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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.263 of 2010
Cuttack this the 6/2 day of February, 2012

Prakash Kumar Mukhi...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. *Whether it be referred to reporters or not ?*
2. *Whether it be referred to CAT, BP, New Delhi for circulation ?*


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. PATNAIK)
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A. No. 263 OF 2010

Cuttack, this the 6th day of February, 2012

CORAM:

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

AND

THE HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)

...

Sri Prakash Kumar Mukhi, aged about 43 years, Son of Late Subala Mukhi, Permanent resident of Village-Guapur, Post. Majhihara, PS-Balipatna, Dist. Puri presently working as Part Time Sweeper Cum Scavenger of Inspection Quarter, P&T Colony, Unit-IV, Bhubaneswar, Dist. Khurda, PIN 751 001.

...Applicant

By the Advocates: M/s. P.K. Padhi, M. Rout, Counsel

-Vrs-

1. Union of India represented through its Chief Post Master General, Orissa Circle, At/Po. Bhubaneswar, Dist. Khurda-751 001.
2. Assistant Director (Staff), O/o the Chief Postmaster General, Orissa Circle, At/Po. Bhubaneswar, Dist. Khurda, PIN 751 001.
3. Assistant Director (Accounts), O/O the Chief Postmaster General, Orissa Circle, At/Po. Bhubaneswar, Dist. Khurda, PIN – 751 001.

...Respondents

By the Advocates: Mr. S. Barik, ASC

O R D E R

A.K. PATNAIK, JUDICIAL MEMBER:

The prayer of the Applicant is for direction to the Respondents to regularize him in Gr.'D' post after conferment of temporary status and till such time to allow him to continue in the post of Sweeper in the Circle Office as he has been

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continuing to discharge the duty of Sweeper Cum Scavenger both in the circle office as well as in the P&T quarters located at Unit IV, Bhubaneswar since 1985 and after retirement of the regular incumbent in the Circle Office since 28.2.2006 and as per the instructions of the DGP&T and the decision of the Hon'ble High Court of Orissa in OJC No. 5246 of 2001 he is entitled to the relief as claimed in this OA.

2. Respondents contest the case of the Applicant and have prayed for dismissal of this Original Application on the ground that the applicant was not appointed/recruited through any employment exchange by following due procedure of Rules as a part time Sweeper. It has been specifically stated in the counter that the applicant was engaged on daily wage on temporary basis to manage the sweeping work of the Circle Office as well as Inspection quarters. It has been further stated that the applicant was disengaged from duty for his unsatisfactory work as well as irregular continuance with effect from 04.02.2010 and after his disengagement, the the work of sweeper is being managed at present by way of local arrangement on daily wage basis @ Rs.90/- for each working day only as a temporary measure till regular appointment in the post is made.

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3. Despite adequate opportunity afforded, no rejoinder was filed by the Applicant. However, a written note of argument has been filed by Mr.P.K.Padhi, the learned counsel for the applicant which has been taken note of.

4. At the out set it was contended by Mr.P.K.Padhi, the learned Counsel for the Applicant that as per the instructions in vogue the applicant having fulfilled the conditions stipulated therein was entitled for conferment of temporary status and consequential regularization in Gr. D Post. But only in order to deprive him from his legitimate claim, the Respondents have replaced the applicant by another casual hand which is not sustainable in the eyes of law. Further Sri Padhi contended that according to the Respondents the disengagement of the applicant was due to unsatisfactory service and irregular continuance thereby attaching stigma which ought not to have been made without following principles of natural justice. Besides it was contended by him that the said allegation is without any basis. Hence he contended that the disengagement of the applicant is not sustainable in the eyes of law. His next contention is that the case of the applicant comes under the casual Labourers (Grant of Temporary Status & Regularization) Scheme framed by the Government of India/Respondents and as such non consideration of the case

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of the applicant for conferment of temporary status is highly illegal and arbitrary. Accordingly, Mr. Padhi submitted that as the applicant had already rendered quite a long years of uninterrupted service and by now became over aged, he is entitled to the reliefs as claimed in the instant OA.

5. On the other hand Mr. S. Barik, Learned ASC appearing for the Respondents besides reiterating the points raised in the counter, has submitted that since the very engagement of the applicant was without following the rules and that he was continuing on daily wage basis he cannot claim regularization as a matter of right. It was contended by Mr. Barik that the disengagement of the applicant was in accordance with the instruction under Annexure-R/2. Hence he has prayed for dismissal of this OA.

6. We have given our anxious consideration to the arguments advanced by the counsel appearing for the respective parties with reference to the points raised in their pleadings and perused the materials placed on record.

7. We would, at the out set, like to observe that the Constitution was enacted to secure to all the citizens of this country social and economic justice. Under our democratic set up what perhaps is required is a pluralist approach to our economic problems rather than a populist socialist approach

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which seeks to make the state, the universal provider and dispenser of jobs and goods. It would be prudent and politically correct to let all available agencies put their shoulder together to the wheel and do their devoir to help mitigate the problem of unemployment in the country. Perhaps then only we would be able to come out of this morass.

8. We have considered the above submissions in the light of the relevant instructions issued by the Government of India from time to time. In this connection, Appointment of Casual labourers to Group D posts, as laid down in Annexure-R/4 reads as under.

"3. Appointment of casual labourers to Group 'D' posts.

3.1 The appointment of casual labourers to Group D posts, borne on the regular establishment which are required to be filled by direct recruitment, will be made subject to the following conditions :-

- i) No casual labourers not registered with the Employment Exchange should be appointed to posts borne on the regular establishment;
- ii) Casual labourers appointed through Employment Exchange and possessing experience of a minimum of two years' continuous service as casual labour in the office/establishment to which they are so appointed will be eligible for appointment to posts on the regular establishment in that office/establishment without any

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further reference to the Employment Exchange.

- iii) Casual labourers recruited in an office/establishment direct, without reference to the Employment Exchange, should not be considered for appointment to regular establishment unless they get themselves registered with the Employment Exchange, render, from the date of such registration, a minimum of two years' continuous service as casual labour and are subsequently sponsored by the Employment Exchange in accordance with their position in the register of the Exchange.(See Paragraph 3 below for one time relaxation)".

9. In the written note of argument, the applicant has furnished clarification [G.I., Dept. of Posts, Lr.No.65-24/88-SPB 1, dated the 17th May, 1989] issued by the Department of Posts regarding Part-time and Full time Casual Labourers. In the said clarification for the purpose of recruitment to Group-D posts eligibility condition of Part-time casual labourer has been stipulated as under.

"...if a part-time casual labourer has served for 480 days in a period of 2 years, he will be treated, for purpose of recruitment, to have completed one year of service as full time casual labourer".

10. In so far as regularization of part-time Casual Labour as full-time, directives have been issued vide G.I.,Dept.

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of Psts, Lr.No.45-14/92-SPB 1, dated the 16th September, 1992.

as under:

"If part-time casual labourers are working for five hours or more, it may be examined whether they can be made full-time by readjustment or combination of duties. However, there should no engagement of fresh casual labourers".

11. As regards the point urged regarding that the applicant has not been engaged through the Employment Exchange, we would like to say that in the counter filed by the Respondents, it has been submitted that the applicant's initial engagement was on daily wage temporary basis, which, by virtue of G.I.Dept.of Posts, Lr.No.65-24/88-SPB 1, dated 17.5.1989 (annexed by the applicant to the written note of argument) has been treated as part-time casual labourer. It is also not the case of the Respondents that any other full-time casual labourers above the applicant are in the queue for regularization. Besides the above, it is also an admitted fact that the applicant, after retirement of regular Sweeper, Shri Manmohan Naik, had been engaged in the regular vacancy to work as such from 28.2.2006 till 5.2.2010, when his services were terminated by substituting fresh persons for unwanted reasons in the face of the instructions issued by the Department of Posts vide G.I.,Dept. of Posts, Lr.No.45-14/92-SPB 1, dated the 16th September, 1992 (supra) to the effect





that "if part-time casual labourers are working for five hours or more, it may be examined whether they can be made full-time by readjustment or combination of duties. However, there should no engagement of fresh casual labourers". In the circumstances, we cannot but entertain doubt regarding fair play adopted by the Respondent-Department in so far as the ongoing state of affairs is concerned.

12. It is not in dispute that the Applicant was working on daily wage basis with effect from January, 1993 and the Post of Sweeper became vacant w.e.f. 01-03-2006 consequent upon the voluntary retirement of the regular incumbent on 28-02-2006. Thereafter, the Applicant was the sole person to manage the sweeping work of the circle office as well as the Inspection quarters. It is not the case of the Respondents that they have taken any step for regular selection since 1993 i.e. after engagement of the applicant if at all they claim that the applicant was not appointed as per the laid down procedure through employment exchange. Therefore, the engagement of the applicant can at best be construed as irregular but certainly not illegal. Similarly, we find no material to uphold the ground of disengagement in absence of any materials in support thereof. We are afraid that the stand taken by the Respondents to the extent that the applicant was not a casual

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labourer but was engaged on daily wage basis on temporary basis and, therefore, he was not entitled to the benefit of conferment of temporary status can stand the legal scrutiny. When the factual scenario is examined in the background of instructions and legal principles exist on the subject, the inevitable conclusion is that the case of the Applicant needs consideration/reconsideration by the Respondents for conferment of temporary status and consequent regularization in terms of the scheme framed by the Govt. of India. Accordingly we feel it proper to dispose of this O.A. with a direction to the Respondents to re-examine the entire issue which exercise has to be completed by them and communicate its decision to the applicant in a well reasoned order within a period of 120 days from the date of receipt of copy of this order. Till such consideration is given and communicated to the Applicant, the Respondents are hereby directed to allow the Applicant to discharge his duty on such casual basis as was given in earlier occasion. There shall be no order as to costs.


(C.R. MOHAPATRA)
Member (Admn.)


(A.K. PATNAIK)
Member (Judl.)