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Date of decision : January 27, 1988.

Sri Madha Patra son of Sarathi Patra,
Daily Rated Mazdoor (Casual Mazdoor)
under the Assistant Engineer, Trunks,
Office of the D.E. Phones, Cuttack.
At-Telephone Bhawan, Bajrakabati Road,
Cuttack. ...

.. Applicant.

Versus

1. Union of India, represented through General Manager, Telecommunication, Orissa Circle, Bhubaneswar.
2. Telecom District Engineer, Cantonment Road, Cuttack.
3. Assistant Engineer, Trunks, At-Telephone Bhawan, Bajrakabati Road, Cuttack.
4. Sub-Divisional Officer, Phones, At-Cantonment Road, Cuttack-1.

.. Respondents.

For the applicant ... M/s.A.K.Bose, &
P.K.Giri, Advocates.

For the respondents ... Mr.A.B.Mishra, Senior Standing Counsel
(Central)

C O R A M:

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

K.P.ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985 the applicant prays to be permanently absorbed in Group D cadre in the Telecommunication Department and it is further prayed that the respondents be directed to publish a gradation list of all casual labourers under its administrative control and so also for implementation of the recommendation of the 4th Central Pay Commission in regard to payment of wages etc. to the applicant.

2. Shortly stated, the case of the applicant is that the applicant was a daily rated Mazdoor (Casual Mazdoor) working under the Assistant Engineer, Trunks attached to the Office of the Divisional Engineer, Trunks, Cuttack and after having worked as such for some time, the services of the applicant have been terminated and no work is being given to him. The grievance of the applicant is that according to the guidelines issued by the Government of India contained in Annexures-5 & 6 it was incumbent upon the respondents to give work to the applicant on daily wage basis and furthermore he should have been absorbed as a regular Government servant having discharged his duties as a casual Mazdoor for a continuous period of 240 days. Further case of the applicant is that on this account he had made a representation before his higher authorities which is still pending consideration and six months having elapsed the applicant had no other alternative but to approach this Bench for redressing his grievance.

3. We have heard Mr. A.K. Bose, learned counsel for the applicant and Mr. A.B. Mishra, learned Senior Standing

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Counsel (Central) at some length. We cannot say that the applicant should be absorbed as a regular Government servant because suitability, efficiency, competency, honesty etc. has to be adjudged by the competent authority. But we may say that after adjudging the suitability etc. of the applicant and keeping in view the observations made by Their Lordships in a judgment reported in AIR 1986 S.C.584 (Surinder Singh and another v. The Engineer in Chief, C.P.W.D. and others) and also taking into consideration the judgment passed by this Bench in Transferred Application No.319 of 1986 disposed of on 17th November, 1986, the representation pending before the Respondent No.1, General Manager, Telecommunications, Orissa Circle, Bhubaneswar be disposed of within two months from the date of receipt of a copy of this judgment. In the case of Surinder Singh and another v. The Engineer in Chief, C.P.W.D. and others (supra) Their Lordships were pleased to observe as follows :

" We also record our regret that many employees are kept in service on a temporary daily-wage basis without their services being regularised. We hope that the Government will take appropriate action to regularise the services of all those who have been in continuous employment for more than six months. "

We have followed the views of the Hon'ble Supreme Court laid down in this judgment while delivering our judgment in Transferred Application No.319 of 1986 disposed of on 17th November, 1986. Very recently there has been another pronouncement made by the Hon'ble Supreme Court in a case reported in AIR 1987 SC 2342 (Daily Rated Casual Labour employed under P & T Department through Bharatiya Dak Tar Mazdoor Manch v. Union of India and

others). In the said judgment Hon'ble Mr. Justice Venkataramiah speaking for the Court was pleased to observe as follows :

" The allegation made in the petitions to the effect that the petitioners are being paid wages far less than the minimum pay payable under the pay scales applicable to the regular employees belonging to corresponding cadres is more or less admitted by the respondents. The respondents, however, contend that since the petitioners belong to the category of casual labour and are not being regularly employed, they are not entitled to the same privileges which the regular employees are enjoying. It may be true that the petitioners have not been regularly recruited but many of them have been working continuously for more than a year in the Department and some of them have been engaged as casual labourers for nearly ten years. They are rendering the same kind of service which is being rendered by the regular employees doing the same type of work. Clause (2) of Article 38 of the Constitution of India which contains one of the Directive Principles of State Policy provides that " the State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations". Even though the above Directive Principle may not be enforceable as such by virtue of Article 37 of the Constitution of India, it may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination. It is urged that the State cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. We are of the view that such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starving 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. We are of the view that on the facts and in the circumstances of this case the classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to employees in the corresponding regular cadres particularly in the lowest rungs of the

department where the pay scales are the lowest is not tenable. The further classification of casual labourers into three categories namely (i) those who have not completed 720 days of service; (ii) those who have completed 720 days of service and not completed 1200 days of service; and (iii) those who have completed more than 1200 days of service for purpose of payment of different rates of wages is equally untenable. There is clearly no justification for doing so. Such a classification is violative of Articles 14 and 16 of the Constitution. It is also opposed to the spirit of Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966 which exhorts all States parties to ensure fair wages and equal wages for equal work. We feel that there is substance in the contention of the petitioners. "

We have directed the applicant to file another copy of the representation along with a copy of our judgment passed in Transferred Application No.319 of 1986 before the General Manager, Telecommunications, in order to enable him to dispose of the representation which is pending before him. Such representation would be filed before him by the applicant within fifteen days from today.

4. It was submitted before us by Mr. Bose that the applicant is now moving with begging bowls and is unable to sustain his livelihood because no work is being entrusted to him now. We feel inclined that in these hard days the applicant is striving hard for his bread and butter. We hope and trust the General Manager, Telecommunications would give appropriate direction to his subordinates to take a compassionate view on the applicant and try to give him some work, if possible, as a casual Mazdoor so as to sustain his livelihood pending final disposal of the representation pending consideration of the General Manager, Telecommunications, Orissa.

5. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

[Signature]
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Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

g agree.

[Signature]
.....27.1.88.....
Vice-Chairman

Central Administrative Tribunal
Cuttack Bench : Cuttack.
January 27, 1988/S.Saranghi.