

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 439 OF 1989

Date of decision: 24.4.92

VALLAIAH AND OTHERS APPLICANTS
VERSUS

UNION OF INDIA AND OTHERS RESPONDENTS

For the applicant : M/s Ganeswar Rath, P.K. Mohapatra,
A.K. Patnaik, Advocates
For the Respondents : Mr. Ashok Mohanty, St. Counsel.

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CORAM:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN

AND

THE HONOURABLE MISS. USHA SAVARA, MEMBER (ADMN.)

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not?
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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For the Respondents Mr.Ashok Mohanty, Sr.Standing
Counsel (Railway Admn.)

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A N D

THE HON'BLE MESS. USHA SAVARA ,MEMBER (ADMN.)

J U D G M E N T

K.P.ACHARYA, V.C. In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioners (37 in number) pray to quash the order of retrenchment/termination of their services as per annexure 1 series and to regularise the services of the Petitioners in their respective posts and to treat them as regular employees with effect from their respective dates of working as Gangman.

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2. Shortly stated the case of the Petitioners is that they were working as Casual labourers under the Opposite Parties in open line from the year 1961 till 1989, in C.P.C. scale and have worked more than 1000 days. The services of the Petitioners having been terminated they invoked the jurisdiction of this Bench by filing an application under section 19 of the Administrative Tribunals Act, 1985 which formed subject matter of Original Application Nos. 284, 286, 321 and 322 of 1987 challenging the order of termination. In Original Application No. 284 of 1987, the Present petitioners were not parties but the Petitioners in those cases were similarly situated and their prayer was the same as in the case of the present petitioners in the other Original Applications. All these original applications were heard analogously and this Bench directed the Opposite Parties to prepare a divisional-wise seniority ^{list} of the casual labourers and absorb ~~be~~ them on regular basis taking into consideration their respective seniority. The Petitioners were again employed with effect from 30th June, 1988 and their services were terminated on 20th October, 1988. Being aggrieved by this order, the petitioners again preferred an application under section 19 which formed subject matter of Original Application No. 338 of 1988. The Bench passed an interim order directing the Opposite Parties not to terminate the services of the Petitioners in Original application No. 338 of 1988 and after hearing both the parties on the merits of the case, directed the Opposite Parties to prepare a seniority list and absorb ~~be~~ the Petitioners on regular basis. The judgment passed in O.A. 248 of 1987 was carried to the Hon'ble Supreme

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which formed subject matter of Special Leave Petition No.9297 of 1983. The Present petitioners did not carry the matter to to the Hon'ble Supreme Court. Hence this application has been filed with the aforesaid prayer.

3. In their counter, The Opposite Parties maintained that the Petitioners have not worked for morethan 1000 days though they have completed 120 days of service and they are entitled to certain benefits like passess, leave and free medical treatment. There are large number of casual labourers, who are senior to the applicants and waiting for their term for absorption. The free nature of their recruitment being intermittent and for a particular purpose their services got retrenched soon after their requirements for the said period is over. The grievance of the Petitioners alongwith others having been finally adjudicated in Original Application Nos. 284,285,321 and 322 of 1987, the principle of resjudicata operates against the Petitioners and therefore, the case is liable to be dismissed.

4. We have heard Mr. Ganeswar Rath Learned Counsel appearing for the Petitioners and Mr. Ashok Mohanty learned Senior Standing Counsel for the Opposite Parties. Mr. Ganeswar Rath learned Counsel for the Petitioners relied upon a judgment of the Hon'ble Supreme Court reported in AIR 1991 SC 26 (Catering Cleaners of Southern Railways V. Chief Commercial Superintendent, Southern Railway). In paragraph 3 of the judgment Their Lordships were pleased to observe as follows:

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" We are, therefore, of the opinion that in the matter of absorption and making the Petitioners departmental employees, there has been no disobedience of the order of this Court. As regards the question of regularising the petitioners in the sense of giving them a permanent status in employment, it has been pointed out by the learned Counsel for the respondent and in our opinion rightly, that the question of making a particular employee permanent will arise only after a permanent post has become available. Learned Counsel for the respondent has stated that all such petitioners who have been given temporary status and are being paid regular salary as such shall be made permanent in due course. In this view of the matter, no further direction is needed. However, to make it sure that none of the petitioners is prejudiced in future, it is made clear that till they are made permanent or till they retire the services of none of the employees falling in the category stated above shall be terminated except in a case where it becomes necessary on account of some departmental exigency".

5. The Petitioners before Their Lordships were also Casual Labourers. Mr. Rath contended that the dictum laid down by their Lordships in the above judgment, should be followed by this Bench. On the other hand it was contended by Mr. Mohanty learned Standing Counsel (Central) that it is no longer open for the Petitioners to re-agitate the same issue as principle of resjudicata operates against the Petitioners, and it was further contended that the principles **Laid down by Their** Lordships in the above mentioned judgment have no application to the facts of the present case.

6. After giving our anxious consideration to the argument advanced at the bar, we find that the Petitioners in Original Application No. 284 of 1987 who are placed in similar circumstance and had similar grievance had carried the matter to the Hon'ble Supreme Court which forms subject matter of Special Leave to Appeal No. 9297 of 1983. Therefore, it cannot be said that the issues for determination being

similar in nature in both the cases have been finally adjudicated, so that section 11 of the Code of Civil Procedure could be attracted, because those issues still remain pending for determination by the Hon'ble Supreme Court. Hence we find no merits in the aforesaid contention of Mr. Mohanty. While admitting the Special Leave Petition, the Hon'ble Supreme Court vide order dated 19th September, 1988 have passed the following order:

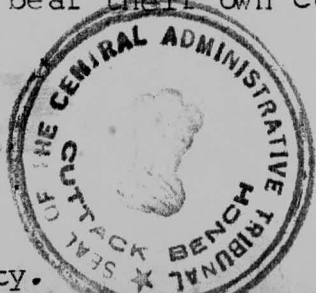
" Issue notice returnable on 13.10.1988. The service of the Petitioner shall not be terminated until further order. The matter is adjourned to 13.10.88"

7. It is neither the case of the Opposite Parties nor it was stated at the Bar that by either the stay order has been vacated or the appeal has been ^{disposed} ~~dismissed~~ by the Hon'ble Supreme Court. Following the interim order, passed by the Hon'ble Supreme Court and in view of the judgment laid down by Their Lordships in the case of Catering Cleaners of Southern Railways (Supra), we would direct that the services of the Petitioners should not be terminated till the disposal of the case before the Hon'ble Supreme Court and orders passed by the Hon'ble Supreme Court in the said case will govern the present case and in case the order of termination has been made effective, the Petitioners should be reinstated to their services and the Petitioners will not be entitled to any backwages.

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

K. Mohanty

 MEMBER (ADMINISTRATIVE)



K. Mohanty
 24.4.92

 VICE CHAIRMAN