

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260000242015

Cuttack, this the 23rd day of June, 2017

CORAM

HON'BLE MR. R. C. MISRA, MEMBER (A)

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Shri Dilip Kumar Patra, aged about 30 years, S/o-Sanatan Patra, At/PO-Sisupalgarh, P.S-Lingaraj, Bhubaneswar, Dist-Khurda, At Present working as a casual Worker at Lingaraj Temple, Archaeological Survey of India site, At/PO/PS-Lingaraj, Dist-Khurda, Odisha.

...Applicants

(By the Advocate-M/s. B. Rout, P. Behera, M. R. Dash)

-VERSUS-

Union of India Represented through

1. Secretary, Ministry of Culture, Govt. of India, Shastri Bhawan, New Delhi-110001.
2. Director General, Archaeological Survey of India, Janapath, New Delhi-110011.
3. Superintending Archaeologist, Archaeological Survey of India, Toshali Apartment, Satyanagar, Bhubaneswar-7, Dist- Khurda, Odisha.
4. Asst. Labour Commissioner(Central), O/o Dy. Chief Labour Commissioner, Lewis Road, Bhubaneswar, Dist-Khurda, Odisha.

...Respondents

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

ORDER

R.C. MISRA, MEMBER(A):

The applicant in this O.A. is a Casual Worker engaged by the Archaeological Survey of India at present working at Lingraj Temple, Bhubaneswar. He has approached the Tribunal, praying that Respondents be directed to grant him 1/30th status since similarly placed casual workers have already been granted such status by the authorities as per the provisions made by the Department of Personnel & Training Government of India vide their Office Memorandum dated 07.06.1988.

2. The applicant claims that he has completed 240 days of work on 26.03.2013 and is therefore included by the Respondents in the list of casual labourers published on 26.03.2013. The claim of the applicant is that casual labourers similarly placed has already granted 1/30th status. The grievance of the applicant in the present O.A. is that as per the Office

Memorandum dated 07.06.1988 issued by the Department of Personnel & Training Government of India he should be allowed 1/30th status because the nature of work entrusted to him and regular employee is the same. In case of casual workers who engaged much earlier to his engagement 1/30th status was granted by the Respondents Organisation. It is alleged by the applicant is that this amounts to discrimination. It is further submitted by the applicant that a Memorandum of settlement arrived at under Section 12(3) of the I.D.Act, 1947 was arrived at between the Respondents Organisation and the Archaeological Survey of India, Worker's Union over 1/30th status to the casual labour. It was settled that casual workers who were engaged after 2002 and completed 240 days of work in a year after rendering continuous work of 07 to 08 years could be granted 1/30th status. The Respondent No.3 has been granted 1/30th status to 08 persons by order dated 12.04.2013. But because of the applicant was not taken up even though he fulfils the criterion.

3. The Respondents have filed counter affidavit making averments that the applicant had never performed the duty of Group 'D' posts. The nature of work discharge by him is not the same as the regular employees and therefore not eligible for consideration of grant of 1/30th status. The applicant has also filed rejoinder in which he has reiterated his submissions made in the O.A.

4. Having perused the records of the O.A. as mentioned above I have also heard carefully the arguments placed by the Ld. Counsels of both the sides. A common feature of the O.A. is that the applicants had earlier approached the Tribunal by disposing of the earlier O.As. filed by the applicants direct the authorities to consider and dispose of the representation filed by the applicants with a reasoned and speaking order. In obedience to the direction of this Tribunal the Respondents have disposed of the representations rejecting the prayer of the applicants. The applicants thus aggrieved have approached the Tribunal challenging the order of rejection. The Ld. Counsel for the applicant has placed before him the order dated 26.03.2013 issued by the Archaeological

Survey of India in which the applicant has been included in the list of casual workers who have completed 240 days of work under the organisation. This list has been prepared finally year wise. Secondly, my attention has been attracted to the order dated 12.04.2013 by which 08 casual workers have been granted 1/30th status. The DOP&T has issued an O.M. dated 07.06.1988 on the subject of recruitment of casual workers and persons on daily wage basis. It has been decided in the O.M that where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day. It is further submitted that a memorandum of settlement arrived at under Section-12(3) of the Industrial Disputes Act, 1947 between the Management of Archaeological Survey of India, Bhubaneswar and Archaeological survey of India Workers Union over 1/30th pay to casual labourer before the Asst. Labour Commissioner (Central), Bhubaneswar on 15.09.2011. In pursuance of such decision by the order dated 12.04.2013, 08 casual workers have been given the 1/30th status. The case of the applicants in various O.As discussed above that they have been discriminated against by the authorities. In the impugned orders the authorities have rejected their legitimate claim since their juniors have conferred their status.

5. The Ld. ACGSC pleads for the Archaeological Survey of India has relied upon his submission that the applicants were never allowed to perform duty of Group 'D' posts. The nature of work discharge by them is not the same as the regular employees and therefore as per the criterion laid down by the DOP&T O.M. dated 07.06.1988 they are not eligible for consideration of grant of 1/30th status. In course of hearing of this case Ld. ACGSC was directed to obtain instruction about the casual workers who has been given 1/30th status by the Respondent's organisation during the last five years. The Ld.

ACGSC has obtained information that the Archaeological Survey of India has conferred 1/30th status on 08 numbers of casual workers by an order issued on 12.04.2013. It is noted that this order dated 12.04.2013 was also earlier annexed to the O.A. Therefore according to the submission of Ld. ACGSC thereafter the statutory status was not conferred to any casual worker.

6. The O.M. dated 07.06.1988 issued by the DOP&T has provided as follows:-

“Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.”

In the present case the Respondents have taken a stand that the applicants were not entrusted with regular work of a Group ‘D’ employee and therefore, they do not fulfil the criterion laid down by the DOP&T. Although it is admitted that the applicant’s work as casual workers who have been included in the Office Order dated 26.03.2013 of the Respondents Organization as casual worker who have completed 240 days of continuous work. Their case could not be considered for 1/30 status for the reasons mentioned above. However, in the Office order dated 12.04.2013, 1/30th status have been conferred upon 08 casual workers. The first paragraph of the order is quoted below:-

“ In pursuance of O.M. No.49014/89-Estt (C) dated 7th June-1988 in Clause-IV issued by the Department of Personnel and Training, New Delhi and guidelines issued by the Director General, Archaeological Survey of India, New Delhi vide F. No.98/4/85-Adm-II dated 20th Jan-1989 and subsequent F. No.7/2/92/Adm-II dated 27th July-1992 and further guidelines issued by the Director General, AS, New Delhi vide F. No.7-1/2009-Admn-II dated 17th April-2009 and subsequent dated 11th May-2009, the following casual labourers engaged up to 2004-2005 and completed 240 days in a year as on 2010-2011 are allowed to perform the similar nature of duties of Group “D” and will be paid wages @ 1/30th of the pay scale at the minimum of Group “D” Rs.4750+1300+D.A. as admissible from time to time w.e.f. 15th April, 2013”.

As mentioned above, the order states that 8 casual labourers engaged up to 2004-05 completing 240 days in a year as on 2010-2011 are allowed to perform the similar nature of duties as Group ‘D’ will be paid wages at the rate of 1/30th of pay scale at the minimum of Group ‘D’ By this order therefore, the

Respondents authorities decided to allow this said 08 casual workers to perform similar nature of duty of Group 'D' and also that will be paid wages at the rate of 1/30th of the pay scale. The O.M. dated 07.06.1988 issued by the DOP&T laid down that where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day. In the order dated 12.04.2013 the Respondents first decided that the concerned casual workers will be allowed to perform similar duties of regular Group 'D' staff. It is a consus decision of the Respondents Department to be allowed the eligible casual employees to perform duties of a regular employee. The Respondents have not relied on which criterion this decision has been taken. It is abundantly clear that it is a consus decision of the Respondents authorities to allow a casual worker to perform duties of a regular nature. Thereafter, as a consus in the same order the casual labourer is allowed to pay at the rate of 1/30th of pay. Therefore, the argument of the Respondents is that the prayer of the applicants in this O.A. cannot be allowed because they have not perform the duty of a regular Group 'D' is quite clearly fallacious. From the order dated 12.04.2013 it has been made clear that it is the Respondents authorities who decided whom they will allow to perform regular duty of Group 'D' and thereafter 1/30th status false as a consequence. The applicants in the O.As under the Archeological Survey of India organization have not been allowed to perform the duty of a regular nature by the Respondents. Therefore, the Respondents contention is that the applicants have not perform the duties of regular of nature is unfair and unsustainable because such decision can be taken only by the Respondents authorities. If some casual workers were allowed to perform duties of regular in nature why the present casual workers who approached the Tribunal will not be allowed to do so is an issue in which the Respondents are not addressed in

their reply. The Respondents organization should have a transparent policy for considering such prayer as per the DOP&T O.M. dated 07.06.1988 mentioned above. The settlement under Section 12(3) of the I.D. Act, 1947 which has been brought to the notice of the Tribunal by the applicant reflect that the cases of casual workers completed 240 days of work shall be taken for consideration of 1/30th status. In the above circumstances the reasons assigned in the impugned order cannot be supported. The Respondents organisation could up course have their own policy for consideration of such cases in a transparent manner. But as per policy of such casual workers should be considered and on the ground that the applicants were never entrusted to discharge the work of a regular employee no body can be ousted from consideration. This is because has articulated in the order the decision to allow a casual worker to perform duties of a regular Group 'D' will again have to be taken by the Respondents themselves. The Ld. ACGSC while replying to the allegations of discrimination has submitted that negative equity can not be claimed. However, making such a submission would amount to indirect admission that the facility of 1/30th status to the other casual workers was extended in a regular manner. It is not clear from the submission of the Respondents that what are the criterion they have followed in sustain such casual workers to allot them work of regular nature equal to that of a Group 'D' but one thing is might clear that the claim of the applicants cannot be summarily thrown out. The Respondents need to keep their cases under consideration under suitable criterion for conferring 1/30th status by following the guidelines as the Government has laid down by the DOP&T in their O.M. dated 07.06.1988. It is also very important to ensure that discrimination and arbitrariness should be completely avoided in the matters of such consideration.

7. Based upon the discussions made above it is directed that Respondents may be considered the matter in the light of the observations made above. The orders impugned in the O.A. dated 12.04.2013 (Annexure-A/4)

and dated 07.08.2014 (Annexure-A/6) are quashed and the matter is remitted to Respondent No.2 for reconsideration.

8. With the above observation and direction the O.A. is disposed of.

(R.C. MISRA)
MEMBER(A)

K.B.