

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO . 1166 OF 2004  
CUTTACK, this the 18<sup>th</sup> day of September, 2006.

Amarendra kumar chaudhury ..... APPLICANTS

Versus

UNION OF INDIA & ORS. ..... RESPONDENTS

( FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not ?
2. Whether it be circulated to all the Benches of the CAT, or not?

(B.B.MISHRA)  
MEMBER (ADMN.)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.**

**ORIGINAL APPLICATION NO. 1166 of 2004**

Cuttack, this the 18<sup>th</sup> day of September, 2006.

**C O R A M:-**

**THE HON'BLE MR.B.B.MISHRA, MEMBER(ADMN.)**

AMARENDRA KUMAR CHAUDHURY,  
Aged about 34 years,  
Son of Jwala Prasad Chaudhury,  
At present working as Senior Casual Worker,  
Under the Archaeological Survey of India,  
Puri Sub Circle, District: Puri.

.... APPLICANT.

BY legal practitioner: M/s. S.N.Mohapatra,, K.R.Mohapatra,  
S.Ghosh, Advocates.

**-VERSUS-**

1. Union of India, represented through its  
Director General, Archaeological Survey of India,  
Janpath, New Delhi, New Delhi-110 001.
2. Superintending Archaeologist,  
Archaeological Survey of India,  
Bhubaneswar Circle, 153, VIP Area, Nayapali,  
Bhubaneswar-14 (Orissa).
3. Conservator Assistant,  
Archaeological Survey of India,  
Puri Sub Circle, Puri, Orissa.

.... RESPONDENTS

By legal practitioner .... **Mr.U.B.Mohapatra, SSC.**

## ORDER

### MR. B.B.MISHRA, MEMBER(ADMINISTRATIVE):

The grievance of the Applicant is that although he has been in uninterrupted casual employment under the Respondents uninterrupted with effect from 24-01-1990, his case has not been considered for conferment of temporary status and regularization as per the Scheme framed by the Government of India in the year 1993. The scheme says that all labourers who are in casual employment and have rendered continuous service for at least one year i.e. to say 240 days (206 days in case of offices observing 5 days week) are entitled to such benefits. This has been conferred on other similarly situated persons like that of the Applicant. Being aggrieved by such discriminatory treatment of the Respondents, the Applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 praying to direct the Respondent No.2 to confer temporary status on the Applicant with effect from 01-09-1993 and for taking steps for regularization as per the scheme.

2. Respondents have filed counter contesting the case of the Applicant on the ground that as the Applicant does not fulfill the requirement of the Scheme of 1993 and his initial appointment being not through the employment exchange, he is not entitled to any of the relief claimed in this Original Application.

3. Heard Learned Counsel appearing for the parties at length and went through the materials placed on record.

4. Learned Counsel appearing for the Applicant has stated that in view of the long continuance in the Department, the Applicant has accrued a right to be regularized after the temporary status, as per the scheme, is conferred on him. It is submitted that that the Applicant after working a year from 02.02.1986 was disengaged and again allowed to discharge his duties on casual basis from 24-01-1990. While he was continuing uninterruptedly, under Annexure-A/l he was treated as casual worker on payment of pro rata basis. This itself goes to show that the Applicant was in employment as on the date of the scheme of 1993 and, therefore he is entitled to be conferred with the temporary status and

regularization more so when others similarly situated have been extended such benefits.

5. On the other hand, learned Standing Counsel appearing for the Respondents submitted that the Applicant is entitled to be conferred with the temporary status and regularization provided his case covers the Scheme framed by the Government of India. As the case of the Applicant does not fulfill the conditions stipulated in the said Scheme, he is not entitled to claim any right out of the said scheme. It is further submitted that as per the instructions of the DOP&T dated 15<sup>th</sup> December, 2003 issued in conformity with the decisions of the Hon'ble Apex Court rendered in the case of Passport Officer Trivandrum and others vrs. Venugopal and other, when the casual engagement of the Applicant was not through any regular process of selection or through any employment exchange, he has no right to claim any benefits as per the Temporary Status Scheme adopted by the Government of India in the year 1993.

6. Having heard the parties, went through the materials placed on record. Paragraph 4 (1) of the said scheme provides as under:-

“4. Temporary status:- (l) temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week)’’.

7. Undisputedly, the conferment of Temporary Status Scheme of 1993 is not an on going scheme and, therefore, it can not be applied for the purpose of giving temporary status to all the casual workers as and when they complete one year’s continuous service. In this connection relevant portion of the observations of the Hon’ble Supreme Court rendered in the case of UNION OF INDIA -vrs.- GAGAN KUMAR (reported in JT 2005 (6) SC 410) are quoted herein below:-

“6. Clause 4 of the scheme is very clear that the conferment of ‘temporary’ status is to be given to the casual labourers who were in employment as on the date of commencement of the scheme. Tribunal has taken the view that this is an on-going scheme and as and when casual labourers complete 240 days of work in a year or 206 days (in case of offices observing 5 days a week), they are entitled to get ‘temporary’ status. We do not think that clause 4 of the scheme envisages it as an on-going scheme. In order to acquire ‘temporary’ status, the casual labourer should have been in employment as on the date of commencement of the scheme and he should have also rendered a

continuous service of at least one year which means that he should have engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. From clause 4 of the scheme, it does not appear to be a general guideline to be applied for the purpose of giving "temporary" status to all the casual workers, as and when they complete one year's continuous service. Of course, it is up to the Union Government to formulate any scheme as and when it is found necessary that the casual labourers re to be given "temporary" status and later they are to be absorbed in Group 'D' posts".

8. The above view has been reiterated in the case of

**DIRECTOR GENERAL, DOORDARSHAN, MANDI HOUSE, NEW DELHI & OTHERS vrs. MANAS DEY & OTHERS** (AIR 2006 SC 263).

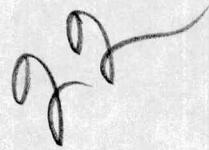
9. Keeping the above in mind, it is to be examined as to whether the Applicant was in engagement as on 10-09-1993 and if so, as to whether he has completed the required number of days so as to entitle him to acquire the temporary status.

10. Neither it is the case of the Applicant; nor it is evident from record that the initial engagement of the Applicant was either through any regular process of selection or after being sponsored through employment exchange. Law governing the field is that the burden of proof is on the

claimant to show that he had worked for 240 days in a given year and was in employment as on the crucial date fixed by the Government. This burden is to be discharged only by workman making the claim. He has to adduce cogent evidence, both oral and documentary. Mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on him to prove that he had worked for 240 in a given year or of that matter he was in employment as on the crucial date of issue of the circular. This view gains support by the decisions of the Hon'ble Apex Court rendered in the cases of **MANAGER, RESERVE BANK OF INDIA vrs. S.MANI**((2005) 5 SCC 100=2005 SCC (L & S) 609), **MUNICIPAL CORPORATIO, FARIDABAD vrs. SIRI NIWAS** ((2004) 8 SCC 195-2004 SCC (L&S) 1062). Further in the case of **ASHWANI KUMAR vrs. STATE OF BIHAR** ((1997)2 SCC 1= 1997 SCC (L & S) 465) the Hon'ble Apex Court have held that "so far as the question of confirmation of these employees whose entry itself was illegal and void, is concerned, it is to be noted that question of confirmation or regularization of an irregularly appointed candidate would arise if the candidate concerned is appointed in

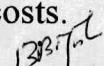
an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But if the initial entry itself is unauthorized and is not against any sanctioned vacancy, question of regularizing the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularization or confirmation is given it would be an exercise in futility". In this case, the Applicant has not produced any document in support of his prayer that he was in casual engagement and has completed 240 days in a given year as on 10-09-1993. He has also not disclosed the name of the so called similarly situated persons conferred with temporary status followed by regularization. In absence of the above, it is difficult to acceded to the prayer of the Applicant made in this O.A.

11. Otherwise also, since the very engagement of the Applicant was not being done through employment exchange as per DOP&T letter dated issued in conformity with the decision of the Hon'ble Supreme Court of India rendered in the case of **PASSPORT OFFICER TRIVANDRUM AND OTHERS vrs. VENUGOPALAND OTHERS** the Applicant



is not entitled to be conferred with the temporary status as  
prayed for by him in this O.A.

12. In view of the discussions made above, I find  
no merit in this Original Application which is accordingly  
dismissed by leaving the parties to bear their own costs.

  
**(B.B. MISHRA)**  
MEMBER (ADMN.)