

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

311 of 1998.

O.A. No.

DATE OF DECISION 15.2.2000

S
PETITIONER(S)

Sri Biren Kalita.

Shri M.Chanda, Mrs N.D.Goswami.

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Sri A.Deb Roy, Sr.C.G.S.C

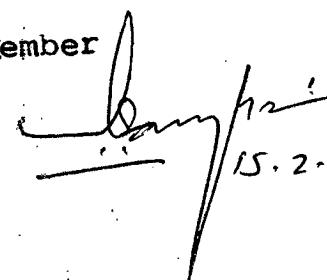
ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR JUSTICE D.N.BARUAH, VICE CHAIRMAN.

THE HON'BLE MR G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Administrative Member


15.2.2000

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.311 of 1998

Date of Order: This the February 2000

HON'BLE MR.JUSTICE D.N.BARUAH, VICE-CHAIRMAN
HON'BLE MR.G.L.SANGLYINE, ADMINISTRATIVE MEMBER

Sri Biren Kalita
Son of Late Khargeshwar Kalita
Vill. & P.O. Manakuchi
District-Kamrup(Assam) Applicant

By Advocate Mr.M.Chanda, Mrs. N.D.Goswami.

-Vs-

1. Union of India

Through the Secretary to
the Government of India,
Finance Ministry,
New Delhi.

2. Commissioner, Customs
North Eastern Region
Shillong -1.

3. Assistant Commissioner,
Guwahati Customs Division
Rajgarh, Guwahati.

... ... Respondents.

By Advocate Mr.A.Deb Roy, Sr.C.G.S.C.

O R D E R.

G.L.SANGLYINE, ADMINISTRATIVE MEMBER:

The applicant was engaged temporarily on contract basis as a Casual Worker on 1-11-1991 with effect from 4.11.1991. Thereafter such engagements were renewed from time to time, according to the applicant till 3.3.1997. He submitted a representation dated 20.8.1998, Annexure 6. But there was no response from the respondents. Thereafter, he has submitted this application praying among others for a direction to the respondents to re-appoint him and to

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regularise his services in the existing vacancies. The respondents have contested the application and submitted written statement. The contention of the respondents is that the applicant was engaged on contract basis and on expiry of the contract he has no claim to appointment to a post. Further, since the applicant was a contract labourer, the provisions of Office Memorandum dated 10.9.1993 were not applicable to him. Moreover, he was not recruited through Employment Exchange. Therefore, he was not entitled to the temporary status and subsequent regularisation as contemplated in the O.M.

We have heard learned counsel of both sides. Mr.A. Deb Roy, Sr.C.G.S.C. supported the written statement. Mr.M. Chanda, learned counsel for the applicant, submitted that the applicant is entitled to temporary status and subsequent regularisation in the post of Farash under the aforesaid office Memorandum. In this connection he relies on the order of this Tribunal dated 3.4.1997 in O.A. No.192 of 1994. We reproduce below the findings of the Tribunal.

"8. We have heard at some length on 19.3.97 and directed the Respondents to produce the relevant registrar, payment vouchers and books of accounts relating the payment made to the casual workers. Unfortunately to day Mr. A.K. Choudhury, informs this Tribunal that those records are not available. But Mr,Choudhury has not informned this Tribunal why the records are not available. Only the token register has been produced before us. In the absence of records before us and the specific averments made in the application we are inclined to hold that all the applicants were engaged by the department as Casual labourers and they have been working for a considerable period. Regarding the next submission, Mr.Pathak has produced a decision of the Apex Court in All India Statutory Co-operation Vs.United Labour Union and Others reported in 1997 SC 645. Mr.Pathak submits that he gets support as the said decision relates to the contract labour (Regulation and Abolition Act 37 of 1970). In paragraph 58 of the said decision the Supreme Court held that as the object is to regulate the contract labour so long as to contract labour is not perennial. The labour is required to be paid the prescribed wages and are provided with other

welfare benefits envisaged under the Act under direct supervision of Principal employer. The violation visits with penal consequences. The Apex Court also further held thus :

The act did not intend to denude them of their source of livelihood and means of development throwing them out from employment. As held earlier it is a socio economic welfare legislation. Right to socio-economic justice and empowerment are constitutional rights. Right to means of livelihood is also constitutional right. Right to facilities and opportunities are only part of and meanst to right to development. Without employment or appointment the workmen will be denuded of their means of livelihood and resultant right to life, leaving them in the lurch since prior to abolition, they had the work and thereby earned livelihood. The Division Bench in Dena Nath's case (1991 AIR SCR 3026) has taken too narrow a view on technical consideration without keeping at the back of the mind the constitutional animations and the spirit of the provisions and the object which the Act seeks to achieve. The operation of the Act is structured on an inbuilt procedure leaving no escape route. Abolition of contract labour system ensures right to the workmen for regularisation of them as employees in the establishment in which they were hitherto working as contract labour through the contractor. The contractor stands removed from the regulation under the Act and direct relationship of "employer and employee" is created between the principal employer and workmen. Gujarat Electricity's case (1995 AIR SCC 1942), being of the co-ordinate Bench, appears to have softened the rough edges of Dena Nath's ratio. The object of the Act is to prevent exploitation of labour. Section-7 and Section 12 enjoin the Principal employer and the contractor register under the Act, to supply the number of labour required by the principal employer through the contractor, to regulate their payment of wages and conditions of service, and the provision welfare amenities, during subsistence of the contract labour.....

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The contractor is an intermediary between the workmen and the principal employer. The moment the contract labour system stands prohibited under Section 10(1) the embargo to continue as a contract labour is put an end to and direct relationship has been provided between the workmen and the principal employer. Thereby the principal employer directly becomes responsible for taking the services of the workmen hitherto regulated through the contractor. The object of the penal provisions was to prevent the prohibition of the employer to commit breach of the provisions of

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the act and put an end to exploitation of the labour and to deter him from acting in violation of the constitutional right of the workmen to this decent standard life, living, wages right to health etc. "

From the above decision it is clear that if the work is perennial in nature with the contract labour and it is continued, the casual labour under the contractor shall become an employee directly under the principal employer. Even assuming for argument sake the applicants were not working under the department but under the contractor, their services are to be regularised. In the present case the nature of work done by the applicants are of perennial in nature and they have been working for a considerable period. Therefore, their services should be regularised. Besides as submitted by Mr. Pathak they got the benefit of O.M. dated. 10.9.93 issued by the Govt. of India, Ministry of Personnel, Public Grievance and Pension. On the basis not the said O.M. this Tribunal also passed an order dated. 23.9.94 in original Application No.58 of 1993 directing the respondents to regularise the services of the applicants."

We have heard learned counsel of both sides. The applicant was a casual worker on contract basis. He worked in two offices. According to him he worked in the office of Central Excise at Guwahati from 4.11.1991 to 15.5.1993 and in the office of Guwahati Customs Division, Guwahati from 1-11-1993 to 3.3.1997. The respondents denied the correctness of the claims of the applicant and submitted that they were not supported by the records. According to records submitted by the applicant, it is found that the applicant worked in Central Excise office, Guwahati for three months from 4.11.1991 and again for 3 months from 5.2.1992. Thus he did not complete one year continuous service. Even if the applicant worked up-to 15.5.1993, he can not get the benefit of the O.M. dated. 10.9.93 as he was not in service on the date the Office Memorandum came into effect. In another office he started working from 1.11.1993. Thus there was a long gap between ^{the} two employments. According to him, he worked up to 3.3.1997 in the later office. According to records produced by him however, he was appointed for a period of 3 months from time to time from 1.11.1993 till the middle of 1996.

Thus the Office Memorandum is also not applicable to his case in the later office as he was engaged afresh after the Office Memorandum came into force. However, it appears that the work of the applicant from 1.11.1993 was perennial in nature and the respondents had been extending his engagement from time to time. Not only that, the respondents had also engaged other casual labours on contract basis from July 1997, but had ignored the applicant. Thus by this action of the respondents the applicant was deprived ^{of} the source of his livelihood even after serving for the respondents in the new office for about three years. In the circumstances, we dispose of this application with a direction to the respondents to consider re-engagement of the applicant and for this purpose the applicant may submit representations to the respondents within 1 months from the date of receipt of this order. The respondents shall communicate a speaking order to the applicant within 1 month from the date of receipt of the representation.

Application is disposed of.


(D.N.BARUAH)
VICE-CHAIRMAN


(G.L.SANGLYINE) 15.2.2000
ADMINISTRATIVE MEMBER