

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 6567 of 2016

State of Odisha and others

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Petitioners

Mr. J.P. Patnaik, GA

Vs.

Markand Dehury & 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.

10

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. 1539 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-31 so far as the opposite party no.1 is concerned, is quoted as hereunder.

Sl. No	Name of the Casual / Daily Wage Labourer	Date of Birth	Date of initial Engagement	Period of continuous service prior to 12.04.1993		Caste (SC/ST/SEBC/UR)	Remarks
				Year	Days of continuous service		
	1	2	3	4	5	6	7
01	Markanda Dehury	04.07.1968	07.04.1986	1986	230		
				1987	248		
				1988	244		
				1989	249		
				1990	247		
				1991	250		
				1992	245		
				1993	248		
				1994	246		
				1995	242	UR	
				1996	245		

1997	244
1998	114
1999	215
2000	173
2001	150
2002	160
2003	139
2004	169
2005	163
2006	142
2007	220
2008-09	246
2009-10	271
2010-11	92
2011-12	NIL
2012-13	8
	(Continuing)

9. As it appears, the opposite party no.1 has not rendered service for at least 240 days in a year and he has only rendered 230 days in 1986, 114 days in 1998, 215 days in 1999, 173 days in 2000, 150 days in 2001, 160 days in 2002, 139 days in 2003, 169 days in 2004, 163 days in 2005, 142 days in 2006, 220 days in 2007, 92 during the year 2010-11, nil days during the year 2011-12 and 8 days during the year 2012-13. 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 the 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.1539 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. 1539 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

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(SAVITRI RATHO)
JUDGE

