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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

1. **O.A.No.107 of 2010**
Babu Naik & 32 others Applicant
Versus
Union of India and others Respondents
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2. **O.A.No. 420 of 2010**
Gopagobinda Mallick 3 others Applicants
Versus
Union of India & Others. Respondents
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3. **O.A.No. 659 of 2010**
Panchu Kumbhar & 16 Ors Applicants
Versus
Union of India & Others. Respondents
.....

1. Order dated : 30th August, 2011.

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

AND

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

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Since these three cases involve common questions of fact and law, though the matter was heard one after the other, for the sake of convenience this common order is passed which would govern all these three cases.

The Applicants in these OAs had earlier approached this Tribunal in OA No.606 of 2005 (P.K.Naik & Anrs. Vs UOI & Ors.), O.A.No.634 of 2005 (Mukut Ekka & Ors vs. UOI & Ors.) and

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in O.A.No.855 of 2005 (Biranchi Narayan Naik & Ors.Vs. UOI & Ors.). The prayers of the Applicants were as under:

- "(i) The order of rejection dated 30.05.2002 under Annexure-6 series be quashed/set-aside;
- (ii) The order of engagement of service provider/contractor dated 02.05.2005 under Annexure-8 be quashed/set-aside, so far it relates to the offices where Applicants are working;
- (iii) Direction or directions be issued to Respondent Nos. 1 & 2 to grant Temporary Status and Regularization of service under the provision of the Scheme formulated by Government of India;
- (iv) Direction or directions be issued in allowing consequential financial service benefits retrospectively;
- (v) The Respondents be directed to frame a Scheme and to regularize the services of the Applicants against Class-IV posts;
- (vi) Any other suitable relief/reliefs, direction/directions as would be deemed fit and proper in favour of the Applicants."

The aforesaid OAs were disposed of by this Tribunal disposed of by a common order dated 23rd October, 2008. Relevant portion of the order is quoted herein below:

"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

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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*

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find no force in the above submission of the Applicant and the same is rejected.

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." [Emphasis supplied].

The aforesaid order of this Tribunal dated 28th October, 2008 was challenged by the Applicants in WP(C) No. 17449/2008, 17450/2008 and WP (C) No.17451/2008. In order dated 17-02-2009

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the above Writ Petitions were disposed of. Relevant portion of the order is quoted herein below:

"We are of the view that the law laid down by the Tribunal is consistent with the law laid down by the Hon'ble Supreme Court in the case of State of Karnataka Vs Uma Devi, (2006) 4 SCC 1.

Therefore, we are of the view that no reason exists to interfere with the same and accordingly, we dismiss the writ application. However, liberty is given to the respondent to take appropriate decision as observed by the Tribunal."

Alleging engagement of labourers in Annexure-7 series through service providers/contractors these OAs have been filed by the Applicants seeking the following reliefs:

- "(i) The order of engagement of service providers/contractors as contained under Annexure-7 series be quashed/set aside, as far as it relates to the offices where applicants are working;
- (ii) Issue directions to respondent No.1 (with the approval of respondent No.2) for taking final decision in framing of a new policy and/or scheme for regularization of service of applicants basing upon the followings:-
 - (a) a letter of request dated 28/29.01.2008 submitted by Respondent Nos.06 to Respondent No.1 for regularization of the service of the applicants and others;
 - (b) a direction given by this Hon'ble Tribunal in paragraph 16 of it's common order of disposal dated 23.10.2008 passed in OA No.606 of 2005 (P.K.Naik & Others Vs Union of India and Others), OA No.634 of 2005 (Mukut Ekka & Others Vs Union of India & Others) and OA No.855 of 2005 (Biranchi Narayan Naik & Others Vs Union of India & Others); and

- (c) a further direction (in confirmation of the above said common order) given by the Hon'ble High Court of Orissa, Cuttack in last sentence of their order of disposal dated 17.02.2009 passed in WP (C) No. 17449 of 2008, WP (C) No. 17450 of 2008 and WP (C) No. 17451 of 2008;
- (iii) Direction or directions be issued in allowing consequential financial service benefits as per the recent 6th Pay Commission Report covering the casual workers on daily wages in Central Government establishments like that of respondent Nos.3 to 8;
- (iv) Any other suitable relief/reliefs, direction/directions as would be deemed fit and proper in favour of the Applicants."

The Respondents filed their counter objecting to the prayers of the Applicants.

Heard Learned Counsel for both sides and perused the materials placed on record. In so far as prayer No. (i) is concerned in view of the specific order of this Tribunal confirmed by the Hon'ble High Court of Orissa holding that "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

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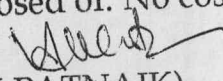
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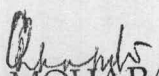
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Courts/Tribunal unless it violates constitutional or statutory provisions. Further in the case of **The Tamilnadu Electricity Board, Chennai and Anr. Vs. Bharathiya Electricity Employees Federation Salem**, 2005 (3) ATJ 82 it has been held that the 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.*" the prayer made in paragraph 8(i) is hit by the law of constructive res judicata and hence is rejected. In so far as other prayers is concerned, it is noticed that this Tribunal made the Respondents' hands free to take decision on the letter under dated 28/29.01.2008 relating to the grievance of the applicants. But nothing has been forthcoming what decision has been taken thereon. Therefore, if no decision has been taken till date, the Respondents are hereby directed to take a decision on the same and communicate the applicants in a reasoned order at an early date.

With the aforesaid observation all these OAs stands

disposed of. No costs.


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


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