

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 216 of 2014

Cuttack this the 5th day of March, 2018

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Biswanath Bhoi, aged about 40 yuears, S/o. Brundaban Bhoi, At/PO-Jagannathpur, Dist-Khurda (Odisha) at present working as Mali in the Office of Director, Institute of Minerals & Materials Technology, Acharyavihar, Bhubaneswar, Dist-Khurda

...Applicant

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

-VERSUS-

Union of India represented through:

1. The Secretary of State for Science & Technology & Earth Science, & Vice President CSIR(Council of Scientific & Industrial Research), At-Anusandhan Bhawan-2, Rafi marg, new Delhi-110 001.
2. Director General, CSIR(Council of Scientific & Industrial Research), At-Anusandhan Bhawan-2, Rafi Marg, new Delhi-01.
3. Director, institute of Minerals & Materials Technology, Bhubaneswar-751 013.

...Respondents

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

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant in this O.A. was working as Mali in the Office of Director of Institute of Minerals, Material Technology (IMMT), Bhubaneswar at the time of filing the O.A. He claims that he has been working as Casual Labourer since 1990 under the Director of IMMT (Res.No.2). He was initially working under a contractor from 1990 and from 1994 work orders have been

issued in his favour directly by IMMT and the same have been extended from time to time from the year 1990. He claims that a Scheme was introduced in 1994 called Casual Workers Absorption Scheme CSIR, 1994 where casual labourers who have worked for more than one year will be considered for conferment of temporary status. He was asked by the Office of Respondent No.2 on 24.10.2008 to submit all documents relating to his employment for consideration of his case for conferment of temporary status under the above mentioned scheme. The applicant filed representations along with all relevant documents for consideration of Respondent No.2 on 26.11.2008(A/3). When his grievance was not redressed he submitted a representation dated 9.5.2009(A/4) to the Director General, CSIR(Res.no.2) praying for conferment of temporary status under the CSIR Casual Workers Absorption Scheme. The applicant filed another representation 20.1.2014(A/5) before Respondent No.3 praying for absorption with effect from 1995 and to grant him all the consequential benefits. Since no relief was granted, he has filed the present O.A. praying for direction to be issued to Respondents to regularize his service in the post of Mali and to give him all consequential and financial benefits thereof or in the alternative to direct the Respondents to consider his case for giving him temporary status on the basis of CSIR-Casual Workers' Absorption Scheme with temporary status from the year 1994 with all consequential benefits.

3. Applicant had prayed for interim relief by way of their continuation in the work they were doing. Records show that this Tribunal after considering their prayer for interim relief had ordered status quo to be maintained.

4. The applicant has based his prayer on the ground that the action of the respondents in not regularizing his services is illegal and not sustainable in the eyes of law since he has been continuously working as casual labourers. The Respondents have not cared to take any steps for his regularization nor have they given any reply on his representations.

5. Respondents in their counter filed on 2.9.2014 have raised a preliminary objection that the matter has already been adjudicated by the Central Government Industrial Tribunal (CGIT), Bhubaneswar involving 140 disputant workmen through their erstwhile Union and the CGIT in its order dated 30.7.2001 had held that the Union had failed to establish that the workmen had worked for more than 240 days and therefore the workmen were not entitled to any relief. Since the matter has already been settled by the CGIT, there is no new material evidence brought out by the applicants contrary to the findings of the CGIT. Therefore, under the principle of *res judicata*, the present O.As. are not maintainable.

The respondents have also submitted that the applicant along with others had filed a joint representation dated 6.3.2014 before the Assistant Labour Commissioner(Central),

Bhubaneswar and the matter is pending before the ALC. So it cannot be adjudicated at multiple fora at the same time. As the matter is pending before the ALC, this Tribunal has no jurisdiction over it and therefore, the present O.As. are not maintainable.

In a similar case, this Tribunal had directed the respondents to consider the representation of one Sri Bholinath Jena in O.A.No.186 of 2013 and the representation has been rejected by a reasoned order dated 16.4.2014 (R/6). The Respondents have outsourced the garden maintenance and other related work to a contractor, viz. M/s.Adarsh Society. The applicant has been hired and engaged by the said contractor. He is the employee of the contractor and there is no direct employee - employer relationship. The Respondents have claimed that the applicant has not been engaged as Mali since 1990 or any time thereafter as claimed by him. He was not directly engaged with the Institute as casual worker. The Casual Workers Absorption Scheme was formulated as one time measure in compliance of the order of the Hon'ble Supreme Court in SLP (c) No.2224 of 2000 (Union of India & Ors. vs. Mohan Pal) wherein it was held that the Scheme of 1.9.1993 is not an ongoing Scheme and temporary status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in clause 4 of the Scheme, namely, they should have been casual labourers in employment

on the date of the commencement of the scheme and they should have rendered continuous service of at least one year i.e., at least 240 days in a year or 206 days in case of offices having 5 days a week. The maintenance of garden and other maintenance work of IMMT is outsourced through open public tender to different contractors since 1996 as per rules. Labourers engaged in this work are paid by the contractor as per the terms and conditions of the contract. The applicant has been hired by M/s. Adarsh Society and the claim of the applicant that he has been engaged in the post of Mali is not substantiated by any record. The applicant has been paid minimum wages and the EPF contribution has been made by the contractor M/s. Adarsh Society. The CGIT in its order dated 30.7.2001 (R/2) has already held that the workmen are not entitled to any relief. The Casual Workers Absorption Scheme, 1990 which was subsequently revised in 1995 was a onetime measure and was applicable to workers engaged on casual basis and paid either on daily wage or monthly basis completing 240 days in a year or 206 days in case of five days' week for one year as on 1.1.1990. The applicant is not eligible for consideration under the scheme since he did not fulfill the eligibility criteria as per the scheme. There is no rule under which the applicant can be considered for regularization and therefore, the O.A. lacks merit and should be dismissed.

6. We have heard the learned counsels from both the sides and perused the documents submitted by them. With regard to maintainability, it is to be noted that the CGIT or the forum of Asst. Commissioner of Labour not being a subordinate court of this Tribunal, the applicant cannot be barred from approaching this Tribunal with his grievance when he claims to be an employee of the respondent no.3's organization. We therefore reject the preliminary objection raised by the respondents on maintainability and proceed to consider the present OAs on merit.

7. The limited issue in the present O.As. is whether the applicant is entitled for regularization on the basis of his claim that he has been working as casual labourer under Respondent No.3 from 1990 onwards.

8. From a perusal of the records, it is apparent that the applicant has not produced any document to show that he was engaged by Res.No.3 as casual labourer nor at any point of time his employment has been extended through any order from the IMMT. There is not a single shred of evidence to substantiate the claim of the applicant that he is the employees of the erstwhile Regional Research Laboratory, presently IMMT. The applicant has submitted his representations from time to time for regularization of services but except these representations which have been annexed to the OAs, he has not produced any letter of appointment or any extension of service or any other

documents to define the terms and conditions of his employment. Although a letter was issued in 2008 giving details of employment for various employees to be considered for regularization under the Casual Workers Absorption Scheme of CSIR that itself is not a conclusive proof that the applicant was indeed a casual labourer directly engaged by Respondent no.3 or its predecessor organization RRL. That being so, his consideration under the said Scheme does not arise. The applicant has failed to establish any legal right for regularization. If he is indeed engaged by a private contractor, he cannot claim regularization from Respondent No.3's organization either under the Scheme of 1996 or any other Scheme. We consider the OA to be devoid of merit and accordingly dismiss it with no order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

BKS

