

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.665 of 2017

Date of Reserve:16.04.2019

Date of Order:05.07.2019

CORAM:

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

1. Brahmananda Sahoo, aged about 38 years, S/o. Late Parikhita Sahoo, At/PO-Junei, PS-Konark, Dist-Puri.
2. Nrusingha Charan Nayak, aged about 34 years, S/o.Batakrushna Nayak, At-Raulapatna, PO/PS-Konark, Dist-Puri.
3. Jogendra Behera, aged about 49 years, S/o. Late Dhaba Behera, At-Kharagan, PO-Junei, PS-Konark, Dist-Puri.
4. Minaketan Satapathy, aged about 45 years, S/o. Laxmidhar Satapathy, At-Kharagan, PO-Junei, PS-Konark, Dist-Puri.
5. Purna Chandra Dalai, aged about 37 years, S/o.Dhadi Dalai, At-Srikanthapur, PS-Konark, Dist-Puri.
6. Sukadev Kandi, aged about 32 years, S/o.Sanatan Kandi, At-Kulisahi, PO-Matiapara, PS-Konark, Dist-Puri.
7. Prasanta Kumar Swain, aged about 31 years, S/o. Manguli Charan Swain, At-Kulisahi, PO-Matiapara, PS-Konark, Dist-Puri.
8. Sarbeswar Behera, aged about 54 years, S/o.Shakti Behera, At-Bagalei, PS-Konark, PO-Sarada, Dist-Puri.
9. Pusparani Mallik, aged about 42 years, W/o.Gangadhar Mallik, At-Karamanga, PO/PS-Konark, Dist-Puri.

...Applicants

By the Advocate(s)-M/s.H.N.Mohapatra
A.Samantaray
A.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Culture, Archaeological Survey of India, New Delhi.
2. Director General, Archaeological Survey of India, New Delhi.
3. Asst.Director, Archaeological Survey of India, New Delhi.

4. Superintending Archaeologist, Archaeological Survey of India,
Bhubaneswar Circle, Samantarapur, Old Town, Dist-Khurda.

...Respondents
By the Advocate(s)-Mr.S.B.Mohanty

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

All the nine applicants claim to have been working as casual labourers on daily wage basis in the Archaeological Survey of India (in short ASI) under the administrative control of Respondent No.4, i.e., Superintending Archaeologist, ASI since more than 12 years and have worked for 240 days in a year continuously. They are aggrieved by the Tender Notice published by the Respondents on 12.10.2017 (A/5) floated by the respondents calling upon the Contractor/Companies/Firms/Agencies for providing manpower at various monuments of ASI, Bhubaneswar Circle. They have therefore, in this Original Application, prayed for the following reliefs:

- i) Let the aforesaid original application be admitted, notice be issued to the respondents and after hearing the parties concerned direct the respondents to allow the applicants to perform the duties similar to Group-D employees and to pay wages @ 1/30th of scale of pay at the minimum Group-D as admissible from time to time as the same benefit have been extended to other similar casual labourers under Annexure-A/2 & A/3 and to quash the tender call notice published by Respondent No.1 for appointment of outsourcing/manpower providing contractors/companies/firm and agencies under Annexure-A/5.
- ii) And allow the aforesaid original application.

2. Facts of the matter in a nutshell are that the applicants have been working as casual labourers prior to 2005-06 and they were being paid wages through wage slips which subsequently was disbursed to them through the Bank. They having completed 240 days in a year, their names are found place in the list under A/1 with a view to allowing them to perform the similar nature of duties as that of Group-D and to grant them wages @ 1/30th of the

pay scale at the minimum Group-D as admissible from time to time. It is their case that some casual labourers have been granted the benefit of 1/30th status in the year 2008 and 2013 vide A/2 and A/3 respectively. According to them, they are entitled to the same benefit with effect from 15.04.2013 when other casual labourers were extended the same benefit. Applicants have submitted that in view of Director General, ASI, New Delhi F.No.98/4/95-Adm.II dated 20.01.1989 issued in pursuance of OM No.49014/89-Estt.(C) dated 07.06.1988 of the Department of Personnel & Training and the subsequent guidelines issued vide F.No.7-1/200-Adm-II dated 27.7.1992, dated 17.4.2009 and dated 11.05.2009, casual labourers who have completed 240 days in a year are eligible to be allowed to perform the similar nature of duties of Group-D and are thus entitled to wages @ 1/30th of the pay scale at the minimum of Group-D as admissible from time to time. While the matter stood thus, the respondents, in order to oust them from the casual service, have floated a tender notice dated 12.10.2017 calling upon the contractors/companies/firms/agencies to provide manpower to their prejudice, which per se is illegal and arbitrary.

3. Respondents have filed their counter opposing the prayer of the applicants. According to respondents, the applicants are working as casual labourers under the Conservation Assistant, Konark sub-circle, Konark against the estimated head and specific work . They are being paid wages as per the rate fixed by the Labour Commissioner (Central) from time to time. The applicants have all through received their wages without raising any objection before the authorities. Respondents have submitted that the circular issued by the DOP&T vide OM dated 07.06.1988 and the circular issued by the ASI, New Delhi dated 07.07.1992 are to get 1/30th status of pay of the minimum of the

relevant pay scale plus dearness allowances for work of eight hours a day as well as the nature of work to be discharged by the casual workers should be the same as regular employees. According to respondents, the applicants were not entrusted to discharge the duty of Group-D employees and as such, they are not entitled to the claim of 1/30th pay at the minimum of the relevant pay scale and other benefits. It has been submitted that Respondent No.4 has allowed/permited those casual labourers to attend the duty of Group-D, presently Multi-tasking-staff(Group-C) who had been engaged on or before 2004-2005 as per need basis according to availability of work and fund position. Further, it has been submitted that a consolidated list of casual labourers has been prepared vide No.3/108/12-Judl.9289 dated 26.03.2013 and only those casual labourers who have been engaged on or before 2004-05 and have completed 240 days of work in a year upto 2011-2012, were allowed to attend the duty of Group-D post. Respondents have pleaded that merely because one casual labour completes 240 days in a year or in 3-4 years that does not mean that he will get 1/30th of scale of Group-D. In order to be engaged as casual labour in regular establishment, names have to be sponsored from the Employment Exchange and in the present O.A. since the nature of work is not permanent/regular and the work comes under the estimated fund, there is no process of selection. Respondents have pointed out that the engagement is being given as per the requirement only. It has been contended that the tender notice dated 12.10.2017 stood cancelled due to administrative reason.

4. We have heard the learned counsels for both the sides and perused the records. In support of their case, applicants have placed reliance on a common order dated 25.06.2017 passed by this Tribunal in O.A.Nos.934, 935 of 2014

and O.A.Nos.23 & 24 of 2015. On a perusal of this order, it reveals that in those OAs the applicants were working as casual labourers under the ASI before 2007-08 and had completed 240 days of work in 2011-12. . As per the Office Memorandum dated 07.06.1988 issued by the Department of Personnel & Training Government of India they were entitled to be paid @ 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 08 hours a day on the grounds that the nature of work entrusted to them was as that of the regular employees. The disputed point for consideration in those OAs was whether the applicants therein were entitled to 1/30th status. This Tribunal vide common order dated 23.06.2017 decided the matter, the relevant paragraphs of which are quoted hereunder:

"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 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 applicants have been included in the Office Order dated 26.03.2013 of the Respondents Organization as casual workers 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 has 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, ASI, 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' and 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 the said 08 casual workers to perform similar nature of duty of Group 'D' and also that they 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 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 conscious decision of the Respondents Department to allow the eligible casual employees to perform duties of a regular employee. The Respondents have not mentioned on which criterian this decision has been taken. It is abundantly clear that it is a conscious decision of the Respondents authorities to allow a casual worker to perform duties of a regular nature. Thereafter, as a consequence in the same order the casual labourer is allowed to be paid at the rate of 1/30th of pay. Therefore, the argument of the Respondents that the prayer of the applicants in this O.A. cannot be allowed because they have not performed the duty of 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 followed as a consequence. The applicants in the O.As working under the Archaeological 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 performed 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 nature why the present casual workers who approached the Tribunal will not be allowed to do so is an issue which the Respondents have 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 reflects that the cases of casual workers who have 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, case of casual workers should be considered and on the ground that the applicants were never entrusted to discharge the work of a regular employee no employee can be ousted from consideration. This is because as articulated in the order the decision to allow a casual worker to perform duties of a regular Group 'D' has been 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 an irregular manner. It is not clear from the submission of the Respondents what are the criteria they have followed in allowing casual workers to do work of regular nature same as that of a Group 'D'. One thing is clear that the claim of the applicants cannot be summarily thrown out. The Respondents need to keep their cases under consideration under suitable criteria for conferring 1/30th status by following the guidelines as the Government as 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 reconsider the matter in the light of the observations made above. The orders impugned in all the O.As are quashed and the matters are remitted to Respondent No.2 for reconsideration, on the basis of observations made above".
5. We have considered the facts of the present O.A. vis-a-vis the fact in the above mentioned OAs decided by this Tribunal vide common order (supra) and found that that the facts in the instant O.A. are quite identical to the facts of those OAs. In view of this, going by the ratio already decided by this Tribunal under similar facts and circumstances, we quash and set aside the impugned tender notice vide A/5 dated 13.10.2017 and accordingly remit the matter to Respondent No.2 for reconsideration on the basis of the observations made above.
6. In the result, the O.A. is thus allowed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

