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O.A. No. 331/09

ORDER DATED 14th SEPTEMBER, 2009

Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)
Hon'ble Mr. C.R. Mohapatra, Member (A)

Heard Ms. R. Bahal, Ld. Counsel for the applicant and Mr. D.K. Behera, Ld. Addl. Standing Counsel for the Respondents.

2. By filing this O.A. the applicant has sought for the following relief:

"The Respondents may be directed to release the 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance against a group D post along with other service benefits retrospectively to which the juniors to the applicant are receiving since 2006."

3. This O.A. was admitted on 14.08.2009 and notice ordered.

4. The Departments have not yet filed their counter.

5. It is the case of the applicant that he has been working as Monument Attendant under the Respondents since 1997. According to the applicant that as per Office Memorandum dated 07.06.1988 & 07.07.1992 issued by the Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training, he is entitled to 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 08 hours a day. In this connection, he has also represented to the authorities as per Annexure-A/5, which is pending for consideration. It is also the further case of the applicant that although his juniors have been granted the benefit of pay, as per O.M. dated 07.06.88 & 07.07.1992 but he is not being extended the same and thereby, he has been discriminated.

6. Since the point to be decided in this O.A is no more res integra in view of the judgements of the Hon'ble Apex Court reported in AIR 1986 1 SCC 637 (Dhirendra Chamoli V. State of U.P.) and AIR 1987

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SC 2342 (daily Rated Casual Labour employed under P & T Department through Bharatya Dak Tar Mazdoor Manch, Petitioners V. Union of India & Others). Hence, in the fitness of things, we direct the Respondent - Department to consider the case of the applicant in the light of the decisions of the Hon'ble Supreme Court as well as the office Memorandum of DOP&T (cited supra) and keeping in view the fact that applicant's juniors have been granted the benefit and pass appropriate orders, within a period of 90 days from the date of receipt of copy of this order. Provided that the nature of the work is the same as that of regular employee. Respondents are further directed to consider the arrear salary to which the applicant is entitled to also. This position has been made clear in Para-2 "Daily Wages" of Swamy's Complete Manual on Establishment & Administration, which reads thus:-

"Daily Wages- If the nature of the casual workers and regular employees is the same, casual workers should be paid at 1/30th of pay at the minimum of pay scale of the regular post plus D.A. (No CCA/HRA will be taken into account)."

7. The O.A. is allowed to the extent indicated above. No costs.


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER