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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

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ORIGINAL APPLICATION NO.127 OF 2005
CUTTACK, THIS THE 3RD DAY OF OCTOBER 2007


Sukanta Kumar Bhoi Applicant

Vs.

Union of India & Others.....Respondents

FOR INSTRUCTIONS

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


(N.D.RAGHAVAN)
VICE-CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.127 OF 2005
CUTTACK, THIS THE 3RD DAY OF OCTOBER, 2007

CORAM:

HON'BLE MR. N.D.RAGHAVAN, VICE-CHAIRMAN

Sri Sukanta Kumar Bhoi, aged about 40 years, Son of Manguli Bhoi, At-Anjira, P.O. Sisilo, dist. Khurda, present Address- C/o. R.N.Prusty, Advocate, SNEHASHREE, At-Purusottam Nager (Kajidiha), P.O. Madhupatna, Dist. Cuttack.

.....Applicant

Advocate(s) for the Applicant - Mr. R.N.Prusty.

VERSUS

1.Union of India represented through Director General, Archaeological Survey of India, Janapath, New Delhi-11.

2. Superintending Archaeologist, Archaeological Survey of India, Plot No. 153, V.I.P. Area, Sri Jagannath Nivas, Nayapalli, Bhubaneswar-751015.

3. Conservation Assistant, Archaeological Survey of India, Cuttack Sub-Circle, Barabati Fort, Cuttack.

4. Ajaya Mallick, Archaeological Survey of India, At/P.O. Lalitgiri, dist. Cuttack

5. Antarjami Padhi, Archaeological Survey of India, At/P.O. Jharial, Kaili, Via- Bangomunda, Dist. Balangir.

6. Prafulla Sethi, Archaeological survey of India, Plot No. 153, V.I.P. Area, Sri Jagannath Nivas, Nayapalli, Bhubaneswar, Dist. Khurda.

7 Sukanta Kumar Bisoi, Archaeological survey of India, Plot No. 153, V.I.P. Area, Sri Jagannath Nivas, Nayapalli, Bhubaneswar-751015, Dist. Khurda.

.....Respondents.

Advocate(s) for the Respondents - Mr. B.Mohapatra.

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ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

This Original Application was filed on 18.3.2005 and placed before the Bench on 2.8.2005 for considering the question of admission. By order dated 2.8.2005 notices were directed to the Respondents requiring them to file counter within six weeks. After availing repeated opportunities, the Respondents filed their counter on 21.3.2007. Thereafter the O.A. was placed before the Bench on hearing on 8.5.2007 and on 11.7.2007 when on the prayer made by the applicant's counsel the hearing was adjourned to 23.7.2007.

2. On 23.7.2007 the learned counsel Mr.R.N.Prusty for the applicant and the learned Additional Standing Counsel Mr.B.Mohapatra for the Respondents remained absent due to advocates' strike on Court work before this Bench purportedly on the basis of the CAT Bar Association resolutions ^{- any foundation, ludicrous} passed without substance or value but violating principles of natural justice too. In this connection, I would like to refer to the decision in the case of **Ramon Services Private Limited Vrs. Subash Kapoor and Others**, reported in JT 2000 (Suppl. 2) Supreme Court 546, holding as follows:

“When the advocate who was engaged by a party was on strike, there is no obligation on the part of the court either to wait or to adjourn the case on that account. It is not agreeable that the courts had earlier sympathized with the Bar and agreed to adjourn cases during the strikes or boycotts. If any court had adjourned cases during such periods, it was not due to any sympathy for the strikes or boycotts, but due to helplessness in certain cases to do otherwise without the aid of a Counsel.”
(Judgment Paras-5 & 14)



"In future, the advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self imposed dereliction of his advocate. The litigant who suffers entirely on account of his advocate's non-appearance in court, has also the remedy to sue the advocate for damages but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the court mulcts the party with costs for the failure of his advocate to appear, the same court has power to permit the party to realize the costs from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause, the court can certainly absolve him from such a liability. But the advocate cannot get absolved merely on the ground that he did not attend the court as he or his association was on a strike. If any Advocate claims that his right to strike must be without any loss to him but the loss must only be for his innocent client, such a claim is repugnant to any principle of fair play and canons of ethics. So, when he opts to strike work or boycott the court, he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his cause would be safe in the hands of that advocate."

(Para-15)

"In all cases where court is satisfied that the ex parte order (passed due to the absence of the advocate pursuant to any strike call) could be set aside on terms, the court can as well permit the party to realize the costs from the advocate concerned without driving such party to initiate another legal action against the advocate."

(Para-16)

"Strikes by the professionals including the advocates cannot be equated with strikes undertaken by the industrial workers in accordance with the statutory provisions. The services rendered by the advocates to their clients are regulated by a contract between the two, besides statutory limitations, restrictions, and guidelines incorporated in the Advocates Act, the Rules made thereunder and Rules of procedure adopted by the Supreme Court and the High Courts. Abstaining from the courts by the advocates, by and large, does not only affect the persons belonging to the legal profession but also hampers the process



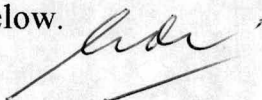
of justice sometimes urgently needed by the consumers of justice, the litigants. Legal profession is essentially a service oriented profession. The relationship between the lawyer and his client is one of trust and confidence."

(Para-22)

"No advocate could take it for granted that he will appear in the Court according to his whim or convenience. It would be against professional ethics for a lawyer to abstain from the Court when the cause of his client is called for hearing or further proceedings. In the light of the consistent views of the judiciary regarding the strike by the advocates, no leniency can be shown to the defaulting party and if the circumstances warrant to put such party back in the position as it existed before the strike. In that event, the adversary is entitled to be paid exemplary costs. The litigant suffering costs has a right to be compensated by his defaulting Counsel for the costs paid. In appropriate cases, the Court itself could pass effective orders, for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system. Inaction will surely contribute to the erosion of ethics and values in the legal profession. The defaulting Courts may also be contributory to the contempt of this Court."

(Paras-24, 27 & 28)

Keeping in view the aforesaid case law laid down by the Hon'ble Supreme Court, condemning severely such strike as contempt of Court particularly Hon'ble Supreme Court itself and leaving the Ld.Counsels including those representing Government at the peril of facing the consequences thereof and in view of the provisions contained in Section 22(2) of the Administrative Tribunals Act, 1985 that Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of the documents and written representations and after hearing such oral arguments, as may be advanced and in accordance with Rule 15 of the CAT (Procedure) Rules, 1987, the available record on hand has been perused for adjudicating the issue as below.



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3. Brief facts of this O.A., according to the applicant, are that he joined as a Casual Labourer in the Department of Archaeological Survey of India on daily wage of Rs.8.25 paisa in the year 1983 and on being directed by the authorities he had worked at different stations. It has been submitted by the applicant that he worked as such from 1983 till 1990 when he was granted temporary status vide order dated 16.4.1990 and posted to the site of Ranipur Jharial in the district of Balangir (Orissa State). While working as such he is stated to have been retrenched on 25.3.1994 without any rhyme or reason. However, on 18.12.1994 he was further allowed to work as casual worker in Sri Sri Sinhanath Temple at Baideswar in the district of Cuttack. It has been submitted by him that although similarly situated persons were given opportunity to work in different sites, he was deprived of that. This fact he had brought to the notice of the authorities, but that did not yield any result, whereafter, he approached this Tribunal in O.A.No.2/95 before this Tribunal. While admitting the said O.A., the Tribunal, vide order dated 3.1.1995. directed, as an interim measure, "if any order of termination of engagement of the applicant is issued before the case is heard, the same shall not be operable for one week".

4. It is the case of the applicant that by virtue of this interim direction of the Tribunal, he joined as casual worker in Jharial site at Ranipur in the district of Balangir where he worked in the same capacity uninterruptedly and diligently to the satisfaction of his authorities for about five years,

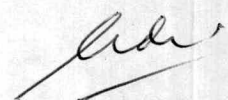


whereafter he was directed to work in other stations in Orissa vide Annexures-2, 3 and 4. It is his case that although he is senior to private Respondent Nos. 4 to 7 in view of entry into service as casual labour and also in view of promotion to the 'status of the casual worker', Respondent No.2 did not consider his grievance in the matter of regularizing his service and thereby he has been deprived of the benefits entitled to him compared to Respondent Nos. 4 to 7. The representations made by him to Respondent No.2 to extend the benefit at par with Respondent Nos. 4 to 7 being not responded, he has moved this Tribunal in the present Original Application seeking the following relief(s):

“The Respondent No.2 be directed to regularize the service of the applicant with all statutory benefits from the date of retrospective promotion in view of his eligibility and suitability in the interest of justice”

5. Private Respondent Nos. 4 to 7 have neither appeared nor filed their counter.

6. In the counter filed by the Respondent-Department, it has been submitted that the applicant was engaged purely on casual labour under Respondent No.3 on 11.03.1985 against the estimate of specific conservation work of the monuments/sites and wages were paid according to the rate fixed by the Labour Commissioner from time to time and that he was disengaged as soon as the specific conservation work was over. Respondent-Department have denied any promotion to have been given by them to the applicant to the status of casual worker. They have clarified that since the work for



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attending the nature of Group D was allotted to the applicant, he was being paid 1/30th + D.A. on pro rata basis. It has been submitted that earlier the applicant had approached this Tribunal in O.A.No.2/95 which was disposed of with direction that the applicant should approach Respondent No.3 with necessary application in this regard within a specific period and necessary orders would be passed by Res. No.3 for the engagement of the applicant within four days thereafter and according to this direction, the applicant was allowed to work under estimated head. Besides the above, the Respondent-Department have brought out in the counter the instructions of DOP & T dated 10.9.1993 and subsequent clarification dated 12.7.1994 with regard to engagement of casual employee through the Employment Exchange and have stated that the casual labour not recruited through the Employment Exchange could not be bestowed with temporary status. In the instant case, the Respondent-Department have added that the name of the applicant was not sponsored through Employment Exchange during initial engagement and therefore, the question of granting him temporary status and consequential regularization does not arise. They have cited the decision of the Hon'ble Supreme Court reported in JT 2005(6) SC 401 in Union of India vrs. Gagan Kumar in support of their stand. At last, they have submitted that the O.A. merits no consideration and therefore, the same is liable to be dismissed with costs,

7. The sole point for consideration in this O.A. is whether the applicant has been discriminated against. It is his specific case that he being senior has



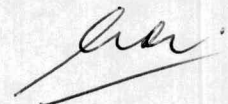
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been deprived of the benefits which the Respondent Nos. 4 to 7 are enjoying (Paragraph Nos. 4.5 and 4.6 of the O.A.) This aspect has not been answered by the Respondent-Department in their counter anywhere except contesting the plea of the applicant with regard to his regularization. Indeed the Respondent-Department have submitted in their counter as to how the applicant could not be granted temporary status and consequential regularization based on the circular of the DOP & T and the decision of the Hon'ble Supreme Court (supra). But the fact remains ^{- that is} the applicant, vide Annexure-2 to his rejoinder, has submitted an O.M. dated 8.4.1991 issued by the Ministry of Personnel, Public Grievances and Pension (Department of Personnel & Training) on the subject of regularization of services of casual workers in Group D posts – Relaxation of employment exchange procedure and upper age limit, which is quoted hereunder:

"The undersigned is directed to refer to this Department's O.M.No.59014/4/77-Estt.© dated 1st March, 1979 wherein the conditions for regularization of casual workers against Group D posts were prescribed. The policy with regard to engagement and remuneration of casual workers in Central Government offices has been reviewed from time to time and detailed guidelines in the matter were issued vide O.M.No.49012/2/86-Estt)C) dated 7th June, 1988.

2.Requests have now been received from various Ministries/Departments for allowing relaxation in the conditions of upper age limit and sponsorship through employment exchange for regularization of such casual employees against Group D posts, who were recruited prior to 7.6.88, i.e., date of issue of guidelines. The matter has been considered and keeping in view the fact that the casual employees belong to the economically weaker section of the society and termination of their services will cause undue hardship to them, it has been decided, as a one time measure, in consultation with the Director General Employment and Training, Ministry of Labour, that workers recruited before 7.6.88 and who are in service on the date of issue of these instructions, may be considered for regular appointment



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to Group D posts, in terms of the general instructions, even if they were recruited otherwise than through employment exchange and had crossed the upper age limit prescribed for the post, provided they are otherwise eligible for regular appointment in all other respects.

3. It is once again reiterated that recruitment of casual workers in Central Government offices may be regulated strictly in accordance with the guidelines contained in this Department's OM No.49014/2/86-Estt© dated 7.6.88. Cases of neglect of these instructions should be viewed very seriously and brought to the notice of the appropriate authorities for taking prompt and suitable action against the defaulters.

4. Ministry of Finance etc. are requested to bring the contents of this OM to the notice of all the appointing authorities under their respective administrative control".

8. From the above, it is to be at first considered whether the applicant's claim for regularization comes within the scope and ambit of the O.M. dated 8.4.1991 issued by the DOP & T (Supra). The following are the criterion to determine the claim of the applicant in line with the said O.M.

i) Whether the applicant was recruited before 7.6.1988?

And

ii) Whether the applicant was in service as on 8.4.1991, i.e., the date of issue of O.M. by the DoP&T?

9. Applicant to his rejoinder vide Annexure-1 has filed a certificate ~~issued~~ dated 19.11.1988 issued by the Senior Conservation Assistant, Bhubaneswar who has certified that Shri Sukanta Bhoi, Son of Shri Manguli Bhoi, At:Angira, PO-Bisilo, Dist-Puri has been working as a casual labour under ~~my~~ ^{- his lab.} jurisdiction in connection with Conservation work of different temples in and around Bhubaneswar as and when required with usual ~~break~~ ^{- break lab.} since 15.11.1984. Respondents have nowhere in their counter

denied engagement of the applicant as casual labour prior to 7.6.1988 nor have they stated that the applicant was not in service as on 8.4.1991 when the above mentioned O.M. in re. regularization of services of casual workers in Group D posts – Relaxation of employment exchange procedure and upper age limit was issued by the DOP & T. This apart, Respondents have not countered the submission on the point of discriminatory treatment meted out to the applicant while extending the benefits of regularization of the services of private Res.4 to 7 (Para-4.6 of the O.A.). From all these, I am of the considered view that this is a fit case where the Tribunal should rise to the occasion to meet the ends of justice and accordingly, I hold that the applicant was recruited before 7.6.1988 and he having been in service as on 8.4.1991, his claim is covered within the scope and ambit of DoPT's circular dated 8.4.1991 for regularization of his service.

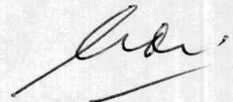
10. Needless is ^{to} ~~it~~ to mention here that this Tribunal has had the opportunity of going through the decision of the Hon'ble Supreme Court in Civil Appeal No. 3168 of 2002 (arising out of SLP (Civil) No. 2224 of 2000) filed by the Respondent-Department (Annexure R/1), the decision of this Tribunal in OA No.1166 of 2004 dated 18.9.2006 (Annexure R/2), reference proceeding note issued by DoPT (Annexure R/3) in which the decision of the Hon'ble Supreme Court in Civil Appeal No. 5368 of 1997 (Passport Officer, Trivandrum and others v. Venugopal C & ors) (Annexure R/4) filed by the Respondent-Department in support of their contentions which are discussed as under.



14. In the case of Union of India and another v. Mohan Pal, etc. , etc. (Annexure R/1), the subject matter of dispute before the Hon'ble Apex Court related to the grant of temporary status to the casual workers in accordance with the scheme formulated by the Department of Personnel & Training, which came into force from 1.9.1993. Therefore, the question arose for consideration as to whether the conferment of temporary status was an one time programme as per the scheme or was an ongoing scheme to be followed by the Department and whether the casual labourers were to be given temporary status as and when they completed 240 days of work in a year (2006 days for the offices observing 5 days week). Another question that came up for consideration was whether the services of casual labourers who had been given 'temporary status' could be dispensed with as per Clause 7 as if they were regular casual labourers. The Hon'ble Supreme Court held as under:

".....However, we make it clear that the Scheme of 1.9.1993 is not an ongoing scheme and the 'temporary' status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in Clause 4 of the Scheme, namely, they should have been casual labourers in employment as on the date of the commencement of the Scheme and they should have rendered continuous service of at least one year, i.e., at least 240 days in a year or 206 days (in case of offices having 5 days a week). We also make it clear that those who have already been given 'temporary' status on the assumption that it is an ongoing Scheme shall not be stripped of the 'temporary' status pursuant to our decision."

15. In OA No.1166 of 2004, decided by the Cuttack Bench of the Tribunal (Annexure R/2), the applicant's engagement being in the year 1990



and he having rendered continuous service for at least one year, i.e., to say 240 days (206 days in case of offices observing 5 days week) he sought for conferment of temporary status and consequent regularization of service in accordance with the scheme of the Department of Personnel & Training which came into force w.e.f. 1.9.1993,

13 In the circumstances, I direct the Respondents:-

- (a) to cause an inquiry with regard to alleged regularization of services of Respondent Nos. 4 to 7 who are junior to the applicant and in case it is found true, the Respondent-Department shall regularize the services of the applicant with effect from the date the services of his so called juniors have been regularized and grant consequential financial and service benefits to the applicant, and/or
- (b) to regularize the services of the applicant keeping in mind the discussions and observations made above, provided the applicant is otherwise eligible for regular appointment in all other respects.

The above directions shall be complied with by the Respondent-Department within a period of 120 (one hundred & twenty days) from the date of receipt of this order,

14. In the result, the O.A. is allowed to the extent indicated above. No costs,


(N.D. RAGHAVAN)
VICE-CHAIRMAN

PPS

fix for pronouncement
on 03.10.07 at PM.
