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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK
ORIGINAL APPLICATION NO.901 OF 2004
Cuttack this the 06th day of November, 2008

Bichhanda Charan Pattanaik

.....

Applicant

Vrs.

Union of India and others

.....

Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not ?
- 2) Whether it be sent to the P.B. of CAT or not?

(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER

(K. THANKAPPAN)
JUDICIAL MEMBER

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CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...
Bichhanda Charan Pattanaik, aged about 35 years, S/o.Nilakantha Pattanaik, Village-Chhelda, Post-Jaria, P.S.Jatni, Dist-Khurda – at present working as Group D, Assistance in the Office of Sr.Post Master , G.P.O., Bhubaneswar, At/PO-Bhubaneswar, Dist-Khurda...Applicant

By the Advocates: Mr.D.K.Mohanty

-VERSUS-

1. Union of India represented through it's Secretary, Department of Posts, Ministry of Communications, Govt. of India, Dak Bhawan, New Delhi-110 001
2. The Chief Post Master General, Orissa Circle, At/PO-Bhubaneswar, Dist-Khurda
3. Senior Superintendent of Post Offices, Bhubaneswar Division, 6/Forest Park, Bhubaneswar, Dist-Khurda
4. Senior Post Master, Bhubaneswar G.P.O., At/PO-Bhubaneswar, Dist-Khurda ...Respondents

By the Advocates: Mr.B.N.Udgata

ORDER

SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

Mooting a question whether a contingent employee of the Postal Department having worked for not less than eight hours per day be considered as a casual employee making him entitle for regularization or not, this application under Section 19 of the Administrative Tribunals Act, 1985, has been filed.

2. The applicant has claimed that he was engaged as a contingent worker/employee for two hours every day, viz., from 10 am to 12 noon in the office of the Sr.Post Master, GPO, Bhubaneswar, from 1.12.1992 per the order dated 2.12.1993 and he was paid wages on v

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However, while continuing as such, by order dated 13.11.2003, the 4th Respondent, i.e., Sr.Post Master, Bhubaneswar GPO, approved the appointment and work of the applicant and his work time was extended from 11 a.m to 2 p.m. However, subsequently by the order dated 16.12.2003, the Sr.Post Master, Bhubaneswar GPO, cancelled the working hours of the applicant which was extended up to 2 pm. Hence, aggrieved by the above order dated 16.12.2003, which is marked as Annexure-A/8 the applicant has prayed for the following relief:

- “i) Admit this original application and to quash the Annexure A/8 passed by the Respondent no.4;
- ii) To direct the Respondents to grant the applicant rendering Group-D Assistant enhanced from 10.00 A.M. to 2.00 P.M. of his services;
- iii) To direct the Respondents, regularized the services of the applicant;
- iv) To pass any other order/orders as this Hon'ble Tribunal may deem fit and proper.”

To substantiate the claim, the applicant relies on copy of the minutes of the meeting held on 22.10.2003 and Annexure-A/6 dated 13.11.2003 approving of the appointment/engagement of the applicant.

3. This Tribunal heard the learned counsel appearing on either sides and perused the materials on record.

4. The learned counsel for the applicant Shri D.K.Mohanty submitted that as the applicant's appointment/engagement as a contingent employee or as a casual employee as per the rules governing the casual employees, the applicant is entitled for regularization of his service taking into consideration his experience which he had in the Department. The counsel further submitted that since the engagement of the applicant has

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been approved by the 4th Respondent, the Sr.Post Master, it is only proper for this Tribunal to hold that he should be treated as a casual employee. Further, the learned counsel submitted that being an employee having less than eight hours of work per day, he ought to have been considered as a part time casual employee and if so, his services ought to have been regularized. The next contention of the applicant is that since as per the order dated 13.11.2003 the working time of the applicant has been increased from 10 a.m – 12 noon to 11 a.m to 2 p.m which is required by the Department, the order of the 4th respondent canceling the same is not tenable. It is also contended by the counsel for the applicant that the applicant was engaged by the Department from December, 1993 till date for two hours of work per day, the engagement of the applicant shall not be curtailed unless the Department is of the view that his engagement is not necessary.

5. The learned counsel appearing for the Respondents, relying on the counter filed for and on behalf of the Respondents, contended that none of the grounds urged in the O.A. is tenable as the engagement of the applicant itself was for a time and his work was only for two hours and therefore, he is not entitled for any regularization. The counsel for the Respondents further relies on Annexures R/1 and R/2 to show that the engagement of the applicant after 1989 itself was irregular and not in accordance with the directions of the Director General, Posts, and the Chief Post Master General, Orissa Circle, directed all the Regional and

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Divisional Heads not to engage any fresh full time or part time casual labourers/contingent workers in the post office with effect from 29.11.1989. That apart, the engagement or appointment of the applicant was not sponsored by any employment exchange. If so, the counsel for the Respondents submits that even the initial engagement of the applicant by the 4th respondent, the Sr.Post Master, Bhubaneswar GPO itself was irregular and illegal. The learned counsel further submits that prior to 1989 the casual employees or the part time contingent employees were engaged only on sponsoring made by employment exchanges and such employees could have been treated at par with temporary Group D employees of the Department. Even if such employees are appointed or engaged at par with Group D employees, conferment of temporary status or regularization of such employment would not become automatic. The learned counsel further submits that increase or the extension of the time of work of the applicant from 11 a.m to 2 p.m is without sanction of the authority. Hence Annexure-A/8 order is tenable in law and cannot be quashed.

6. The two questions, which arise for our decision, are: Whether the applicant is entitled for regularization of his services and whether the increase of the working time of the applicant is justifiable or not? Though the applicant was engaged by the 4th Respondent to perform the work for two hours from December, 1993, he was paid on voucher receipts/slips and as per the rules applicable to casual employees which have been



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related by the Respondents in Annexure-A/6. The casual employee should be on a status and that should be reflected on his appointment. The benefits to which the casual employees or casual workers are entitled in accordance with the Government instructions can be extended only to such employees who are appointed or engaged by the authorities as per the necessity of the Department. In this context, it may be noted that in Annexure-R/6, it has been categorically laid down that by strict and meticulous observance of the guidelines by all Ministries/Departments, it should be ensured that there is no more engagement of casual workers for attending to work of a regular nature, particularly after the review envisaged is duly completed. Each Head of Office should also nominate an officer who would scrutinize the engagement of each and every casual worker and the job for which he is being employed to determine whether the work is of casual nature or not. Apart from the above, the applicant has not adduced any material to show that his work was of such a nature to hold that it was a contingent work or a casual work beyond eight hours per day. If so, the engagement of the applicant cannot be considered as a casual employment or a contingent employment. It can be considered as duty related employment even though the Department requires such work. In the above circumstances, we are of the view that the applicant is not entitled to any regularization of his piecemeal service.

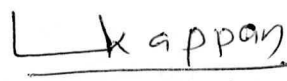
7. The next question to be considered is that whether Annexure-A/8 is sustainable or not. It is admitted case of the applicant that he was engaged

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by the 4th Respondent only to work for two hours, viz., 10 a.m to 12 noon.

There is no reason or justification for the authorities to increase the working time of the same nature of work which the applicant was doing from 1993 as per the order dated 13.11.1993. That apart, such increase of the working time has to be considered only by the 4th Respondent. Hence the cancellation order dated 25.11.2003 cannot be considered irregular or illegal. There is no material placed before us to hold that the extension of working time of the applicant is liable to be upheld. For the reasons stated above, we do not find any merit in this O.A., which is accordingly dismissed. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER