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OA No.266 of 2008

Harekrushna Maharana & Others .... Applicants
Versus
Union of India & Others .... Respondents

Order dated: 19/02/2010

CORAM
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)
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By filing the present Original Application, 21(Twenty one) Applicants claiming to have been discharging the duties of regular Group D employees of the Central Excise and Customs, on casual basis in the Commissionerate-I&II of the Central Excise and Customs, Bhubaneswar challenge the action of the Respondents in taking steps to take fresh faces from the open market in the regular Gr.D vacancies available under the Respondents instead of regularizing them in service. By filing counter, Respondents opposed the stand of the Applicants and have prayed for dismissal of this Original Application.

2. Heard Learned Counsel for both sides and perused the materials placed on record. In course of hearing, it was brought to the notice of this Tribunal that similar grievance of similarly situated persons came up for consideration in OA Nos.606/2005, 634/2005 and 855/2005 and this Tribunal in a common order dated 23.10.2008 dismissed the prayers made in the aforesaid OAs with observation that dismissal of the OAs shall not stand as a bar on the Respondents for considering the grievance of those applicants favourably at their level, if they so choose by drawing up an appropriate scheme for such category of contract labourers. Perused the records including the order of this Tribunal dated 23.10.2008 vis-à-vis the records of this case. I find no factual difference between both the cases. The line of reply filed in those cases is the same filed by the Respondents in this case also. As such,

instead of great details, it would suffice if the relevant portion of the aforesaid order of this Tribunal is quoted and the matter is disposed of in the light of the order passed by this Tribunal. It runs thus:

> 14. As regards the merit of the matter, we may state that perusal of the records conclusively proves that the engagement of the Applicants was purely contractual for a fixed period. Even assuming that the Applicants are 'Casual Labourers' then also they cannot get the benefits which flow from the scheme of temporary status and regularization issued by the DOP&T in the year 1993 for their failure to prove that they were in employment as on the cut off date fixed under the scheme. It is trite law that onus lies on the workman to prove that he had worked 240 days in a calendar year (vide **BSNL and others v Mahesh Chand**, (2008) 1 SCC (L&S) 792). But the Applicants produced no such documents, not to speak of unimpeachable one to, substantiate that any of the Applicants had in fact completed 240 days service continuously in a calendar year on the cut off date prescribed under the 1993 scheme. However, even if it could have been substantiated or it is a fact that the Applicants complete 240 in a calendar year, then also they are not entitled to the benefits of the scheme floated by DOP&T because it is settled law that even if one has completed 240 days continuous service, he/she cannot claim any benefit as the very engagement being contractual one (vide- **M.D.Kar, Handloom Dev. Corporation v. Mahadeva L. Raval (SC),** 2007(2) SLR 251). Fact remains that the Applicants were not in employment as on the cut off date fixed in the guidelines issued by the DOP&T. It is trite law that Grant of Temporary Status and Regularization Scheme of the Govt. of India, 1993 is applicable to only those casual labourers who are in employment on the date of commencement of the scheme. The scheme is not in the nature of general guidelines to be applied to casual labourers as and when they complete one year continuous service (vide- **UOI vs. Gagan Kumar**, 2005 SCC (L&S) 803;). So far as the challenge of the decision of the Government to execute the duties discharging by the Applicants through service providers/contractors, we may observe that, these are the policy decisions of the Government and it is trite law as held by the Hon'ble Apex Court in the case of **Basic Education Board, UP vs Upendra Rai and others**, (2008) 1 SCC (L&S) 771, that policy decision of the Government cannot be interfered with by Courts/Tribunal unless it violates constitutional or statutory provisions. Further in the case of **The Tamilnadu Electricity Board, Chennai and Anr. Vs. Bharathiya Electricity Employees Federation Salem,** 2005 (3) ATJ 82 it has been held that the decision maker has the choice in the balancing of the pros and cons relevant to the change in policy. Hence change of policy is for the decision maker and not the Courts/Tribunal to interfere. In view of the above, we find no force in the above submission of the Applicant and the same is rejected.
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> 15. The Applicants have not been able to point out any statutory rule or executive instructions on the basis of which their claim of continuation in service, grant of temporary status or regularization can be granted. It is well settled that unless there exists some rule no direction can be issued for grant of any of the above reliefs to contract labourers. Such matters are executive functions, and it is not appropriate for this Tribunal to encroach upon the functions of another organ of the State; especially when it is the specific case of the Respondents that there has been no sanctioned post. Ordinarily speaking, the creation and abolition of a post is also the prerogative of the executive. It is the executive

again that lays down the conditions of service subject, or course, to a law made by the appropriate legislature. In view of the above, Applicants have no right to get any of the reliefs claimed by them in these OAs which need to be dismissed.

16. However, it is noticed from the correspondence made between the Respondents; especially from the letter under Annexure-A/18 dated 28/29.01.2008 that request has been made to the Head quarters at Delhi for favourable consideration of the grievances of the Applicant in relaxation of normal rule but it is not known where the matter is lying. In the said premises, we make it clear that dismissal of these OAs shall not stand as a bar on the Respondents for considering the grievance of the Applicants favourably at their level, if they so choose by drawing up an appropriate scheme for such category of contract labourers.

17. In the result, with the aforesaid observations these OAs are dismissed. There shall be no order as to costs."

3. I see no justification to deviate from the view already taken in the aforesaid cases especially there being no factual discrepancies in the cases disposed of by the DB in the present one. Hence, this OA stands dismissed. No costs.

However, it is reiterated by way of direction to the Respondents that the cases of the present Applicants should also be examined in the light of the observation and direction given in paragraph 16 above.

(C.R.MOHAPATRA)
MEMBER (ADMN.)