

18

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No. 260/00988 of 2014
Cuttack, this the ^{28th} day of July, 2017

CORAM:

THE HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

Shri Kishore Behera, aged about 42 years, S/o. Late Giridhari Behera, At-Gayana Naga, Po-Old Town, PS-Lingaraj, Bhubaneswar, at present working as a Casual Worker awarded with 1/30th Status at Megheswar Temple, Archaeological Survey of India site (Horticulture Divison-IV), Kalpana Square, Bhubaneswar, Dist. Khurda, Odisha.

..... Applicant

By legal practitioner : Mr.P.K.Mohapatra, Advocate

Versus

1. Union of India represented through the Secretary, Ministry of Culture, Govt. of India, Shastri Bhawan, New Delhi-110001.
2. Director General, Archaeological Survey of India, Janpath, New Delhi-110011.
3. Chief Horticulturist, Archaeological Survey of India, Eastern Gate, Taj Mahal, Agra-282001, Utter Pradesh.
4. Dy. Superintending Horticulturist, Archaeological Survey of India, Division-IV, Satyanagar, Bhubaneswar-07, Dist. Khurda, Odisha.

.....Respondents

By legal practitioner: Mr.S.K.Singh, Advocate

ORDER

A.K.Patnaik, JM:

The prayer of the applicant in this Original Application filed U/s.19 of the A.T. Act, 1985 is as under:

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19

- 2 -

“(i) To pass appropriate orders directing the respondent Nos. 1 to 4 to grant temporary status and regularized and to allow him to work as casual worker in his place of working; and to extend all the service and consequential benefits to which he is entitled to with effect from the date of enjoyment of such benefit like his other colleagues by quashing the illegal order dated 17.5.2015 vide Annexure-A/5;

(ii) To pass such other order(s)/direction(s) calling for the relevant records from the Department as deemed just and proper in the facts and circumstances of the case and allow the original application with costs.”

2. Respondents filed their counter contesting the case of the Applicant and praying therein that this OA being devoid of any merit is liable to be dismissed.

3. The applicant has also filed rejoinder to the counter acting the stand taken by the respondents in their counter.

4. After the closure of the hearing, the applicant has also filed notes of arguments which has been taken note of.

5. Heard the arguments advanced by the Ld. Counsel appearing on behalf of the respective parties and perused the records.

6. The sum and substance of the arguments advanced by the learned counsel for the applicant is that the applicant was engaged as a Casual Labour in the year 1995 on daily wage basis under the Respondents and had completed 240 days of

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20

-3-

service continuously in the year 1998-1999, 1999-2000, 2000-2001. He was awarded 1/30th pay by the Respondents vide order dated 21.4.2005. Similarly placed casual labourers have been granted temporary status and consequently they having been regularized in Gr. D posts as per the scheme formulated by the Government; whereas, the applicant was discriminated. He represented to the authority concerned for grant of temporary status and consequent regularization which had been extended to others. There being no response, he approached this Tribunal in OA No. 106 of 2013 which was disposed of on 7th March, 2013 with direction to the Respondents to consider the grievance of the applicant as raised in his representation and dispose of the same within a specific period stipulated in the said order. The Respondents considered his representation and intimated the result thereof, vide order dated 17.5.2013 stating therein that the applicant is not entitled to award of temporary status as he did not qualify the criteria fixed by the government for such purpose and that similarly placed casual employees have been awarded temporary status and were regularized in Gr. D posts only in compliance of the order of this Tribunal which is highly illegal and arbitrary as the Respondents cannot compel each and every individual to approach the court for the same relief nor can they discriminate on such ground. Hence, according to the

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21

-4-

learned counsel for the applicant, order of rejection being per se illegal, the same is liable to be quashed with direction to the Respondents to consider conferment of temporary status and consequent regularization in Gr. D posts as the applicant had completed 240 days of continuous service in a year.

On the other hand, the learned counsel appearing for the Respondents objected to the very maintainability of this OA on the ground of delay and laches. In so far as merit of the matter is concerned, it has been stated that as the scheme dated 10th September, 1993 is not an ongoing scheme and hence temporary status can be conferred on the casual labourers on fulfilling the conditions incorporated in clause 4 of the scheme as because they should have been working as casual labourers as on the date of commencement of the scheme and should have rendered continuous service of at least one year i.e. 240 days in a year. As the applicant did not fulfil the norms of the scheme, he was not entitled to such benefit which was rightly rejected by the respondents. Accordingly the learned counsel for the respondents has prayed for dismissal of this OA.

7. In so far as the law of limitation is concerned, by drawing my attention to paragraph 12 of the judgment of the Hon'ble Supreme Court of India rendered in the case of Tukaram Kana Joshi & Ors through the Power of Attorney

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Holder v M.I..C & Ors in Civil Appeal No. 7780 of 2012 (arising out of SLP (C) No. 2418 of 2012 as well as the earlier order of this Tribunal in OA No. 106 of 2013 disposed of on 7th March, 2013 has contended that in fact there is no delay and laches and even if there is delay and laches then also the same cannot stand on the way where there is glaring injustice and discrimination caused in the decision making process of the matter to an individual. In so far as the merit of the matter is concerned, it has been contended that as similarly placed employees had been conferred with temporary status and subsequently they were regularized in Gr. D post, the applicant is also entitled to similar benefit.

8. I have considered the rival contentions of the respective parties and gone through the records. I find sufficient force on the arguments advanced by the learned counsel for the applicant in so far as delay and laches is concerned. Obviously the applicant has got a cause of action when other similarly situated persons were granted with the temporary status and subsequently regularised in pursuance of the order of this Tribunal. While conferring temporary status in pursuance of the order of this Tribunal in OA Nos. 81/1998 and 82/1998, the Respondents ought to have considered the case of the applicant. Having not considered he has ventilated his grievance through representation. Since no action was taken he has

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23

-6-

approached this Tribunal along with an application for condonation of delay. The Tribunal took note of both and directed for consideration and disposal of his representation. The representation of the applicant was considered but rejected vide order dated 17.5.2013 which he has challenged in this OA filed on 8th December, 2014. In the order of rejection, the respondents have admitted that persons similarly placed had been conferred with temporary status and subsequently regularized in Gr. D post in compliance of the order of this Tribunal. If it is so, there was no impediment on the part of the Respondents to extend the said benefit to the applicant in order to remove the discrimination which is the antithesis to rule of law. In this connection the observation of Hon'ble Apex Court in paragraph 12 of the decision in the case of Tukaram Kana Joshi (supra) is relevant and is quoted herein below for ready reference:

"12. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot

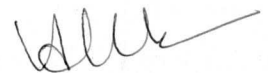
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24

- 7 -

claim to have a vested right in the injustice being done, because of a non deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the Petitioners (vide Durga Prasad v Chief Controller of Imports and Experts & Ors, AIR 1970 SC 769, Collector, Land Acquisition, Anantnag & Anr v Mst. Katiji & Ors, AIR 1987 SC 1353, Dehri Rohtas Light Railway Company L td v District Board, Bhojpur & Ors, AIR 1993 SC 802, Dayal Singh & Ors v Union of India & Ors, AIR 2003 SC 1140 and Shankara Co op Housing Society Ltd v M.Prabhakar & Ors, AIR 2011 SC 2161)."

9. As discussed above, since similarly placed employees had already been conferred with temporary status and consequently they had been regularized in Gr. D posts, the Respondents are directed to consider grant of temporary status and consequent regularization of service of the applicant in the light of the benefit granted to Shri Purnachandra Sethi vide order dated 11.12.2009 and Shri Pratap Kumar Sahoo. The entire exercise shall be completed and appropriate order be issued within a period of 60 (sixty) days from the date of receipt of a copy of this order. The impugned order dated 17.5.2013 is accordingly quashed. This OA is accordingly disposed of. No costs.



(A.K.Patnaik)
Judicial Member

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