CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

**O. A. No. 260/412 OF 2014**
**Cuttack, this the 24 day of January, 2018**

CORAM
**HON'BLE MR. S. K. PATTNAIK, MEMBER(J)**
**HON'BLE DR. M. SARANGI, MEMBER (A)**

.....

Badani Barik,
aged about 37 years,
D/o. Gajendra Barik,
At-Puba Sasan, PO- Kausalyagang,
Via-Bhubaneswar-2, District-Puri.

...Applicant

(By the Advocate-M/s. A. Mishra, M.S. Swarup, Raj Laxmi)

-VERSUS-

**Union of India Represented through**

1. Secretary, Ministry of Agriculture Department, New Delhi-110001.

2. Secretary, Indian Council of Agricultural Research, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi-110014.

3. Director, Central Institute of Fresh Water Aquaculture, (CIFA), Koushalyaganga, Bhubaneswar, Dist- Khurda.

4. Administrative Officer, Central Institute of Fresh Water Aquaculture, (CIFA), Koushalyaganga, Bhubaneswar, Dist-Khurda.

...Respondents

(By the Advocate- Mr. S. B. Jena)

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**O R D E R**

**S. K. PATTNAIK, MEMBER (J):**

The applicant has filed this O.A. praying for the following reliefs:

> *"Under these circumstances it is humbly prayed that this Hon'ble Tribunal may graciously be pleased to direct the Respondents to regularize the services of the applicant;*
>
> *And further be pleased to direct the respondents to disburse the equal pay for equal work at par with regular employee.*
>
> *And further be pleased to quash the letter dated 05.12.2013 and letter dated 26.12.2013 passed by the Administrative Officer, CIFA under Annexure-A/7 and Annexure-A/8 respectively.*
>
> *Or pass any other order/orders, direction/directions be issued so as to give complete relief to the applicant.*
>
> *And allow this Original Application with cost."*

2. Short facts as revealed from this O.A. runs as follows:

The land of the applicant's family was acquired for Establishment of Central Institute of Freshwater Aquaculture (CIFA) at Kausalyagang as per the understanding by the State Government and Central Government dated 23.12.1972. On account of acquisition of his land, the applicant applied for appointment and was engaged in the CIFA on casual basis since 1998. Placing reliance at Annexure-A/1 dated 12.09.2000, the applicant claims that he has been working as Nominal Muster Roll basis. A Memorandum of Understanding (Annexure-A/2 series) was signed between the Management and Kalinga Shramika Sangha, CIFA, on 26.09.2001 with regard to the regularization of 60% of the workman on certain terms and conditions. A list of casual labourer

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was also enclosed in which the applicant's name finds place at Sl. No.9. However, no action was taken by the Management. On 22.02.2001 vide Annexure-A/3, the Govt. of India, Ministry of Home Affairs issued an order for granting temporary status in favour of casual labourers. Subsequently, the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training issued O.M. dated 06.06.2002 (Annexure-A/4) for grant of Temporary Status and Regularization to the casual labourers, who have worked for 240 days in a year. The applicant pleaded that although the Association approached the departmental authorities time and again but no heed was paid to their grievances for regularization even if there was a favourable letter dated 30.03.2013 (Annexure-A/6) of Director, CIFA, (Respondent No.3) to the higher authorities. Vide Annexure-A/8 dated 05.12.2013, the ICAR has issued a letter to the Director, CIFA-Respondent No.3 to engage the casual labourer in outsource basis. While the matter stood thus, the ICAR requested to engage all the casual/NMR on outsource basis through contractor as per Letter dated 26.12.2013 of the Administrative Officer, CIFA (Annexure-A/7) and the work order period has been extended in favour of M/s Subash Chandra Parida for supply of unskilled agricultural labour to CIFA, Kausalyagang, as and when required. Further, vide Annexure-A/9 dated 29.01.2014 Tender Notice has been published in Daily Newspaper inviting applications from the Labour Contractors for supply of unskilled agricultural labourer to CIFA, Kausalyagang, Bhubaneswar. The grievance of the applicant is that even

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if the applicant is continuing to work uninterruptedly since last 16 years, he was neither given temporary status nor his services have been regularized as per the Govt. of India Order under Annexure-A/4.

3. Respondents contested the case by filing a counter. The preliminary objection of the Respondents is with regard to the maintainability of this O.A. on the ground that the applicant is not holding a civil post as he is working on outsourced basis through a Contractor and, therefore, he is precluded to approach this Tribunal. This O.A. is also premature on the ground that the applicant has approached the Central Industrial Govt. Tribunal and further a representation has been submitted to the Asst. Labour Commissioner, which is pending for consideration. The Secretary, CIFA Shramik Sangha vide W.P.(C) No. 5468/2014 has also moved the Hon'ble High Court of Orissa, Cuttack seeking quashing of Advertisement dated 29.01.2014 (Annexure-A/9 to this O.A.) and, therefore, this O.A. is not maintainable.

4. Regarding parity of the applicant with the regular employee, they have submitted that as per the law laid down by the Hon'ble Supreme Court in the case of *State of Karnataka & Ors. Vs. Uma Devi & Ors. (AIR 2006 SC 1806)* "*no right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate and made permanent in employment....*" Respondents have submitted that the Constitution Bench of the Hon'ble Apex Court, has laid down that it is not proper for the Courts to direct regularization or absorption in permanent employment of those who have

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been engaged without due process of selection as envisaged by rules. Recruitment has to be made in accordance with rules framed only and not otherwise. The applicant was not engaged following due process of selection and directing regularization of such persons will impose extra financial burden on the State, which has been forbidden.

4. Respondents contention is that Govt. land as well as private lands were acquired by paying adequate compensation as per the prevailing land value and there was no decision/agreement that the land loosers will get appointment. There is no dispute that the applicant was initially allowed to work on casual basis but there was no assurance that his services will be regularized subsequently. Enlisting the name of the applicant under contractual workers does not construe any right upon her for regularization of her services. They have submitted that Circular dated 22.08.2001 is not applicable for the CIFA and as per the DoPT O.M. dated 10.09.1993, which was for one time measure, the eligible workmen were granted temporary status. Respondents have further submitted that pursuant to the agitation by the labourer, Respondent No.3 referred the matter to ICAR, which was examined in the Council and after approval of the competent authority instructions were issued (copy not enclosed). As per the latest decision of the Govt. of India, the casual work can be managed through outsourcing basis, which is being followed by the Respondents since long, and the applicant is continuing through a Contractor and now he cannot claim regularization of his service. As per the job requirement of the Institution, different categories of employees are recruited at different levels as per the Recruitment

Rules against sanctioned posts. So far as applicant's work is concerned, it depends on the project basis and after completion of one project the same workman is engaged in subsequent project, if any, to bring continuity in their engagement. But so far as their regularization is concerned, the same depends upon different factors like sanctioned post, eligibility in terms of Recruitment Rules, Govt. policy and other Rules and criteria. In view of above, the Respondents have prayed for dismissal of this O.A. as the applicant in no way is eligible for regularization.

5. Heard Mr. A.Mishra, Ld. Counsel for the applicant, and Mr. S.B.Jena, Ld. Counsel for the Official Respondents.

6. Applicant seeks impetus from the letter dated 22.02.2001 (Annexure-A/3) and letter dated 06.06.2002 (Annexure-A/4). There is no dispute about the fact that there was direction for regularization of casual labourers and grant of temporary status in view of the judicial pronouncement. The applicant could not reap any benefit in 2001 and 2002 and is harping the present remedy only in this O.A. filed in 2014. Had such a regularization matter come up before passing of the Constitutional Bench judgment in the case of State of Karnataka Vs. Uma Devi reported in (2006) 4 SCC 1, the matter would have been different. After this Constitutional Bench judgment, regularization has to be made in terms of the specific observation of the Hon'ble Apex Court. Ld. Counsel for the applicant argued that there is no dispute about the fact of continuance of the applicant since last two decades but the Central Institute of Fresh Water Aquaculture is delaying the matter on one

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pretext or the other. However, as a one time settlement of labour issues, the Director, Central Institute of Fresh Water Aquaculture, Koushalyaganga, Bhubaneswar, Odisha, has written a letter to Dr. B.Meenakumari, Deputy Director General (Fy.), Indian Council of Agricultural Research on 30.03.2013 (Annexure-A/6), the relevant portion of the letter is extracted below for ready reference:

> *"It is, therefore, requested that the respected Deputy Director General (Fy) may kindly be graciously pleased to realize the difficulties of the Institute, especially keeping in view the problems being faced due to labor unrest, appreciate the measure taken by the ASI authorities and grant the following:*
>
> *Regularizations of services of all the above labour.*
>
> *Or*
>
> *Grant of Temporary Status to all the above cited group of 29 nos. of Casual labourers presently getting wages @ 1/30$^{th}$ of minimum pay of a regular employee (Skilled Support Staff) to the rest i.e., the group of labour (who were directly paid wages by the Institute till 30.06.2001, but subsequently treated as contractual labour w.e.f. 26.9.2001)."*

7. In view of such development, the O.A. is disposed of with direction to the Respondents to take a decision regarding regularization or giving temporary status to the applicant if he is otherwise eligible in terms of their official guidelines, norms and precedence.

8. O.A. is disposed of accordingly. No costs.

(M. SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)

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