

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/350/2018

Date of Order: 04.07.2019

Between:

1. Nallaboyina Purnachander Rao, S/o Simhadri
Aged about 26 years, Occ: Casual Labour
R/o 2-53, Near Krishna Temple
Narukullapadu, Guntur District
Andhra Pradesh.
2. Yanamandala Anjana Devi, W/o Veerabhadraiah
Aged about 37 years, Occ: Casual Labour
R/o 11-10-8, Chenchupeta, Tenalinelapadu
Guntur District, Andhra Pradesh.
3. Nallaboyina Ganesh, S/o Shivaiah
Aged about 28 years, Occ: Casual Labour
R/o 1-18, Sarkullapadu, Guntur District
Andhra Pradesh.
4. Nallaboyina Goutham, S/o Sitaramaiah
Aged about 31 years, Occ: Casual Labour
R/o 119, Sarkullapadu, Guntur District
Andhra Pradesh.

.... Applicants

AND

1. The Union of India
Ministry of Culture
New Delhi, Rep. by Secretary.
2. The Archaeological Survey of India,
24, Tilak Marg, New Delhi – 110 011
Rep. by its Director General

3. The Superintending Archaeologist
Archaeological Survey of India
Amaravathi Circle, Babu Museum
Bandar Road, Vijayawada
Andhra Pradesh 520 002.

4. Assistant Superintending Archaeologist
Archaeological Survey of India
Amaravathi Museum
Amaravathi, Guntur District. ... Respondents

Counsel for the Applicant ... Mr. Ch. Ravinder.

Counsel for the Respondents ... Mr. A. Surender Reddy, Addl. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is filed challenging the tender notification floated by the respondents for providing unskilled manpower.

3. Applicants are working for the respondents organisation as Casual Labour since March 2014. However, no order of appointment has been issued to them though they are discharging the same nature of duties as are being discharged by the regular employees. Their daily wages are being paid through Bank accounts maintained by them on the basis of measurement book and attendance register. When applicants represented for temporary status,

respondents issued the tender notification for supply of unskilled manpower. Obviously, the move was to replace them. Aggrieved, the OA has been filed.

4. The main grounds of the applicants are that the issue of tender notification is violative of Articles 14 & 16 of the Constitution of India. It is well settled in law that a casual employee cannot be replaced by another casual employee. Applicants cited the Hon'ble Supreme Court observation in **State of Haryana v Piara Singh** (1992) 4 SCC 118, in support of their cause. Action of respondents is against the tenets of a model employer. Applicants are experienced employees and are local people discharging their duties with utmost devotion and dedication. The nature of work is of regular nature and, hence, their services cannot be terminated abruptly. This Tribunal in OAs 90/2018, 103/2018, 108/2018 has granted favourable interim directions in similar matters.

5. Respondents were given ample opportunities to file the reply statement. Even under the threat of imposing costs on 24.4.2019, respondents did not file the reply. Issue concerns the future of the applicants and, hence, the matter was heard in the interests of Justice.

6. Heard both the counsel and perused the documents placed on record.

7. I) It is an undisputed fact that the applicants are working as Casual Labour in the respondents organisation since 2014 on daily wage basis.

Respondents have filed a tender to replace them by labour supplied by the labour contractor. Learned counsel for the respondents has argued that till date applicants are continuing to work for the respondents and, hence, there is no cause of action to adjudicate on the issue. The very purpose of the tender notification is for supply of unskilled labour. Once the supply is made by the labour contractor, there would be no place for the applicants in the respondents organisation. Hence, the notification of the tender, to replace them by another set of Casual Labour, has to be construed as the cause of action. The tender notification is under challenge in the OA. Consequently, the objection raised does not stand to reason.

II) Besides, applicants have experience and have been working for quiet some years in the respondents organisation which deals with the preservation, display, etc. of priceless artefact. Their expertise would be handy to the respondents. It may cost more to engage such experienced manpower. Learned counsel for the applicants submitted that applicants' request is to continue them on daily wages and that they are not seeking any temporary status or regularisation. In response, learned counsel for the respondents has contended that it is the policy of the respondents to engage Casual Labour through tenders. This Tribunal would not prefer to interfere in policy matters but the law on the subject has also to be upheld. It is a well laid

principle that an ad hoc employee/temporary employee cannot be replaced by another ad hoc or temporary employee, as per the directions of the Hon'ble Supreme Court in

a) **State of Haryana vs Piara Singh** (1992) 4 SCC 118 as under:

“an adhoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.”

b) **Jacob M. Puthuparambil And Ors. vs Kerala Water Authority**

And Ors. on 19 September, 1990 Equivalent citations: 1990 AIR 2228, 1990 SCR Supl. (1) 562

“12. India is a developing country. It has a vast surplus labour market. Large-scale unemployment offers a matching opportunity to the employer to exploit the needy. Under such market conditions the employer can dictate his terms of employment taking advantage of the absence of the bargaining power in the other. The unorganised job seeker is left with no option but to accept employment on take-it-or-leave-it terms offered by the employer. Such terms of employment offer no job security and the employee is left to the mercy of the employer. Employers have betrayed an increasing tendency to employ temporary hands even on regular and permanent jobs with a view to circumventing the protection offered to the working classes

under the benevolent legislations enacted from time to time, One such device adopted is to get the work done through contract labour.”

Applying the principles laid down by the Hon’ble Apex Court, to the case on hand, respondents need to avoid replacing the applicants, who have been doing the job for the last 5 years, by labour supplied by a labour contractor. As long as the work exists they can be engaged on, as is where is basis, with the same terms and conditions of a daily wager. Respondents Organisation, being a model employer, it should not exploit the applicants who have no bargaining power, by replacing them by contract labour. There being extensive unemployment, learned counsel for the applicants has submitted that since they have not been appointed through proper procedure, applicants have reconciled to the fact that they have no locus standi to claim for temporary status or regularisation. Albeit, there is no job security in the present assignment, applicants want to just cling to the same, to eke out a livelihood. Hon’ble Apex Court observation on a similar issue relevant to the case is reproduced hereunder:

c) **Daily Rated Casual Labour v. Union of India**, (1988) 1 SCC 122:

“The government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starvation wages. It may be that the casual labourer has agreed to work on such low

wages. That he has done because he has no other choice. It is poverty that has driven him to that State. The government should be a model employer.”

It is the poverty of the applicants which has forced the applicants to continue on a daily wage basis, though the associated job insecurity is a cliff hanger for them. Replacing applicants with another set of casual labour is not in tune with the philosophy of respondents organisation being a model employer.

III) Another interesting observation made in (26) **Hansbury and Maudsley's Modern Equity**, eleventh Edition at page 753 is relevant and pertinent to the cause of the applicants:

“Thus it is common to speak that the equities of estoppel, of rescission, of rectification of undue influence, of consultation of mortgages to which may now be added the equity arising from the principles that he who takes the benefit must accept the burden, and the list is not exclusive.”

The benefit of using the services of the applicants over the last few years, particularly in an organisation like the respondents organisation where priceless artefact are to be preserved, handled and stored for posterity, it is all the more necessary to have experienced hands and for that the small burden of continuing the applicants on daily wages has to be borne by the respondents. As expositied supra, it is an advantage to the respondents to have experienced Casual Labour *albeit* the applicants will have to continue with no job security.

IV) Therefore, keeping in view the Hon'ble Supreme Court observations cited above, respondents are directed to consider giving preference to the applicants to be engaged as Casual Labour as long as the work exists on a daily wage basis, till they are replaced by regular employees after due process, as per the policy of the respondents organisation. It is made clear that under the garb of this order, applicants cannot claim temporary status or regularisation, unless they are otherwise eligible for the same as per the policy formulations of the respondents organisation in the years to come.

With the above directions, the OA is allowed.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 4th day of July, 2019

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