

NOTE OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Rejoinder not filed.

Bench

Rejoinder not filed.

Bench

Rejoinder not filed.

Bench

Rejoinder of 2nd.

Bench

Rejoinder not filed.

Bench

For Admonition

Bench

SJM -

14. ORDER DATED 11-5-2001;

Learned counsel for the applicant Shri Gopabandhu Dash is absent. There is no request for adjournment. In view of this, the matter can not be allowed to drag on indefinitely. We have, therefore, heard Shri U.B. Mohapatra, learned Additional Standing Counsel for the Respondents and have also perused the records.

In this Original Application, the applicant has prayed for quashing the order dated 25.1.2001 at Annexure-9 in so far as it relates to respondent no. 4. The second prayer is for a direction to the Departmental Respondents to allow the applicant to work in the office and to get his salary and other allowances. The last prayer is for a direction to absorb the applicant on regular basis against a Gr.D post.

Departmental Respondents have filed counter opposing the prayers of applicant.

No rejoinder has been filed.

Applicant's case is that he was working as a daily rated worker under the pass Port Officer, Bhubaneswar from 1990. In 1993 he appeared at a special qualifying examination held by the SSC. Applicant has stated that he was conferred with temporary status in order dated 16.6.1994 at Annexure-4. Accordingly, he was allowed the minimum of the scale of pay including other allowances granted to regular employees holding the same post. As a daily rated worker he was entrusted with despatch work. It is stated that in connection

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with certain lapses of his Crl. case was instituted against him and against some other persons by the Central Bureau of Investigation. Applicant's grievance is that while other persons namely the Passport Officer and the LDC were suspended and subsequently reinstated and the suspension period was regularised, the engagement of applicant as daily rated worker was simply discontinued. In view of this he has prayed for a direction to allow him to join and do his work as a daily rated worker. He has also stated that Respondent No. 4 one Shri S. Naik has been regularised in service in a Gr. D post even though in the order at Annexure-4 granting temporary status to the applicant and to Respondent No. 4, name of Respondent No. 4 appears below the applicant. Because of this, he has asked for quashing the regularisation of Respondent No. 4 ^{and} has also prayed for regularising him against a Gr. D post. For the purpose of considering the prayers of applicant it is not necessary to go into the various averments made by the Respondents in their counter because these will be referred to while considering the submission made by Shri Mohapatra, learned SC appearing for the Respondents.

Respondents in their counter have stated that while engaging the applicant as a daily rated worker his name was not sponsored through any Employment Exchange nor was he selected through any process of selection.

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Departmental instructions clearly provide that casual workers who have not been selected on being sponsored by the Employment Exchange, are not entitled to conferment of temporary status for subsequent regularisation. In that case of Passport Officer, Trivendrum decided by the Hon'ble Supreme Court copy of which has been enclosed by the Respondents, alongwith counter at Annexure-B/2, temporary status granted to such workers in pass port Officer, Trivendrum were subsequently withdrawn and on being challenged, the order withdrawing the conferment of temporary status was upheld by the Apex Court. Hon'ble supreme Court held that those persons who have not been sponsored through Employment Exchange while at the time of they ^{were} ~~are~~ being engaged as daily rated workers, are not entitled for conferment of temporary status or regularisation. In view of the above, clear pronouncement by the Hon'ble SC as also relevant instruction in the matter, we hold that the applicant can not claim for a direction that he should be regularised against any Gr.D posts. This prayer of the applicant is accordingly rejected.

In view of our above findings his other prayers for quashing the regularisation of Shris. Naik is also held to be without any merit and is rejected. Moreover, Respondents have pointed out in their counter that Shri Naik belongs to SC and he has been regularised against a post of Sweeper which is earmarked

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for a person belonging to SC whereas the applicant belongs to General category. On this ground also this prayer is held to be without any merit and is rejected.

The last prayer of applicant is for a direction to the Respondents to re-engage him as a casual worker. Law is well settled that casual workers are engaged for the purpose of attending to seasonal and intermittent work and the very nature of engagement of casual worker is seasonal and intermittent. It is for the Departmental Authorities to decide whether there is any need for such engagement of casual workers and it is not open for the Tribunal to give a direction to the Departmental Authorities to engage a person as a casual worker. Moreover, Respondents in this case have pointed out that a Crl. case is pending against the applicant. During the pendency of the Crl. case it has been decided not to engage him. As the applicant has not been engaged through any regular order of engagement and has also not been discontinued by any order it is always open for the appropriate authority not to engage the applicant because of the pendency of a Crl. case against him. Had the applicant been a regular employee, it was open for the Departmental Authorities to place him under suspension as he was arrested and was kept in custody for sometime. But as he is a casual worker and the relevant service rules do not apply to him, we find no irregularity in the action of the Departmental Authorities not to

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engage the applicant during the pendency of the Crl. case against him.

In view of our above discussions, we hold that the application is without any merit and is rejected. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
18-3-2001

KNM/CM.

Case records received
today even on 18-3-2001

Free copies of
final order of 11-3-2001
issued to counsels
for both sides.

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28/3/2001
S. O (J)