

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No. 276/2020,

Original Application No. 277/2020

Original Application No. 278/2020

HYDERABAD, this the 21st day of April, 2022



Hon'ble Mr. Ashish Kalia, Judl. Member

Original Application No. 276/2020

1. Mungamuri Dhanaraju, S/o. Sanjeevarao,
Aged about 36 years, Occ: Casual Labour,
Peedavaghi Temple, Eluru,
R/o.10-10, Kodandarama Nagarcolony,
Jeelakaragudem, West Godavari, AP.
2. Sabavath Bala, S/o.Mathu Naik,
Aged about 30 years, Occ: Casual Labour,
Amaravathi Stupam, Amaravathi,
R/o.3-83, Sailpet, Amaravathi, AP.
3. Shaik Shakeela Begum, W/o. Shaik Rahman,
Aged about 36 years, Occ:Casual Labour,
Amaravathi Stupam, Amaravathi,
R/o.6/37, Amaravathi, Amaravathi, AP.

...Applicants.

(By Advocate: Mr. CH. Ravinder)

Vs.

1. The Union of India,
Rep. by its Secretary,
Ministry of Culture,
New Delhi.
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,
Aurobindo plaza, Door No.6/134-1,
Near Andhra Bank, Kanur main road,
Vijayawada, Andhra Pradesh- 520 007.

... Respondents.

(By Advocate: Mr. D Satyaveer, Sr. PC for CG)

Original Application No. 277/2020

1. L.Vijay Kumar, S/o. Late Lakshmaiah,
Aged about 58 years, Occ: Casual Labour,
At Golkonda Fort, Hyderabad,
R/o. 2-191, Hydershah Kote, SMP Model High School,
Rajendranagar, Ranga Reddi, Telangana.
2. Mohammed Afjal, S/o. Mohammed Kuthbuddin,
Aged about 52 years, Occ: Casual Labour,
At Golkonda Fort, Hyderabad,
R/o. 04-97, Janwada, Janwada,
Ranga Reddy District, TS.
3. Bojamma Mallesh, S/o. Bojamma Pentaiah,
Aged about 48 years, Occ: Casual Labour,
At Golkonda Fort, Hyderabad,
R/o.1-85, Mirjaguda, Janwada,
K.V. Ranga Reddy, TS.
4. Gundu Wara Lakshmi, W/o. Gundu Shankar,
Aged about 30 years, Occ: Casual Labour,
At Golkonda Fort, Hyderabad,
R/o.9-10-13, Gunj, Golconda, TS.
5. Bojana Kumar, S/o.Bojana Mallesh,
Aged about 32 years, Occ: Casual Labour,
At Golkonda Fort, Hyderabad,
R/o.1-85, Mirjaguda, Shankarpally Mandal,
Mirjaguda, Janwada, K.V.Ranga Reddy, TS.
6. Bojana Sushila, S/o. Bojana Mallesh,
Aged about 53 years, Occ: Casual Labour,
At Golkonda Fort, Hyderabad,
1-85, Mirjaguda, Shankarpally MA,
Mirjaguda, Janwada, TS.
7. Chekka Simhachalam, S/o. Mutyalu,
Aged about 45 years, Occ: Casual Labour,
At Golkonda Fort, Hyderabad,
R/o.9-01-333/C/03, Laxminagar,
Langer House, Hyderabad.
8. Pallaveni Rambabu, S/o.Pallaveni Venu,
Aged about 34 years, Occ: Casual Labour,
At Golkonda Fort, Hyderabad,
R/o.9-5-102/02, Ramdevuda, Golconda Fort, Hyderabad.
9. Babu Singh Thakur, S/o. Ganga Singh Thakur,
Aged about 32 years, Occ: Casual Labour,
At Golkonda Fort, Hyderabad,
R/o.9-1-333/C/3/1, Laxminagar, Langer House,
Golconda Fort, Hyderabad.



10. Gujjulola Boya Ramesh, S/o. Gujjulola Buddanna,
Aged about 26 years, Occ: Casual Labour,
At Golkonda Fort, Hyderabad,
R/o. 15-7/1, Near Panchayat Office,
Opp. New Bus stand, Alampur, TS.
11. B.Nagaraju, S/o. Boya Krishnaiah,
Aged about 21 years, Occ: Casual Labour,
At Golkonda Fort, Hyderabad,
R/o.9-1-34/12/9, Babughat,
Langer House, Hyderabad.
12. Kabita Ghosh, W/o. Gopal Ghosh,
Aged about 39 years, Occ: Casual Labour,
At Golkonda Fort, Hyderabad,
R/o.8-1-87/6, Shaikpet, Golkonda Fort, Hyderabad.
13. Mahesh, S/o.Sanju,
Aged about 22 years, Occ: Casual Labour,
At Golkonda Fort, Hyderabad,
R/0.9-1-333/A/7, Laxminagar, Langer House, Hyderabad.
14. Baidla Balraj, S/o.Ramaiah,
Aged about 32 years, Occ: Casual Labour,
At Golkonda Fort, Hyderabad,
R/o.2-77, Mirjaguda, Shankarpalli,
Janwada, K.V.Ranga Reddy, TS.
15. B.Gopi, S/o.B.Kishan Rao,
Aged about 36 years, Occ: Casual Labour,
At Golkonda Fort, Hyderabad,
R/o.13-6-720, Near Dabar Maisamma Temple,
Marati Basti, Karwan, Asifnagar, Kulsumpura, Hyderabad.
16. Allam Sanjeevulu, S/o.Allam Durgaiah,
Aged about 32 years, Occ: Casual Labour,
At Kondapur Fort, Kondapur, Sanga Reddy,
R/o.1-102, Kondapur (V & M),
17. Allam Venkatesham, S/o.Allam Pentaiah,
Aged about 32 years, Occ: Casual Labour,
At Kondapur Fort, Kondapur, Sanga Reddy,
R/o.1-93. Kondapur, Medak.

...Applicants.

(By Advocate: Mr. CH. Ravinder)

Vs

1. The Union of India,
Rep. by its Secretary,
Ministry of Culture, New Delhi.

2. The Archaeological Survey of India,
24 Tilak Marg, New Delhi - 110 011,
Rep. by its Director General.
(email - dg.asi@gov.in)
3. The Superintending Archaeologist,
Archaeological Survey of India,
Hyderabad Circle, Kendriya Sadan,
3rd Floor, 2nd Block, Sultan Bazar,
Hyderabad - 500 095.



(By Advocate: Mrs. B Gayatri Varma, Sr. CGSC)

... Respondents.

Original Application No. 278/2020

1. Rajaboina Kavitha, W/o. Ramesh,
Aged about 36 years, Occ: Casual Labour,
Fort, Warangal,
R/o. Geesugonda Mandal, Dharmaram, Warangal.
2. Mohammed Musthafa, S/o. Mohammed Masthan,
Aged about 27 years, Occ: Casual Labour,
Ramappa Temple, Warangal,
R/o. 15-4-41, Pothananagar, Warangal District.
3. Mohammad Munsif, S/o. Mohammad Hussain,
Aged about 33 years, Occ: Casual Labour,
Ramappa Temple, Warangal,
R/o. 20-10-221, Middle Fort, Muslim Street, Fort, Warangal,
4. Mohammed Ajaz, S/o. Mohammed Khaja Pasha,
Aged about 32 years, Occ: Casual Labour,
Fort, Warangal
R/o. 20-11-3, Fort, Warangal.
5. Bairaboina Sandeep, S/o. Bairaboina Ilaiah,
Aged about 26 years, Occ: Casual Labour,
Fort, Warangal,
R/o. 20-10-24, Yadava Street, Madyakota Fort,
Warangal.
6. Raishetti Srikanth, S/o. Raishetti Sambaiah,
Aged about 26 years, Occ: Casual Labour,
Fort, Warangal,
R/o. 3-112/1, Jangalapalli Mulug,
Incherla, Incherla, Warangal.
7. Tholem Govardhan Rao, S/o. Nagaiah,
Aged about 33 years, Occ: Casual Labour,
Janampeta, Warangal,
R/o. 6-02, Deva Nagaram, Pinapaka Mandalam,

Singireddipalle, Khammam.

8. Md.Saifoddin, S/o. Md.Faheemuddin,
Aged about 20 years, Occ: Casual Labour,
Fort, Warangal,
R/o. 3-57/2, Muslim wada, Venkatapur, Mulugu,
Warangal.
9. Teegala Yashwanth, S/o.Teegala Sridhar,
Aged about 21 years, Occ: Casual Labour,
Janampeta, Warangal.
10. Garimalla Giri Prasad, S/o.Narasimha Swamy
Aged about 21 years, Occ: Casual Labour,
Ramappa Temple, Warangal,
R/o. 12-2-26, SVN Road, Near Venkateswarlu Swamy Temple,
SVN Road, Warangal.
11. Raishetti Dhamodar, S/o.Sambaiah,
Aged about 30 years, Occ: Casual Labour,
Fort, Warangal,
R/o. 3-112/1, Jangalapalli, Mulug, Warangal.
12. Koutam Nagaraju, S/o. Laxmana Swamy
Aged about 30 years, Occ: Casual Labour,
Fort, Warangal,
R/o. 1-75/1, Regonda, Kanaparthi, Warangal.
13. Singaram Raju, S/o.Yellaiah,
Aged about 35 years, Occ: Casual Labour,
Thousand Pillar Temple, Warangal.

...Applicants.

(By Advocate: Mr. CH. Ravinder)

Vs.

1. The Union of India,
Ministry of Culture, New Delhi,
Rep. by its Secretary,
2. The Archaeological Survey of India,
24 Tilak Marg, New Delhi - 110 011,
Rep. by its Director General.
(email - dg.asi@gov.in)
3. The Superintending Archaeologist,
Archaeological Survey of India,
Hyderabad Circle, Kendriya Sadan,
3rd Floor, 2nd Block, Sultan Bazar,
Hyderabad - 500 095.

... Respondents.

(By Advocate: Mr. D Satyaveer, Sr. PC for CG.)



ORAL ORDER**(As per Hon'ble Mr. Ashish Kalia, Judl. Member)**

These Original Applications have been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:



“That this Hon'ble Tribunal may be pleased to declare the tender notification dt. 12.05.2020 & 13.04.2020 as illegal, arbitrary and violative of Article 14 & 16 of the Constitution of India and set aside the same and further declare that the services of the applicants as casual labours cannot be discontinued by engaging other casual employees/temporary employees in their places and consequently direct the respondents to continue the applicants as casual labours in the interest of justice and be pleased to pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.”

2. Since the facts and the question of law involved in all these OAs are similar, they are being disposed of by this common order.
3. The applicants are working for the respondents' organisation as Casual Labour. 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. The applicants are being paid daily wages according to the rates notified by the Ministry of Labour, Govt. of India or by the State Government and their wages were paid directly to their respective bank accounts. It is submitted that, all of a sudden, the respondents have issued impugned tender notifications for supply of manpower and it was informed to the applicants that their services will be replaced by fresh casual labours. Aggrieved over the same, the applicants have approached this Tribunal for redressal of their grievances. They have relied upon the judgment of the Hon'ble Supreme Court in the case of *State*

of *Haryana Vs. Piara Singh [(1992) 4 SCC 118]* and also the order of this Tribunal in *OA No. 350/2018 dt. 04.07.2019*.



4. The respondents state that the applicants were not engaged after following due procedure but were engaged for duties of maintenance of monuments and they cannot be treated on par with the regular staff of the department. The Ministry of Finance, Govt. of India has issued detailed guidelines for directions & Manual for Procurement of Consultancy & Other Services, 2017. In the said guidelines, all the Ministries were directed to engage the manpower through outsourcing agencies. It is submitted that the respondents have issued Notice inviting Tender(NIT) for supply of unskilled manpower for the maintenance of protected monuments. However, the applicants were continued to be engaged, subject to availability of work and till the process of NIT is over. It is further submitted that as per Clause 2 of the Terms and Conditions of the Bid document, all the successful bidder should give preference to the applicants in OA No. 90/2018 along with OA Nos.103/2018, 322/2018, 346/2018, 589/2018, 590/2018 and 1036/2017 vide order dt. 04.07.2019. This will ensure that the applicants were not denied employment. All the bidders participating in the Bid should compulsorily agree to the above said Clause and there is no question of replacing the applicants with another casual employee. The respondents intend to migrate to the outsourcing system without compromising the well being of the applicants. The bid document also makes it mandatory for advance monthly wages payment by 7th of every month to the persons supplied by them. Further, a clause has been kept that the successful bidder has to pay monthly wages for a period

of 3 to 4 months from his own funds to ensure regular payment of wages, even if there is a shortfall in the budgetary allocation of the respondents. Further, the persons who have been deployed by the successful bidder will be brought under the ESI and EPF benefits. Moreover, the successful bidder will be paid only after he transfers the payment to the individuals and the statutory authorities. There were sufficient provisions in the bid document to ensure continuous employment to the applicants, subject to the fitness. The bidders were clearly informed about the orders issued in OA No.350/2018 & Ors. and, therefore, no unfair or arbitrary action has been taken by the respondents. This new system of engaging the employees through outsourcing is, in fact, gives more benefits to the employees engaged through agency than the persons engaged earlier as casual labourers. Therefore, the respondents state that Notice Inviting Tenders(NIT) for outsourcing is done as per the policy of the Government of India. The respondents have prayed for dismissal of the OA.



5. Heard the counsels for the parties at length and perused the pleadings on record.

6. This Tribunal has already dealt with this issue in OA No. 350/2018 dt. 04.07.2019 by taking note of judgment of the Hon'ble Supreme Court in the case of **State of Haryana Vs. Piara Singh** (1992) 4 SCC 118. The operative portion of the said order is reproduced below:

“xxx. 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 ad hoc 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 exposted 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.”

7. It is a settled law that a casual/temporary employee cannot be replaced by another casual/temporary employee. He can only be replaced by a regular employee. After taking into consideration the facts of the case and legal position, this Tribunal is of the view that the respondents may continue with the tendering process but the only rider is that the applicants

shall be allowed to continue in the services with similar or more benefits that can be granted and they shall not be replaced by other casual/temporary employees. It is ordered accordingly.

8. With the above direction, the OA is disposed of without any order as to costs.



/Ram/

(ASHISH KALIA)
JUDICIAL MEMBER