

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/0074/2015

Date of Reserve:22.02.2019
Date of Order: 27.03.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Shri Nakula Kumar Bhuyan, aged about 38 years, S/o. Late Golakha Bhuyan, At/PO-Chandrasekhar Prasad, PS-Dhenkanal Sadar, Dist-Dhenkanal, now working as a Casual worker awarded with 1/30th status, at Kapileswar Mahadev Temple, Archaeological Survey of India Site, At/PO-Kamakhya Nagar, Dist-Dhenkanal, Orissa.

...Applicant

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

-VERSUS-

Union of India represented through:

1. The Secretary, Department of Culture, Ministry of Human Resources & Development, Shastri Bhawan, New Delhi-110 001.
2. Director General, Archaeological Survey of India, Janpath, New Delhi-110 011.
3. Superintending Archaeologist, Archaeological Survey of India, Bhubaneswar Circle, At-Tashali Apartment, Block No.VI(B), PO-Satyanagar, Bhubaneswar, Dist-Khurda.

...Respondents

By the Advocate(s)Ms.S.B.Das
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Casual Worker with 1/30th status under the Respondent-Archaeological Survey of India (in short ASI). He had earlier approached this Tribunal in O.A.No.388 of 2013 praying for regularization of his service in Group-D post under Physically Handicapped category. This Tribunal vide order dated 27.06.2013 disposed of the said O.A. with a direction to Respondent No.2 to consider the representation of the applicant dated 21.01.2013 and pass a reasoned and speaking order within a

period of 60 days from the date of receipt of the order. In compliance with the aforesaid direction, Respondent No.2 passed an order dated 10.12.2013 (A/5) rejecting the representation of the applicant, *inter alia*, on the grounds as under:

"01. That the applicant/Shri Bhuyan is not eligible for granting temporary status as per the Scheme called "Casual Labourers (Grant of Temporary Status and Regularization), 1993 framed by the DoPT, New Delhi. Besides, Model Recruitment Rules has been amended by the Government of India with the instruction of DoPT vide O.M. No.AB-14017/6/2009, Estt.(RR) dated 30th April, 2010 stating that their will be no further recruitment in Group 'D' as the post has been upgraded to Group 'C' on recommendation of the 6th CPC, therefore, the case of the applicant for regularization in Group "D" post is rejected.

02. That the DoPT has issued an OM dated 30th April, 2010 on Model Recruitment Rules wherein the DoPT has advised in para 2 to all the Ministries/Department to amend the Recruitment Rules for the erstwhile Group D posts. As per the Model RRs, the Director General, ASI has taken decision in the light of the guidelines of DoPT and issued instructions to all Circles/Branches of ASI that "no further recruitment in Group 'D' as Group 'D' posts have been upgraded to Group 'C' on the recommendation of the 6th Central Pay Commission.

03. That the DoPT has issued an O.M.No.49010/1/2006-Estt.(C) dated 11th Dec., 2006 in pursuance of the Judgment/Order of A Constitution Bench of Hon'ble Supreme Court of India in Civil Appeal No.3505, 3612/99 in the case of Secretary, State of Karnataka & Others vs. Uma Devi Y Others. The Hon'ble Court reiterated that any public appointment has to be made in terms of the Constitutional Scheme. In the present case, the applicant has been engaged purely casual in nature subject to availability of funds and works and he has not been engaged against the sanctioned post of Group 'D' under this Circle, therefore, the question of regularizing his service against Group D post does not arise at all. However, the benefits as per the circular of DoPT dated 7th June, 1988 is being drawn and paid to the applicant/Shri Bhuyan like similar situated persons/workers engaged under this Circle.

Since, the applicant/Shri Bhuyan is not eligible for regularization of service in Group D post under the establishment of Superintending Archaeologist, ASI, Bhubaneswar Circle, Bhubaneswar, therefore, his representation dated 21st Jan.2013 for regularization of service against Group D post is rejected".

2. Aggrieved with the above order, the applicant has approached this Tribunal in this O.A. in which he has prayed for the following reliefs:

- i) To pass appropriate orders directing the departmental respondents to grant temporary status to him from the retrospective effect 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 others by quashing the illegal order vide Annexure-A/5.
- 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 costs".

3. Facts as revealed from the O.A. are that the applicant was engaged as a casual labour under the Respondent No.3 in the year 1996 and while working as such, he was awarded 1/30th status vide order dated 16.09.2008. He also claims to have completed 240 days casual service for years together to the satisfaction of his authorities. Grievance of the applicant is that although persons who had been engaged much after the DoP&T O.M. dated 10.9.1993 (A/2) came into force have been granted temporary status vide A/3 and consequent regularization, rejection of his claim on the ground that his engagement is after the said DOP&T OM dated 10.09.1993, is discriminatory being violative of Articles, 14 & 16 of the Constitution.

4. Opposing the prayer of the applicant, respondents have filed a detailed counter. They have denied that the applicant has ever served for more than 240 days in a year. According to them, as per Memorandum of Settlement made in the year 2008 before the Assistant Labour Commissioner(Central) with the ASI Workers Union, it was decided that those casual labourers who have completed 240 days of work in a year as on 2002, the Management of ASI will allow such casual labourers for attaining the duty of Group-D post on pro rata basis and they will get 1/30th status. It has been stated by the respondents that since the applicant had completed 240 days of work, he

along with others was allowed 1/30th status. It has been submitted by the respondents that as per Clause-4 of OM dated 10.09.1993 issued by the DoP&T, temporary status would be conferred on all casual labourers who were in employment on the date of the said OM and according to them, since the applicant had not completed 240 days as on 10.09.1913 when the OM of DoP&T came into force, he is not entitled to conferment of temporary status nor the consequential regularization in service. At this stage, we would like to note that since we have already quoted the points raised while rejecting the claim of the applicant vide order dated 10.12.2013(A/5), we are not inclined to reduce to writing the same thing to avoid unnecessary reiteration.

5. Applicant has filed a rejoinder to the counter more or less reiterating the same facts as averred in the O.A.

6. We have heard the learned counsels for both the sides and perused the records.

7. The main thrust of the counter is that as per DOP&T OM dated 10.09.1993 the applicant ought to have completed 240 days in a year for grant of temporary status and consequent regularization. Besides, they have pointed out that in view of OM dated 30th April, 2010 on Model Recruitment Rules, the DoPT has advised all the Ministries/Departments to amend the Recruitment Rules for the erstwhile Group D posts in consequence of which instructions to all Circles/Branches of ASI have been issued to the effect that "no further recruitment in Group 'D' will be made as Group 'D' posts have been upgraded to Group 'C' on the recommendation of the 6th Central Pay Commission. Further, the respondents have pointed out that since the applicant has been engaged purely on casual basis subject to availability of

funds and work and that his engagement is not against the sanctioned post of Group 'D', the question of his regularization does not arise.

8. On the other hand, the applicant relying on the office order No.33 dated 3.8.2011(A/3) has brought to the notice of the Tribunal that the Respondents in consideration of casual service of persons who had been engaged after the Scheme called Casual Labourer (Grant of Temporary Status & Regularization) 1993 (in short Scheme, 1993) came into force, have been conferred with temporary status. On a careful scrutiny of the same, it is found that S/Shri Ajaya Kumar Khuntia, C.S.Panda & Gangadhar Nayak at Sl.Nos.4, 19 & 23 and whose dates of engagement are 30.05.1994, 17.04.1994 and 01.06.1994, respectively, have been conferred with temporary status in the light of the orders/judgments of this Tribunal dated 23.6.2000 in O.A.No.852/1996, orders dated 12.04.2002 in O.A.No.266/97, order dated 12.05.2000 in O.A.Nos.81 & 82/1998, the orders/judgment of the Hon'ble High Court of Orissa dated 20.2.2009 and the orders of the Hon'ble Apex Court in SLP No.17155/09, SLP No.17758/09 and SLP No.18119/09 by granting them the revised scale of Rs.4400-7440 + 1300 (Grade Pay) with usual allowance as admissible from time to time. It also further reveals from another office order no.47 dated 23.08.2011 that S/Shri Firoz Bakash and Bhagirath Behera placed at Sl.Nos. 3 & 4 have been conferred with temporary status, being their date of engagement on 29.3.1994 and 1.5.1994 respectively. Therefore, it is a matter on record that even persons engaged after the Scheme of 1993 came into force have been conferred with temporary status.

9. We have considered the rival submissions. It is not in dispute that the applicant had been engaged as casual worker in the year 1996. In the counter although on one hand the respondents have submitted that the applicant has

not completed 240 days in a year and he should be subjected to strict proof of the same, on the other hand, they have submitted that since he had completed 240 days as on the year, 2002, he was granted 1/30th status as per Memorandum of Settlement made in the year 2008 before the Assistant Labour Commissioner(Central) with the ASI Workers Union. This being the position, the statement made by the respondents that the applicant has not completed 240 days in a year is belied. From the above, the corollary is that since the persons engaged after coming into force the Casual Labourer (Grant of Temporary Status & Regularization) Scheme, 1993 have been conferred with temporary status, non-consideration of the request of the applicant for conferment of temporary status on the similarly analogy amounts to discriminatory treatment and hence does not stand to judicial scrutiny.

10. Having regard to what has been discussed above, we quash the impugned order dated 10.12.2013(A/5) and direct the respondents to confer temporary status on the applicant in the light of consideration that they have shown while conferring temporary status vide A/3 (supra) and grant him the consequential benefits as due and admissible under the rules, within a period of three months from the date of receipt of this order.

11. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS