

92

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO.133 OF 2005**  
**CUTTACK, this the 15<sup>th</sup> day of November, 2007**

Bhima Sethi ..... Applicant

-Versus-

Union of India & others ..... Respondents

**FOR INSTRUCTIONS**

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

*G. Shantappa*  
(G. SHANTAPPA)  
MEMBER(JUDL.)

13

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**CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO.133 OF 2005**  
**(CUTTACK, this the 15<sup>th</sup> of November,2007)**

CORAM:

**HON'BLE SHRI G.SHANTAPPA, MEMBR(JUDL.)**

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Bhima Sethi, aged about 41 years, S/O- Mani Sethi, at present working as Casual Worker under Archaeological Survey of India, Puri Sub-Circle, Dist-Puri

.....Applicant

Advocate for the Applicant

.....Mr.P.K.Padhi.

Versus:

1. Union of India represented through the Director General, Archaeological Survey of India, Janpath, New Delhi, PIN-110001.
2. Superintending Archaeologist, Archaeological Survey of India, Bhubaneswar Circle, 153, V.I.P.area, Nayapalli, Bhubaneswar-14 (Orissa).
3. Conservation Assistant, Archaeological Survey of India, Puri Sub-Circle, Puri, Orissa.

.....Respondents

Advocate for the Respondents

.....Mr.U.B.Mohapatra.

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O.A.NO.133 OF 2005

ORDER DATED 15.11.07

The above O.A. is filed under Section 19 of the AT Act,1985 seeking the following relief:

- "i)Direct the Res.No.2 to confer the temporary status to the applicant as Casual Labourer with effect from 1.9.93 and release all consequential financial/other benefits as provided under the casual labourers (Grant of Temporary Status and Regularisation) Scheme of Govt. of India, 1993;
- ii) Further direct the Respondetns to take steps for regularization of the applicant."

2. The brief facts of the case according to the applicant are the applicant was initially engaged as Casual Labour w.e.f. 8.11.89 on daily wage basis. The respondents have issued an order to elevate the status of the applicant as casual worker w.e.f. 1.9.97 and he was allowed his wages in pro-rate basis. To that effect, the Superintending Archeologist has issued an order dated 28.09.97, in accordance with the scheme framed by the Govt. of India with regard to grant of temporary status and regularization of casual laborers deployed in the Ministries, Department of Govt. of India and its subordinate Offices. The said scheme called "Casual Laborers (Grant of Temporary status and Regularisation) 1993 which came into force w.e.f. 1.9.93 by superceding all other pre-existing circulars/instructions issued by the Govt. of India. The scheme provides for grant of temporary status would be conferred to all casual labourers who are in employment and have rendered continuous service for at

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least one year that is to say 240 days (206 days in case of officers observing 5 days a week) such status conferred on a casual laborer/casual worker could entitle the benefits under the scheme.

3. The applicant is working on casual basis after having continued in service uninterruptedly for more than 8 years. The Res.No.2 apparently did not take note of the scheme of 1993. The applicant is entitled for grant of temporary status under the said scheme, since he is eligible for regularization in service. Applicant has submitted a representation dated 8.11.04 (Annexure-A/3) which has not been considered. Hence, the applicant is asking for a direction as prayed in the O.A.

4. Per contra the respondents have filed a detailed reply statement rejecting the relief of the applicant on the ground that the applicant is not entitled to any of the relief as prayed in the O.A. The applicant was engaged as Casual Labour at Lord Jagannath Temple, Puri on 08.11.89 for conservation work of the temple against specific estimate and was disengaged as soon as conservation work was over. The applicant was awarded 1/30<sup>th</sup> pay +D.A. of group-D from 01.09.97 on pro-rate basis as he was attending the watch and ward duty of group-D. The applicant is not entitled for awarding temporary status as per the circular dated 10.09.93. Clause No.4 of the scheme which clearly mentioned that the casual labour which have worked continuously and completed 240 days as on 10.09.93 and should have been engaged on the commencement of the scheme is eligible for awarding temporary status. As per the D.O.P.&T. OM dated 12.07.94, it has been clearly mentioned that since it is mandatory to engage casual employees through employment exchange and

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hence casual employee cannot be bestowed with temporary status. In this aspect, the Hon'ble Apex Court has held in the case of Union of India Vrs. Mohan Pal. There is no discrimination shown to the applicant and fundamental rights of the applicant under Article 14 are not violated. The respondents have supported their action under the Judgement of Hon'ble Apex Copurt and they have requested for rejection of the O.A.

5. The applicant has filed rejoinder refuting the averments made in the reply statement. In the rejoinder he has taken the contention that he is in service as a casual labour w.e.f. 08.11.89 and he was working for 8 hours and for more than 300 days in a year. The applicant is coming within the purview of the said scheme dated 01.09.93. The applicant has already rendered 18 years of service and after 18 years, it is not just and proper to rely on the recent circular to deprive the claim of the applicant. Had the applicant would have been conferred with temporary status prior to 25.11.03, the respondents could not have raised this point or whether any department has withdrawn temporary status from any employee on the ground of non-sponsored is a point to be considered by the Hon'ble Court.

6. When the case is called, none appeared from the either side. Hence, I invoke the Rule 15 & Rule-16 of the CAT Procedure Rules for the Applicant and for the Respondents respectively, perused the pleadings and documents and proceed to pass orders in this case.



7. The case of the applicant is that he was engaged as casual labour w.e.f. 8.11.89 and he served for 15 years. His nature of job as per the documents submitted under Annexure-A/1 and A/2. As per Annexure-A/1 the applicant was engaged on casual basis in the Lord Jagannath Temple, Puri since 08.11.89 as per the office record. As per the Annexure-a/2 dated 28.09.97, the applicant was elevated to casual workers w.e.f. 01.09.97 and he will be paid wages in pro-rate basis. The expenditure will be borne under SR/AR for the year 1997-98. On these two documents the applicant is submitted his representation at Annexure-A/3 dated 08.11.04. The respondents have stated that the applicant was engaged as casual labour on 08.11.89 for conservation work of the temple against specific estimate and was disengaged as soon as conservation work was over. He was awarded 1/30<sup>th</sup> pay +DA of group-D from 01.09.97 on pro-rata basis as he was attending the watch and ward duty of group-D. The said service particulars and the nature of duty does not cover the Clause-4 of the scheme called Casual Labours(Grant of Temporary status and Regularisation) 1993. The applicant has refuted the averments made in the reply statement that he was in service as on the scheme of 1993 came into force. Neither the applicant nor the respondents have produced the said scheme which was framed on 01.09.93. The scheme of 01.09.93 is not an ongoing scheme and the temporary status can be conferred only on the casual labours under that scheme only on fulfilling the conditions incorporated in the Clause-4 of the scheme, namely they should have been casual labours in the employment on the date of 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 officers having 5 days a week)

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8. In the present case the applicant has not produced any kind of documents to show that he was in service as on 1.9.93 on the date of the said scheme came into force. I have to consider the averments made in the reply statement that the applicant was awarded 1/30<sup>th</sup> + DA of group-D from 01.09.97 on pro-rate basis regarding the earlier service as on the date of the scheme came into force. But the applicant was engaged on 08.11.89 for conservation work of the temple against the specific estimate and was disengaged since the conservation work was over. When the applicant has not produced any kind of documents to show that he has fulfilled the ingredients of Clause-4 of the said scheme, the service of the applicant is admitted based on Annexure-A/1 & A/2. Only dispute raised whether the applicant is eligible for grant of temporary status since he was not working full time as on 01.09.93 on the date the scheme came into force? It is relevant to refer para-5,6 & 7 of the Scheme OM dated 01.09.93 which reads as follows:

“5. The controversy can be resolved on the basis of the interpretation of clause-4 of the scheme. As already noticed, the scheme came into effect from 1.9.1993. Clause-4(1) of the scheme reads as follows:

“4. Temporary status:- (1) ‘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 case of officers observing 5 days a week)

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 206

18  
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days (in case of officers observing 5 days a week) they are entitled to get 'temporary' status. We do not think that clause 4 of the scheme envisages is 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 been 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 guidelines 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 are to be given "temporary" status and later they are to be absorbed in group 'D' posts.

7. A similar controversy was examined by this Court in Union of India and Anr. v. Mohan Lal and Ors., JT 2002(Suppl.1) SC 312 and a similar view was expressed in paragraph 6 of the Judgement."

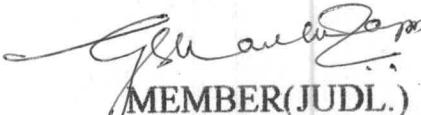
9. The Counsel for the respondents has relied on the judgement of the Hon'ble Apex Court in the case of Union of India Vrs. Mohan Pal in the Civil Appeal No.3168/02 dated 29.04.02. Subsequent to the judgement of the Hon'ble Apex Court, relying on the earlier judgement, another judgement has been rendered by the Hon'ble Apex Court in the case of Union of India Vrs. Gagan Kumar reported in 2005(6) SLR 417.

10. The claim of the applicant according to the relief, he is asking for regularization in terms of Casual Labours(Grant of Temporary status and Regularisation) 1993. In view of the judgements of Hon'ble Apex Court which are referred above, it was held that the scheme provided for grant of temporary

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status to those who were in employment as on the date of commencement of the scheme rendering continuation of service of one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. In the present case the applicant was not in service and he has not fulfilled the ingredients of the said scheme which is extracted above. Based on the reasons pointed above, the applicant is not entitled for grant of temporary status under the scheme. Hence the applicant has not made out his case for grant of relief. The stand taken by the respondents in their reply statement is correct. Accordingly, the O.A. is liable to be dismissed.

11. Accordingly, the O.A. is dismissed. No costs.

  
MEMBER(JUDL.)