

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.741 OF 2010

Cuttack the 30th day of October, 2013

CORAM

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

HON'BLE SHRI R.C.MISRA, MEMBER(A)

1. Jalandhar Suna
Aged about 38 years
S/o. Sri Angad Suna
At-Quarter No.C-216, Sector-15
Rourkela
Dist-Sundergarh
2. Bahadur Kumbhar
Aged about 40 years
S/o. late Jatish Kumbhar
At-Quarter No.C-259, Sector-15
Rourkela
Dist-Sundergarh

...Applicants

By the Advocate(s)-M/s.P.Acharya
Sanjay Rath
B.K.Jena

-VERSUS-

Union of India represented through

1. The Directorate General of Central Excise Intelligence
Kolkata Zonal Unit
Kolkata
2. The Joint Director Central Excise Intelligence,
Kolkata Zonal Unit
Kolkata
3. The Deputy Director of Directorate General of Central Excise Intelligence
Regional Unit
Rourkela

...Respondents

By the Advocate(s)-Mr.U.B.Mohapatra



ORDER**HON'BLE SHRI R.C.MISRA, MEMBER(A)**

Applicants two in number having a common cause of action have approached this Tribunal in the present Original Application for quashing notice dated 9.11.2010 being illegal and arbitrary and in the circumstances, they have prayed for direction to be issued to the Respondent-Department not to remove them from service. Further, they have prayed that the Respondents be directed not to stop their daily allowances and therefore, their services should also be regularized.

2. The facts of the case in brief are that the applicants are working as contract workers in the Office of Respondent No.3 at Rourkela. While they are discharging their duties satisfactorily, the Respondent No.2 issued a letter dated 9.11.2010 to Respondent No.3 in which it has been directed that no bill of any contingent labour on daily wage basis shall be considered from next month in view of the fact that the competent authority has approved that henceforth the Unskilled/Semi skilled/Skilled labour can only be engaged through service providers following the procedure prescribed in GFRs and therefore, there cannot be any engagement of contingent labour on daily wage basis. The applicants therefore, are apprehending danger of disengagement of their service and have submitted that they have a right to continue in the service till their age of retirement. It is further averred that the applicants have been working under Respondent No.3 from the year 2000 and during the span of more than 10 years no dissatisfaction has been expressed by the Respondents regarding their work. Therefore, the issue of the letter dated 9.11.2010 is arbitrary. Following the direction in the letter dated 9.11.2010, Respondent No.3 issue a letter dated 18.11.2010 to one Steel Solution, Rourkela in which they have invited sealed quotations from the reputed service



providers for engagement of Unskilled/Semi skilled and Skilled contract workers for attending of sweeping, cleaning of furniture and records, supply of drinking water, opening and closing of doors, windows and guarding of office building etc. and to attend for feeding of data into the computer. This has been challenged by the applicants also in this O.A. It has been further pointed out that the Deputy Secretary to the Government of India had issued a letter to all the Chief Commissioners of Central Excise & Customs and Directors of CBEC and CRCL regarding regularization of daily wagers and to furnish the information expeditiously by 10.8.2006 vide Annexure-3 dated 3.8.2006. The applicants have submitted that the Respondents did not reply to this letter nor did they furnish the information required for regularization of services of the daily wagers. According to applicants, they have acquired huge amount of experience while discharging various functions in the office and therefore, experience should have been utilized rather than taking raw hands for performing such work. The Respondents knowingly did not furnish information in the year 2006 resulting in non-consideration of the case of the applicants for regularization.

3. In the counter affidavit filed by the Respondents it has been submitted that the applicants were contract labours working in the Office of Respondent No.3 at Rourkela and they were contingent labours on daily wage basis. The Government of India in the meantime took a decision not to engage any contingent labours but to outsource this work through the service providers following the procedure as prescribed in the GFRs. It has been further decided that there cannot be any engagement of contract labours on daily wage basis henceforth. The learned counsel for the Respondents has also submitted in the counter affidavit that the contract is for a specific period and on completion of the period, the contract

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expires automatically and the parties cannot claim its continuance. The law is well settled that the person entering into contract was well aware about his position while accepting the contractual job. Since the service comes to an end on expiry of contract he cannot claim regularization in any post which requires to be filled up through selection as per the Recruitment Rules. It is further submitted in the counter affidavit that no appointment order was issued to the applicants and the applicants were neither engaged in any permanent or quasi permanent post through the recruitment process nor have they been conferred with Temporary Status and therefore, they cannot claim regularization. As regards letter dated 3.8.2006 in which the Deputy Secretary to the Government of India in the Ministry of Finance has asked all the Chief Commissioners of Central Excise etc, it is the submission of the Respondents that the applicants are not coming under the subject of this letter since this letter seeks information about regularization of casual workers who have been conferred with Temporary Status. The applicants are only contingent workers who are working on daily wage basis and therefore, the Government have never taken up their cases for regularization. It is the case of the Respondents that through the service providers, they can get the workers ^{who R} ~~which~~ are appropriate for discharging the various functions in the office. Moreover, this is a policy decision of the Government and the applicants cannot challenge this decision.

4. Having heard the learned counsel for both the sides, we have perused the records. The first question that we have to address ourselves to is the status of the applicants. The averment made in the O.A. is that the applicants have been working as contingent labours in the office of Respondent No.3. The Respondents also have submitted in their counter affidavit that applicants are contingent daily

wage labourers. They are on a contract with the Department, and on completion of a specific period, the contract comes to an end. Thereafter, the applicants have no enforceable right in so far as their employment is concerned. No appointment order was issued to the applicants. The applicants were neither engaged in any permanent or quasi permanent posts. They are not the products of any recruitment process, nor are they even temporary status workers in the establishment. They, therefore, cannot claim regularization.

5. A point that the applicants have emphasized is that they have been working with the Respondents for more than ten years, and this long period of service, although on a contractual basis, should be reckoned for considering their regularization. The Deputy Secretary to Government of India had sent a letter dated 3.8.2006 to all Chief Commissioners of Central Excise, Customs, and the Directors of CBEC and CRCL regarding the regularization of daily wagers and to furnish the required information by 10.8.2006. Applicants have alleged that Respondents did not take any action on this communication. The letter dated 3.8.2006 has been filed as Annexure-3 to the O.A. However, the Respondents in their counter have clarified the matter by submitting that the applicants are not covered by the subject matter of this letter which seeks information about regularization of casual workers conferred with temporary status. The applicants are casual workers on daily wage basis. The contents of this letter also support the submission of Respondents. In view of the same, this argument taken by the applicants falls to the ground.

6. The main prayer of the applicants is that the impugned notice dated 9.11.2010 issued by the Respondents should be struck down as illegal and arbitrary. The letter dated 9.11.2010 addressed from Respondent No.2 to

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Respondent No.3 communicates the decision of the competent authority that henceforth the unskilled/skilled labour can only be engaged through the service providers following the procedure prescribed in the GFRs and the practice of engagement of contingent labour on daily wage basis would be discontinued. There is a direction that the quotations should be accordingly called from reputed service providers. There is a further direction that this decision should be implemented from the next month. The Respondent No.3 has taken steps to implement this decision by writing to one M/s. Steel Solution, Rourkela on 18.11.2010. A copy of that letter is filed at Annexure-2 to the O.A. The learned Sr. Central Govt. Standing Counsel representing the Respondents has submitted that it is the decision of the Government of India not to engage contract or contingent labours for the maintenance work in the office, but to outsource the work through service providers in keeping with the provisions of GFRs. This being a policy decision of the Government of India cannot be challenged by the applicants. The practice of engaging contingent daily wage workers has been found to be wrong, and Government have now taken a conscious decision of outsourcing the work to service providers by following due financial procedure.

7. We are inclined to agree with the ground relied upon by the learned Senior Central Govt. Standing Counsel for the Respondents. The applicants have really no locus standi to challenge the policy decision of the Respondents. They have been working on a daily wage basis under the terms of contract and they have no claim for regularization. The terms and conditions of their working with Respondents are purely contractual. If the Respondents have decided to follow a different usage for managing their work by outsourcing to service providers by following the prescribed rules, there is hardly any scope for the Tribunal to interfere with

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the same. This is a policy decision of the Government. On the other hand, the terms and conditions of the applicants' working in Respondents' Organization are such that they do not create any right for regularization.

8. In view of the above, the O.A. is found to be devoid of merit and accordingly dismissed with no order as to costs.

(R.C.MISRA)
MEMBER(A)



BKS



(A.K.PATNAIK)
MEMBER(J)