

9

O.A. No.322/2007

ORDER DATED 19th MAY, 2009

Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)

Hon'ble Mr. C.R. Mohapatra, Member (A)

In this Original Application under Section 19 of the AT Act, 1985 the applicant has prayed for the following relief:-

"Let the applicant be regularized in his service forthwith and pass any other and /or further order/orders as deemed fit and proper under the circumstances of the case."

2. It is the case of the applicant that he entered in the establishment Respondent No.3 as casual worker in the year 2001 and while continuing as such, Respondent No.1, by virtue of Annexure-A/1 letter dated 28.07.06, called upon Respondents No.2 & 3 to submit information regarding total number of casual labourers (Daily Wagers) working under their control, who have not been regularized. Based on this, as it reveals from Annexure-A/3 letter dated 08.08.06, the name of the applicant as casual labour (Daily Wagers) who has not been regularized, has been intimated to Respondent No.2 by Respondent No.3. While the matter stood thus, after about one year of forwarding his name as per Annexure-A/3, the Respondent No.3 instructed the applicant not to come to duty w.e.f. 01.08.07. Being aggrieved by this, the applicant has

99

moved this Tribunal in the present O.A. with the prayers, as quoted above.

3. This matter came up on 26.09.07 for admission. This Tribunal, while issuing notice to the Respondents, issued the following interim direction:-

“Applicant has prayed for an interim relief, since he has been serving from the year 2001 onwards, in all expectations that his engagement must be based on the Govt. order dated 07.06.88. As he has been continuing for substantial number of years and if the work is available, the applicant shall not be disengaged. The Respondents are directed accordingly. List the matter on 10.10.07 to consider the continuance of the interim relief. Respondents may file their fresh short reply in regard to the same. Ordered accordingly.”

4. The Respondents have filed their counter opposing the prayer of the applicant, to which no rejoinder has been filed.

5. Heard Mr. S. Mohanty, Ld. Counsel for the Applicant and Mr. U.B. Mohapatra, Ld. Sr. Standing Counsel for the Respondents and perused the materials on record.

6. The applicant, in support of his case has urged the following grounds: -

- i) The applicant having worked as casual labourer under the Respondents for more than six years, the verbal direction issued by Respondent No.3 not to join duties is illegal, mala-fide and violative of



constitutional mandates, particularly when his regularization of service is in pipeline.

ii) The applicant having served as casual labourer since 2001 and having completed 240 days, his service should have been regularized by the Respondents-Department.

7. The Respondents have not disputed the engagement of the applicant on daily wage basis. But they have stated that the Office of the Commissioner of Income Tax (Appeals) Rourkela, where the applicant was engaged, having been closed in the year 2007, his services were no more required. Respondents have denied the statement of the applicant that his casual service is in pipe line for regularization and the information that was sought and furnished regarding casual labourer (Daily Wager) who has not been regularized was due to administrative reasons and for the purpose of financial control. It has been submitted that the applicant was being paid on daily basis for each day that his services were utilized, which did not amount to continuous engagement as in case of regular employee.

8. We have considered the submissions made by the Ld. Counsel of both the sides. In course of hearing, Ld. Counsel for the applicant drew our attention to a decision of Hon'ble Andhra Pradesh High Court in N. Sanjeeviah and Ors.

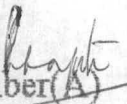


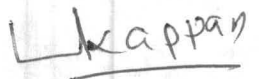
Vrs. Andhra Pradesh Agricultural University and Ors. Decided on 24.10.97. We have gone through the judgement in its entirety and we found therein that although there was need for regular nature of work by the Andhra Pradesh Agricultural University, as admitted by the Respondents therein, the Hon'ble High Court, keeping in view the direction of the Hon'ble Supreme Court from time to time, directed to create additional posts for regularisation of casual workers as it was not permissible to keep employees on temporary/ad-hoc or daily wage basis for so long time. But in the instant case, we find that the establishment under which the applicant was engaged has since been closed and thereby there exists no work to engage the applicant any more. As regards the engagement of the applicant on daily wage basis or casual basis, as the case may be for six or seven years, it is to be noted that the applicant has not produced any document disclosing the source of his engagement as casual labourer and/or any order issued by the Respondents and that behalf. This apart, the scheme for regularization, which the applicant has averred in the O.A., has not been submitted by him to take an over-all view regarding his entitlement or otherwise to regularization, having regard to the terms and conditions stipulated therein. The applicant has not cited a single instance that any casual labourer junior to him has been regularized by ignoring his claim.

9. Above all, existence of a regular vacancy being the criterion to regularize the services of a casual labourer, and

there being no regular vacancy or sanctioned post at all due to closure of the office, we hold that the decision cited by the applicant in support of his case is of no help as the facts of that case are not in tune with the facts in this O.A.

10. Having regard to what has been discussed above, we hold that the O.A. is devoid of merit and accordingly, the same is dismissed. No costs.


Member(A)


MEMBER (J)