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Cuttack, this the 09th November, 2010

THE HON'BLE MR. C.R. MOHAPATRA, ADMN. MEMBER

Respondent No.1 for consideration of regularization against the Gr.D post lying vacant w.e.f. 30.11.2009. Further case of the Applicant is that he has been kept out of his casual work and on the other hand Respondent No.3 allowed one Sudarsan Behera to work in place of the applicant and now step has been taken to regularize his service against the vacant Gr. D post. Being aggrieved by such action of the Respondents, the Applicant approached this Tribunal in the present Original Application with prayer to direct the Respondents to allow the applicant to discharge his duty as casual laborer in the office of the Respondent No.3 and further to direct the Respondents to regularize his services against the Gr.D post pursuant to the letter dated 14-09-2007 and 07-09-2007.

2. In the counter filed by the Respondents it has been brought to the notice of this Tribunal that the initial engagement of the applicant was not through employment exchange or by way of open selection considering the candidatures of all other candidates. The engagement of the applicant was on casual/ seasonal intermittent basis on payment of daily wage, to meet the emergent situation as and when necessary. They have also denied any such assurance given to the applicant that in case the OA No. 215 of 2001 is withdrawn by him his case will be considered for regularization. His casual engagement was not on regular basis nor was he paid 1/30th of the pay at the minimum pay scale of regular Gr.D employees of the Department. The engagement of the applicant on casual basis was also against regular Gr.D sanctioned post of the department. They have also stated that the orders dated 14-09-2007 and 07-09-2007 pertain to the Department of Income Tax and have nothing to do with the casual labourer working under the Respondents. It has been clarified by the Respondents in paragraph 10 of their counter that even if the orders dated 14-09-2007 and 07-09-2007 are made applicable to

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the present Department, the Applicant cannot get any benefit out of the said order as it provides that regularization of certain categories of casual labourers who have worked for ten years or more in duly sanctioned posts but not under cover of the orders of courts/Tribunal against Gr.D vacancies of the Income Tax Department as one time measure. It has been contended that one Shri Sudarsan Behera is engaged in the office on daily wage basis intermittently as and when required by the Department. There is no scope to regularize Shri Behera as he is not working in the office of Respondent No.3 on regular basis. They have admitted the completion of 240 days of intermittent work during 1999-2000 and 2000-2001 of the applicant. They have denied the contention of the applicant that he has put in more than 240 days continuous service from 4.12.1996 to 06.11.2001 in every year. Respondents have also admitted availability of one Gr.D vacancy after the retirement of the regular incumbent w.e.f. 30.11.2009 but it has been stated that as the applicant does not fulfill the conditions of regularization nor ~~was~~ his engagement was through any regular process of selection after his name being sponsored through employment exchange, matter has been reported to the headquarters for filling up of the said vacant Gr.D post. Accordingly, Respondents have prayed for dismissal of this OA.

3. Applicant has chosen not to file any rejoinder controverting the stand taken by the Respondents in their counter despite adequate opportunity granted for the same.

4. Heard Mr. Jayadev Sengupta, Learned Counsel for the Applicant and Mr. S.B. Jena, Learned Additional Standing Counsel for the Respondents and perused the materials placed on record.

5. Contention of the Applicant's counsel is that Right to work and right to livelihood is a fundamental right of every citizen. The Respondents

extracted the work at the time of their need by engaging the applicant on daily wage basis and the time when he demanded his right accrued by the strength of various instructions issued by the department for conferment of temporary and consequent regularization, the Respondents deprived him to earn his daily wage which he was earning in lieu of his work performed in the department which amounts to hiring and firing and the hiring and firing principle adopted by executives have already been deprecated by the Hon'ble Apex Court. As such, the applicant is entitled to relief claimed in this OA. Further contention of the applicant is that law is well settled that one casual or adhoc hand should not be replaced by another casual or adhoc hand. But the Respondents in gross violation of the said principles engaged another person on such casual basis in place of the applicant because he has approached this Tribunal which is not sustainable in the eyes of law. In course of his argument, violation of doctrine of legitimate expectation and promissory estoppel as the limbs of his argument were put forward by him. However, he took time to produce copy of the latest instruction of the DoP&T in support of his oral submission that at least the applicant was entitled to temporary status after completion of 240 days service during the period 1999-2001. However, Learned ASC appearing for the Respondents placed his argument with reference to the various decisions of the Apex Court that since the initial engagement of the applicant was not through any process of selection, he was not entitled to temporary status, what to speak of regularization. He has contended that it is too late in the day to claim temporary status for the completion of 240 days service during 1999-2001. His submission is that in case the present argument of the applicant is accepted then flood gate will open to many of the casual labourers working in different departments to claim regularization as a matter of right though their appointment de hors the Rules. By stating so, the Respondent's


Counsel strongly objected to the prayer of the applicant for regularization or even for conferment of temporary status on him.

6. Despite adequate opportunity by way of allowing time to produce the circulars as undertaken by the Learned Counsel for the Applicant to do so within two days, he failed to produce any such instruction to support his case. He has also miserably failed to convince as to how he is entitled to regularization on the face of the fact that his initial engagement was not by following any regular process of selection or through employment exchange. It is trite law that 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. 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 guarantees 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 the Rules. It is needless to emphasize that the purpose and object behind holding a recruitment examination is to select suitable and best candidates out of the lot and such an object can only be achieved by making

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selection based on merit and the leading decision on the subject of the Hon'ble Apex Court is in the case of **Secy., State of Karnataka v. Umadevi** (3), (2006) 4 SCC 1. I have also gone through the circular relied on by the Applicant in support of the relief claimed in this OA. But I find that the said circular is not applicable or even if it is applicable, the applicant does not fulfill the condition laid down therein.

7. For the reasons discussed hereinabove, I find no merit so far as the present prayer is concerned. Hence this OA stands dismissed by leaving the parties to bear their own costs.


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