

10

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 178 OF 2000
Cuttack, this the 29th day of October, 2002

Kunjabihari Das Applicant


Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? NO
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? Yes


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 178 Of 2000

Cuttack, this the ~~20th~~ day of October, 2002

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

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Kunjabihari Das, aged about 40 years, son of Balabhadra Das, At-Roulpatna, P.O-
Konark, District Puri Applicant

Advocates for applicant - M/s B.N.Nayak, B.B.Mohapatra

Vrs.

1. Union of India, Ministry of Human Resources and Development,
represented through its Secretary, Shastri Bhawan, New Delhi.
2. Director General, Archaeological Survey of India, Janpath, New Delhi
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3. Superintending Archaeologist, Archaeological Survey of India,
Bhubaneswar Circle, Old Town, Bhubaneswar 2, Dist.Khurda

.....Respondents

Advocate for respondents - Mr.S.Behera, ACGSC

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

In this Application under Section 19 of the Administrative Tribunals Act,
1985, the applicant prays for a direction to be issued to the respondents to grant
temporary status to him in terms of the Scheme, called, "Casual Labourers (Grant of

12

-2-

Temporary Status and Regularisation) Scheme of Government of India, 1993 (hereinafter referred to as "Scheme of 1993").

2. Shorn of details, facts of the case are that the applicant had worked as a casual labourer in 1977 for 302 days, 1978 for 317 days and 1979 for 329 days under Archaeological Survey of India, Bhubaneswar. However, the Superintending Archaeologist, Bhubaneswar Circle (respondent No.3), was not maintaining any seniority list of casual labourers working there, nor was he following the principle of 'last come first go' in disengaging this category of casual labourers. It was further alleged that even though the applicant was the seniormost casual labourer, he was being engaged for lesser number of days than his juniors. The applicant also stated that he had earlier filed O.A.No.399 of 1993, in July 1993, with a prayer to regularise his service, but the same was disposed of by this Tribunal on the ground of limitation and with the observation that in case any work was available at the disposal of respondent no.3, the case of the applicant should be considered to give such work on casual basis. It is the submission of the applicant that respondent no.3 never offered him any job even on casual basis in compliance with the direction of the Tribunal. He further stated that the Scheme of 1993 came into force with effect from 1.9.1993, but the concerned authority, i.e., respondent no.3, never considered his case for granting temporary status out of sheer grudge and malice. The applicant had also submitted a representation to respondent _____

9

no.3, but with no effect. Finally, it was submitted by the applicant that because of non-maintenance of seniority list of casual labourers, the applicant was denied of the opportunity of getting temporary status according to the Scheme of 1993, introduced by the Government of India.

3. In their counter, the respondents did not dispute the fact that the applicant had worked as a casual labourer, as and when required, to sweep the temple premises of Sun Temple at Konark, on the festival days/special occasions from 1977 to 1985. They stated that the applicant's request for granting him temporary status was not acceptable, as his initial engagement was not done through Employment Exchange. They further stated that as per the Government's instructions, a daily wage worker, for being conferred with temporary status, should have rendered a continuous service of at least one year, which means that he must have been engaged for a period of at least 240 days in a year. In the instant case, they submitted, the applicant had not rendered continuous service of one year prior to the introduction of the Scheme of 1993. It was further argued by Shri S.Behera, learned Additional Standing Counsel, appearing for the respondents, that the applicant did not fulfil any of the eligibility conditions prescribed for grant of temporary status, as he was not on the rolls of the Department as on 1.9.1993 (the date from which the Scheme of 1993 came into force), that he did not have, to his credit, continuous service for a period of 240 days, and, lastly, that he was not heard of after 1985. It was also submitted by the learned Additional Standing Counsel that the respondents were maintaining seniority list of casual workers, but the name of the applicant did not figure there as he was _____

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14

disengaged, keeping in view the orders and instructions contained in Government of India's O.M.No.49014-18/84-Estt.(C) 1987, dated 7.5.1985. It was further submitted by the learned Additional Standing Counsel that the Department of Personnel & Training, vide their O.M. No. 49014/2/93-Estt. (C) dated 12.7.1994, had clarified that it was mandatory to engage casual employees through Employment Exchange and therefore, the engagement — of casual employees , without consulting Employment Exchange, was irregular and such casual employees could not be bestowed with temporary status. In furtherance of this decision of the Government, he referred to the judgment of the Apex Court in the case of Passport Officer, Trivandrum and others vs. Venugopal C. and others. where it was held that if the Department decided that only those employees, who were recruited in normal manner, i.e., through Employment Exchange, should be given temporary status, nothing fault could be found with the Department, and the decision could not be said to be unreasonable or arbitrary. The learned Additional Standing Counsel also referred to the judgment of this Tribunal in the case of Shri Akhaya Kumar Mohapatra vs. Union of India and others. OA No.476 of 1998, decided on 16.8.2000, where the Tribunal, relying on the decision of the Apex Court in *Passport Officer, Trivandrum's case (supra)*, took the view that the applicant therein, having not been sponsored through the Employment Exchange at the time of his initial engagement as casual labourer, was not entitled to get temporary status. Finally, it was submitted by the respondents that though the applicant had worked for several years in their organisation, he had never performed duty of regular nature to be eligible to be conferred with temporary status. The applicant was only a seasonal

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worker and did not fulfil the basic eligibility criteria for being conferred with temporary status in accordance with the Scheme of 1993.

4. We have given our anxious thoughts to the pleas made by the applicant that he had worked for several years from 1977 to 1985 (except during 1981) and then for 24 days in 1994. It has also been admitted by the respondents that the applicant had worked for 302 days, 317 days and 329 days during 1977, 1978 and 1979. Thereafter he had worked for 26 days during 1980, 52 days during 1982, 142 days during 1983, 155 days during 1984 and 176 days during 1985. It has also been admitted that the applicant was not offered any work after 1985 as he was not sponsored through Employment Exchange. The Government of India have been issuing guidelines, from time to time, in the matter of recruitment of personnel on daily wage basis. Our attention has been drawn to the Government of India's Office Memorandum No. 49014/18/84-Estt. (C) dated 7.5.1985 and Office Memorandum No. 49014/2/86-Estt. (C), dated 7.6.1988, laying down policy regarding engagement of casual workers in Central Government offices, keeping in view the judgment of the Supreme Court, delivered on 17.1.1986 , in the case of Shri Surinder Singh and others vrs. Union of India. The aforesaid policy was further reviewed in the light of the judgment of the Central Administrative Tribunal, Principal Bench, New Delhi, delivered on 6,2,1990 in the O.A. filed by *Shri Raj Kamal and others v. Union of India*, and the Government of India formulated the Scheme of 1993. This Scheme of 1993 was notified to be applicable to casual labourers in employment of the Ministries/ Departments of Government of India and their attached and subordinate offices. This Scheme of 1993, however, was not to be made applicable to casual

workers in Railways, Department of Telecommunications and Department of Posts as those Departments had already their own Schemes. There were three crucial eligibility conditions set forth in the said Scheme of 1993, namely, that temporary status would be conferred on those casual labourers who were in employment on the date of issue of that Office Memorandum, had rendered continuous service of at least one year, and that such conferment of temporary status would be without reference to the creation/availability of regular Group "D" posts. Having regard to the above conditions for the operation of the Scheme of 1993, we find that the applicant was not in employment under Archaeological Survey of India on the date of issue of the Office Memorandum, i.e., 10.9.1993, and that he had not worked on continuous basis for a period of one year immediately preceding the introduction of the Scheme. In the circumstances, the applicant did not have the requisite eligibility conditions for being considered under the Scheme of 1993. Further, this Scheme of 1993 was an one time operation to cover only those casual labourers who were working in the said Central Government organisations on a continuous basis and were performing job of perennial nature.

5. In the circumstances, we find no merit in the Application and the same is rejected accordingly. No costs.

M.R. Mohanty
(M.R. MOHANTY) 29/10/2002
MEMBER (JUDICIAL)

CAT/CTC/ OCT.02
AN/PS

B.N. Som
(B.N. SOM)
VICE-CHAIRMAN
B.N. Som