

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00521/2015

Cuttack this the 3rd day of January, 2019

CORAM:

HON'BLE SHRI G.C.PATI, MEMBER(A)
HON'BLE SHRI S.K.MISHRA, MEMBERA(J)

1. Subhashree Ranjan Behera, aged about 35 years, S/o. Mana Ranjan Behera, At-pareswar Sahi, PO-College Square, Dist-Cuttack.
2. Laxmikanta Nayak, aged about 38 years, S/o. Gour Ch.Nayak, At-Ranihat, Malisahi, Dist-Cuttack.
3. Gouranga Charan Sahoo, aged about 39 years, S/o.Duryodhan Sahoo, At-Balabhadrapur, PO-Mahan, Via-Rameswar, Dist-Cuttack.
4. Akshaya Kumar Suta, aged about 43 years, S/o.Basudev Sutar, At-Chauliaganj (Matha Sahi), Dist-Cuttack.
5. Sk.Abtav Uddin, aged about 46 years, S/o.Sk.Amin Uddin, At-Satabatia, PO-Madhyakachha, Dist-Cuttack.
6. Benudhar Behera, aged about 41 years, S/IBabaji behera, At-Imman Nagar, PO-Bhairpur, Dist-Cuttack.
7. Himansu Sekhar Mallick, aged about 43 years, S/o. Golekha Bihari Mallick, At/PO-Barisinghpur, Via-Kanakpur, Dist-Jagatsinghpur.
8. Sangram Keshari Sill, aged about 37 years, S/o.Dhirendra Kumar Sill, At-Khatabin Sahi, PO-Tulasipur, Dist-Cuttack.
9. Saroj Kumar Rout, aged about 28 years, S/o. Jatadhari Rout, At-Itanaga, PO-Begunia, Dist-Jagatsinghpur.
10. Subrat Kumar Sarangi, aged about 30 years, S/o. Sarat Ch.Sarangi, At-Purbakachha, PO-Madhyakachha, Dist-Cuttack.
11. Dipti Kanta Biswal, aged about 33 years, S/o.Dhirendranath Biswal, At-Anandapur, PO-Chasakhanda, Dist-Cuttack.
12. Gouri Shankar Nanda, aged about 30 years, S/o.Susil Kumar nanda, At-Dadapur, PO-Kadapada, Dist-Jagatsinghpur.
13. Bijaya Kumar das, aged about 25 years, S/o.Bhramabar Das, At-Balabhadrapur, PO-Mohan, Via-Rameswar, Dist-Cuttack.
14. Malaya Kumar Rout, aged about 34 years, S/o.Benudhar Rout, At-Bitimira, PO-Biridi Road, Dist-Jagatsinghpur.
15. Lokanath Behera, aged about 28 years, S/o.Chitta Ranjan Behera, At-Pareswar Sahi (Jobra) PO-College Square, Dist-Cuttack.

16. Abhisek Jena, aged about 25 years, S/o.Antaryami jena, At-Poparada, PO-Nayabazar, Dist-Cuttack.
17. Biswambar Nath Parida, aged about 25 year, S/o.Bijaya Parida, At-Rajagagicha, Sarbodayapur, PO-Telengabazar, PS-Badambadi, Dist-Cuttack.
18. Santosh Kumar Parida, aged about 22 years, S/o. Late Sudhakar Parida, At-Kulakalapada, Via-bentakur, Dist-Cuttack.
19. Dipti Ranjan Biswal, aged about 33 years, S/o.Gurubari Biswal, At-Purusottampur, PO-Sisua, Dist-Cuttack

All are working as Substitutes under Senior Superintendent, RMS 'N' Division, Cuttack

...Applicants

By the Advocate(s)-Mr.B.S.Tripathy-I

-VERSUS-

1. Union of India represented through Director General of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar-751 001, Dist-Khurda.
3. Senior Superintendent, RMS 'N' Division, Cuttack-753 001.
4. Shiba Charan Adhikari, Head Record Officer, R.M.S. 'N' Division, Cuttack.

...Respondents

By the Advocate(s)-Mr.P.K.Mohanty

ORDER

PER MR. S.K.MISHRA, MEMBER(J):

Applicants 19 in number having a common cause of action and on being permitted to prosecute this O.A. jointly, have approached this Tribunal seeking for relief as under:

- i) Quash the impugned order dated 28.09.2015 under Annexure-8 with a direction to Respondents No. 2, 3 and 4 to forthwith allow the applicants engagement as Substitutes and confer upon them Full Time Casual Labour Status and/or Temporary Group 'D' status with effect from the date of their joining.
- ii) Pass such other order(s) as would be deemed fit and proper in the facts and circumstances of the case.

2. Short facts of the case as it appears from the O.A. are that earlier these applicants had approached this Tribunal in O.A.No.260/00340/15 and this Tribunal vide order dated 01.07.2015 disposed of the said O.A. as under:

“...However, since a representation has been made and is said to be pending before Respondent No.2, without going into the merits of this case, I direct Respondent No.2 to consider and dispose of the representation and communicate the decision thereon to the applicants through a well-reasoned order within a period of sixty days from the date of receipt of this order”.

3. In compliance with the aforesaid direction, Chief Post Master General, Odisha Circle, Bhubaneswar (Res.No.2) passed an order dated 28.09.2015, the relevant part of which reads as under:

“As per Rule-7 of GDS (Conduct and Engagement) Rules, 2011, a GDS official, while proceeding on leave, is entitled to provide a substitute to work in his place on the sole responsibility of the former according to the terms of the security bond executed by him. Besides, when applying for leave in the prescribed form, a GDS official undertakes to be responsible for the work of the substitute. If the original GDS proceeds on leave for personal reasons or to take leave to work in a departmental post the appointing authority approves such arrangement if the eligibility conditions are satisfied such as age and qualification etc. Except this, department has no other role in this matter. Therefore, it is wrong to interpret that the substitutes are engaged by the Department.

Further, the applicants cited the case of 15 mazdoors who have declared as Part time casual labourers as per the direction of the Hon'ble CAT, Cuttack Bench, Cuttack vide order dated 08.05.2012 in OA No.227/2011, confirmed by the Hon'ble High Court order dated 05.05.2014 in W.P. (C) No.20506/12 and WP(C) No.12177/2013 with the approval of the competent authority vide Circle Office letter No.LC/70-25/2013 dated 05.04.2014. The applicants in O.A.No.260/00340/15 are substitutes of Gramin Dak Sevaks who are governed by GDS (Conduct & Engagement) Rules, 2011 whereas the 15 mazdoors, i.e., applicants of O.A.No.227/2011 have been declared as Part time Casual Labourers as per the order dated 08.05.2012 of Hon'ble C.A.T., Cuttack Bench, Cuttack. The judgment in O.A.No.,227/2011 of the Part time Casual Labourers is not applicable to the applicants of this O.A., i.e., applicants of O.A.No.,260/00340/2015. The benefit of the judgment dated 08.05.2012 in O.A.No.227/2011 is restricted to 15 mazdoors only.

Accordingly, the representation dated 28.04.2015 of Sri Subhashree Ranjan Behera & 18 others is considered and rejected being devoid of merit”.

4. Aggrieved with the above order, applicants have approached this Tribunal in the present O.A. seeking for reliefs as mentioned above.

5. The grounds urged by the applicants in support of the reliefs claimed are that the respondents have acted in an illegal and arbitrary manner inasmuch as they have refused to confer upon them the status of full time casual labour and/or temporary Group D status with effect from the date of their joining. According to applicants, the impugned order dated 28.09.2015 under A/8 goes to show that the applicants have been continuing as Substitutes in RMS 'N' Division for a considerable length of time ranging from December, 1998 to December, 2013 and notwithstanding this, they are not been regularized as full time casual labourers nor have they been conferred temporary Gr.D status in terms of instructions/clarifications issued by the Department of Posts letter dated 17.05.1989 read with Office Memorandum No.49014 dated 16.04.2014 of the Government of India in DOP&T which states that temporary status can be conferred on the casual labourers if they have been in employment rendering continuous service of at least one year. It has been contended that since the applicants have been continuing working as Substitutes for a considerable length of time, they are entitled to be conferred with full time casual labour status and/or temporary Group D status. According to them, though this Tribunal had directed Respondent No.2 to consider the representation of the applicants, while considering the same, Respondent No.2 has not taken into account the grounds urged in the representation and therefore, the impugned order dated 28.09.2015(A/8) is liable to be quashed.

6. Opposing the prayer of the applicants, respondents have filed their counter. It is the case of the respondents that as per Rule-7 of GDS (Conduct &

Engagement) Rules, 2011, a GDS official is entitled to provide a substitute to work in his place on the sole responsibility of the former as per FG bond executed by him, if the original GDS proceeds on leave for personal reasons or to take leave to work in a higher post in the Department of Posts. Referring to letter dated 17.05.1989 issued by the Department of Posts, it has been submitted that all daily wagers working in Post Offices or in administrative offices or PSDs/MMS under different designations (mazdoors, casual labourer, contingent paid staff, daily wager, daily rated mazdoors, outsiders) are to be treated as casual labourers and those casual labourers who are engaged for a period not less than 8 hours a day should be described as full time casual labourers. It is their case that the substitutes engaged against absentee should not be designated as casual labourers for the purpose of recruitment of Group-D (now MTS Group-C) posts. They have submitted that the decision cited by the applicants in O.A.No.227/2011 as confirmed by the Hon'ble High Court is not applicable to the case of the applicants herein inasmuch as the applicants in that case have been declared as Part Time casual labour as per the order dated 8.5.2013 of this Tribunal in O.A.No.227/2011. They have therefore, submitted that the O.A. being devoid of merit is liable to be dismissed.

7. Heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of submission filed by the parties.

8. Indisputably, the engagement of Substitute GDS is at the risk and responsibility of the incumbent proceeding on leave for personal reasons or to work on higher post in the Department of Posts. Provision of providing substitute GDS is as per Rule-7 of GDS (Conduct & Engagement) Rules, 2011.

Therefore, a question does arise whether the engagement of substitute as such could be termed as Part Time or Full Time casual labour, as the case may be. Applicants have not produced a scrap of paper showing that they were ever engagement as Part Time or Full Time casual labourers. Applicants have placed reliance on the decision of this Tribunal in O.A.No. 227 of 2011 to buttress their stand point. We have gone through the said decision. In that case, applicants were working as Substitutes EDs from 1984 onwards and subsequently, they were engaged as Mazdoors in 1994 on daily wage basis for five hours per day in different sets of Bhubaneswar RMS. This being the position, they were guided by the G.I. Dept. Of Posts, Lr.No.65-24/88-SPB.I dated 17.05.1989 wherein it was clarified that all daily wagers working in Post Offices or in RMS Office or in Administrative Offices or PSDs/MMS under different designations (Mazdoor, casual labourer, contingent paid staff, daily wager, daily-rated mazdoors, outsiders) are to be treated as casual labourers. Having regard to this, the Tribunal held that the engagement of the applicants as Mazdoors is deemed to be determined as casual labourers. As indicated above, applicants herein have not produced any such documents to establish that they are mazdoors, casual labours, contingent paid staff, daily wager, daily-rated mazdoors etc. Viewed from this, the facts of O.A.No.227 of 2011 being different and distinct from the facts of the present O.A., the ratio as decided therein cannot be applied herein.

9. We have also gone through the decisions of the Hon'ble Supreme Court [(Loman Fransis & ors. Vs. Union of India (Civil Appeal No.1394/2011), (Sheo Narain Nagar vs. State of UP) (D.S.Nakara vs. Union of India (AIR 1983 SC 130] as cited by the applicants. In this connection, we would like to note that the applicants' engagement as Substitute GDS is at the instance of the regular

incumbents proceeding on leave or for holding higher post in the same Department. Therefore, the nature of engagement of substitute GDS in so far as applicants are concerned, is quite different and distinct from the appointment made through any other source. In view of this, we are not inclined to grant any relief to the applicants. In the result, the O.A. being devoid of merit is dismissed. No costs.

(S.K.MISHRA)
MEMBER(J)

(G.C.PATI)
MEMBER(A)

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