

## NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

Dt. 20.11.2000

counter filed.  
copy served. Put  
up on 8.12.2000 for  
rejoinder

*20/11/2000*  
REGISTRAR

Rejoinder  
not filed.

*21/11/2000*  
Regd.

8-12-2000

Parties are absent on  
call. No steps taken to  
file rejoinder. Put up  
before the Bench for  
further orders.

*8/12/2000*  
REGISTRAR

Rejoinder not filed.

*29.1.01* Bench

Rejoinder not filed.

*29.1.01* Bench  
*1/2/01*

Rejoinder not filed.

*10/4/01* Bench

Rejoinder not filed.

*11.5.01* Bench

Order dated 19.9.2001

Heard Shri Ashok Mishra, learned counsel for the petitioner and Shri A.K.Bose, learned Senior Standing Counsel for the respondents and also perused the records.

In this Original Application the petitioner has prayed for a direction to respondents for giving him appointment to the post of E.D.B.P.M., Palasahi B.O. by taking into account his working experience in the above said post.

The case of the petitioner is that one Rataakar Jena was ~~his~~ adopted father, who was the regular incumbent of the post of EDBPM, Palasahi B.O. and during his illness the applicant had acted as his substitute, ~~during~~ in different spells in 1998 and 1999. According to applicant he worked as substitute for 173 days in 1998 and 182 days in 1999, in total 355 days. Applicant has stated that after retirement of the regular incumbent Shri Jena, applications were invited on 7.6.2000 fixing the ~~last~~ date for receipt of applications to 27.6.2000 in pursuance of which he applied for the post with necessary documentation. But even though he had earlier worked in the post with full satisfaction of the higher authorities, his case was not considered. In the context of the above the petitioner has come up in this O.A. with the prayers referred to earlier.

Respondents have filed their counter opposing the prayer of the applicant. No rejoinder has been filed.

For the present it is not necessary to record all the averments made by the respondents in their

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Re: *Answer not filed.*

Bench

My  
27/6/01Re: *Answer not filed.*

Bench

B  
18-6

For Admission

Bench

B  
18/9/01*S. Jom.*

counter, because these will be taken note of while considering the submissions made by the learned counsel of both sides. The admitted position between the parties is that the applicant worked as substitute in the post of EDBPM, Palashai B.O. Law is well settled that at the time of regular selection experience gained as substitute cannot be taken into account. If this is allowed be so, then it will always be open for an <sup>A. S. Jom</sup> incumbent to go on leave by inducting one of his relations as substitute and thereby giving <sup>him</sup> an undue advantage over the other candidates when regular selection process is undertaken. In view of this the departmental authorities were right in not taking into account the experience gained by the applicant as substitute EDBPM.

It has been further submitted by the learned counsel that as the applicant had worked for 355 days as substitute under law, he should be regularised in that post. This contention is held to be without any merit because substitutes are not casual labourers. It has been decided by the Full Bench of C.A.T., Cuttack in the case of Raghunath Nayak vs. Union of India (O.A. 315/90) that substitutes are not casual labourers and the benefit of ~~eg~~ granting Temporary Status and consequent regularisation are not applicable to them for having rendered service as substitutes for a number of days. In this view of the matter, this contention of the learned counsel for the petitioner is held to be without any merit. Even the Hon'ble Supreme Court in the case of Supdtd. of Post Offices vs. P.K. Rajamma reported in

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AIR 1997 SC 1677 have taken the same view.

Respondents in their counter have contested that the applicant has worked for 355 days as substitute. According to them the number of days worked by the applicant as substitute is somewhat less. But in view of the findings referred to above, it is not necessary to go into this aspect of the matter any further. Respondents have admitted that in response to public notice petitioner applied for the post, but as the post was reserved for ~~SC~~ ST<sup>ST</sup> candidate, his case could not be considered. Respondents have indicated the level of representations in the post of EDBPM/SPM by the SC/ST & OBC Communities. We find no illegality in reserving the post ~~of~~ for the S.T. community. In view of this we hold that the action of the respondents in not considering the applicant who is not a S.T. candidate against a vacancy meant for the S.T. cannot be found fault with.

In view of our discussions held above, we hold that the applicant has not been able to make out a case for any of the reliefs prayed for by him. The O.A. is held to be without any merit and the same is rejected, but without any order as to costs.

MEMBER (JUDICIAL)

*S. Venkateswara*  
VICE-CHAIRMAN  
19.9.2001

Free copies offered  
Order dt. 19.9.01 issued  
to counsel for both sides.

S. O. (T)

21.9.01