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CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH JODHPUR

Date of order : 12-12-2003

O.A. No. 92/2003

Ganesh Lal S/o Shri Hem Raj aged about 36 years, Resident of Village and Post Gopinathji Ki Madaar, Via Thoor District Udaipur (Rajasthan). Presently working on the post of Gardener in the office of Assistant Commissioner, Central Excise and Customs, Division Udaipur (Rajasthan).

.....Applicant.

versus



1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, New Delhi - 110 016.

Commissioner, Central Excise and Customs,
Nav Central Revenue Bhavan, Prithavi Raj Road,
Statue Circle, Jaipur (Rajasthan)

3. Assistant Commissioner, Central Excise and Customs Division, Udaipur (Rajasthan)

.....Respondents.

Mr. S.K. Malik, counsel for the applicant.

Mr. Kuldeep Mathur, counsel for the respondents.

CORAM :

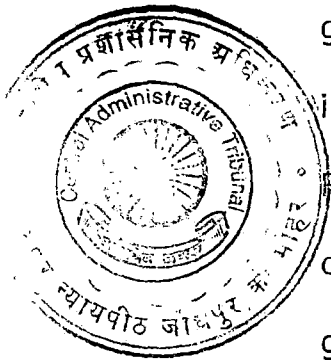
Hon'ble Mr. G.R. Patwardhan, Administrative Member

ORDER

This is an application by **Ganesh Lal**, claiming to work as Gardener in the office of respondent No. 3, the Assistant

Commissioner of Central Excise and Customs, Udaipur. The other two respondents are the Union of India and the Commissioner, Central Excise and Customs, Jaipur. No order or direction has been challenged – the prayer is to direct the respondents to make monthly payment of wages.

2. The facts of the case as revealed by the application, are as follows. The Superintendent (Excise) by his letter dated 2^{1.1.1990} informed the applicant Shri Ganesh Lal that his name had been forwarded by the Employment office, Udaipur for the post of Gardener on daily wages and that he should appear on 11.1.1990 with relevant certificates and documents. The applicant thereafter seems to have appeared and subsequently got the appointment order dated 18.1.1990 (Annex.A/2) indicating the period of service i.e. 22.1.1990 to 21.4.1990 on Rs. 200/- per month as part-time contingent staff. This continued for quite sometime and the applicant made efforts to get regularised. In the meanwhile. minimum wages got revised during the period and the respondents also gave a hike. As eleven long years had passed and the services of the applicant were not regularised, he filed an O.A. in 2001 This was decided on 29.5.2002 (Annex.A/5) when the Tribunal directed the respondents to consider appointment of the applicant to any group 'D' post that may fall vacant and also ensure payment of wages including arrears, if any, due to him for the period he performed work of Gardner through the Contractor. It is the case of the applicant that even this did not move the respondent



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authorities and they did not make payment. A petition for drawing contempt of court proceedings was filed, during the pendency of which the applicant seems to have received payment. The relevant portions of the order in that case dated 25.2.2003 run as follows :-

"5. We have gone through the additional reply filed on behalf of the alleged contemnors and find that reasons given for causing delay are that applicant had been working for them through an agency of C.P.W.D. and on receipt of this Tribunal's order dated 29.5.2002, the issue was taken up with the C.P.W.D. authorities and this process took time. However, they did all along made sincere efforts to do the needful but since the process took time, the delay has been caused. For this, the alleged contemnors have tendered their un-conditional apology.

6. The learned counsel for respondents admitted that there was a failure on their part to seek extension of time for compliance of order of this Tribunal when it was realised that it will not be possible to arrange payment to the applicant within the time frame given by this Tribunal. This lapse was un-intentional. Shri Bhansali further brought to our notice the fact that the order of this Tribunal has already been challenged before the High Court of Judicature for Rajasthan at Jodhpur.

7. Having perused the entire records and considering the arguments, we are of the considered view that orders of the Tribunal have been fully complied with though, after an abnormal delay for which Shri Rajesh Kumar Verma, Contemnor (respondent No.2), has sought un-conditional apology. Notwithstanding the fact that there has been laxity on the part of department in not seeking extension for compliance of the orders which they realised that the same was going to take time, but it is not a case of deliberate and wilful disobedience of our order. Moreso, when the orders have actually been complied with. In so far as the issue raised by the learned counsel for applicant that the respondents have violated the orders by stating that the C.P.W.D. was the principal employer, we are of the view that this limited aspect is not relevant to the relief claimed by the applicant and this is no ground to proceed in a contempt matter any further.



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8. In view of the above discussions, we dismiss this contempt petition and discharge the notice issued to the contemnors as the petitioner/applicant has received his full wages. In case, he is not satisfied with the sum paid to him and still something is left, he shall be at liberty to move this Tribunal afresh, if he is so advised."

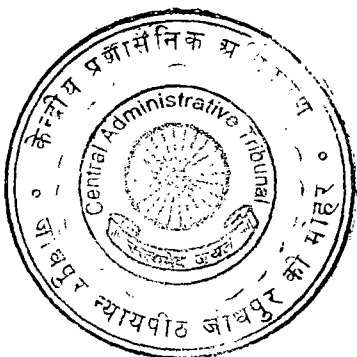
3. It, however, appears that the troubles of the applicant did not end there and further payments have been stopped. This has led to the present application.

4. Respondent, Assistant Commissioner, Central Excise and Customs, Udaipur, has filed a reply to the O.A. This has led to filing of a rejoinder by applicant Ganesh Lal. Both are on record.

5. The learned advocates for both the parties have made their submissions.

6. It would be appropriate to allude to admitted facts first and then to consider the disputed points. The respondents have admitted the following :-

(a) That the applicant was appointed as part time contingent staff on 18.1.1990 vide copy of orders placed at Annex.A/2.



(b) That the applicant was initially paid Rs. 200/- per month, Rs. 300/- per month, thereafter and lastly, Rs. 400/- per month from June 1991 onwards.

- (c) That the case of the applicant for regularisation was considered but as limited vacancies were available with the department and other candidates were also available, the applicant could not get it.

7. Respondents have not admitted the following averments, which are relevant for adjudication of the prayer :-



- (a) That the applicant is working as a Gardener in the office of Assistant Commissioner, Central Excise and Customs.
- (b) That the applicant is doing work which is of a regular nature.

8. Learned advocate for the applicant has relied on some of the letters/orders issued by the respondents in support of his assertion that the applicant was appointed as a Gardener, that the work is of a regular nature and that he continues to be in their employment. The first is an office order dated 18.1.1990 (Annex.A/2) and the next is a letter dated 5.10.1995 (Annex.A/3). It is his contention that as the status of a Gardener even though part time, has been conferred by an office order, the same can be taken back only through another order and as the respondents have not shown any such order, they cannot say that the applicant is not in their employment.

Reliance has also been placed by the petitioner on the following decisions of the Hon'ble Supreme Court :-

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(i) State of West Bengal Versus Pantha Chatterjee
(2003) 6 SCC 469

where, it was held that the Border Wing Home Guards, appointed by the Government of West Bengal, under a Central Scheme, for short term durations but continued for more than ten years are to be treated at par with whole time Home Guards and entitled to all the benefits available to the West Bengal Government Servants. It was also held that they were entitled to arrears of service benefits and absorption irrespective of age bar.

(ii) Bharat Heavy Electric Limited Versus State of U.P.
and Ors. (2003) 6 SCC 528

where, it was held that if a workman is engaged to produce goods or services and these are for the business of another, the other is the employer.



(iii) N.T.P.C. Limited Versus Karni Potharajan and Ors.
(2003) 7 SCC 384.

It was held that where in discharge of a statutory obligation of maintaining a canteen in an establishment, the principal employer availed the services of a Contractor, the contract labour would indeed be the employees of the principal employer.

It is his submission that even if it is held that the applicant is a part time employee, the long service of nearly eleven years rendered by him, attracts the spirit of the judgement in the case of State of West Bengal Vs. Potharajan Chatterjee.

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9. To the first argument quoted above, there is no reply from respondents. All that they say is that the work of gardening is done by the C.P.W.D. and that it is being attended to by a contractor. However, they are silent about any order that puts an end to the employment of the applicant.

10. The respondents have also attempted to draw strength from an order of this Tribunal passed on 29.5.2002 and 15.7.1994 in O.As whereby the part time nature of the applicant was recognised as also the fact that he was working under a contractor and not directly under the respondents. It is submitted by them that these orders should be construed as res judicata and this O.A. should be treated as vexatious.



However, it needs to be noted that the present O.A. is essentially for payment of arrears which admittedly would arise in case it is held that the applicant is continuing in his job. It would therefore be relevant to examine this aspect of the matter.

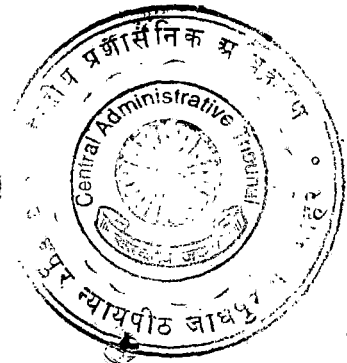
11. It needs to be recorded here that the prayer of the applicant in this O.A. is essentially for release of his monthly salary w.e.f. April 2002 and to quash any termination order whether verbal or otherwise.

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The discussion so far reveals that though the applicant was appointed by a written order, this has not been superseded – whether in writing or by oral communication. Respondents have only argued that the work is now being managed by a contractor and that the applicant is no more in their employment. Strictly speaking, therefore, the applicant should be held to be in the employment of respondents and also continuing on the basis of order dated 18.1.1990. This should also lead to the next corollary – i.e. the respondents are under an obligation to pay all arrears till this status of 'part-time employee' subsists.

12. The fact that the work performed by the applicant is of a regular nature – is borne by a letter dated 5.10.1995 issued under the signature of Administrative Officer, Central Excise and Customs Division, Udaipur. Coupled with the discussions in Para 11 above, it only lends credence to the claim of the applicant.



13. The O.A, therefore, succeeds in so far as claim of payment of arrears is concerned. Respondents shall ensure payment of all arrears within a month of the receipt of this order.

14. No order as to costs.

(G.R. Patwardhan)
Administrative Member

jrm

RIC
on 15/12/13
for
(DAYARAM)
Adv.

RIC
Gauri Kumar
15/12/13
for - Kuldeep Mathur
Adv.