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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 79 of 2008

Cuttack, this the ~~15th~~ day of March, 2011

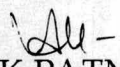
Hari Chandra Mahakud Applicant


-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? X
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? X


(A.K.PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 79 of 2008

Cuttack, this the ~~154~~ day of March, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

A N D

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Shri Harish Chandra Mahakud, aged about 28 years son of Late Raghunath Mahakud of Dangarpanusi, PO/PS Jeypore, Dist. Koraput, At/Present-Panchabati Dam side, At/Po/Dist. Malkanagiri.

.....Applicant

By legal practitioner: M/s.R.K.Sahoo, Rajjeet Roy, S.K.Singh, Counsel.

-Versus-

1. Union of India represented through its Secretary, Ministry of Human Resources Development Department of Education, Government of India, New Delhi.
2. Principal, Navadaya Vidyalaya, Satiguda, PO/Dist. Malkangiri.

....Respondents

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

ORDER

MR. C.R.MOHAPATRA, MEMBER (ADMN.):

The Applicant in this Original Application filed U/s.19 of the Administrative Tribunals Act, 1985 seeks direction to the Respondents to regularize him in Class IV taking into consideration his continuance in the Department since 1987. According to the Applicant, on 07-07-1987 he was initially engaged as a cook in Navodaya Vidyalaya in a consolidated pay of Rs.350/- per month. His engagement, on such consolidated pay, was extended from time to time vide order dated 03-11-1989, 31-01-

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1990 and 06-10-1994. While continuing as such, the Principal of NVS, Malkanagiri, vide letter dated 03-11-2006, asked him to furnish certain documents for his engagement as Chowkidar under him. Since June, 2007, he was disengaged from his engagement. His stand is that no heed having been paid to the series of representation requesting for his engagement/requisition, he is constrained to approach before this Tribunal seeking the above relief.

2. It is the case of the Respondents that the applicant was working on daily wage basis in JNV, Satiguda Koraput since 1989 to 1990. Thereafter, he was not in engagement of the Department. However, after opening of JNV at Malkanagiri, in July, 2004, he was engaged on daily wage basis in JNV, Malkangiri from 2005 to April, 2007. He was provided opportunity in the interview conducted for the post of Chowkidar, in JNV, Malkangiri but was not selected. Meanwhile the post of Chowkidar at JNV, Malkanagiri has been filled up on transfer from JNV, Jabua, Alirajpur, MP. It has been stated that unlike the Applicant another person (Krishna Murari Raikwar) who was engaged on casual basis in JNV, Ramkhiriya, Panna (MP) approached the Jabalpur Bench of the Tribunal in OA No. 63 of 2006, seeking direction to regularize him in the post of Chowkidar. The Jabalpur Bench of

the Tribunal, after considering all aspects of the matter and various Judge made laws on the subject rejected the prayer of the Applicant on 01-04-2008. This, being a case of similar nature, by applying the decision of the Jabalpur Bench, is liable to be rejected.

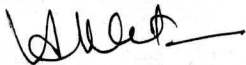
3. Despite receipt of counter and adequate time granted to the Applicant, no rejoinder has been filed.

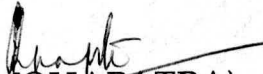
4. Heard Learned Counsel for both sides and perused the materials placed on record. The experience certificate at Annexure-1 states that the applicant was in engagement of the JNV, Satiguda (Koraput) since 7th July, 1987, the order at Annexure-2 states that he was in engagement from 01-07-1989 to 15-12-1989, the order at Annexure-2/1 states that he was in engagement from 16-01-1990 to 30-04-1990 and the experience certificate at Annexure-2/2 speaks of his engagement from September, 93 till the date of the certificate. No record has been produced by the applicant in support of his prayer that he was in engagement after 1994. However, it was fairly admitted by the Respondents in their counter that the applicant was in engagement on daily wage basis in JNV, Malkangiri from 2005 to April, 2007. It is not the case of the Applicant that his initial engagement was through Employment Exchange or by way of any open selection in accordance with the Rules. The Applicant has not been able to

point out any Statutory Rule on the basis of which his claim for regularization can be granted. It is well settled law that unless there exists some Rule supporting the claim, no direction can be issued by the Tribunal for regularization of a daily rated employee. Such matters are executive functions, and it is not appropriate for the Tribunal to encroach into the functions of another organ of the State. The Tribunal must exercise judicial restraint in this connection. Further it is well established law that no appointment can be made by a local authority without following the provisions of Recruitment Rules. Any appointment made in violation of the said Rules as also the Constitutional Scheme of equality as contained in Articles 14 & 16 of the Constitution of India would be a nullity. Due to some exigency of work, although recruitment on daily wages or on an ad-hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory Rules [Ref: **Mahboob Deepak v Nagar Panchayat, Gajraula and another**, (2008) 1 SCC (L&S) 239]. If appointment is made without following Recruitment Rules and procedure, such appointments are illegal and termination of such appointment cannot be held invalid [Ref: **State of Jharkhand and others v Manshu Kumbhakar**, 2008 (1)

SLR 1 (SC)]. In view of the facts and law stated above, we see no reason to interfere in the matter.

5. Hence this OA is held to be without any merit and is accordingly dismissed. No costs.


(A.K.PATNAIK)
Member(Judl.)


(C.R.MOHAPATRA)
Member (Admn.)

