RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

TA/20/3/2017 with MA 20/226/2017
(WP No. 22461 of 2004)

HYDERABAD, this the 23rd day of September 2020

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

Between:

1. B. Sriramamurthy Naidu,
S/o. Sri Appa Rao,
Aged about 28 years, Occ: Casual Labourer,
Telecom Centre, Amudalavasala, Srikakulam,
Resident of 9-4-1975, Sivalayam Street,
Amudalavalasa – 532185.

2. G V S Nagaraju, S/o. Sri Ramadas,
Aged about 34 years, Occ: Casual Labourer,
Telegraph Office, Srikakulam, Resident of Srikakulam.

3. Ch. Trinadha Rao, S/o. Sri Ramamurthy,
Aged about 26 years, Occ: Casual Labourer,
Telecom Centre, Tekkali, Resident of Tekkali.

4. G. Rama Rao, S/o. Sri Appalaswamy,
Aged about 30 years, Occ: Casual Labourer,
Telegraph Office, Srikakulam,
Resident of Srikakulam.

5. Chandan Behara, S/o. Sri Sivaram Behara,
Aged about 31 years, Occ: Casual Labourer,
Telegraph Office, Srikakulam,
Resident of Srikakulam.

6. V. Naga Satya Rao, S/o. late Sri Sanyasi Rao,
Aged about 33 years, Occ: Casual Labourer,
Telecom Centre, Kanchili, Resident of Kanchili.

7. B S V Srinivasa Rao, S/o. late Sri Ramanayya,
Aged about 37 years, Occ: Casual Labourer,
Telegraph Office, Srikakulam,
Resident of Srikakulam.

8. N. Krishna Murthy, S/o. late Sri Suryanarayana Murthy,
Aged about 32 years, Occ: Casual Labourer,
Telecom Centre, Ichapuram,
Resident of Ichapuram.

...Applicants

(By Advocate : Sri V. Venkateswara Rao)

Vs.

1. The Union of India, Rep. by the Secretary to Government,
Department of Telecommunications,
Ministry of Communications & Information Technology,
Sanchar Bhawan, New Delhi – 110 001.

2. M/s. Bharat Sanchar Nigam Limited
(A Government of India Enterprise)
Corporate Office, Personnel-IV Section,
Sanchar Bhavan, New Delhi – 110 001.

3. The Chief General Manager (Telecommunications),
Andhra Pradesh Circle,
M/s. Bharat Sanchar Nigam Limited,
Abids, Hyderabad – 500 001.

4. The General Manager, Telecom District,
M/s. Bharat Sanchar Nigam Limited,
Srikakulam – 532 001.

5. The Sub Divisional Engineer,
Central Telegraph Office,
M/s. Bharat Sanchar Nigam Limited,
Srikakulam – 532 001.

....Respondents

(By Advocate: Mrs. K. Rajitha, Sr. CGSC for R-1
Mr. M.C.Jacob, SC for BSNL)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The TA is about the non grant of temporary status and regularisation of the services of the applicants.

3. Brief Facts with terse sufficiency: This case has a chequered history. Grant of temporary Status followed by regularization of casual labour service is governed in the Respondent's organization as per certain schemes framed by it. One such scheme is of 1988 while another is of 1998. The applicants were initially engaged as causal labourers on different dates in the years 1992 & 1993 for delivery of telegrams and other class IV duties. Though they have worked for 240 days in each year but for the artificial breaks, yet their services were not regularised for the reason that they were engaged after the cut-off date of 22.6.1988 fixed under the scheme of Casual Labourers (Grant of Temporary Status and Regularization) Scheme,1988 (for short "***1988 scheme"***). Before the framing of the second scheme, on the ground of entrustment of the specific job of delivery of telegrams, such task was accomplished through contractors, consequent to which, the services of the applicants were sought to be disengaged. The applicants approached the Tribunal by filing OA 412/1995, which was disposed with a direction to the respondents, to engage them on hourly basis till their representations are disposed of. Accordingly, representations were made on 8.4.1995. Thereafter OA 800/1996 was filed seeking 1/30th of the minimum of pay scale applicable to Group D employees, which was allowed. However, on 12.11.1997, when

the respondents proposed to discharge the applicants, for want of work, OA No.1684/1997 was filed, which was disposed directing the respondents to continue the applicants, if work is available in preference to those required to be engaged from the open market. Besides, respondents were directed to follow the prescribed procedure to terminate the services of the applicants, whenever it is warranted. 3rd respondent issued concurrent instructions resonating with the order of the Tribunal. However, respondents did not re-engage the applicants despite there being work and thereby, in the given circumstances, they had to perforce work under the private contractor, engaged to deliver telegrams received by the respondents. To be precise, the orders of the Tribunal in OA 1684/1997 and the instructions of 3rd respondents were not followed. In fact, the Telecom District Manager, Srikakulam vide letter dated 3.12.1999 sought permission to re-engage the applicants as per orders in OA 1684/1997 but was not permitted and hence, they had to continue to work under the private contractor. It was by this time that the DOT issued guidelines under Grant of Temporary Status and Regularisation Scheme, 1998 (for short "***1998 Scheme"***), stating that those casual labourers continuously engaged after 22.6.1988 and were continuing in service as on 1st October,1998 are entitled for grant of temporary status and regularisation of services. Thus, the cut-off date was changed from 22.6.1988 to 1.10.1998 and later to, 1.10.2000. As the applicants were working as casual/contract labourers attending to delivery work as on 1.10.1998 and thereafter too, yet, their cases for regularization were not considered on the ground of their so called engagement through contractor. The claim of the applicants is that in view of specific order in OA No.1684/1997, they were to be engaged directly by the Department, albeit

not adhered to, they must be deemed to have fulfilled this condition of being on engagement as on 01-10-1998. Thus, OA 469/2002 came to be filed, which was disposed of directing the respondents to extend the same relief as was granted to those vide letter dated 28.3.2001. Respondents examined, but rejected extension of similar relief vide letter 16.7.2003, on the ground that the conditions of 1998 Scheme were not complied with. Aggrieved, OA 899/2003 was filed, but, as by then BSNL was constituted, due to lack of jurisdiction with the Tribunal, the said OA was dismissed. Hence, W.P. No. 22461/2004 was filed before the Hon'ble High Court and, with the notification of enlisting BSNL within the jurisdiction of this Tribunal, the writ petition was got transferred to the Tribunal and thereupon, the case was re-numbered as TA No.3 of 2017 on the file of this Tribunal.

4. The spinal contentions of the applicants are–

(a) The nature of work done by them is the same as is being done by those casual labour who were granted temporary status and their services regularised, the applicants being made to work under a contractor notwithstanding.

(b) Had the respondents religiously complied with the orders of the Tribunal in OA No. 1684 of 1997, this kind of a situation would not have arisen and their services would have long been regularised.

(c) In support of their contentions, applicants relied on the judgments of the Hon'ble High Court of Telangana and A.P as well as that of this Tribunal.

5. Respondents in the reply statement gave the sequence of events as to the initial engagement of the applicants as telegram deliverers on hourly rate basis in 1992/93; their first disengagement from 15-03-1995 and re-engagement on 19-03-1995 in compliance with the orders of the Tribunal in OAs 412 & 585 of 1995; subsequent representations from the applicants and rejection thereof on 28.7.1997 followed by their disengagement from 5.11.1997. The filing of OA 1684/1997 by the applicants and the observation of this Tribunal in its order in the said OA that the applicants are not eligible for regularisation under the 1988 Scheme since it was applicable only to those who were engaged prior to 22.6.1988 and that too, when engaged continuously for a period of 240 days plus they should have been sponsored by the employment exchange, had also been highlighted by the respondents. Thus, the contention of the respondents is that the applicants not having been engaged prior to 1988, which made them ineligible for regularization under the 1988 Scheme and their not having been under direct engagement as on 01-10-1998 to entitle them for regularization under the 1998 Scheme had been the factors reckoned with in denying their claim.

As is seen from the facts, applicants were engaged in 1992 and 1993. The applicants were continued as casual labourers by virtue of the interim order dated 8.12.1997 and the Tribunal directions were to continue them till a decision was taken in regard to regularisation of services of those engaged after 22.6.1998. The petitioners were not engaged after 5.11.1997. Thereafter, applicants filed OA 469/2002 and as per Tribunal orders, the request of the applicants was examined and rejected. Thus, under both the

schemes of 1988 & 1998 applicants are not entitled for grant of temporary status and regularisation of services. Hence, there is no merit in the TA for consideration by the Tribunal.

6. Arguments were heard and documents perused.

7. I. The issue in dispute is about grant of temporary status and regularisation of the services of the applicants. Facts, not being in dispute, obviate debate on facts. OA 1684/1997 filed at the juncture when the respondents proposed to disengage the applicants for want of work by issuing letter dated 12.11.1997, which was disposed by observing on 17.8.1998, as under:

> *" The applicants have been continuing to serve the department by virtue of the interim order dated 18 December, 1997. We feel it proper to direct the respondents not to disengage the applicants till they take a final decision in the matter of regularisation of the casual labourers, who were engaged after 22nd June, 1988. If, in any eventuality, the respondents were to terminate the services of the applicants for want of work or for any other reason, then they shall follow the prescribed procedure of issuing notice and maintain a live register of the retrenched casual labourers in their office and provide work to the applicants, whenever the work is available with the department, as per their turn "*

The above order of the Tribunal is to the extent that the applicants should not be disengaged by the respondents till the respondents take a decision in the matter of regularisation with a condition precedent to termination that if there services are to be terminated then due procedure has to be followed. A live register of retrenched casual labourers has to be maintained so that in case necessity arose to engage casual labourers, the same shall be from the retrenched casual labourers. This, in fact, is in tune with the decision by the Apex Court in the case ***of State of Haryana vs Piara Singh (1992) 4 SCC 118*** Respondent No. 3 acted with full responsibility making it explicit that if the services of the applicants are to be terminated proper

procedure has to be followed. When law requires that particulars material to the facts are to be specifically mentioned, there is not even a whisper in the reply statement about the said order of Respondent No. 3 much less as to whether the directions of the Tribunal have been followed in letter and spirit. Facts, which stare with lucidity, are that termination of the services of the applicants has not been in accordance with the prescribed procedure as mandated in the orders of the Tribunal or that of the 3rd respondent. There are, in fact, no orders of termination filed by the respondents as proof of termination. Hence, it is obvious that the orders of the Tribunal were not adhered to.

II. When questioned, the Ld. Counsel for the respondents, with a view to supporting the contentions of the respondents drew our attention to para 6, of the reply statement, reproduced hereunder,

> *"6. It is submitted that the petitioners have been continued as casual labourers by virtue of the interim order dated 8.12.1997, the tribunal felt it proper to direct the respondents not to disengage the petitioners till they take a final decision in the matter of regularisation of casual labourers who were engaged after 22.6.1998. The petitioners were not re-engaged after 5.11.1997."*

The respondents claim that the applicants were continued as casual labourer by virtue of the interim order of the Tribunal dated 8.12.1997, which in fact, was also observed by the Tribunal in its order dated 17.8.1998. Surprisingly, in the same vein, they contradict this statement by claiming in the very same para that the applicants were not re-engaged after 5.11.1997. In other words, the respondents themselves are not sure as to what they have done to the applicants. Enigmatically this misfeasance of the respondents, apart from being surprising is shocking too, as the

compliance of the order of this Tribunal is more by breach than by adherence, rather qualified to be termed as stultification of the order of the Tribunal. Requisite seriousness was not shown in complying with the order of the Tribunal or in presenting the facts as they should be. Particularly, when the issue involved was about the future career of the applicants involving their bread and butter. Respondents court themselves to contempt proceedings but the applicants did not pursue this remedy. Moreover, instructions issued by the 3rd respondent, have not been denied in the reply statement. There is a well known Yiddish saying that words should be weighed and not counted. It appears that the respondents have not weighed the words of the Tribunal order in terms of their significance but it looks as if they have counted them without assessing their intrinsic value and hence, non compliance is evident.

III. The Ld. Counsel for the applicants submitted that being helpless and to eke out a livelihood, the applicants started working under the private contractor when the orders of the Tribunal in OA 1684/1997 were not complied with. They continued to do so even thereafter and in order not to offend the respondents, contempt was not filed. According to them, there is absolutely no difference in the performance of their duties, their supervision being with the authorities and thus, if the veil of contract is pierced, it would reflect that there has been absolutely no difference between a casual labourer directly working under the department and that working through the medium of the contractor. The need for survival of the applicants as well as their families made them to have soft pedalling and be persuasive to achieve the relief sought. The predicament of the

applicants is well taken, but when a vested right is infringed, the battle has to be fought the way it should be till the end, though the end may end in anything – a success or failure, but the means do weigh.

The above narration depicts that evidently, there is a flagrant infringement of the judicial orders of the Tribunal issued in OA 1684/1997. Even the submissions of the respondents are self contradictory which is ample proof that the respondents have committed a grave error by not complying with the orders of the Tribunal. The error of the respondents should not in any way cause irreparable damage to the cause of applicants seeking grant of temporary status and service regularisation. We take support of the Hon'ble Supreme Court observations in a cornucopia of cases as under, in observing what we did.

> *(i) The Apex Court in **Union of India vs. Sadhana Khanna,** C.A. No. 8208/01, decided on 14.12.2007, held that the mistake of the department cannot recoiled on employees.*
>
> *(ii) In yet another recent case of **M.V. Thimmaiah vs. UPSC**, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.*
>
> *(iii) It has been held in the case of **Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363** wherein the Apex Court has held "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."*

The career of the applicants in terms of grant of temporary status and regularisation of services should not be doomed due to the misfeasance of the respondents in not complying with the orders of the Tribunal in OA 1684/1997, in terms of the above observation of the Hon'ble Apex Court. True to speak, the concerned official who took a decision contrary to the orders of the Tribunal need to be put under the scanner, but it is too late in

the day to direct on the same. We rather felt it proper to right the wrong done to the applicants.

IV. Instead of implementing the orders of the Tribunal, respondents did point out that in para 9 of the OA 1684/1997, the tribunal observed that the applicants are ineligible for regularisation since they were not engaged prior to 22.6.1988. Obviously, question of regularization ante does not arise as the engagement of the applicants is posterior to the earlier scheme. Though they have highlighted the above, conveniently, the respondents have eclipsed the directions mandated to be complied with viz., till the respondents take a decision in the matter the applicants should not be disengaged. What the decision was, when and by whom was it taken, had not been properly placed on record. Therefore, it is apparent that the crucial direction of this Tribunal, to this extent has been given a go-bye. Further, if they are to be disengaged, proper procedure has to be followed. Even the 3rd respondent is reported to have issued similar orders, which were uncared for. Therefore, the main limbs of the judgment namely to continue the applicants till a decision is taken by the respondents and that the services are to be terminated by following procedure have not been adhered to. Hence, taking cover under para 9 of the Tribunal order by the respondents is misplaced and non-contextual. The respondents did not explain in the reply statement, as to what prevented them to terminate the services of the applicants by following due procedure as directed by the Tribunal. Instead, they just stated that they did not re-engage the applicants from 5.11.1997, which is too bald and brazenly violative of the orders of the Tribunal. An administrative order cannot substitute a judicial order as

per law. Hence, the corollary to the theorem of the Tribunal order, is that the applicants are to be deemed to be in the service of the respondents as casual labour, from the date of the interim order of the Tribunal issued on 8.12.1997.

V. Having being denied the benefit of the order in OA 1684/1997, applicants pursued their cause by filing OA 469/2002 wherein the Tribunal disposed the same on 27.2.2003, by directing as under:

> *"4. On going through the letter No R & E /2 (A)/III/49 dated 28.3.2001, it is seen that those persons who were engaged in the department during the period between 21.1.91 to 21.5.94 were disengaged thereafter but they were again engaged by the department and were continuing till the order was issued on 28.3.2001. But it is not clear as to when those persons were re-engaged or in other words, whether they were on the roll of the department as on 1.8.98.*
>
> *5. That being the position, I dispose of this application by directing the respondents to examine the case of the applicants and if it is found that the applicants herein and the persons mentioned in letter No. R&E/2.6 (A)/III/49 dated 28.3.2001 (page 5 of the rejoinder filed by the applicant), are similarly placed, the respondents shall extend the same benefit to the applicants and pass appropriate order within a period of 2 months from the date of communication of this order"*

In the context of the above judgment, we need to adduce that the respondents for not having abided by the orders of the Tribunal in 1684/1997, the applicants are constrained to work as contract labour from 1997 onwards. The question is, can the order of the Tribunal be circumvented in such a manner. It is trite law that, a judicial order has primacy over an administrative order and an administrative authority cannot sit in appeal over such judicial orders. The conditions stipulated in the 1998 scheme are that the casual labourers have to be working continuously from 1.8.1997 and should have completed 240 days of work between 1.8.1997 & 1.8.1998, plus they should continue to do work on 1.8.1998 and onwards. The Ld. Counsel for the applicants has stated that

the applicants have been working for the respondents through the contractor as contract labour, doing similar nature of work as is being done by the casual labour who have been granted temporary status and whose services regularised, for more than the period required and even on 1.10.1998 and thereafter. This fact was not denied by the respondents in the reply statement. Thus, it can be safely concluded that, but for the respondents ignoring the orders of the Tribunal OA 1684/1997, applicants would have been in the service of the respondents continuously from as early as 1992 & 1993 to be considered under 1998 scheme.

VI. To reaffirm the above, the history of the service career of the applicants when gone into, reveals that they have been engaged in 1992 & 1993 and thereafter, they continued to work for the respondents in view of a series of orders of the Tribunal commencing with OA 412/1995 wherein it was directed on 30.3.1995 as under:

> *"The applicants may make a representation to R-2 [viz., The Director, Telegraph Traffic, Telecommunications, Hyderabad] for their engagement as Telegraph men (T-men) on hourly basis. If such representation is going to be made by sending it by RPAD by 17th April, 1995, the same has to be disposed of by R-2. Till the said representation is disposed of, the applicants have to be engaged on hourly basis as Telegraph men at the rates which they were being paid till 19th March, 1995 on production of a copy of this order from the earliest possible date till the representation is disposed of."*

Applicants represented on 8th April 1995 accordingly and things went well. Thereafter OA 800/1996 was filed, which was allowed granting 1/30th of the minimum of Group D scale. Later, applicants were given notice on 12.11.1997, stating that their services would not be required for want of work, but the Tribunal intervened and directed to continue them vide interim order on 18.12.1997 in OA 1684/1997. Final order of disposal of

the OA was on 17.8.1998. Therefore, it is evident that the applicants have been working for the respondents from 1992/93 onwards till respondents did not re-engage them from 5.11.1997 despite Tribunal orders to the contrary. It is well settled in law that the respondents are not empowered to act contravening a judicial order. The order of the Tribunal was not stayed by the orders of a superior judicial forum nor was the order of the Tribunal got vacated. The order of a court, whether good or bad, has to be obeyed. Hence, the administrative decision contrary to the interim order dated 18.12.1997 and the final order on 17.8.1998, would result in chaos and confusion leading to impairment of administration of justice. While stating so, we rely on the observation of the Hon'ble Apex Court in The ***Commissioner, Karnataka Housing Board vs C. Muddaiah*** in Appeal (Civil) No.4108 of 2007 on 7 September, 2007, as under:

> *"31. We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected."*

VII. Besides, Court order once delivered becomes final between parties and they are not permitted to reopen the issue. In the instant case, once the Tribunal has observed in OA 1684/1997 that the applicants shall be continued till a decision is taken and if in case they have to be retrenched then due procedure has to be followed, the observation is binding on both the parties. They cannot toe a line other than what has been observed unless the order is modified or retracted by appropriate legal

proceedings known to law. The unilateral decision of the respondents not to re-engage the applicants from 5.11.1997 is breach of the binding decision between the two parties. Such a breach is contrary to the observation of the Uttarakhand High Court in ***Dhananjay Verma vs State of Uttarakhand & Others*** on 21 May, 2019 in Writ Petition (S/B) No.45 of 2014

> *"24. A decision, which has attained finality, is binding between the parties, and they are not to be permitted to reopen the issue decided thereby. (Supreme Court Employees Welfare Association Vs. Union of India, AIR 1990 SC 334 : (1989 (5) SLR 3 (SC)). Such orders bind the parties in a subsequent litigation or before the same Court at a subsequent stage of proceedings. (Barkat Ali v. Badrinarain, AIR 2001 Rajasthan). An order of a Court/Tribunal of competent jurisdiction, directly upon a point, creates a bar, as regards a plea, between the same parties in some other matter in another Court/Tribunal where the said plea seeks to raise afresh the very point that was determined in the earlier order. (Swamy Atmananda [AIR 2005 SC 2392]; IswarDath Land Acquisition Collector [(2005) 7 SCC 190]. Issues which have been concluded inter-parties cannot be raised again in proceedings inter-parties. (State of Haryana Vs. State of Punjab 2004 (12) SCC 673). "*

In the instant case, interim and the final orders of the Tribunal on 18.12.1997 & 17.8.1998 respectively, are binding on both the parties, and hence, neither can raise something which is contrarian to what has been directed, on a later occasion unless the same has undergone change by due process of law in the appropriate judicial forum. In the case on hand, such a change has not occurred, as is seen from the records. It was the respondents who breached the binding observation of the Tribunal by not continuing the applicants as casual labour as they ought to be. Hence, once again, we find an infringement of the legal principle set out by the Hon'ble High Court as at above, the consequence would then be that the decision not to re- engage the applicants would be invalid in the eyes of law. Applicants have to be deemed to be working for the respondents from 1992/ 1993 onwards directly and indirectly as contract labour.

VIII. We need to also add that a few breaks of few days caused to the service of the applicants, here and there, would not matter since it was the respondents who were taking decisions which were neither fair nor in accordance with rules/ law. Most importantly, in such matters, it is the aspect of substantive justice which has a say and not the technical/ procedural aspect, as observed by the Hon'ble Apex Court in Supreme Court of India in ***State Rep. by Inspector of Police vs M Subrahmanyam*** on 7 May, 2019 in Cr. Appeal NO. 853 of 2019 (arising out of SLP (Crl.) No(s). 2133 of 2019) as under:

> *"9. The failure to bring the authorisation on record, as observed, was more a matter of procedure, which is but a handmaid of justice. Substantive justice must always prevail over procedural or technical justice."*

The fact that the respondents did not comply with the orders of the Tribunal in OA 1684/1997 is not only illegal but also procedurally incorrect. The respondents cannot turn around and state that the applicants were not re-engaged after 5.11.1997 and therefore, procedurally would not come under the ambit of the 1998 Scheme, which is unsustainable. They cannot be permitted to encash their own mistake as has been held in A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust, (2010) 1 SCC 287 and in Rekha Mukherjee v. Ashis Kumar Das, (2005) 3 SCC 427, wherein it has been emphatically held in para 36 –

> *"The respondents herein cannot take advantage of their own mistake."*

The due procedure was to implement the order of the Tribunal. On grounds of procedural inaccuracy, injustice cannot be done to the

applicants and the Tribunal when seized of the issue cannot be a silent spectator. Albeit, respondents faltered, the substantive aspect, which holds the ground is that the judicial order being in favour of the applicants in OA 1684/1997, they need to be considered to be notionally in service from the date of the interim order issued on 18.12.1997. It is this substantive aspect, which holds the ground. Some minor breaks for a few days are to be ignored as they are procedural in nature because the Tribunal has been holding over the years that the applicants have something substantive on their part to be continued in the respondents' organisation. Records appended substantiate this aspect. As for instance the Telecom District Manager, Srikakulam in his letter dated 3.12.1999 (Annexure A-II) has clearly stated that based on the monthly expenditure incurred on delivery of telegrams, there is continuous work. Besides, mazdoors/Coolies working in telegraph offices have been continued except in Srikakulam. The Chief General Manager vide Annexure A-III dated 10.7.2001, referring to OA 1625/2000 has directed the G.M, Anantapur that since the applicants have been working for 6 hours a day since last 6 years they be treated as part-time casual labour instead of getting work done through them by entering into individual contracts. In Para 4 of this Tribunal order in OA 469/2002, it was observed that some other persons engaged between 1991 and 1994 were disengaged and re-engaged later. The respondents have not explained as to why applicants in the instant case were not re-engaged despite there being a court order favouring the applicants to continue them, if there is work. The letter of the GM, Srikakulam cited confirms that there was work and that mazdhoors in Telegraph offices were continued excepting Srikakulam and further in one another letter dated 24.3.2003 addressing

CGM (Annexure A-VII) he does mention that the applicants have not been engaged despite the letter of CGM not to disengage the applicants vide letter TA/LC/5-309/97, dtd. 9/98 which was issued based on orders of the Tribunal in OA 1684/1997. Hence the above correspondence does make it evident that there was work and the applicants were discriminated along with overlooking of the Tribunal orders cited.

IX. The above are all legal issues but then, the spinal issue is whether the claim of the applicants is in tune with the law on the subject and they are, in fact, entitled to the claim they have made i.e. regularization. For this, one method is to ascertain whether the applicants are similarly situated to those whose services were regularised vide letter dated 28.3.2001 under 1998 scheme, as directed in OA 469/2002. Respondents have submitted that the employees figuring in the cited letter were engaged by the General Manager, Khammam between 1991 and 1994 as part time casual labourers and they worked without a break. They were continued and converted into full time casual labourers on 15.5.1997. Thereupon, they continued to work so, till they were granted temporary status w.e.f. 9.6.2000 on 28.3.2001. The question is whether such a procedure would have been followed in the case of the applicants as well, if only the respondents had not illegally terminated their services despite the specific court order. In the instant case, the applicants had been working from 1992 and 1993 till 5.11.1997. However, the decision of not re-engaging the applicants after 5.11.1997 was found to be legally invalid as at above, and thus, but for the fact of illegal termination and stultification of the order of this Tribunal, the applicants too would have been placed at

the very same pedestal as of those in OA 469 of 2002 and since the misfeasance of the respondents cannot dwarf the rights of the applicants, judicial intervention is justified to hold that the applicants are construed to be continuing in the service of the respondents, even be it notionally, complying with the requirements of the 1998 scheme. Therefore, the applicants are said to be similarly placed as those who figure in the letter dated 28.3.2001 referred to by the Tribunal for grant of the relief sought. Hence, the respondents have erred in not granting temporary status and regularisation of the services of the applicants in terms of the orders of this Tribunal in OA 469/2002, by misinterpretation of facts and in violation of law.

X. Further, the judgment relied upon by the applicants rendered in Review W.A.M.P. No.190 of 2015 in W.A. No. 2560 of 2006, which is extracted here under, squarely applies to the case of the applicants since the plea of the appellants therein was on grounds of being similarly placed with those in the districts whose services were regularised and the same was upheld by the Division Bench of the Hon'ble High Court of Telangana & A.P. On review, the order of the Division Bench was set aside to the extent of deemed regularisation of the services of the appellants from 1.7.2007 but the order did not preclude the review petitioners from considering the case of the respondents- appellants, for regularisation of their services, in accordance with the law. Orders granting temporary status were issued on 6.7.2017 by the respondents to the concerned employees as per directions in the review petition. Applicants in the instant case are similarly placed to those who were indicated in the letter dated 28.3.2001 as well as to those

similarly situated like those who have been granted temporary status and whose services regularised under the 1998 Scheme of the respondents, as was brought out in the above paras. The order in Review W.A.M.P. No.190 of 2015 in W.A. No. 2560 of 2006 reads thus:

> *"In the order under review, the Division Bench had observed that the plea of the appellants, that employees similarly situated as those in other districts of the State of Andhra Pradesh had been conferred with temporary status and they were regularised in service, remained unrebutted; in fact, this was admitted in the counter affidavit itself; and therefore, the appellants were entitled to be extended the benefit, may be with effect from different dates.*
>
> *While allowing the writ appeal , and setting aside the order of the learned Single Judge, the Division Bench directed that the appellants shall be deemed to have been converted from part –time casual labourers to full time casual labourers, and then be conferred with temporary status from 30.6.2004; they shall also be deemed to have been regularised with effect from 1.7.2007; however, they shall not be entitled to any arrears of salary on account of such measure; and they shall be paid salary as regular employees only with effect from 1.11.2014.*
>
> *xxx temporary status was directed to be granted to the respondents – appellants, does not necessitated review. The earlier order of the Division Bench, to the limited extent that the appellants were deemed to have been regularised with effect from 1.7.2007 is set aside. It is made clear that this order shall not preclude the review petitioners from considering the case of the respondents – appellants, for regularisation of their services, in accordance with law. "*

The OA 250/2017, relied upon by the applicants, was allowed based on the decision of the Hon'ble High Court in WAMP No.190/2015. Hence, it fortifies the case of the applicants further. Both the verdicts cover the case of the applicants and hence, are binding as per judgment of the Hon'ble Supreme Court in ***Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644***.

XI. Before, we part; it must be observed that there have been different shades of arbitrariness exhibited by respondents in dealing with the issue for nearly 3 decades. It is not out of place that the respondents are

bound to act in a fair & reasonable manner and in accordance with the rules which are congruent to law. We find that the respondents were not fair in dealing with the applicants when we journeyed through the historical facts of the case as was brought out in paras supra. The right of the applicants to continue as casual labourers has been adversely affected by the respondent's executive action of ignoring the orders of the Tribunal in OA 1684/1997 and that of the 3rd respondent. The implied obligation to take a fair administrative decision by not discriminating the applicants from those who were named in letter dated 28.3.2001 was not met, as elucidated supra. Applicants were reasonably anticipating that the respondents would comply with the Tribunal orders cited, which is the sine qua non of fairness. Alas, it was not to be. In addition, respondents have caused uncertainty to the cause of the applicants albeit the Tribunal over the years was making it crystal clear that the scales of justice were inclining towards the applicants. The reply statement was devoid of justifiable reasons for the uncertainty displayed on the issue which required decisive action, in consonance with the directions of the Tribunal. On the contrary, respondents' arbitrary decisions, not backed by law, has denied the legitimate benefit. It must be remembered that arbitrariness and discrimination combinedly would lay the foundation for decisions to be taken differently for similarly placed employees, as we have seen in the instant case. Adding fire to fuel, a collusion of arbitrariness and discrimination would infuse profound uncertainty in decision making process. Such uncertainty in decision making process has to be obviated, at any cost and any rate. In the case on hand, there was no uncertainty looming large on the issue in question, since the Tribunal was coming up with explicit orders every time the issue

cropped up before it. Sadly, such uncertainty was ushered in by the respondents, though not required for reasons explained. The above decision is after a thorough rumination on the issue involved and taking full support from the lucid observation of the Hon'ble Apex Court in ***Asha Sharma v. Chandigarh Admn., (2011) 10 SCC 86 : (2012) 1 SCC (L&S) 354***, as under, while observing what we have in the above lines

> *"14. Action by the State, whether administrative or executive, has to be fair and in consonance with the statutory provisions and rules. Even if no rules are in force to govern executive action still such action, especially if it could potentially affect the rights of the parties, should be just, fair and transparent. Arbitrariness in State action, even where the rules vest discretion in an authority, has to be impermissible. The exercise of discretion, in line with principles of fairness and good governance, is an implied obligation upon the authorities, when vested with the powers to pass orders of determinative nature. The standard of fairness is also dependent upon certainty in State action, that is, the class of persons, subject to regulation by the Allotment Rules, must be able to reasonably anticipate the order for the action that the State is likely to take in a given situation. Arbitrariness and discrimination have inbuilt elements of uncertainty as the decisions of the State would then differ from person to person and from situation to situation, even if the determinative factors of the situations in question were identical. This uncertainty must be avoided."*

Lastly the respondents submitted that the case has no merit but it is not for the respondents or the applicants to come to a conclusion in tandem to their expectations, as observed by Hon'ble Apex Court in ***Charan Lal Sahu vs Union of India, AIR 1990 1480*** as under:-

> *"as said by Lord Denning in* ***Jones v. National Coal Board*** *- let the advocates one after the other put the weights into the scales — the 'nicely calculated less or more' — but the judge at the end decides which way the balance tilts, be it ever so slightly. This is so in every case and every situation."*

The weights have been put in the scales one after the other by both the sides and now it is for the bench to decide. We decide that the balance has tilted towards the applicants not slightly but considerably. Therefore, in

view of the aforesaid circumstances, we declare that the TA fully succeeds. Consequently, the impugned order 16.7.2003 is quashed and set aside. After doing so, we direct the respondents to consider as under:

i. Regularise the services of the applicants as per the 1998 Scheme from the dates they are respectively eligible in accordance with the relevant rules and as per law.

ii. No back wages to be paid from the dates of regularisation as ordered at (i) above.

iii. Save back wages, other benefits viz., Notional seniority from the dates of regularisation and other direct and proximate consequential benefits that flow from the grant of notional seniority be granted as per rules and law.

iv. Time allowed to implement the judgment is six months from the date of receipt of this order. This long time is granted as implementation of this order may result in redrawing of seniority and calling for objections from any of those who might be affected by such redrawing of seniority.

With the above directions the TA is allowed to the extent indicated. MA 226/2017 accordingly stands disposed. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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