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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 634 OF 2000
Cuttack this the 2nd day of March/2001

A.K. Biswal & Others ... Applicant(s)

VERSUS

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

G. Narasimham
SOMNATH SOONI
VICE-CHAIRMAN

2.3.2001

2.3.2001
(G. NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.634 OF 2000
Cuttack this the 2nd day of March /2001

CORAM:

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

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1. Sri Akshya Kumar Biswal, aged about 29 years,
S/o. Gobinda Ch.Biswal, At-Gendamali, Post-Balarampur Garh
Via-Gabakunda, District - Puri
2. Sri Dillip Kumar Mohanty, aged about 30 years,
S/o. Bhagabat Mohanty, At-Gartanga, Post-Podamarhia,
Via-Mahanga, District - Cuttack
3. Bijaya Ketan Mohanty, aged about 30 years,
S/o. Satyanarayan Mohanty, At-Buhala, PO-Kendupatna,
Dist - Cuttack
4. Sk.Imtiyaz Ali, aged about 28 years,
S/o. Sk.Ali Akber, At-Fakirabada, Post/District-Kendrapara
PIN 754 211

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Applicants

By the Advocates

M/s.AK.Mohanty
PK.Nayak

-VERSUS-

1. Deputy Director General, National Sample Survey
Organisation (Field Operation Division), Ministry
of Statistics and Programme Implementation,
New Delhi (Block, 3rd Floor, Puspa Bhawan, New Delhi-62
2. Deputy Director (Administration), National Sample
Survey Organisation, (Field Operation Division),
New Delhi, C- Block, 3rd Floor, Puspa Bhawan, New Delhi-62
3. Joint Director (Eastern Zone), National Sample Survey
Organisation (Field Operation Division), Calcutta
Mahalanobis Bhawan, 164 GLT Road, Calcutta-35
4. Deputy Director (Statistics), National Sample Survey
Organisation (Field Operation Division), Bhubaneswar,
District - Khurda, Commercial Complex, 1st Floor,
Acharya Vihar, Bhubaneswar-13
5. Assistant Director, National Sample Survey Organisation
(Field Operation Division) 3 & 4, O.S.H.B. Colony,
Modipara, Sambalpur-2

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Respondents

By the Advocates

Mr.S.B.Jena, A.S.C.

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O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): The four applicants, who were appointed as Investigators (F.O.D.) under the Respondents i.e., National Sample Survey Organisation, on 30.12.1998 on contractual basis for one year and extended upto the end of December, 2000 filed this Original Application for regularisation of their services and for payment of equal pay of regular Investigators. They were recruited through a selection comprising of written test and viva voce held during later part of 1998 on all India basis pursuant to an advertisement (Annexure-R/1) for filling up 223 posts on contract basis on a fixed salary of Rs.6000/-, for a period of one year or till regular candidates from Staff Selection Commission/Surplus Cell are available. In July, 2000, Staff Selection Commission issued advertisement (Annexure-4) for filling up regular Investigators in the pay scale of Rs.5000-8000/-.

2. The grievance of the applicant is that they possess the required educational qualification prescribed for regular Investigators and they completed uninterrupted and continuous service of more than 366 days in the posts in question, they acquire a right for regularisation in view of the availability of permanent vacancies and are entitled to usual pay prescribed for regular Investigators as they are discharging similar nature of duties. They are also continuing against regular vacant posts. Respondents being model employers should act fairly and should not exploit them taking advantage of their helplessness because of acute unemployment problem.

3. On 27.12.2000, after hearing the applicants in person and in the absence of the Respondents this Bench stayed orders termination till 10.1.2001. On 10.2.2001, Respondents through

their Asst. Superintendent filed show cause praying for vacation of the stay order. On 11.1.2001, the stay order was vacated with an observation that in case the applicants ultimately succeed they would be entitled to all financial and service benefits.

4. In the counter the stand of the Department is that the applicants being fully aware of the terms and conditions of this appointment on contract basis mentioned in the advertisement (Annexure-R/1) and also in the appointment orders dated 19.12.1998, accepted the appointments signing the terms and conditions of the appointments (for instance Annexures-R/2 to R/5 in case of the applicant Bijaya Ketan Mohanty). As per the terms their appointments stood terminated on 29.12.1999. But the work of the scheme having been not completed, they were again appointed on same terms upto 31.8.2000 and subsequently upto 31.12.2000. Bound as they are by these terms and conditions, they have no right of regularisation. As per the terms, they were being paid consolidated salary of Rs.6000/- per month and not Rs.4000/- as alleged in the application. These Investigators on contract basis were not carrying out exactly the same work as the regular Investigators do, who in addition to Socio Economic Surveys are required to take up special surveys including the work of Price Collection. Regular Investigators also extend necessary help in management of the office. Hence claim for equal pay for equal work carries no meaning. Further under rules regular Investigators can only be appointed through a selection in competitive recruitment conducted by the Staff Selection Commission.

5. In the rejoinder while reiterating the averments in the Original Application by annexing four more annexures including daily diary of the applicant Sk. Imtiyaz Ali, pleaded that terms and conditions signed being opposite to public policy are not binding on them. A new plea on additional facts advanced will be discussed later.

6. We have heard Shri A.K.Mohanty, learned counsel for the applicants and Shri S.B.Jena, learned Addl. Standing Counsel for the Respondents. Also perused the records.

7. From the aforesaid pleadings the following facts not in controversy emerge. Thorough Annexure-R/1, the Respondent (Department) No.1 advertised inviting applications for recruitment to 223 posts of Investigators on contract basis for one year on consolidated salary of Rs.6000/- per month. Out of these 223 posts, for Orissa Zone six were allotted. The applicants came out successful through written test as well as viva voce and were given the appointments on 30.12.1998, after ^{they} signing in the terms containing the terms and conditions of their appointments on contract basis. These assignments were extended from time to time till 31.12.2000. But they continued till 11.1.2001, pursuant to the stay order of this Bench. Further educational eligibility for appointments on regular basis and on contract basis is the same. Yet regular Investigators can be appointed only by a selection through a competitive examination conducted by the Staff Selection Commission.

8. Shri Mohanty, the learned counsel for the applicants vehemently contended that the work entrusted to the applicants being perennial in nature and substantive vacancies being available, the terms and conditions signed by them in respect

of contract appointments are opposed to public policy and are not binding on them and cannot be utilised against them. It is not their case that through ~~undue influence~~ undue influence practised by the Respondents, they had to appear this selection for these contract appointments and were made to sign these contracts. Hence even assuming the terms are opposed to public policy, they being parties to these conditions by signing the same with full knowledge and import of the terms and conditions and deriving benefits under those terms for two years, they cannot take the help of a Court for a declaration that these conditions ^{are} opposed to the so called public policy are void, because no polluted hand shall touch the pure fountain of justice. Even if these conditions and terms are void in nature, the applicants cannot be allowed to continue on regular basis when the rule is regular appointments can be made only on a recommendation by the Staff Selection Commission after selection of successful candidates through a competitive by recruitment conducted that Agency. At least vires of such rule is not questioned in this application. Further we fail to understand how these terms and conditions are opposed to public policy. The specific case of the Department is that these appointments were made for a specific purpose on contract basis directly by the Department at all India level to manage the work as a stop-gap-arrangement and to ensure fairness such appointments were made through open advertisement (Annexure-R/1) incorporating therein the main terms and conditions. This apart the applicants were not in employment for years together. We, are therefore, not inclined to accept this contention of the applicants.

9. It is next to be considered whether the plea for equal pay for equal work is tenable. In the Original Application besides suppressing a material fact the applicants made a false averment that they are getting consolidated pay (underlining is ours) below Rs.4100/- as against the pay scale of Rs.5000-8000 for regular Investigators. The correct version in the counter and not denied in the rejoinder is that as per terms of the contract they are being paid a consolidated salary(not pay) Rs.6000/- per month which was fixed apparently by taking into account the minimum basic pay of Rs.5000/- as available to regular Investigators. One cannot get equitable relief unless he approaches the Court with clean hands. Since they are getting salary more than the minimum basic pay of a regular Investigator, the claim for equal pay for equal work cannot but fail even if they are discharging the similar duties as that of Regular Investigators.

10. In the rejoinder, a new plea of 'Legitimate Expectation' was advanced by citing instance of regularisation of services of Som Dutta Sharma and Jagadish Lal vide order under Annexure-7. This Annexure-7 (date not legible) reveals that these two persons were initially appointed on adhoc basis in the year 1978. While continuing so they appeared in the regular recruitment conducted by the Staff Selection Commission, but could not be selected. Hence their services were terminated. Shri Sharma approached the Principal Bench and Shri Lal Chandigarh Bench of the Tribunal. The Benches ordered their reinstatement with direction to treat them to have been regularly appointed from the dates of initial appointments. The judgments have not been annexed. Neither the rejoinder nor Annexure-7 contains

cases numbers or dates of disposal, at least to obtain the judgments through correspondence. Hence in the absence of judgments, it cannot be presumed that these two employees were in identical footing of the applicants. Rather Annexure-7 reveals that they were appointed on adhoc basis and not on contract basis as in the case of the applicants. On the other hand it was contended by the Department that they were engaged on adhoc basis against regular ~~in~~ vacancies which is not the case of the applicants. Thus this plea also fails.

11. The learned counsel for the applicants placed reliance on the following decisions.

- 1) AIR 1990 SC 2228 (Jacob N.Puthu Parambadi vs. Kerala Water Authority)
- 2) AIR 1995 SC 1665 (Union of India vs. Dinesh Kr. Saxena)
- 3) 1994 Lab.(IC) 1109 (Z.Venyo vs. State of Nagaland)
- 4) 1999 Lab(IC) 200 (G.S.Sibaprkash vs. Central Silk Board)
- 5) 1999 AIRSCW 892 (Secretary, Haryana State Electricity Board vs. Suresh & Others)

We have carefully gone through these decisions. The case of Haryana State Electricity Board decided by the Apex Court deals with interpretation of Contract Labour (Regulation and Abolition) Act, 1970 and Industrial Dispute Act. These two Acts are in no way involved in the case before us. Hence this decision is not at all relevant to issue of regularisation as raised in this Application.

Dinesh Kumar Saxena's case in a way supports the case of the Department. In this case, some employees were appointed on contract basis for a limited and fixed duration on fixed pay. No work was available in the Department to keep them busy throughout. The Apex Court held that the Department could not be directed to absorb them permanently, even though

the employees worked in the Department for about six years. In the case before us it cannot be said that work is not available. But the fact remains the applicants were appointed on contract basis for a certain period with clear understanding that they should make room for the regular employees to be selected by the Staff Selection Commission and the process of selection through Staff Selection Commission had already commenced. This decision is clearly distinguishable.

In Jacob's case the Apex Court had to deal with a situation where some employees on stop gap arrangement had served for several years. Taking this into consideration, the Apex Court held that their services are to be regularised by observing specifically that cases of such employees serving for more than two years need to be sympathetically considered. In the case before us the applicants hardly served for two years and pursuant to the order of stay they continued for 11 more days.

G.S.Sibaprkash's case was dealt by the Karnataka High Court, where the order of termination of the employee concerned working on contract basis was issued by an authority other than the appointing authority. Moreover, the applicant therein worked for more than six years continuously though on contract basis. Hence this decision is also clearly distinguishable.

Z.Venyo's case (decided by the Guwahati High Court) was appointed as Judicial Magistrate-IIInd Class on contract basis for two years by order dated 17.7.1990. Again by order dated 14.7.1992, his service was extended for another period of six months, but with a new condition that he must make room for an officer on regular basis selected through Nagaland Public

Service Commission, if he joins earlier, six months. Further by order dated 2.12.1992, his service was extended for a period of one year on the same condition. In other words, he continued in that post for more than two years. He also applied to appear in the Nagaland Public Service Commission for recruitment to the post of Judicial Magistrate, advertised on 10.4.1992, but could not appear at the examination. Since he served for more than two years, relying on the decision of the Apex Court in Jacob N.Puthu case(Supra) his services were directed to be regularised.

Thus it is seen, none of the cases referred to above deals with employees, who served on contract basis, just for two years and not more than two years, as in the case before us. The decisions being distinguishable will not be of any help to the applicants.

12. In the result, we do not see any merit in this Application which is accordingly dismissed, but without any order as to costs.

Somnath Somay
(SOMNATH SOMAY)
VICE-CHAIRMAN
2.3.2001.

L.A. 2.3.2001
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//