



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

CALCUTTA BENCH.

O.A. No. - 350/1026/2019. (M.A. 556/2019)

DETAILS OF THE APPLICATION:

PARTICULARS OF THE APPLICANTS:

- 1) Ruhit Tapader, Son of Late Kartik Chandra Tapader, aged about 45 years, residing at 1/14, Netaji Nagar, P.O.- Regent Estate, Kolkata-700092.
- 2) Manas Dey, son of Late B.C. Dey, ^{aged about 48 years.} 1/59A, Ashokanager, Tollygunge, Calcutta - 700040.
- 3) Shambhu Nath Chakraborty, Son of Trina Chakraborty, 2/1A, Vidyasagar Upanibash, Post Office - Bagha Jatia, Calcutta - 700086.
- 4) Ashis Das, Son of Late Bhenindra Nath Shri Haricharan Das, Gorfa Main Road, Saful Para, Calcutta - 700078. ^{aged about 45 years.}
- 5) Sisir Kumar Saha, Son of Late Nagendra Krishna Saha, ⁴⁹ 62, Regent Colony, Calcutta - 700040.
- 6) Narayan Ch Sen, Son of Ganesh Chandra Sen, ^{aged about 48 years.} 28, Deshopran Sashmol Road, Calcutta - 700033.
- 7) Ajoy Kumar Bose, Son of Shri Arun Bose, ^{aged 49} 5/5 Bijoy Garh, Calcutta - 700092.
- 8) Gora Chand Das, Son of Shri Gonga Chandra Das, Post Office & Village Subhes Gram, South 24 Parganas. ^{aged about 44 years.}
- 9) Ashutosh Chakraborty Son of Late Jitendra Chakraborty D/23 Congress Nagar Colony, P.O. Basdroni, Calcutta - 700070. ^{aged about 48 years.}
- 10) Manik Lal Daskhaskel, Son of Late Sudhirkh Daskhal, of 22/1 D.H. Road Calcutta - 700053. ^{aged about 49 years.}

hns

11) ^{chattri} Raju ^{chitter 43 years.} Bahadur, Son of Ram Chandra Bahadur, 14, Barada
Sarani P.O. Haridevpur, Calcutta - 700082.

12) Santu Kumar Das, Son of Laksmi Charan Das, ^{aged about 47 years} Village -
Machinan, Post Office - Gopalnagar, Police Station -
Kolaghat, District - Purba Medinipur, Pin - 721130.

13) Kallal Bose, Son of Late Nitin Bose, 33H Monohar Pukur Road,
Calcutta - 700029.

14) ^{aged about 44 years.} Prabir Seal, son of Late Narandra Nath Seal, 111/B, Rakhal Das
Road, Calcutta - 700033.

15) ^{aged about 44 years} Manik Lal Das, Son of Shri Ananta Kumar Das, 7/63 Netaji
Nagar, Calcutta - 700092.

16) ^{aged about 47 years} Manas Adhikari, Son of Late Dilip Kr. Adhikari, 39, Gobinda
Banerjee Lane Calcutta - 700033.

17) ^{aged about 46 years} Rupan Biswas Son of Late Phonindra Nath Biswas, 78, Regent
Place, Post office Regent Park, Calcutta - 700040.

18) ^{aged about 45 years.} Sunil Kumar Rakshit, Son of Late Shyama Chandra Rakshit
177/6, B.L. Saha Rd. Calcutta - 700053.

19) ^{aged about 44 years.} Palan Kr Haldar Son of Shri Gopal Chandra Halder 91,
Tollygunj Rail Colony, Calcutta - 700033.

20) ^{aged about 44 years} Partha Das, Son of Shri Gopal Das, 21/1, Pitambar Ghatak
Lane, Calcutta - 700027.

21) ^{aged about 44 years} Parimal Roy, Son of Late N.B. Roy 722 232, Sodpur First Lane,
P.O. Haridevpur, Calcutta - 700082.

22) ^{age about 49 years} Swapan Saha, son of Late Shri Monindra Lal Saha, Narua
Panchanantala, Post Office - Chandannagar, Pin - 712138.

hph

23) Jagannath Ganguly, Son of Shri Jyotilal Ganguly, Post Office
Kanchrapara, Village - Barajonepur, North 24 Parganas.
age about 46 years

24) Govinda Munsi, Son of Shri Kolika Munsi 15, Vivekananda Park,
Calcutta - 700070.
age about 49 years

25) Shib Nath Mitra Son of Shri K.C. Mitra 90/7, Dakshin Para, Post
Office- Dum Dum, Calcutta - 700028.
age about 47 years

26) Debdas Roy, Son of Shri Prafulla Roy, 25A, Subas Pally, Regent
Estate, Calcutta - 700092.
age about 49 years

27) Jhantu Das, Son of Shri Satis Das, 8/13, Ne Moors Avenue
Calcutta - 700040.
age about 46 years

28) Arup Adhikary, Son of Late Indu Adhikary, 46, Moore Avenue,
Calcutta - 700040.
age about 46 years

29) Jhantu Seal, Son of Late Bhusen Seal, of 12/C/C, Dharmatala
Road, Bose Pulero (Kasba) Calcutta - 700040.
age about 46 years

30) Panchanan Mondal, Son of Late Duranta Mondal, of Village
and P.O.- Kalikapur, P.S.-Sonarpur, Kolkata-700150.
age about 48 years

31) Juthika Bhattacharya, residing at 49, Gopal Chatterjee Road,
Suk Char, Kolkata-700115.
B/o - late K. P. Bhattacharya aged about 43 years

32) Sailabala Nayak, Son of Late Magu Mallick, of 135/B/1 Sara
Road, Kolkata-700053.
age about 44 years

... Applicants.

-V E R S U S-

PARTICULARS OF THE RESPONDENTS:

haji

- 1) Union of India, service through the Secretary, Ministry of Information and Broadcasting, Government of India, Shastri Bhawan, New Delhi-110001.
- 2) The Director General, Doordarshan, Mandi House, New Delhi-110001.
- 3) The Chief Executive Officer, Prasar Bharti, Broadcasting Corporation of India, Mandi House, Copernicus Marg, New Delhi-110001.
- 4) The Director, Doordarshan Kendra, Doordarshan Bhawan, 18/3, Uday Shankar Sarani, Golf Green, Kolkata-700095.
- 5) The Dy. Director (Engineering), Doordarshan Kendra, Doordarshan Bhawan, 18/3, Uday Shankar Sarani, Golf Green, Kolkata-700095.
- 6) The Section Officer (S-II(A)), The Directorate General, Doordarshan, Mandi House, New Delhi-110001

... Respondents.

(Signature)

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

O.A. 350/01006/ 2019
MA 556/2019

Order dated: 29.07.2019

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Ruhit Tapader & Ors Applicants.

Versus

Union of India & Ors..... Respondents.

For the applicant : Ms. A. Chakraborty, Counsel

For the respondents : Mr. S. Pal, Counsel

ORDER (ORAL)

Per Dr. Nandita Chatterjee, Administrative Member.

The applicants have approached the Tribunal praying for the following relief:

"(a) Office Order No. 28/13/2018/SII(A)/305 dated 01.07.2019 issued by the respondent No.6 is not tenable in the eye of law and as such the same may be quashed.

(b) An order do issue directing the respondents to allow the petitioners to continue their services at the present position and place of posting and thereby releasing salary to the applicants month by month without any disturbance along with all arrears till date with the admissible interest and to grant all the benefits of services attached to the posts which are similar in nature already in the respective cadre of the respondent Kendra.

(c) Such further or other Order or Orders be passed and/or Direction or Directions be given....."

hpb

Applicants have also prayed for the following interim relief:

".....not to give any effect and/or further effect to the impugned Office Order No. 28/13/2018-SII(A)/305 dated 01.07.2019 issued by the respondent No.6 and thereby to allow the applicants to continue at their present posting on regular payments of remuneration and wages."

2. Heard both Ld. Counsel, examined documents on record. Matter is taken up at the admission stage.

3. An M.A. bearing No. 556/2019, arising out of O.A. 1006/2019, has been filed praying for joint prosecution of the matter U/R 4(5)(a) of CAT Procedure Rules, 1987. Having been satisfied that applicants share a common interest and that they are pursuing a common cause of action, the M.A. is allowed and disposed of accordingly.

4. The submissions of the applicants, as canvassed through their Ld. Counsel, are that all the applicants are casual workers in Doordarshan Kendra at Kolkata for the last 20-30 years.

That, some of the applicants, of this O.A. had earlier preferred an O.A. before this Tribunal in 1998, praying for temporary status, which, although allowed by the Tribunal, vide its order dated 07.09.2001, was, thereafter, dismissed by the Hon'ble Apex Court.

That, thereafter, in 2012, some of the applicants had prayed for wages and benefits as extended to some of the persons working in the same capacity, but the Tribunal had turned down their prayer. Their prayer for payment of wages at the same rate was also turned down by the Tribunal. Consequently, the authorities are not paying the applicants wages on regular basis and, that, such

h.h.

wages remain unpaid since March, 2019 onwards and, as because an Office Order was issued on 01.07.2019 by which the Kendra was directed to hire casual labourer through HR agencies, the applicants have approached the Tribunal in the instant O.A. for relief.

5. Ld. Counsel for the Respondents controverts the claim of the applicants by stating that the Office Order dated 01.07.2019 (Annexure-A/5 to the O.A.) is based on a well settled national policy and is not confined only to the Office of Doordarshan Kendra, Kolkata, and, that, the national policy has been initiated for hiring of casual labourers through GeM on the basis of provisions of GFR. The Respondents would contend that such policy, based on the government rules, cannot be challenged by a few casual labourers on frivolous grounds.

Ld. Counsel for the Respondents also furnishes, during hearing, two statements dated 25.07.2019 that show that wages had been remitted to two sets of 7 and 26 casual workers respectively and, hence, the averment of the applicants that they have not been paid their wages since March, 2019 is not factually correct.

6. Ld. Counsel for the applicant would vociferously cite the ratio in Union of India & Ors. Vs. Mahendra Singh & Ors., Special Leave to Appeal (C)...CCNo. 2587/2016, in support, wherein, it has been held by the Hon'ble Apex Court as follows:

"So far as Rule 178 of the General Finance Rules is concerned, suffice to mention that the mode of utilizing services through outsourcing is always available to the petitioners but merely on that count services of the casual labourers already working are not required to be dispensed with. In our considered opinion, the Central Administrative Tribunal, thus,

Leh

rightly directed the petitioner respondent not to remove the respondent original applicants from service by another substituted employees under any guise or cover."

Upon a close reading of the said order, however, it is seen that the Hon'ble Apex Court in Mahendra Singh (supra) had upheld the orders of the Tribunal that had restrained the Respondent authorities not to substitute the original applicants by another set of substitute employees under any guise.

Per contra, Ld. Counsel for the Respondents submits that they have no intention of replacing the applicants by another set of casual workers subject to fulfillment of eligibility conditions and, accordingly, the ratio of Mahendra Singh (supra) is not applicable in the case of instant applicants.

Ld. Counsel for the Respondents further submits that even if the casual labourers are hired through an agency through GeM as per GFR, as government policy mandates that all casual labourers should be paid minimum wages, there is hardly any scope of apprehension that, even if engaged by an outsourced agency, causal workers will not be paid wages mandated by government policy.

7. As the applicants, however, are apprehensive of losing their employment on account of engagement of HR Agency and for non-payment of wages thereafter, we hereby accord the applicants liberty to prefer a comprehensive representation citing rules and judicial decisions, if any, in their support, within three weeks of receipt of a copy of this order. We further direct the concerned Respondent authorities that, in the event such representation is preferred, to examine and dispose of the same within a further period of 12 weeks thereafter. The Respondent authorities, however, shall decide in accordance with law, and,

Chandra

shall abide by the government guidelines, particularly, in the matter of payment of wages with reference to the applicants, if so engaged, subject to their eligibility, through an outsourced agency. Till such time that the representations are disposed of, Respondents may not dislocate the applicants from their present place of engagement.

In the event that no such representation is received within the stipulated time period, however, the Respondents are at liberty to act as per law.

8. With these directions, the O.A. is disposed of. Applicants will pay their individual court fees.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

RK