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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00711 OF 2015
Cuttack, this the 12th day of November, 2015

K. Nayak & Ors. Applicants

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓

2. Whether it be referred to PB for circulation? ✓


(R.C.MISRA)
MEMBER (A)


(A.K.PATNAIK)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00711 OF 2015

Cuttack, this the 12th day of November, 2015

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

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

.....

1. Kanthamani Nayak, aged about 45 years , son of Late Balaram Nayak, At -Khaleri, P.O- Alang, Dist- Jagatsinghpur.
2. Mahendra Kumar Naik, aged about 44 years, son of Manguli Naik, At- Podapada, P.O- Argul, P.S-Jatni, Dist- Khurda.
3. Rama Prasad Sahu, aged about 34 years, son of Late Mahadev Sahu, At- Khandual, P.O- Dhanupali, Dist- Sambalpur.
4. Sayad Habib Alli, aged about 41 years, Son of Late sayad Samser Alli, At/PO- Mukundadaspur, Via- Pipili, Balipatna, Dist- Khurda.
5. Hadu Pradhan, aged about 41 years, Son of Late Bhakodo Pradhan, At- Bada Bazar, Sambalpur, Dist- Sambalpur.
6. Chhabindra Barik, aged about 37 years, Son of Late Sanatana Barik, At/PO- Pandlam, P.S- Kalapathara, Dist-Cuttack.
7. Babu Naik, aged about 42 years, Son of late Dama Baik, At/P.O- Kiajara, P.S- Khandapada, Dist- Nayagarh.
8. Rama Krishna Padhi, aged about 40 years, Son of Subash Ch. Padhi, At/ P.O- Bellaguntha, Dist- Ganjam.
9. Babuli Panigrahi, aged about 40 years, Son of late Ramachandra Panigrahi, At- Badagada, P.O- Bandhaguda, Via Seariguda, Dist- Ganjam.
10. Panchu Kumbhar, aged about 38 years, Son of Bairagi Kumbhar, At- Bramhari Dungri, P.O- G.S. Duguripalli, Dist- Balangir.
11. Gopagobindra Mallick, aged about 42 years, Son of late Ganesh Prasad Mallick, At/PO- Haripur, P.O- Sahada, Via Sabaranga, Dist- Bhadrak.
12. Rashmi Ranjan Behera, aged about 37 years, Son of Rangadhara Behera, At- New Panitanki Colony, Gotghar, Plot No. A/8, Sector- 5, Rourkela-2, Dist- Sundergarh.
13. Mukutrani Ekka, aged about 38 years, Son of Fransis Ekka, At/P.O- Kesramal, Via- Rajgangpur, Dist- Sundargarh.
14. Gadadhara Pradhan, aged about 39 years, Son of Udyia Narayan Pradha, At- Tahalia, P.O- Chaka, Jagannathpur, Dist- Balasore.
15. Brajakishor Mathan, aged about 36 years, Son of Bansidhara Mathan, At- Mathasahi, P.O- Baradia, Rajkanika, Dist- Kendrapara.
16. Banamber Lenka, aged about 40 years, Son of Jhari Lenka, P.O- Haladia, At- Bramhani Bereni, Dist- Khurda.
17. Prakash Chandra Sahoo, aged about 34 years, Son of Biswanath Sahoo, At- Manasila, P.O- Belagaon, Via- Palasara, Dist- Ganjam.
18. Sk. Riazuddin, aged about 46 years, Son of Sk. Riasatuddin, At/P.O- Rasulpur, Via- Lataharan, Dist- Puri.
19. Padman Bag, aged about 42 years, Son of Kasti Bag, At/P.O- Dalipali, P.S- Bhasma, Dist- Sundergarh.
20. Umesh Ch. Tudu, aged about 46 years, Son of Jagan Tudu, At- Nayadera, P.O- Assurchpla, Rourkela-43, Dist- Sundergarh.

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21. Sanatan Dakoa, aged 40 years, Son of late Magata Dakoa, At/P.O- Bhanja Nagar, Chirangibi Pattnaik Street, Dist- Ganjam.
22. Prasanta Kumar Padhi, aged about 42 years, Son of late Damodara Padhi, At/P.O- Podangi, Via-Pital, Dist- Ganjam.
23. Dipti Ranjan Nayak, aged about 38 years, Son of Kailash Ch. Nayak, At/P.O- Ghodansh, Dist- Jagatsingpur.
24. Kamala Bhoi, aged about 39 years, Son of Chandramani Bhoi, At- Deheripali, P.O- Budharaja, Dist- Sambalpur.
25. Rabinarayan Bhoi, aged about 38 years, Son of late Makara Bhoi, At/P.O- Pratap Purusottampur, P.S- Chandanpur, Dist- Puri.
26. Brajendra Kumar Behera, aged about 46 years, Son of Niranja Behera, At- Telugunuagain, P.O- Agasti Nuagam, Dist- Ganjam.
27. Ajit Prusty, aged about 38 years, S/O. Sanatana Prusty, At- Jualibandha, P.O- Mathatentulia, Via- Gondiapatna, Dist- Dhenkanal.
28. Renubala Sahoo, aged about 34 years, Wife of Ranjan Kumar Pradhan, Qr. No. F-2/1, Designs Colony, B.J.B. Nagar, Bhubaneswar, Dist-Khurda.
29. Kapilendra Mahapatra, aged about 43 years, Son of Ramesh Ch. Mahapatra, At-Ketaki Patna, P.O- Lalitapahandi, Via- Sakhigopal, Dist- Puri.
30. Rebati Jena, aged about 38 years, W/o. Mayadhara Jena, At/P.O- Jaganathpur, P.S- Baliana, Dist- Khurda.
31. Judhistira Jena, aged about 34 years, Son of Achhaba Jena, At/P.O- Hantuka, P.S- Chandanpur, Dist- Puri.
32. Madhusudan Das, aged about 48 years, Son of Late Purnananda Das, At/ P.O- Goti Sahi, P.S- Sarnakul, Dist- Nayagarh.
33. Gadadhara Sahoo, aged about 38 years, Son of Bainsidhara Sahoo, At/P.O- Haladia, Dist- Khurda.
34. Ashok Kumar Sangitra, aged about 46 years, Son of late Damodara Sangitra, At- Harachandi Sahi, P.O- Old Town, Dist- Khurda.
35. Rabindra Behera, aged about 35 years, Son of Jogendra Behera, At- Rahama, P.O- Postala, Via- Bramhanasailo, Dist- Cuttack.
36. Sarat Chandra Behera, aged about 38 years, Son of Ganeswara Behera, At-Kantapatna, P.O- Lethaka, P.S- Gondia, Dist- Dhenkanal.
37. Susanta Kumar Sahoo, aged about 38 years, son of Kumudabandhu Sahoo, At- Balikatirana, P.O- Anantapur, Via- Sora, Dist- Balasore
38. Khageswara Sahu, aged about 42 years, Son of Mangulu Sahu, At/P.O- Badagugua, P.S- Banei, Dist- Sunbdergarh.
39. Pankaj Kumar. Patnaik, aged about 38 years, Son of late Sarat Chandra Patnaik, At- Alliabad, P.O- Karapada, Dist- Ganjam.
40. Purna Chandra Das, aged about 33 years, Son of Madhusudan Das, At/P.O- Gotisahi, P.S- Sarankul, Dist- Nayagarh.
41. Snehalata Sadangi, aged about 48 years, Wife of late Sarat Sadangi, At- Kahalia, Baligohiri, P.O- Raj Nilagiri, Dist- Balasore.
42. Hrusikesh Maharana, aged about 45 years, Son of late Madan Maharana, At- Pathara, P.O- Bahadurpeta, Dist- Ganjam.
43. Biswajit Suna, aged about 31 years, Son of Late Amritlal Suna, At- Stationpada, P.O- Khetrarajpur, Dist- Sambalpur.
44. Seshadev Kumbhar, aged about 35 years, Son of Bairagi Kumbhar, At-Bramhani Dunguri, P.O- G.S. Dunguripalli, Via- Chudapali, Dist- Bolangir.

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45. Ashok Chhatriya, aged about 32 years, Son of Kunja Chhatriya, At- Qr. No. 245, Sector-7 Rourkela, Dist- Sundergarh.
 46. Bishnu Prasad Mishra, aged about 40 years, Son of Parasara Mishra, At-Jemadelpur Sasan, P.O/P.S- Narasingpur, Dist- Cuttack.
 47. Ramesh Chandra Maharana, aged about 41 yers, Son of Dambarudhara Maharana, At/P.O- Kanda Bindhu, Via- Gadasahi, Dist- Dhenkanal.
 48. Girish Chandra Dash, aged about 37 years, Son of Gobardhana Dash, At- Sarod, P.O- Tampoia, Via- Gop, P.S- Nimapara, Dist- Puri.
 49. Bapi Kabati, aged about 30 years, Son of Krushna Kabati, At- Athanga, P.O- Sidheswarpur, Dist- Cuttack.
 50. Subasini Gouda, aged about 34 years, D/O late Nityananda Kanta, At- Rajgangpur(Master Colony), Dist- Sundergarh.
 51. Arjuna Bhoi, aged about 30 years, Son of Rama Chandra Bhoi, At/ P.O- Bira Ramachandrapur, P.S- Satyabadi, Dist- Puri.
 52. Sanjukta Mohanty, aged about 42 years, Wife of late Parsuram Mohanty, At- Hatasahi, P.O- Sriramchandrapur, P.S- Satyabadi, Dist- Puri.
 53. Rohita Kumar Sahoo, aged about 38 years, Son of late Dhaneswar Sahoo, At/ P.O- Kandabindha, Via- Gadasila, Dist- Dhenkanal.
 54. Gumani Maharana, aged about 33 years, Son of Dambarudhara Maharana, At/P.O- Kandabindha, Via- Gadasila, Dist- Dhenkanal.
 55. Sridhar Prasad Parida, aged about 40 years, Son of Laxman Parid, At- Dehulia Patana, P.O-Kihajhar, Bhubaneswar, Dist- Khurda.
 56. Srinibas Lenka, aged about 39 years, Son of Late Surendranath Lenka, At- Old Town, Bhubaneswar, Dist- Khurda.
 57. Ashok Naik, aged about 37 years, Son of Paramanda Gochhayat, At- Misar, P.O-Putuli, Dist- Khurda.
 58. Pradip Gochhayat, aged about 40 years, Son of Dhadi Gochhayat, At/P.O- Erasama, Dist- Jagatsingpur.
 59. Nilambar Tripathy, aged about 44 years, Son of Parshuram Tripathy, At- Ramsigha, P.O- Khalia, Dist- Bolangir.
 60. Krushna Chandra Lohar, aged about 42 years, Son of Ganesh Lohar, At- Bankotola, P.O- Khuntaboon, Dist- Sundergarh.
 61. Prasanna Sahu, aged about 37 years, Son of Tofan Kumar Sahoo, At- Mohanapur, P.O- Khalikore, Dist- Ganjam.
 62. Sanjaya Mallik, aged about 30 years, Son of Bhagaban Mallik, At/ P.O- Mulalasaha, P.S- Satyabadi, Dist- Puri.
 63. Pabitra Kumar Panda, aged about 40 years, Son of Suryamani Panda, At- Andigoda, P.O- Odisho, Dist- Jajpur.
 64. Naresh Naik, aged about 38 years, Son of P. Naik, residing at Central Excise Customer Service, Headquarter, Bhubaneswar, Dist- Khurda.
 65. Shyam Rai, aged about 45 years, Son of R. Bahadur Rai, residing at Central Excise Customer Service, Headquarter, Bhubaneswar, Dist- Khurda.
 66. Bisikeshana Nayak, aged about 34 years, Son of late Laxmidhara Nayak, At-Arjunbania, P.O- Kanto, Via- Ghasipur, Dist- Keonjhar.
 67. Rajendra Mukhi, aged about 36 years, Son of Narayan Mukhi, At- Sutahat, Upper Sahi, P.O- Baxi Bazar, Dist- Cuttack.

10

- 68.Nrushingh Maharana, aged about 43 years, Son of Baidhara Maharana, At- Balibereni, P.O- Garhranatir, Dist- Khurda.
- 69.Surendra Nath Acharya, aged about 42 years, Son of late Simanchal Acharya, At- Bank Colony, 2nd Line, At/ P.O/Dist- Raygada.
- 70.Raj Kumar Biswal, aged about 34 years, Son of D. N. Biswal, At- Bilasahi, P.O/P.S- Balikuda, Dist- Jagatsinghpur.
- 71.Prasanta Kumar Nayak, aged about 53 years, Son of Gangadhar Nayak, At- Arisal, P.O- Dandi, Chhatabara, Dist- Khurda.
- 72.Jagdish Maharana, aged about 38 years, Son of late Madan Maharana, At- Patkura, P.O- Bahadurpeta, Dist- Ganjam.
- 73.Manoj Kumar Pattnaik, aged about 38 years, Son of

.....Applicants

(Advocate: M/s. S.K. Dalai, P.N. Swain, S.B. Mohapatra)

VERSUS

Union of India Represented through

1. Secretary, Ministry of Finance, Central Board of Excise and Customs, North Block, New Delhi.
2. Chief Commissioner, Central Excise and Customs and Services Tax, Bhubaneswar-II, Central Revenue Building, Rajaswa Vihr, Bhubaneswar, Dist-Khurda.
3. The Regional Labour Commissioner (Central), Kendriya Shrama Sadan, N-7, IRC Village, Bhubaneswar, Dist-Khurda.

... Respondents

(Advocate: Mr. C.M. Singh)

ORDER

A. K.PATNAIK, MEMBER (J):

Heard Mr. S.K. Dalai, Ld. Counsel appearing for the applicant and Mr. C.M. Singh, Ld. ACGSC appearing for the Respondents on MA No. 741 of 2015 filed by the applicants seeking permission to prosecute this O.A. jointly, the MA stands allowed and is accordingly disposed of. No costs.

2. In so far as the prayer of the applicants in this OA is concerned, the same runs thus:

“ (i) Why the action of the respondent No.2 in rejecting the representation of the applicants dated 15/16.7.2015 under Annexure-A/8 shall not be declared illegal, arbitrary, malafide, unconstitutional, non-application of mind and contrary to the *direction of this Hon'ble court and so also direction of Hon'ble Apex Court.*

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(ii) Why the applicants case shall not be considered for regularization in the light of letter dated 28.08.2015 by allowing them to perform their duties in respective establishments to secure ends of justice.

(iii) Why the impugned order dated 30.12.2010 under Annexure-A/3 shall not be quashed declaring the same as illegal, arbitrary, malafide, unconstitutional and contrary to the settled principles of law and rule of service jurisprudence;

(iv) And pass such other relief/reliefs as would be deemed fit and proper; ”

3. Mr. Dalai, Learned counsel for the applicants placing reliance on the stand taken in the O.A. has submitted that all the applicants are working under the respondents' department as casual/contract workers since long and as such, being not covered by the decision of the Hon'ble apex court in the case of Uma Devi, are entitled to be regularised in civil posts of the department but the respondents without due application of mind rejected their grievance which is liable to be quashed with the consequential direction as prayed for by them. This was strongly objected to by the learned counsel appearing for the respondents both on the ground of res judicata as also on merit. We have considered the contentions advanced by the parties and perused the pleadings and materials placed in support thereof. For the sake of clarity and brevity the order of rejection dated 15/16th July, 2015 placed as Annexure-A/8 is quoted herein below:

“... This office has received two Orders of the Hon'ble Central Administrative Tribunal, Cuttack Bench as mentioned in the captioned subject, through your Counsel Shri Sukanta Kumar Dalai, on 18.06.2015.

2. The Hon'ble CAT have not expressed any opinion on the merit of the case and disposed of the OAs at admission stage. In the OA No.1097/2014, there were 07 (Seven) applicants and 80 (Eighty) applicants in the OA No.231/2015. Your name (Sri Banamber Lenka) is appearing at Sl No.19 of the OA No.231/2015.

3. As per the facts of the case at page 6, Para 4(B) of OA No.1097/2014 and page 17 Para 4(C) of OA No.231/2015, it is stated that Applicants are members of Central Excise, Customs and Service Tax Shramika Sangha, Odisha, Bhubaneswar, which is registered under the Indian Trade Union Act, 1926 and has been allotted the Registration No.1010/CTC/2012 (herein after called “Shramika Sangha”). It



is further stated that the Shramika Sangha is functioning for the all-round development of the workers. As the General Secretary of the said Shramika Sangha, you have filed two Statements of claim, dated 16.09.2013 in ID Case No.52/2013 and dated 04.12.2013 in ID Case No.53/2013, before the Ld. Central Govt. Industrial Tribunal-cum-Labour Court, Bhubaneswar. Both these ID cases are still pending in the Ld. CGIT-cum-Labour Court. Since Sri Baanamber Lenka is the General Secretary of the Shramika Sangha having 104 members, including the present 87 Applicants in these two OAs, this order/Letter is being addressed to him at the Shramika Sangha address of Bhubaneswar for reference of all the members (herein after called "the Applicants").

4. The enclosures at Annexure-13 Series of both the OAs are the unsigned typed copies of representations and marked as "Sd/-", stated to have been submitted to the Chief Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar Zone on various dates in the month of January, 2014. Though no such representation(s) have been received in the office of the Chief Commissioner, Bhubaneswar Zone, even assuming that there were representations, the facts/points on the issue involved vis-à-vis your claims, is communicated for your reference in the following paras. On verification of Annexure-13 Series it is seen that there are copies of 14 applicants attached to OA No.1097/2014 and 13 applicants attached to OA No.231/2015. The copies of representations are exactly the same in both the OAs and the only difference is in additional copy in O.A. No.1097/2014 of Sri Gumani Moharana.

5. On perusal of aforesaid copies of representations in the Annexure-13 Series of both OAs, the applicants have stated the following and requested for consideration to continue work:

(i) On 11.04.2013 they started Dharana in front of Office; (ii) on 7.5.2013 as per direction of the Regional Labour Commissioner they came to office to continue duty which the authority did not allow; (iii) Their Cases pending in CGIT and (iv) They have been suffering due to financial hardship.

6. This Department is bound by the Instructions/Circulars/Orders of the Govt. of India and Orders passed by the Hon'ble Tribunal/Courts. In the year 2005, the Central Board of Excise and Customs, New Delhi, issued guidelines vide F. No.A-12034/1/2005 Ad.III.B dated 02.05.2005, on outsourcing of services of cleaning/sweeping, etc. Accordingly, following the guidelines/orders of the CBEC and the DOP&T, this office attempted to outsource the work of cleaning, sweeping, etc, in the year 2005. On the issue of outsourcing of essential services, following 3 cases were filed in the Hon'ble CAT, Cuttack Bench, by the Applicants (now members of Shramika Sangha) who were then working as contractual workers.

(a) OA No.606 of 2005 (P.K. Naik & Ors Vs UOI & Ors);
(b) OA No.634 of 2005 (Mukut Ekka & Ors Vs UOI & Ors)
and;

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(c) OA No.855 of 2005 (Biranchi Narayan Naik & Ors Vs UOI & Ors) with the prayer, interalia, to:

(i) Quash/set aside the order of engagement of service provider/contractor dated 02.05.2005 and tender notice dated 04.07.2005, in so far it related to offices where the applicants were working;

(ii) Issue direction to Respondent department to grant temporary status and regularization of service under the provision of the scheme formulated by Govt. of India; and

(iii) Issue direction to respondent-Department to frame a scheme and to regularize the service of the Applicants against Class-IV posts.

7. Since these three OAs involved common questions of fact and law and reliefs sought, the Hon'ble CAT, Cuttack Bench, vide its order dated 23.10.2008, disposed of the same by dismissing all the prayers of the Applicants. In Para 14 of the said order dated 23.10.2008, the Hon'ble CAT has conclusively held that "As regards the merit of the matter, we may state that perusal of the records conclusively prove that the engagement of the Applicants was purely contractual for a fixed period. Even assuming that the Applicants are "Casual Labourers", then also they cannot get the benefits which flow from the scheme of temporary status and regularisation issued by the DOPT in the year 1993 for their failure to prove that they were in employment as on the cut-off date fixed under the scheme".

8. Further in the said Para 14, on the issue of outsourcing by the Department for engagement of service provider/ contractor in accordance with the guidelines issued vide F. No A-12034/1/2005.Ad.III.B dated 02.05.2005 and the Department's Tender Notice dated 04.07.2005 to give effect to such guidelines dated 02.05.2005, the Hon'ble CAT observed that:

"So far as the challenge of the decision of the Government to execute the duties discharging by the Applicants through service provider/contractors, we may observe that, these are the policy decisions of the Government and it is trite law as held by the Hon'ble Apex Court in the case of Basic Education Board, UP vs Upendra Rai & Others, (2008)1SCC(L&S)771, that policy decision of the Government cannot be interfered with by Courts/Tribunal unless it violates, constitutional or statutory provisions".

9. Again in Para 15 of the said order dated 23.10.2008, it has been held that the Applicants have not been able to point out any statutory Rule or executive instruction on the basis of which their



claim for continuation in service, grant of temporary status or regularisation can be granted. Thus the OAs were dismissed.

10. The Applicants further challenged the above order dated 23.10.2008 of Hon'ble CAT, before the Hon'ble High Court in W.P(C) No 17449 of 2008, which was disposed of vide their order dated 17.02.2009. The Hon'ble High Court of Orissa, upheld the order dated 23.10.2008 of Ld. CAT in their order dated 17.02.2009 and held that "we are of the view that the law laid down by the Tribunal is consistent with the law laid down by the Hon'ble Supreme Court in the case of State of Karnataka vs Umadevi, (2006)4SCC 1. Therefore we are of the view that no reason exists to interfere with the same and accordingly we dismiss the writ application".

11. These issues were again freshly taken up by way of filing of another OA No. 278/2008 (Bisikeshan Naik & Others Vs Union of India & Ors.) before the Hon'ble CAT, which was disposed of vide order dated 08.09.2010 by dismissing the prayers of the Applicants, relying upon its earlier order dated 23.10.2008, which was upheld by the Hon'ble High Court in order dated 17.02.2009 in WP(C) No 17449/2008.

12. Again these issues were taken up by other groups of Applicants, by way of filing of OA No. 107/2010 (Babu Naik & Others vs Union of India & Ors.), OA No. 420/2010 (Gopagobinda Mallick & Others vs Union of India & Ors.), OA No. 659/2010 (Panchu Kumbhar & Others vs Union of India & Ors.) before the Hon'ble CAT, which were disposed of vide common order dated 30.08.2011 by dismissing the prayers of the Applicants, relying upon its earlier order dated 23.10.2008, upheld by the Hon'ble Court vide order dated 17.02.2009 in WP(C) No. 17449/2008.

13. The members of Shramik Sangha (through their General Secretary Sri Banamber Lenka) have filed two Statements of Claim in ID Case Nos. 52/2013 and 53/2013, raising the same issue, before the CGIT-cum-Labour Court, Bhubaneswar. They have not disclosed in their Statements of Claim submitted before Ld. CGIT about the decisions of Hon'ble CAT and Hon'ble High Court of Odisha on the same issue which has been decided in favour this Department.

14. The members of Shramik Sangha again filed writ before the Hon'ble High Court of Orissa vide WP(C) No. 5812/2014 (Badal Jena & Ors. Vs UOI & Ors.), raising the same issue of regularisation, payment of 1/30th of pay and for consideration of

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their representations to allow them to work in their work place. In this case too, the Petitioners did not disclose the earlier decisions on the same issue decided by the Hon'ble CAT and Hon'ble High Court of Odisha. Hon'ble High Court passed order dated 15.05.2014 dismissing the WP(C) No. 5812/2014 filed by the 'contractual' workers under the Industrial Disputes Act/ Rules made there under.

15. Having lost the case in Hon'ble CAT, Cuttack Bench and Hon'ble High Court of Orissa, these Applicants formed an organisation. These contractual workers deployed for sweeping/cleaning and miscellaneous housekeeping work in various offices of Central Excise & Customs, Bhubaneswar Zone had formed the above referred organization called "Central Excise, Customs & Service Tax Shramika Sangha, Odisha", in the month of November, 2012. Consequent upon the formation of the aforesaid Shramika Sangha, all these Applicants left the work suo motu w.e.f 10.04.2013, and staged a Dharna from 11.04.2013 in front of the office of the Chief Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar Zone, Rajaswa Vihar, Bhubaneswar-751007.

16. As detailed above, the exact status of the members of the said Shramika Sangha has been matter of various past litigations at Hon'ble CAT, Cuttack as well as Hon'ble High Court of Orissa and the status of these persons, whether they are "contractual" or "casual" workers has already been settled by the Hon'ble CAT who have clearly stated that, they were "contract workers only" and this stand has also been upheld by the Hon'ble High Court of Orissa. Earlier these applicants were engaged by the Department on purely contract basis for sweeping/ cleaning work, etc. on payment of fixed amount per day as and when required, on no-work no-pay basis, for a few days in a month. But, these Applicants had been claiming to be 'casual' workers, which the Department has disputed and the decisions of Hon'ble CAT, Cuttack Bench and Hon'ble High Court of Orissa are already in favour of the Department.

17. The outsourcing of services of cleaning/ sweeping etc. through contractor has been done following the guidelines of Govt. of India, the DoPT and the Central Board of Excise & Customs, New Delhi, on the subject. This office had no option but to hire workers through contractors, following due procedures by way of inviting tenders in Newspapers

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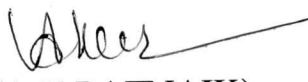
The entire process of tender was completed by 17.06.2013 and thereafter, the contractors took up the work of cleaning, sweeping, etc. in office by employing their workmen and the same has been continuing till date. Therefore, the Applicants (members of the Shramika Sangha) cannot be allowed to substitute in the place of the existing arrangement finalised, following the due process of law, more so when they quit work suo motu w.e.f 10.04.2013.

18. As elaborated above, this department has followed the Instruction/Circular of the Government of India and the orders of the Hon'ble CAT/ High Court on the issue and there is no injustice at all done to any of the Applicants (members of Shramika Sangha) by this office.

This issues with the approval of the Chief Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar Zone.”

4. All the applicants are the members of the Shramika Sangha is not in dispute. As the general Secretary of the said Shramika Sangha, two statements of claim dated 16.9.2013 in ID Case No. 52/2013 and dated 04.12.2013 in ID Case No. 53 of 2013 are pending adjudication before the learned Central Government Industrial Tribunal cum CGIT Cum Labour Court, in our considered view the present OA is not maintainable. Hence, this OA is dismissed. No costs.


(R.C.MISRA)
MEMBER (A)


(A.K.PATNAIK)
MEMBER(J)