

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 6564 of 2016

State of Odisha and others

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Petitioners

Mr. J.P. Patnaik, GA

Vs.

Paban Majhi & Anr.

.....

Opposite parties

*Mr. J.K. Khuntia, Advocate
(O.P.1)*

CORAM:

**DR. JUSTICE B.R. SARANGI
MISS JUSTICE SAVITRI RATHO**

ORDER

31.03.2022

Order No.
06.

This matter is taken up through hybrid mode.

2. Heard Mr. J.P. Patnaik, learned Government Advocate for the State-petitioners and Mr. J.K. Khuntia, learned counsel for opposite party no.1.

3. The State-petitioners have filed this writ petition assailing the order dated 30.09.2015 passed by the Odisha Administrative Tribunal, Bhubaneswar in O.A. No. 1541 of 2014 in Annexure-3, by which direction was given by the state petitioners to consider the case of the applicant for conferment of 'temporary status' as per Resolution of the Government dated 04.09.2012.

4. Mr. J.P. Patnaik, learned Government Advocate contended that the direction given by the tribunal to consider the case of the applicant for conferment of 'temporary status' as per Resolution of the Government dated 04.09.2012 is absolutely an outcome of non application of mind and, therefore, seeks for quashing of the same. It is further contended that opposite party no.1 has not

completed 240 days as is required for conferment of temporary status in terms of the Resolution dated 04.09.2012 and thereby the relief sought cannot also be granted to opposite party no.1.

5. Mr. J.K. Khuntia, learned counsel for opposite party no.1 vehemently contended that opposite party no.1 was appointed prior to 12.04.1993 and had also discharged the duty more than 240 days in each year, therefore, the tribunal has not committed any error by directing to consider his case for conferment of 'temporary status' as per Resolution of the Government dated 04.09.2012 and it cannot be faulted with. Therefore, the tribunal is well justified in passing the order, which does not warrant interference by this Court at this stage.

6. Having heard learned counsel for the parties and after going through the records, it appears that the Government of Odisha in Finance Department had passed a resolution on 04.09.2012 framing the scheme for grant of temporary status and absorption of Casual/Daily wage labourers engaged in different Government establishments prior to 12.04.1993 against regular Group D vacancies. Clause-5 (a) of the said Resolution reads as follows:-

*“5. **Scheme for Conferment of 'Temporary Status'** : In order to provide appropriate emoluments and terminal benefit, 'Temporary Status' would be conferred on the casual/daily wage labourers engaged in Government establishments prior to 12.04.1993. Such conferment of 'Temporary Status' would be without reference to creation/availability of regular Group 'D' posts.*

(a) Eligibility:

- (i) To be eligible for conferment of 'Temporary Status' such persons must have been engaged prior to 12.04.1993 i.e., before the imposition of ban on such engagement.*
- (ii) They must have rendered continuous service since their initial engagement. Engagement of at least 240 days in a year shall be construed as a complete year of engagement for this purpose.*
- (iii) Date of initial engagement i.e., prior to 12.04.1993*

and continuity of service shall have to be certified by the concerned Head Office and countersigned by the concerned Heads of Department.”

7. On perusal of such clause, it is clearly evident that in order to provide appropriate emoluments and terminal benefit, ‘Temporary Status’ would be conferred on the casual/daily wage labourers engaged in Government establishments prior to 12.04.1993 and such conferment of ‘Temporary Status’ would be without reference to creation/availability of regular Group ‘D’ posts. To be eligible for conferment of ‘Temporary Status’ such persons must have been engaged prior to 12.04.1993 i.e., before the imposition of ban on such engagement and they must have rendered continuous service since their initial engagement and the engagement of at least 240 days in a year shall be construed as a complete year of engagement for this purpose.

8. The documents, which has been placed on record at page-30 so far as the opposite party no.1 is concerned, is quoted as hereunder.

Sl. No	Name of the Casual / Daily Wage Labourers	Date of Birth	Date of initial Engagement	Period of continuous services prior to 12.04.1993	Caste (SC/ST/ SEBC/ UR)	Remarks
				Year	Days of continuous service	
	1	2	3	4	5	6

02	Paban Majhi	12.05.1970	16.08.1991	1991	118	
				1992	243	
				1993	253	
				1994	278	
				1995	265	
				1996	282	
				1997	242	
				1998	263	
				1999	249	
				2000	258	OBC
				2001	247	

2002	249
2003	198
2004	233
2005	195
2006	203
2007	234
2008-09	210
2009-10	209
2010-11	024
2011-12	86
2012-13	85

9. As it appears, opposite party no.1 has not rendered service for at least 240 days in a year and he has only rendered 118 days in 1991, 198 days in 2003, 233 days in 2004, 195 days in 2005, 203 days in 2006, 234 days in 2007, 210 days during the year 2008-09, 209 days during the year 2009-10, 024 days during the year 2010-2011, 86 days during the year 2011-12 and 85 days during the year 201-13. Therefore, the requirement as per eligibility criteria fixed under Clause-5(a) of the Resolution dated 12.04.1993 has not been satisfied, even though he has been engaged prior to 12.04.1993. Therefore, the Tribunal has committed an error on the face of the record by directing to consider case of the opposite party no.1 for conferment of 'temporary status' as per Resolution of the Government dated 04.09.2012, by treating that opposite party no.1 has worked 240 days per year for the last 10 years continuously. But the fact is totally different as has been evident from the document which has been mentioned above.

10. In view of such position, the direction for conferment of 'temporary status' as per Resolution of the Government dated

04.09.2012 on the plea of completion of 240 days of work in each year cannot have any justification and, thereby the order passed by Tribunal on 30.09.2015, so far as it relates to the applicant in O.A. No.1541 of 2014 cannot sustain in the eye of law. Accordingly order dated 30.09.2015 passed by the Odisha Administrative Tribunal, Bhubaneswar so far as it relates to O.A. No. 1541 of 2014 in Annexure-3 is liable to be set aside and hereby set aside.

11. The writ petition is accordingly allowed.

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(DR. B.R. SARANGI)
JUDGE

Alok/Sukanta

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(SAVITRI RATHO)
JUDGE

