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OA No. 90 of 2010

A.P.Parida

....

Applicant

Versus

Union of India & Others

....

Respondents

Order dated: 11<sup>th</sup> March, 2010.

C O R A M

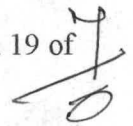
THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN

And

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

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It has been alleged in the present Original Application filed (on 09.02.2010) under section 19 of the Administrative Tribunals Act, 1985 that pursuant to an advertisement (for recruitment to the posts of Technician under DDK/Bhubaneswar) dated 15.12.1993, the Applicant faced the selection on 26.02.1994 and he was called upon on 20.04.1994 to fill up certain attestation forms and to furnish documents and, finally, with the intervention of this Tribunal ( order dated 03.04.1998 rendered in OA No.554 of 1997) , he was asked ( on 13/14.07.1998) to report to duty at LPT/Tirtol (to attend for miscellaneous technical job, on contract basis, on payment of Rs.1800/- per month) and he reported to duty on 15.07.1998. It is stated that later, during April, 2006, he was taken to LPT/Durgapur, where he was paid Rs.2821/- PM. Presently, however, he is being paid Rs.3510/- p.m. By way of making prayer to get the monthly pay, equal to the pay of his counterparts in the regular establishment under DDK/Bhubaneswar, and to treat his services in regular establishment w.e.f. 15.07.1998, the Applicant stated to have submitted a representation on 20.07.2009 and, no action having been taken by the Respondents, the Applicant has approached this Tribunal with the present Original Application filed (on 09.02.2010) under section 19 of



the Administrative Tribunals Act, 1985 wherein he has made the following prayers:-

“To direct the Respondents to pay the Applicant the equal pay for equal work as applicable to the counter part employees (Technicians) working in regular cadre with effect from the date of the initial engagement of the applicant i.e. 15.7.1998; and further be pleased to direct the Respondents to regularize the services of the applicant against post of Technician with effect from 15.7.1998 within a short stipulated period;

And pass any other order/orders as deemed fit and proper in order to give complete relief to the Applicant.”

2. Heard Mr.S.N. Sharma, Learned Counsel appearing for the Applicant and Mr. B.Mohapatra, Learned Additional Standing Counsel for the Union of India (to whom a copy of this OA has already been supplied) and perused the materials placed on record.

3. In course of hearing, Learned Counsel for the Applicant drew our attention to the order dated 16<sup>th</sup> November, 1993 of this Tribunal rendered in OA Nos.441 of 1992(Sameer Kumar Sahoo and others vs Union of India and others); OA No. 562 of 1992 (B.K.Mitra and others v Union of India and others) and OA No.362 of 1992 (Suryakanta Patnaik v Union of India and others); wherein, while dealing with the grievance of almost similarly situated persons and the identical issues (as that of the present Applicant) this Tribunal asked the authorities of Doordarshan Organization to pay the wages to the applicants therein at par with their counterparts in the regular establishment. Relevant portion of the said order dated 16<sup>th</sup> November, 1993 extracted herein below:

“4. Law is well settled by a plethora of judicial pronouncements of the Hon’ble Supreme Court that every casual laborer should be paid the basic pay scale which is being given to a regular government servant in regard to the nature of work which is a particular casual labourer is discharging. This settled

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position of law was rightly and fairly not disputed at Bar and, therefore, no citations need be quoted. It is, therefore, directed that all these petitioners who have been discharging their duties as casual workers be paid the minimum basis pay scale which is being given to a regular employee discharging the same nature of duties like that of the present petitioners. If it has already been paid this order become ineffective. If it is not paid, it should be paid with effect from 2<sup>nd</sup> September, 1992 so far as petitioners in Original Application No. 441 of 1992 is concerned, with effect from 3<sup>rd</sup> August, 1992 so far as petitioner in OA No. 362 is concerned and with effect from 30<sup>th</sup> October, 1992 so far as petitioner in OA No. 562 of 1992 is concerned. Arrears be calculated and paid to all these petitioners within ninety days from the date of receipt of a copy of this judgment."

In the said case, there were also a direction to regularize the Applicants therein.

4. In the present case, the Applicant claims that since he faced a regular recruitment (and since some of the persons similarly placed like him, have already been regularized) his case for regularization need receive prompt consideration and that, pending consideration of his case for regularization, he should be paid salaries equal to his counter parts in regular establishment; especially because he has been continuing uninterruptedly for last more than ten years that too without any court order. In this connection Learned Counsel for the Applicant has also relied on the decision of the Hon'ble Apex Court rendered in the case of **Secretary, State of Karnataka and Others v Uma Devi and others** (reported in 2006 SCC (L&S) 753 (paragraph 53); paragraph 53 of which reads as under:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa, R.N.Nanjundappa and B.N.Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have **continued to work for ten years or more but without the intervention of orders of the courts or of tribunals.** The question of regularization

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of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the case above referred to and in the light of this judgment. **In that context, the Union of India, the State Governments and their instrumentalities should take steps 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. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.” (emphasis supplied)

5. Be that as it may, it is the positive case of the Applicant that representation filed by him (seeking removal of the injustice caused to him in the subject matter of this Original Application) is pending consideration and no order has yet been passed thereon till date. There can be no dispute that the authorities have got inherent power, jurisdiction and competence to remove the injustice caused to an employee on the subject matter of this Original Application and admitting this OA otherwise tantamount to arresting the hands of the authorities to exercise the power conferred on them. Therefore, we are of the considered view that ends of justice would be met, if we dispose of this OA at this admission stage by calling upon the Respondents to consider the grievance of the Applicant (as raised in his representation and in the present OA) keeping in mind the decisions cited above and pass a reasoned order; as expeditiously as possible preferably; within a period of 120 days from the date of receipt of a copy of this order under intimation to the Applicant. **Ordered accordingly.**




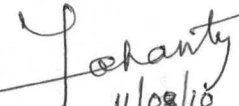
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6. Send copies of this order to the Applicant and to all the Respondents (with copies of this OA) by Regd. Post in the address given in this OA for which Learned Counsel for the Applicant undertakes to deposit the postal requisites within next seven days.

7. Free copies of this order be given to Learned Counsel for both sides.

  
Member (Admin.)

  
11/08/10  
Vice-Chairman

