

14

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 374 OF 2009

Cuttack, this the 30th day of April, 2010

Sri D. Panda & Others Applicants

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

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

(C. R. MOHAPATRA)
ADMN. MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 374 OF 2009
Cuttack, this the 30th day of April 2010

CORAM:

Hon'ble Mr. C.R. Mohapatra, Member (A)

In the matter of

1. Sri D. Panda, S/o-Rama Chandra Panda, At-Nimakolipur, P.O.-Rahasoi, Via/P.S./Dist-Jajpur.
2. K. Rupendra, S/o- Late K. Sanyasi, At- Gobindpur, P.O- Surala, Via-Girisola, P.S-Golantra, District-Ganjam.
3. Sibanath Mohapatra, S/o-Banshidhar Mohapatra, At/P.O- Tulasipur, Via-Baghamari, P.S-Banki, Dist-Khurda.
4. Kartikeswar Sahoo, At-Kulasikhrapatana, P.O- Dandamakundapur, P.S-Pipili, Dist-Puri.
5. Dibakar Mohanty, S/o-Late Padmacharan Mohanty, At- Lingipur, P.O-Sisupalagada P.S-Lingaraj, Dist-Khurda, Bhubaneswar-2
6. Suresh Barala, S/o-Late Bulei Barala, At-Haldia, P.O- Cortala, Via/P.S/District-Jagatsinghpur.
7. Maheswar Rout, S/o-Keshaba Ch. Rout, At/Po-Balarpur, Via-Manjori Road, P.s-Bhandari Pokhari, Dist-Bhadraka.
8. Yogendra Ghadei, S/o-Ananda Chandra Ghadei, At/Po- Amarakhuda, Via-Banamalipur, P.S-Balipatana, Dist- Khurda.
9. Jaladhar Nayak, S/o-Nidhi Nayak, At/P.o-Manikagoda, Via- Bolagada, District-Khurda.
10. Bichitrananda Das, P.O- Kumarabast, Via-Aranga P.S/Dist- Khurda.
11. Krushna Chandra Sahoo, At/Po-Olakana, Via- Nischintakoili, P.S-Mahanga, Dist-Cuttack.
12. Sapan Chatayee, At/Po-Matiapada Near Trilochana U.P. School, Dist-Puri.
13. Prakash Chandra Gouda, S/o- Hanu Gouda, At/Po-Seragada, Via-Aska, Ps-Patpur, Dist-Ganjam.
14. Satrughan Das, S/o-Rabindra Das, At-Saradeipur, P.O- Biranilakanthapur, Via/Ps/Dist-Kendrapara.

15. Rakhala Chandra Lenka, S/o-Bhaskara Lenka, At-Nanpur, P.O-Jhadalinga, Via/Ps-Astaranga, Dist-Puri.
16. Suresh Chandra Mohanty, S/o- Late Kelu Charana Mohanty, At-/Kalikadevi Sahi, Kunja Tota Lane, P.s-Puri Town, Dist-Puri.
17. Sukanta Sahoo, S/o-Udayanath Sahoo, At-Bhaura, Po-Kaini, p.S-Pipil, Dist-Puri.
18. Basudev Bazara, S/o-Chitaranjan Hazara, Quarter No.28/4, Unit-3, Kharabela Nagar, Bhubaneswar.
19. D. Somanath Reddy, S/o-D. Balaji, At-Govindapur, Po-Sorala, Via-Girisola, P.s-Gulanthra, Dist-Ganjam.
20. Bidyadhar Behera, S.o-Bimbadhar Behera, At/Po-Regeda, Via-Narsinghpur, Dist-Cuttack.
21. Guru Charan Panda, At-Desahi, P.o-Dadhibamanapur, P.S.-Govindapur, Dist-Kendrapara.
22. P. Krishna Mohan Reddy, Plot No.1149 (2nd phase), Dumuduma Housing Board Colony, Bhubaneswar, Khurda
23. Subasa Kumar Jena, S/o-Braja Kishore Jena, At/Po-Muktpur, P.S/Dist-Khurda.

All are presently working in the Office of the Accountant General (A&E), Orissa, Bhubaneswar, Dist-Khurda.

..... Applicants

By the Advocate(s)..... M/s. D.P. Dhalsamant,
N. Rout.

-Vrs.-

1. Union of India represented through Comptroller & Auditor General, 10-Bahadursaha Marg, New Delhi-1100124.
2. Accountant General (A&E), Orissa, Bhubaneswar, Khurda-751001.
3. Senior Deputy Accountant General, Office of the Accountant General (A&E), Orissa, Bhubaneswar, Dist-Khurda-751001.

..... Respondents

By the Advocate(s)..... Mr. U.B. Mohapatra, SCGSC

L

O R D E R

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

This Original Application has been filed by 23 applicants jointly with the following prayer:-

“Direction/directions be issued to the Respondents to regularize the services of the applicants in Group-D post with effect from 11.12.2006 with all consequential benefits;

Any other order/orders be passed to give complete relief to the applicants. “

According to the applicants they were engaged as daily wage casual labourer in different spells during 1986 to 1998 onwards in the Respondents' Department and they have been continuing to work as such till date. Their case is that some of the applicants like applicant Nos.1, 2, 4, 8, 13, 14, & 15 have been paid at the rate of 1/30th of the pay scale of the minimum of the relevant pay scale of (Group-D) plus dearness allowance w.e.f. 01.11.1996 by the Respondents pursuant to the circular issued by the DOP&T O.M. No.490140/2/86-Estt. (c) dated 7th June, 1988. The applicants like applicant Nos.3, 5, 6, 9, 10, 11, 12, 17, 18 & 23 have also been paid at the rate of 1/30th of the

pay scale of the minimum of the relevant pay scale of (Group-D) plus dearness allowance w.e.f. 2001 and applicant Nos. 7, 19, 21 & 22 were paid at the rate of 1/30th of the pay scale of the minimum of the relevant pay scale of (Group-D) plus dearness allowance w.e.f. 2002, 2004, 2005 and 2007 respectively and applicant No.16 has also been paid the same from 1988. Their case is that they have been working hard and performed satisfactory service in the area of work they were deployed/engaged. They have been engaged to work in (i) transit home for IA & AS Officers, (ii) Office Garden, (iii) Watch and Ward duty in old A.G's Bungalow and vacant 'B' Type Quarters, (iv) Cleaning of office and bath rooms. Their contention is that since they have been working for more than 10 years they are entitled to be regularized in the light of the decision of the Hon'ble Apex Court in the case of State of Karnataka and Others –Versus- Uma Devi and instruction issued by the DOP &T vide its O.M. No.49019/1/2006-Estt. (C) dated 11.12.2006 pursuant to the order of the Hon'ble Supreme Court. Their representations for being regularized against Group 'D' posts and payment as per the recommendation of the Sixth

Central Pay Commission have not been responded positively, whereas the Income Tax Department has regularized the services of similarly placed persons.

2. The Respondents by filing detailed counter have opposed the prayer of the applicants. The factual matrix of the case given by the Respondents are that, the applicants were/are only engaged on contingent basis as and when their services were/are required and they were/are being paid from contingent fund. They were/are never appointed against any post of Gr'D' or for any specific work of regular nature that are being done by the regularly appointed Group 'D' employees of Department. The applicants have also not been sponsored by Employment Exchange nor faced any selection process. So, the applicants not having satisfied those requirements are not entitled for regularization.

It is empathetically stated by the Respondents that these applicants were engaged intermittently to undertake menial nature of work on daily wage basis and not as casual labourers. They also pointed out that except applicant at Sl. No 12 the

remaining workers are not engaged against regular nature of work or the work which are entrusted to Group 'D' posts. These applicants are never recruited through employment exchange which is crucial in terms of Government Circular dated 7th May, 1985 (Annexure-R/1). The further contention of the Respondents is that the applicants not being regular Government servants are not holding any civil post under the Government of India. It is the further contention of the Respondents that even if it is assumed but not admitted that the applicants were engaged as casual labourers at the rate of 1/30th of pay at the minimum of the relevant pay scale plus DA, still they cannot claim regularization of their services as they were/are not engaged in accordance with any extant rules. In this connection they have placed reliance on the the Judgement delivered by the Hon'ble SC in Dhampur Sugar Mills Ltd Vrs. Bhola Singh in Civil Appeals No.1262-63/2003 dated 08.02.05. Further stand of the Respondents is that the engagement of these applicants was never against any work of permanent nature against sanctioned post of Group 'D'. It is averred that, consequent upon transfer of estate management, the services of

Mali and Chowikdars have since been transferred to Audit Office w.e.f. 24.02.09 and the Respondents are not at all deploying the applicants to undertake the duties of Mali and Chowikdars since then. It is the stand of the Respondents that the applicants are not covered under guidelines issued by the DOP&T dated 11.12.06 as they were not appointed as casual labourers through employment exchange or after facing selection process for recruitment of casual labourers. The Respondents further dispute the claim for regularization at par with persons in the Income Tax Department as they were never engaged against duly sanctioned post and their engagement was purely on day to day requirement. The Respondents have also referred to the order of this Tribunal dated 23.10.08 in O.A. Nos.606/05, 634/05 & 855/05 in a case pertaining to the persons of Central Excise and Customs and Service Tax Department, in which such types of grievance for regularization of services was dismissed which was upheld by the Hon'ble High Court of Orissa.

3. The applicants have filed their rejoinder pointing out that they were working as casual labourers against 38 Group 'D' sanctioned posts under Respondent No2 and 3

which were abolished by the Respondent No.1 vide its letter No.14445-885/118-2007 dated 25.04.2007 and subsequently those 38 posts have been restored vide letter dated 12.01.2010. The applicants having completed more than 10 years and also having minimum qualification of 8th Standard pass, ~~so that~~ they are entitled to be regularized. The applicants have also filed their written notes of arguments reiterating the points already taken in the pleading.

4. Heard the Ld. Counsel on either side at length and perused the materials placed on record.

5. The main ground urged by the applicants in support of their claim for regularization is that they have worked for a long period as casual workers and have been paid at the rate of 1/30th of pay at the minimum of the relevant pay scale of Group 'D' plus dearness allowance. Hence, they are entitled to regularization against the sanctioned post. Their further contention is that they also possess the minimum educational qualification required for a Group 'D' post. In this connection

they have relied on the decision of the Hon'ble Apex Court in the case of Umadevi (Supra).

I have gone through the circular of the DOP&T dated 11.12.06 (Annexure-A/1) dealing with regularization of qualified workers working against any sanctioned post in regular manner and the decision relied on by both sides.

(1) According to the Respondents the applicants were never appointed as against Gr.D sanctioned posts nor are they casual employees of the Department. They are the contingent paid workers engaged as and when required on payment of pro rata basis i.e. 1/30th pay in accordance with the instructions of the DOP&T for the days they worked. This was disputed by the Applicants. In order to justify the claim that the applicants are the casual workers working under the Respondents without any break in service against duly Gr.D sanctioned posts, by filing MA No. 194 of 2010 Learned Counsel for the Applicants seeks direction to the Respondents to produce records such as the file, records, bills containing bonus, arrear differential dearness allowance etc. for the year 2008-09. While giving

consideration to the merit of the matter, I have also heard the Learned Counsel for both sides on the question of production of records. Learned Counsel appearing for the Respondents vehemently opposed the contention of the Learned Counsel for the Applicants on the ground that there is no record to show that the Applicants were engaged as casual laboruers and continuing for last ten years. On the other hand in order to substantiate their claim, Learned Counsel for the Applicant through his notes of argument produced certain records showing the payments made to the applicant for few months of some of the years such as 2007-2008 etc. In view of the above, I do not find any justifiable ground to direct the Respondents to produce the records existence of which has been disputed by the Respondents. This is because, law is well settled in a plethora of judicial pronouncements. Suffice to quote the cases of BSNL and others v Mahesh Chand, (2008) 1 SCC (L&S) 792 and Ranip Nagar 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.

So far as merit of the matter is concerned, it is noted that in the first instance it is to be decided whether the Applicants were contingent paid worker of the Department or were engaged on casual basis against duly sanctioned Gr.D posts and have been continuing since then in a regular manner. No material has been placed by the Applicants to justify that they are the casual employees of the Department and have been continuing for last ten years regularly. Contingent paid workers continue to work, if there is need of work and there is availability of fund. Even if work is available but fund is not available, engagement is not possible. Applicants failed to prove that they are not the contingent paid worker as claimed by the Respondents. Law is well settled 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 and sewerage Board v. Ranjodh Singh [2007] 1 SCC (L&S) 713; **Punjab State**

Warehousing Corporation v. Manmohan Singh [2007] 9 SCC 337). Any appointment 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.

Also I may state that Article 14 read with Article 16 (1) of the Constitution enshrine fundamental right to 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. That the applicants' engagement was not through due process of selection & also not through Employment Exchange is not in dispute. I have also gone through the decisions of the Hon'ble Apex Court in the case of Secy., State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 as also the instructions issued by the DOP&T under Annexure-A/1 relying on the direction of the Hon'ble Apex Court in the case of Uma Devi (supra). Relevant portion of the instruction of the DOP&T under Annexure-A/1 is extracted herein below:

" However, the Supreme Court in Para 44 of the aforesaid Judgement, dated 10.04.2006 has directed that the Union of India, the State Government and their instrumentalities should take steps to regularize as a one-time measure the services of such irregularly appointed, who are duly qualified persons in terms of the statutory recruitment rules for the post and who have worked for ten years or more in duly sanctioned

posts but not under cover of orders of courts or tribunals. The Apex Court has clarified that if such appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized."

Neither in the decision of the Hon'ble Apex Court in the case of Uma Devi (surpa) nor in the instructions of DOP&T there has been any whisper in regard to the regularization of the contingent paid worker like the present Applicants. The decisions as also the instructions clearly provide that steps be taken to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. As discussed above, neither the applicants were temporary employees nor were they continuing against duly sanctioned posts rather they were getting their wages from the contingent fund. Payment made to them on pro-rata basis in accordance with the instructions of the DOP&T cannot give them any right to

claim regularization nor can it justify that they are continuing on regular basis against duly sanctioned posts.

In the light of the discussions made above, I find absolutely no justifiable reason to grant any of the prayers made in this OA. This OA, is therefore, accordingly dismissed being devoid of any merit. There shall be no order as to costs.

Chanda
(C.R.MOHAPATRA)
ADMN. MEMBER