

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/652 of 2013

Cuttack this the 25th day of May, 2018

CORAM:

THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Rabindra Kumar Mallick, aged about 41 years,S/o. late Kailash Chandra mallick,At/PO-Ratnagiri, Via-Indupur, Dist-Jajpur, at present working as a Casual Worker awarded with 1/30th Status at Ratnagiri Museum, Archaeological Survey of India, Ratnagiri, Dist-Jajpur, Odisha

...Applicant

By the Advocate(s)-M/s.D.K.Mohanty
S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Culture, Government of India, Shastri Bhawan, New Delhi-110 001
2. Director General, archaeological Survey of India, Janpath, New Delhi-110 001
3. Superintending Archaeologist, Archaeological Survey of India, Toshali Apartment, Satya Nagar, Bhubaneswar-7, Dist-Khurda, Odisha
4. Asst.Superintending Archaeologist for Museum, Archaeological Survey of India, At/PO-Ratnagiri, Dist-Jajpur, Odisha

...Respondents

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

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant was working as a Casual Worker with 1/30th status at Ratnagiri Museum of Archaeological Survey of India at the time of filing the O.A. He was first appointed as a casual labour on 3.12.1990 at Ratnagiri Museum on daily wage basis. He claims that he worked for more than 240 days in

1992, 1993, 1996, 1998, 1999 and 2002. He was conferred with 1/30th status vide Office Order No. 480-482 dated 31.3.2003. A seniority list of Temporary Status Casual Workers was published by the Office of the Superintending Archaeologist, Archaeological Survey of India, Bhubaneswar (Res.No.3) on 29.10.2011. The applicant's name was not included in that seniority list. The applicant filed O.A.No.874 of 2012 in this Tribunal which was disposed of on 6.12.2012 with a direction to Respondent Nos. 2 and 4 to consider the applicant's representation within a period of 45 days. Accordingly, the representation was considered and rejected on 30.5.2013 on the ground that the applicant does not fulfill the terms and conditions for granting temporary status as per the Scheme of DOP&T dated 10.9.1993 and is not covered under the order of Hon'ble Courts. Aggrieved by this impugned order dated 30.5.2013, the applicant has filed the present O.A. praying for the following reliefs:

- i) To pass appropriate orders directing the departmental respondents to consider the case of the applicant to grant temporary status and to allow him to work as casual labourer in different places of the respondents 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 30.05.2013 vide Annexure-A/6.
- 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 cost.

2. The applicant has based his prayer mainly on the ground that his juniors who have acquired temporary status have already been regularized in service and the applicant has been discriminated against in an illegal and arbitrary manner. He has rendered more than 23 years of continuous service as a casual labourer and is therefore entitled to the relief as prayed for in Para-12 above.

3. The Respondents in their counter filed on 28.11.2014 have raised a preliminary objection that the O.A. is barred because of limitation. The Respondents have also claimed that the applicant had worked only for 20 days in 1991-92, 160 days in 1992-03, 52 days in 1993-94, 71 days in 1994-95 and 169 days in 1997-98. He had not worked on any day in 1995-96 and 1996-97. So the applicant's contention that he has worked for more than 240 days in 1992, 1993, 1996, 1998, 1999 and 2002 is totally incorrect. As per the Scheme called Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1993 issued by the DOP&T, the same will be applicable only on fulfilling the conditions incorporated in Clause-4 which prescribes that the casual labourers in employment as on the date of commencement of the scheme, i.e., 1.9.1993 should have rendered continuous service of at least 204 days in a year (206 days in the case of offices observing 5 days week). Subsequently

another clarification was issued by the DOP&T dated 12.7.1994 stating that those casual employees who have not been recruited through the Employment Exchange cannot be given temporary status. The Hon'ble Supreme Court in the case of Passport Officer, Trivandrum vs. C.Venugopal & Ors. had held that if the Department decides that only those employees who were recruited in a normal manner i.e., through the Employment Exchange shall be given temporary status, no fault can be found with the Department. In Civil Appeal Nos.3168/02 with 3182, 3179, 3176-79, and 3169 of 2002 the Hon'ble Supreme Court specifically stated that the Scheme of 1.9.1993 is not an ongoing scheme and temporary status can be conferred on the casual labourers under the scheme only on fulfilling the conditions incorporated in Clause-4 of the Scheme which stipulates that the casual laboures should be in employment on the date of commencement of the scheme and should have rendered continuous service of at least one year amounting to 240 days in a year. Hence the impugned order dated 30.5.2013 suffers from no illegality and the O.A. should be dismissed as devoid of merit.

4. The applicant filed a rejoinder on 28.1.2015 in which he claims that the O.A. has been filed within the time limit. The persons who are junior to the applicant have been granted temporary status vide order dated 3.8.2011 and 23.8.2011 whereas the case of the applicant was not considered by the

respondents although he is a member of ASI Workers' Union. The cause of action has arisen from 3.8.2011 and the applicant had sent a representation which was not considered leading to filing of O.A.No.874 of 2012. Pursuant to the order of this Tribunal dated 6.12.2012 in O.A.No.874/2012, the impugned order dated 30.5.2015 was passed and the present O.A. was filed on 30.8.2013 challenging the said impugned order. The applicant has also contested the claim of the respondents that he has not worked for less than 240 days in a year. He claims that he has worked for more than 240 days in a year right from 1992 for years together. Moreover, all the casual employees who have been granted temporary status and subsequently regularized vide order dated 3.8.2011(A/7) and dated 21.2.2012(A/8) have not been recruited through the Employment Exchange and therefore, the claim of the applicant cannot be ignored when similarly situated persons and those who were junior to him have been regularized. The applicant has pointed out that in the order dated 21.10.1011(A/4) the services of persons at Sl.Nos. 45 to 55 who did not have the requisite qualification have been regularized. The entire selection process has been done in an arbitrary manner and the applicant's claim has been unjustly denied.

5. The issue of limitation has already been met by the applicant in the rejoinder filed on 28.01.2015 and I hold that the explanation given by him is sufficient to remove misgiving

about the present O.A. being barred by limitation. Hence, I proceed to consider the O.A. on merit.

6. The matter was argued on 8.11.2017 when the following orders were passed:

“Heard Mr.B.Rout, Ld. Counsel for the applicant and Mr.S.K.Singh, Ld. Counsel for the respondents.

Ld.Counsel for the respondents has filed the counter on 28.11.2014 in which he has given the number of working days for the applicant from the year 1991-92, 1992-93, 1993-94, 1994-95 and 1997-98. He is directed to produce the record showing the number of days worked by the applicant during these years.

Ld.Counsel for the applicant brought to my notice the office order No.33 dt. 03.08.2011 in which the services of the persons at Sl.No. 4, 5, 15,19,23, 37 and 45 have been regularized. It is the applicant's grievance that services of these persons, who had joined after him as a casual labour, have been regularized and he has been discriminated against by the respondents. Respondents are directed to file a memo along with the records relating to number of days worked by these persons, as mentioned in the above serial numbers, for the period they worked as casual labourer, if their services have been regularized without rendering the necessary number of working days, i.e. 240 days, then the applicant is justified in his grievance against the respondents.

Four weeks' time is granted to the Respondents to produce the records and also file the memo as per the aforesaid serial numbers in the Office Order No.33 dated 03.08.2011.

List it on 09.01.2018 for hearing. Copies of this order be given to both the Parties”.

7. Subsequently the matter was taken up on 12.3.2018 and another opportunity was granted to the official respondents to produce the records and file the memo as ordered on 8.11.2017. On 16.3.2018 the matter was again taken up and the learned counsel for the respondents was directed to submit the

order of the CAT and the Hon'ble High Court which was mentioned in the Office Order No.33 dated 3.8.2011 as at A/7 of the rejoinder. The matter was finally heard on 8.5.2018. The Respondents were not able to give the details of the number of days worked by the persons as directed vide order dated 8.11.2017. Similarly they were also not able to produce the number of days worked by the applicant nor did they file the judgment of CAT and the Hon'ble High Court as quoted by them in No.33 dated 3.8.2011. The matter was however reserved on 8.5.2018. Since the respondents were unable to produce the records despite repeated opportunities granted to them, during the arguments, learned counsel for the applicant filed the order dated 12.5.2000 of this Tribunal in O.A.Nos. 81 and 82 of 1998 which was upheld by the Hon'ble High Court of Orissa in OJC No.9686/2000 and subsequent orders passed by this Tribunal in O.A.Nos.438/14, 412/14, 187/14 and 408 of 2014 to support his prayer for grant of temporary status and regularization.

8. The applicant's claim has been denied in the impugned order dated 30.5.2013 mainly on the ground that he had not worked for 240 days in a year as on 1.9.1993 when the Scheme "Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1993" was introduced. The Respondents have also urged that the applicant was not recruited through the Employment Exchange. The applicant however has vehemently claimed that none of the persons

regularized in the order at A/7 and A/8 had been recruited through the Employment Exchange. In the order passed by this Tribunal in O.A.Nos. 81 and 82 of 1998 pronounced on 12.5.2000, this aspect has been considered and this Tribunal had emphatically held that the applicants who were working in the Archaeological Survey of India at Barabati, Cuttack were entitled to be considered for being granted temporary status directly in accordance with the Scheme of 1.9.1993 in spite of the fact that at the time of their engagement their names were not sponsored by the Employment Exchange. This order of the Tribunal was upheld by the Hon'ble High Court of Orissa in their common judgment dated 20.2.2009 in OJC Nos.9786, 10664, 11073 of 2000 & 6732 of 2004 with the following observations:

“Learned counsel appearing for the workmen has produced before us an order dated 31.10.2003 by which pursuant to the judgments and orders of the Tribunal and the guidelines issued by the Director General of Archaeological Survey of India, such status has already been conferred. After a lapse of six years of passing of such order by the Director General of Archaeological Survey of India, we are not inclined to examine the issue at all”.

9. Vide order dated 08.11.2017 Respondents were directed to file a memo along with the records relating to number of days worked by the persons at Sl.No. 4, 5, 15,19,23, 37 and 45 whose service have been regularized as per Office Order No.33 dated 03.08.2011. They were unable to do so despite repeated opportunities being given. The learned counsel for the

respondents was specifically asked how in the absence of records the respondents could give the details of number of days worked by the applicant in the counter filed by them. But he simply stated that no records are available about the number of days worked by the applicant nor of those whose regularization has been challenged by the applicant. The fact that the applicant has been granted 1/30th status vide office order No.480-481 dated 31.2.2003 shows that the applicant has at least established a claim for temporary status by his continuous working with the Respondents.

10. This Tribunal had considered the cases relating to temporary status in a number of Original Applications. Recently in O.A.No.438 of 2014 this Tribunal discussing the facts of the case relating to an employee of the Department of Posts and taking into account the judgment of the Hon'ble Supreme Court in Amarkant Rai vs. State of Bihar & Ors. in Civil Appeal No.2835/2015 [arising out of SLP (Civil) No.20169/2013] decided on 13.3.2005 and considering the fact that the applicant in that O.A. has been working continuously with the Department, it was ordered that temporary status should be given to him from the date the temporary status scheme was introduced in the Department and subsequently he is entitled to regularization. In O.A.No.412 of 2014, the applicant was working in the Central Institute of Fresh Water Aquaculture. This Tribunal disposed of the said O.A. with a direction to the

respondents to take a decision regarding regularization or giving temporary status to the applicant if he was otherwise eligible in terms of official guidelines, norms and procedure. Similar orders were also passed in O.A.Nos.187/2017 and O.A.No.408/14.

11. The applicant has drawn my attention to Office Order No.33 dated 3.8.2011 by which temporary status was awarded to 50 casual labours under the Scheme of 1993 in pursuance of the orders of this Tribunal in O.A.No.852/96 dated 23.1.2000, in O.A.No.266/97 dated 12.4.2002 and in O.A.Nos.81 & 82 of 1998 dated 12.5.2002 and the common judgment of the Hon'ble High Court of Orissa dated 20.2.2009 and the orders of the Hon'ble Apex Court in SLP Nos.17158/09, 17758/09 and 18119/09. The applicant has filed copy of the order in O.A.Nos. 81 & 82 of 1998 in which the direction was given to the Archaeological Survey of India (Respondents in the present O.A.) to consider the grant of temporary status to the applicants in terms of the Scheme at A/2 of the O.A.

12. Taking into consideration the facts of the present case, judicial pronouncements in the above mentioned OAs and various orders of the Tribunal as well as the Hon'ble High Court and the Hon'ble Apex Court, it is quite obvious that the case of the applicant who has already been granted 1/30th status deserves to be considered for grant of temporary status and consequent regularization under the Scheme of 1993. The

applicant is entitled to grant of temporary status from the date his juniors who had initially joined as casual workers were granted temporary status. The Respondents are directed to pass the necessary and appropriate orders to that effect within a period of eight weeks from the date of receipt of this order. With the aforesaid direction, the O.A. is disposed of with no order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

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