

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA No.596 of 2010

Cuttack, this the 22nd November, 2010

Purna Chandra Sahu Applicant
Versus
Union of India & Others Respondents

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THE HON'BLE MR. C.R. MOHAPATRA, ADMN. MEMBER
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After hearing Mr. Mr.S.Patnaik, Learned
Counsel for the Applicant and Mr. S.Mishra, Learned
Additional Standing Counsel appearing for the
Respondents minutely perused the materials filed by the
parties in support of the contentions raised in the pleadings
of the respective parties. Except bald statement, no
material has been filed by the Applicant that his initial
engagement was only after his name was received from
the employment exchange or through due process of
selection in consideration of the candidatures of different
candidates received pursuant to any open notification
inviting application from general public as provided in the
Rules. No material has also been produced by the
Applicant showing that his engagement was against the
sanctioned post of LDC. By filing preliminary counter,

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Respondents vehemently opposing the contention of the Applicant have stated that the engagement of the applicant was purely on casual basis to meet the urgent day to day need and paid out of the contingent fund. They have also denied issuance of any such order annexed by the Applicant as Annexures A/7 & A/8. Even if it is accepted that the engagement of the applicant was against the sanctioned post of LDC w.e.f. 10.8.2007 and he was terminated w.e.f. 28.2.2010 this is hardly of any help to the Applicant to claim regularization. ~~his is~~ because, law is well settled in a plethora of judicial pronouncements like the cases of **BSNL and others v Mahesh Chand**, (2008) 1 SCC (L&S) 792 and **R. N. Palika v Babuji Gabhaji Thakore and Ors**, 2008 (2) SLR 767 (SC) in which it has been held by the Hon'ble Apex Court that onus lies on the persons to prove their engagements. It is also trite law in a catena of decisions that in cases where the appointments were void *ab initio*, having been made in utter disregard of the existing recruitment rules and/or constitutional scheme adumbrated under Article 14 and 16 of the Constitution of India would be wholly illegal (ref: **Punjab water supply**

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and sewerage Board v. Ranjodh Singh [2007] 1 SCC (L&S) 713; Punjab State Warehousing Corporation v. Manmohan Singh [2007] 9 SCC 337). Any public employment in violation of the Constitutional scheme as also the statutory recruitment rules, if any, would be void- Ghaziabad Development Authority and another v Ashok Kumar and Another (2008) 1 SCC (L&S) 1016. Appointment made without following recruitment rules and procedure-Such appointments are illegal-Services rightly terminated-State of Jharkhand and others v Manshu Kumbhakar, 2008 (1) SLR 1 (SC). Further in the case of Director, SCTI etc. v. M.Pushkaran, (2008) 1 SCC (L&S) 258 as under:

“8. ...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 and 16 of the Constitution of India would be a nullity. Para-9 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. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized”-Mahboob Deepak v Nagar Panchayat, Gajraula and another, (2008) 1 SCC (L&S) 239.”

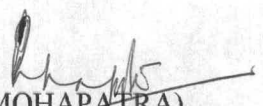
2. Also I may add that Article 14 read with Article 16 (1) of the Constitution creates fundamental right in

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every citizen to claim consideration for appointment to a post under the Government. Therefore, even if there is any post lying vacant, the same needs to be notified inviting applications from all eligible candidates to be considered for their selection in accordance with their merit. It is needless to emphasize that the purpose and object behind holding a recruitment examination is to select suitable and best candidate out of the lot and such an object can only be achieved by making the merit selection and no regularization can be made if the selection is de hors the Rules- **Secy., State of Karnataka v. Umadevi** (3),(2006) 4 SCC 1.

3. In the light of the discussion made above, this OA sans any merit and is accordingly dismissed by leaving the parties to bear their own costs.


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