondents have stated that from 1997 till 8.12.1998 the applicant was not working in the office and therefore he was not entitled to any payment. It is further stated that in exigency of service the applicant was appointed on ad hoc basis to work as Peon for a period of three months from 8.12.1998. The process of recruitment is in progress. The Employment Exchange had been requested to sponsor names. But due to delay in receipt of names from Employment Exchange, the applicant was again reappointed as Peon on ad hoc basis from 1.4.1999 to 30.6.1999 after a gap of some days. The

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Employment Exchange has sponsored 40 candidates and the recruitment process is in progress. It is further stated that the applicant's services were terminated with effect from 31.5.1999 as per direction of the Ministry. The question of applicant's experience and qualification will be considered when the selection is done on regular basis and if he comes through proper channel. The respondents have stated that the applicant cannot be regularised in that post. For that he has to come through the process of selection for regular recruitment to the post of Peon. It is further stated that the applicant has been paid remuneration during his period of engagement as daily wager Peon as per rules of Government. So his claim for extra remuneration is not acceptable. It is further stated that the applicant not having completed one year of service or 240 days in a year, his prayer for getting wages equal to the minimum of the pay scale of regular Group-D employee is not acceptable. On the above grounds, the respondents have opposed the prayers of the applicant.

5. The applicant in his rejoinder has stated that as he was working against the vacant post of Peon from the very first day of his engagement as daily wager Peon, he is entitled to one-thirtieth of the minimum of the pay scale of Peon and for this it is not necessary that he should have completed one year of service and 240 days in a year. It is further stated that he is eligible to hold the post of Peon and he should be allowed to be considered along with the candidates sponsored by the Employment Exchange giving due weightage to his experience as he cannot get his name sponsored through the Employment Exchange now. It is further stated that against the order dated 28.6.1999 of the Tribunal the applicant had

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approached the Hon'ble High Court of Orissa in OJC No. 8625 of 1999 which was disposed of in order dated 25.8.1999 directing that the Tribunal should dispose of the proceedings preferably by October, 1999.

6. We have heard Shri K.C.Kanungo, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have also perused the records.

7. In support of his contentions, the learned counsel for the petitioner has relied on the following decisions:

- (i) Dhirendra Chamoli v. State of U.P., (1986) 1 SCC 637;
- (ii) Surinder Singh v. Engineer-in-Chief, CPWD, AIR 1986 SC 584;
- (iii) State of Haryana v. Piara Singh, 1992 SCC (L&S) 825;
- (iv) J & K Public Service Commission v. Dr.Narinder Mohan, AIR 1994 SC 1808;
- (v) State of Himachal Pradesh v. Suresh Kumar Verma, AIR 1996 SC 1565;
- (vi) Dr.Surinder Singh Jamwal v. State of J & K, AIR 1996 SC 2775;
- (vii) Union of India v. V.S.Tripathi, 1998 SCC (L&S) 1732.

8. Before considering the submissions made by the learned counsels for both sides, one factual aspect will have to be considered. The admitted position is that the applicant was initially appointed as a daily wager Peon from 10.10.1995. According to the petitioner he continued as such till 8.12.1998 when he was appointed in the order at Annexure-2 as a Peon on temporary and ad hoc basis. The respondents have, on the other hand, stated that the applicant was initially appointed on 10.10.1995 as a daily wager Peon and continued as such till December, 1996. Thereafter he was again appointed as Peon on temporary and

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ad hoc basis from 8.12.1998. Thus, according to the respondents he did not work during the period of his disengagement in December 1996 till 8.12.1998. The learned counsel for the petitioner has stated that the applicant did actually work during the period from December 1996 till 8.12.1998, but he has no records with him about such engagement. It is not possible to accept the above contention because as it is seen from Annexure-1 during his engagement as daily wager Peon his wages were being sanctioned for specified number of days for every month. The order at Annexure-1 sanctions his wages at the rate of Rs.25/- per day for 20 days during the month of December 1995. Had the applicant been actually in engagement as daily wager Peon beyond December 1996 till 8.12.1998, then his wages would have been sanctioned for each month's engagement and it would have been possible for the applicant to file such sanction orders as he had done in one case. The respondents have, on the contrary, pointed out that after December 1996 the Pay & Accounts Officer of the Ministry objected to his bill and as the Ministry did not agree to his continuance as a daily wage worker he was not continued beyond December 1996. In the absence of any documentary evidence to the contrary, we have to accept the respondents' contention that the applicant worked as a daily wager peon from 10.10.1995 till December 1996. The other admitted position is that in order dated 8.12.1998 he was appointed as a temporary ad hoc Peon for a period of three months initially and this was again continued in the order dated 7.4.1999 for another three months from 1.4.1999 to 30.6.1999. It is also the admitted position that after 30.6.1999 he has not been engaged either as a daily wager Peon or as a Peon on ad hoc and temporary basis.

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9. The first point for consideration is, during the applicant's engagement as a daily wager Peon, what would be his entitlement for wages. In the order at Annexure-1 it has been mentioned that he has been paid Rs.25/- per day. This order also mentions that he has been engaged as a daily wager Peon. It has been argued by the learned counsel for the petitioner that since in the order itself it is mentioned that he has been appointed as a daily wager Peon it must be taken that he had discharged the same duties as that of a Peon. It is also the applicant's case that he was subsequently appointed against a vacant post of Peon and therefore, as he has discharged the duties of a Peon even while working as a daily wager, he is entitled to get one-thirtieth of the minimum of the pay scale of Peon following the decisions of the Hon'ble Supreme Court in Dhirendra Chamoli's case (supra) and Surinder Singh's case (supra). In Dhirendra Chamoli's case (supra) persons were working as daily wage employees in Nehru Yuvakendra as casual workers for long periods ranging upto 12 years and in Surinder Singh's case (supra) also the petitioners were working on daily wage basis under C.P.W.D. for a number of years. In both the cases they demanded the same wages as are paid to the regular Group-D employees and this claim was allowed. These two decisions do not support the contention of the applicant that a daily wage worker from the very first day of his engagement would be entitled to get one-thirtieth of the minimum of the pay scale of Group-D employee of the Department because in his order of engagement as daily wage worker it has been mentioned that he is appointed as a daily wager Peon and therefore it must be held that during

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such engagement, he discharged the same duties as that of Peon. Besides relying on the description of his engagement as daily wager Peon the applicant has not stated in his petition that he was performing the same duties as that of a Peon. The nature of duties performed by him has also not been mentioned. If the contention of the learned counsel for the petitioner is accepted, then no daily wage worker can be appointed on the basis of minimum daily wage in any office because the nature of work of such person would be more or less similar to that of Peon. In various cases referred to by the learned counsel for the petitioner the daily wage workers had been working for many years and doing the same type of job as a regular Group-D employee. It is also to be noted that according to the respondents his engagement as a daily wager Peon ended in December 1996 and the applicant has come up in this petition only in May 1999 claiming one-thirtieth of the minimum of the pay scale of Peon for engagement during the above period. On the above grounds, we hold that the applicant is not entitled to payment of one-thirtieth of the minimum of the pay scale of peon during the period of his engagement as daily wager Peon. It is to be noted here that with effect from his engagement as Peon on ad hoc and temporary basis from 8.12.1998 for a period of six months till 30.6.1999 the applicant has been paid the scale of pay of a Peon and his claim for equal pay for equal work does not cover the later period when he was appointed as a Peon on temporary and ad hoc basis. The first prayer of the applicant is accordingly disposed of.

10. The second prayer of the applicant is for a direction to the respondents to allow him to continue as Peon on temporary and ad hoc basis till the regular

incumbent is selected. The learned counsel for the petitioner did not press for this because in our order dated 28.6.1999 we had refused to issue a direction to the respondents to give him further engagement beyond 30.6.1999 and the Hon'ble High Court have also declined to interfere further in this matter when the matter was taken up to them challenging our order dated 28.6.1999. In view of the above, this prayer of the applicant is held to have become infructuous.

11. The third prayer of the applicant is that the respondents should be directed to regularise him in the post of Peon. For considering this prayer it is not necessary to refer to the facts of various cases cited by the learned counsel for the petitioner. We have gone through those cases. The law is now well settled that a daily wage worker has no right to get regularised de hors the Recruitment Rules. It is not the petitioner's case that he was selected as a daily wager Peon or Peon on ad hoc and temporary basis through any process of selection along with others on his name being sponsored by the Employment Exchange. Therefore, such engagement as daily wager peon or even as Peon on temporary and ad hoc basis cannot give him a right to get regularised. Law is equally well settled on the basis of different decisions of the Hon'ble Supreme Court that such ad hoc employees or daily wage workers have a right to consideration along with others for the post at the time of regular selection subject to age relaxation. The respondents in their counter have stated that the applicant's case can be considered at the time of regularisation in case he comes through proper channel. By proper channel obviously the respondents mean that in case his name is forwarded by the Employment Exchange. As the

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applicant had been working for sometime in the office of the respondents firstly as a daily wager and later on for six months as a Peon on temporary and ad hoc basis, he would have lost his queue in the Employment Exchange and therefore it is not possible for him to get his name sponsored by the Employment Exchange. In view of this, we direct the respondents that while considering the candidates sponsored by the Employment Exchange for the post of Peon, they should also consider the case of the applicant in accordance with the Recruitment Rules. The applicant has stated that he has the eligibility for being appointed to the post of Peon. While considering the case of the applicant, if necessary age relaxation should be given to him by the respondents to the extent of the applicant's engagement under the respondents as daily wager Peon and Peon on temporary and ad hoc basis.

12. With the above observations and direction the Original Application is disposed of but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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(SOMNATH SOM) 26.1.99

VICE-CHAIRMAN