

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 901 of 2016

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Rama Chandra Nath, aged about 54 years, S/o Late Kartika Chandra Nath, At/PO-Kerei, Dist-Sundargarh at presently working as Skilled Farm Worker (SFW), Basic Seed Multiplication and Training Centre, Basic Tasar Silkworm Seed Organization, Central Silk Board, Govt. of India, PO-Kerei-770073.

.....Applicant

VERSUS

1. Union of India represented through its Secretary in the Department of Textiles, Central Secretariat, New Delhi.
2. Central Silk Board, represented through its Secretary, BTM Layout, Madiwala, Bangalore-560068, Karnataka.
3. Director, Central Silk Board, BTM Layout, Madiwala, Bangalore-560068, Karnataka.
4. Scientist-C, Demonstration-cum-Technical Service Centre, Central Silk Board, in front of Hero Honda Show Room, At/PO-Dolamundai, Dist-Cuttack.
5. Scientist-C, Basic Seed Multiplication & Training Centre, At/PO-Kerei, Dist.-Sundargarh, Pin-770073.

.....Respondents

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.P.K.Mohanty, counsel

Heard & reserved on : 5.8.2019 Order on : 29.8.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA praying for the following reliefs :

- "(i) Admit the original application.
- (ii) Call for the records.
- (iii) Quash the letter Dt.12.5.2016 vide Annexure-4 and direct the Respondent Nos.2 and 3 to confer Temporary Status to the applicant in terms of the circular dt. 23.3.2016 vide Annexure-1 from the date his juniors were conferred such status and to give all financial benefits since then within a stipulated time.
- (iv) Any other relief/reliefs that may deem just and proper be passed in the facts and circumstances of the case."

2. The applicant was engaged on 1.7.1987 as a casual labourer. Since he was not paid wages, he had to file OJC No. 6424/1991 before Hon'ble High Court and the OJC was disposed of with a direction to provide the applicant work. Thereafter, he was taken back for engagement w.e.f. 1.9.1993. When the

matter stood thus, the respondents issued an order dated 23.3.2016 (Annexure-1 of OA) on temporary status scheme (in short TSS) of the Central Silk Board. The applicant submitted a representation dated 5.4.2016 (Annexure-3) requesting to engage him as SFW (TS) w.e.f. 1.7.2015. The respondent no. 3 informed the applicant that since he had not completed 240 days of continuous service as on 1.9.1993, he cannot avail the benefits of the TSS as per the order at Annexure-1.

3. The grounds mentioned in the OA are that the applicant has been working for more than 240 days of continuous service w.e.f. 1.7.19878. It is stated that as mentioned in his representation dated 5.4.2016 (Annexure-3), 13 temporary farm skilled labourer like the applicant had been given conferred temporary status w.e.f. 1.7.2015 and the applicant's case has been ignored although he was working since 1987;

4. The respondents filed Counter stating that as per the order dated 19.4.1994 (Annexure-R/2), the applicant was engaged since 1.7.1994 vide the order at Annexure-R/3. He was converted to the time scale farm worker w.e.f. 1.7.1996 vide order at Annexure-R/4. Then after undergoing training, he was made a skilled farm worker (in short SFW). It is stated that the circular on TSS at Annexure-1, was applicable for the employees who were on rolls as on 1.9.1993. Since the applicant was taken back for engagement w.e.f. 1.7.1994 as per the order of Hon'ble High Court, he was not eligible for the benefits under the TSS. It is further stated that there were 250 other employees whose case could not be considered like the case of the applicant. It is stated that the applicant has not given the name of the juniors who were allowed benefit of the TSS. It is stated that those SFWs who had completed one year of continuous service as on 1.9.1993 and were on employment on 1.7.2015 are entitled for the benefit of the TSS as per the order at Annexure-1.

5. Rejoinder has been filed by the applicant stating that before order dated 19.4.1994 was passed by Hon'ble High Court, he was taken back to the work on 1.9.1993 to join at Fakirpur, Keonjhar and he was transferred to Cuttack. He reiterated his stand that he was eligible for the benefit of the TSS. He stated that as on 1.9.1993, he had completed 240 days of continuous service. Additional affidavit was also filed by the applicant enclosing the information regarding his engagement prior to 1.9.1993 obtained under the RTI Act, 2005 vide letter dated 23/24.10.2018. This letter stated that the number of days he was engaged in 1987, 1988, 1989, 1990 and 1991 including off days were 108, 334, 358, 354 and 289 days respectively.

6. The respondents filed a Reply to the Additional affidavit stating that as per the DOPT guidelines at Annexure-R/1 of the Counter, temporary status would be conferred on casual labourers who have rendered a continuous service of at least one year, i.e. engaged for a period of at least 240 days (205 days for 5 day week). It is stated that the applicant was not on employment as on 1.9.1993 and had not worked continuously for 240 days prior to 1.9.1993 as he was offered work intermittently. Since no work was available in the centre, he was not given any work from 23.10.1991 onwards. The EPF contribution does not prove that he was on continuous service for the purpose of TSS.

7. Learned counsel for the applicant was heard. He pointed out that as stated in the letter enclosed with the Additional affidavit, the applicant was engaged 358 and 354 days including the off days during 1989 and 1990 respectively, which shows that the applicant had been engaged continuously for one year prior to 1.9.1993. He further argued that the scheme for temporary status of 1993 was adopted by the respondents on 23.3.2016 vide the order at Annexure-1 of the OA, with the cut off date 1.7.2015. It was submitted that it is undisputed that the applicant was being engaged as on 1.7.2015, for which, the applicant will be entitled for the benefit of the order at Annexure-1 of the OA.

8. Per contra, learned counsel for the respondents opposed the submission of the applicant's counsel stating that the applicant was first taken back to work on 1.7.1994 after the order dated 19.4.1994 was passed by Hon'ble High Court. It was submitted that as on 1.9.1993, the applicant was not being engaged, for which, he will not be entitled for the scheme notified vide order at Annexure-A/1.

9. Temporary Status Scheme vide the order dated 23.3.2016 (Annexure-1) stated as under:-

"5. Subject to the above conditions, it may kindly be noted that (i) Temporary Status will be conferred on all the eligible SFWs who are in employment in CSB as on 1.9.1993 and who have rendered continuous service of at least one year as on the said date and continue to remain in the service of the Board as on 1.7.2015, (ii) the implementation of TSS to all such eligible SFWs is w.e.f. 1.7.2015 which is the date of approval of the Board for the implementation of the said scheme, (iii) the benefits available under the TSS are indicated in Annexure-II and (iv) an undertaking may be obtained from the eligible SFWs (if not already given) in the format enclosed as Annexure-III. All the annexures for part & parcel of this Circular."

10. The order dated 19.4.2014 in the O.J.C. No. 6424/1991 has held regarding the status of the applicant's engagement as a casual labourer as under:-

"The petitioner is a casual labourer in the Central Silk Board (opp.party No.1) which is a Government undertaking. His grievance is that though his name still continues in the nominal Muster Roll, he is not being paid wages with effect from 24.10.91 and his attendance is not being marked though he was all through available for work. It is further submitted that the petitioner has not been retrenched and that his juniors are still being engaged as casual labourers. Notices have been issued to the opp. parties. They have filed counter stating that the petitioner was not attending his duties properly and allegations of misbehaviour to the staff often made were taken note of against the petitioner. They have annexed the document in Annexure-A purporting to be an apology of the petitioner tendered for the misbehaviour admitted to have been shown by him and Annexure-B is another document where he has admitted about some instances relating to lending machine to the sister of the petitioner. At any rate, they have been admitted in the counter affidavit that the petitioner has not been terminated from the nature of service he was rendering, but he has not been allowed to work in the centre with effect from 24.10.91 due to his conduct and performance of duties. He is required to ascertain as to whether his conduct and performance of work was under any enquiry by the opp. parties at any point of time to which Mr.Rath, learned counsel appearing for the opp. parties on instruction and on perusal of necessary records by him submitted that no enquiry has at all been made against the petitioner prior to or after 24.10.91,. On verification of the Muster Roll it is submitted that for about ten days after 24.10.91 the petitioner was absent and there is nothing to indicate regarding the absence. In the circumstances, we do not find any justification that the petitioner shall not be provided any work subject to the availability of work when his juniors are being provided with work. We, therefore, dispose of the writ application directing the opp. parties to provide the petitioner with work subject to availability keeping in mind that if work is available for his juniors there is no justification for denial of work to the petitioner."

11. According to the Counter, the applicant was engaged from 1.7.1994 after the order dated 19.4.2014 of Hon'ble High Court was passed vide a copy enclosed at Annexure-R/2 of the Counter. From the above order of Hon'ble High Court, it is clear that the applicant was being engaged till 23.10.1991 and he was discontinued from 24.10.1991 on allegation of some misconduct. However, the applicant was not retrenched nor his service was terminated as observed in the order dated 19.4.1994. It was also observed in the aforesaid order that the applicant's name was there in the Muster Roll. With this factual background, Hon'ble High Court directed the respondents to continue to give work to the applicant and this order was duly complied. On the face of these facts, the contention of the respondents that the applicant was not on engagement as on 1.9.1993 and he was continued to be engaged w.e.f. 1.7.2014 after passing of the order dated 19.4.2014 by Hon'ble High Court cannot be accepted since the order dated 19.4.2014 had observed that the applicant's name was there in the Muster Roll and he was being engaged till he was discontinued w.e.f. 24.10.1991 and his service was not terminated. Hence, the applicant would be deemed to be under engagement as a casual labourer as on 1.9.1993 although he was not being given any duty due to reasons mentioned in the order dated 19.4.2014 and after this order, he was continued to be engaged.

12. The respondents have contended that the applicant was not engaged continuously for one year or more prior to 1.9.1993 and this is one of the reason for rejecting the claim of the applicant. It is noticed that in the Additional affidavit, the applicant has enclosed the details of engagement prior to 1.9.1993 as discussed in para 5 of this order. Although the respondents have filed the Reply to the Additional affidavit, the applicant's contention that he had been engaged 358 and 354 days (including weekly off days) during 1989 and 1990 respectively, has not been contradicted by the respondents in their Reply to the Additional affidavits. Clearly, the applicant had been engaged 240 days or more at least during each of the years 1989 and 1990. On the face of these facts, the averments of the respondents in the Counter that the applicant had not been engaged for 240 or more prior to 1.9.1993, should have been corroborated by appropriate documents to substantiate these averments. Hence, the averment in the Counter that the applicant had not been engaged continuously at least for one year as on 1.9.1993, cannot be accepted.

13. Other criterion for availing the benefit of TSS is that the applicant should be continuing in service as on 1.7.2015. The averments in para 4.8 of the OA that the applicant was continuing in service from 1.7.1987, have been denied vide para 18 of the Counter by stating that the applicant was engaged as Casual Farm Worker on 1.7.1994. In view of the findings in the order dated 19.4.2014 (Annexure R/2) of Hon'ble High Court and the information as discussed in para 12 above, we are unable to accept the contentions of the respondents in their Counter in this regard.

14. In view of the discussions above, we are of the considered view that the applicant's seniority should have been deemed to be from 1987 and not from 1994, in view of the clear findings in the order dated 19.4.1994 of Hon'ble High Court and that the applicant was entitled for all the benefits in accordance with the order dated 23.3.2016 (Annexure-1 of the OA) to which his juniors had been allowed. The impugned order dated 12.5.2016 (Annexure-4), rejecting the case of the applicant, is bad in law and hence, we quash the said order dated 12.5.2016 and direct the respondents to confer the temporary status to the applicant as per the order dated 23.3.2016 with effect from the date his juniors were allowed such benefit and to allow all other consequential benefits as per law within four months from the date of receipt of a copy of this order.

15. The OA is allowed accordingly with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

