

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH,CUTTACK

O.A.No.142 of 2013

Cuttack this the 25th day of July, 2017

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

1. K.Rupendra, aged about 42 years, S/o. late K.Sanyasi, At-Gobindpur, PO-Surala, Via-Girisola, PS-Gonantra, Dist-Ganjam
2. Suresh Barala, aged about 38 years, S/o. late BuleiBarala, At-Haldia, PO-Cortala, Via/PS/Dist-Jagatsinghpur
3. Yogendra Ghadei, aged about 50 years, S/o. Ananda Chandra Ghadei, At/POAmarakhuda, Via-Banamalipur, PS-Balipatna, Dist-Khurda
4. Satrughan Das, aged about 40 years, S/o. Rabindra Das, At-Saradeipur, PO-BiraniLakanthapur, Via/PS/Dist-Kendrapara
5. Rakhal Chandra Lenka, aged about 38 years, S/o. Bhaskar Lenka, At-Nanpur, PO-Jhadlinga, Via/PS-Astaranga, Dist-Puri

...Applicants

By the Advocate(s)-M/s.R.N.Acharya
B.Barik

-VERSUS-

Union of India represented through:

1. The Comptroller & Auditor General of India, Pocket 9, DeenDayalUpadhyay Marg, New Delhi.
2. Principal Accountant General Accounts and Entitlements, Odisha, Bhubaneswar, Dist-Khurda.
3. Accountant General(Civil Audit), Odisha, Bhubaneswar, Dist-Khurda

...Respondents

By the Advocate(s)-Mr.S.K.Patra

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ORDER**A.K.PATNAIK, MEMBER(J)**

Five applicants having a common cause of action and on being permitted to jointly prosecute this O.A., have filed this Original Application under Section 19 of the A.T.Act, 1985, in which they have sought for the following relief.

- i) The decision taken by the respondent no.2 to engage/appoint contract labour system to discharge the function of the establishment kindly be quashed.
- ii) The letter dated 15.06.2012 vide Annexure-1 issued by the respondent no.2 to the respondent no.1 for allocation of funds may kindly be quashed.
- iii) The order of disengagement w.e.f. 6.7.2012 by way of refusal of employment to the applicants by the Respondent no.2 may be declared as illegal and be quashed and the applicants may kindly be allowed to continue as casual labourers in their respective services.
- iv) After reinstatement, applicants services may kindly be regularized in a permanent cadre in the post of M.T.S. with effect from their date of joining.

2. Brief facts of the matter are that applicants claim to have worked as casual labourers in the post of M.T.S. in different dates under the Respondent No.2, as annexed vide A/2 to the O.A. While working as such, an advertisement was published in The Employment News dated 30.07.2010, inviting applications from the outsiders including the casual labourers those who were interested for absorption in M.T.S. cadre on a permanent basis. In response to this, applicants submitted their

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applications and accordingly, they were issued with the call letters for appearing at the viva-voce and document verification. However, the result of the said test was published on 26.4.2012 in which names of 110 candidates found place in the merit list. In the said list 88 casual labourers working under the respondent no.2 were empaneled for MTS. In the meantime, a decision was taken by Respondent No.2 to manage the existing work through outsourcing thus, abolishing the continuance of casual labour system. In this regard, Respondent No.2 addressed a letter to Respondent No.1 for allocation of funds for the engagement of contractor to carry out the day to day work. Having come to know about this, the applicants submitted a representation dated 26.6.2012(A/6) to Respondent No.2 with a prayer not to adopt the contract labour system and on the other hand, allow them to continue as casual labourers. Since the said representation was not disposed of by Respondent No.2, applicants moved this Tribunal by filing O.A.487 of 2012 praying therein for a direction to Respondents to include their names in the final seniority results of MTS recruitment published on 26.4.2012(A/4) and to appoint them in the respective suitable post in PB-1. This matter was taken up for admission by this Tribunal on 29.6.2012. However, with some observation, the matter was adjourned to 05.7.2012 for consideration on the question of admission and as an interim measure, it was directed that if the applicants were continuing





in casual engagement, they should not be disengaged till 05.7.2012. While the matter stood thus, on a Misc. Application No.1164/12 being filed by the applicants, this Tribunal, vide order dated 04.01.2013 dismissed the O.A.No.487 of 2012 as withdrawn. However, in the meantime, the applicants have been disengaged from service with effect from 06.7.2012.

3. The case made out by the applicants is that all of them except applicant no.2 had been paid the minimum relevant scale of pay fixed for Group-D category with dearness allowance, as that of the regular employees with effect from 01.11.1996 in pursuance of circular dated 07.6.1988 issued by the Department of Personnel & Training. On the other hand, the applicant no.2 has also been paid at the rate of 1/30th of the pay scale of the minimum relevant pay scale of Gr.D plus dearness allowance, as would be evident from A/8. Therefore, it has been contended that termination of service of the applicants as casual labourer without following the due procedure of rules amounts to violation of the principles of natural justice. In support of their case, applicants have also relied on various decisions.

4. Respondents by filed a reply statement in which they have opposed the prayer of the applicants. According to the respondents, the applicants were never engaged as casual labourers by them. They have submitted that some contingent workers were engaged to attend such works as and



when required and when such type of work was available. It has been pointed out that many a times, casual labour and contingent labour is used mutually as a semantic to denote employees who are not borne on the regular strength of the department and are not paid salaries. As regards the recruitment of MTS, it has been pointed out by the respondents that the notification published in The Employment News was for direct recruitment to the vacant posts in Pay band1 carrying Grade Pay Rs.1800(MTS) in different offices of the Indian Audit and Accounts Department located at Bhubaneswar and that it was not for regularization/absorption of contingent labourers. However, the contingent labourers engaged in the Department were allowed relaxations in upper age limit and weightage in work experience as per terms and conditions mentioned in the advertisement as well as through corrigendum published in The Employment News dated 02nd /08th October, 2010.

5. The Applicants have filed rejoinder in which they have denied the statement of the respondents that the applicants had not been engaged as casual labourers. In this connection, the applicants have brought to the notice of the Tribunal the annexure A/2 to O.Ainorder to establish that they were in fact engaged as casual labourers under the Respondent-Department.



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6. Heard the learned counsels for both the sides and perused the records including the written notes of submission filed by the parties concerned.

7. Before considering the matter on merit, it is to be noted that in the instant O.A, the applicants have not challenged their selection and/or appointment to the post of MTS in pursuance of the advertisement published in The Employment News. However, it is seen they had filed O.A.No.487/2012 challenging their non-selection, which was dismissed as withdrawn as already mentioned above, on the prayer made by the applicants. Therefore, in the instant O.A. the only point that needs determination is whether the applicants, as prayed by them, could be reinstated in service as casual labourers, where after their service will be regularized as MTS.

8. In order to decide the point, I have gone through A/2 (which is undated) as filed by the applicants. The annexure A/2 reveals the service particulars of the casual labourers continuing in the office of the Principal Accountant General(A&E), Odisha, Bhubaneswar. Though the applicants have mentioned different dates of their respective engagement as casual labourers, but, apparently, this has not been issued by the Office of Respondent No.2, inasmuch as A/2 does not contain the name and designation of the authority who has issued the same. Therefore, in my considered view, this being a discredited document, it would not be proper to rely on A/2 in

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order to hold that the applicants were ever engaged as casual labourers under the respondent no.2. On the contrary, respondents have produced an order dated 30.04.2010 of this Tribunal passed in O.A.No.374 of 2009 (A/2 series) to counter the submissions made by the applicants. Upon perusal of the said decision, it is found that in that O.A. 23 applicants including the applicants herein had approached this Tribunal for direction to be issued to regularize their service in Group D post with effect from 11.12.2006 with all consequential benefits which was dismissed by this Tribunal.

9. As regards the decision of the respondents to engage contract labourers to carry out the day to day work is concerned, it is to be noted that this being a policy matter, this Tribunal cannot not interfere with the same. The point raised by the applicants that without complying with the principles of natural justice their services have been terminated is farfetched inasmuch as the applicants were being paid from the contingent fund as regular contingents, as evident from A/8 series. Therefore, the respondents were at liberty to disengage them in the absence of availability of any work and/or on account of engagement of contract labourer. In the circumstances, the point regarding the reinstatement of the applicants and/or their further engagement does not deserve consideration.

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10. For the reasons what have been discussed above, the O.A. is held to be without any merit and the same is accordingly dismissed, leaving the parties to bear their own costs.

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(A.K.PATNAIK)
MEMBER(J)