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M/S S. K. Nayak - 1
A. B. Beral
K. Pal
Rev
J. K. Khushn
S. K. Nayak - 3

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

O.A./T.A./B.A.No. 350 1993

..... *Kishore Chandra Panda* Applicant (s)

Versus

..... *Union of Indianers* Respondent (s)

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1.	16.7.93	<p>We have heard Mr.S.K.Nayak learned counsel for the petitioner on the question of admission. Since Mr.B.Pal learned Standing Counsel (Railway) was present in court, we had requested him to render necessary assistance to this Bench. We have also heard Mr.Pal.</p> <p>Here is a case where the petitioner Shri Kishore Chandra Panda has been working ^{on casual basis} in the Engineering Department from 4.7.1967 to 29.2.1968 and then from 8.7.1969 to 23.3.1970. He has been rendering service at different spells from 1968 till today and the total number of days exceed about 700 days. This statement is contained in Annexure 1 which has been attested by the Station Superintendent, South Eastern Railway, Khurda Road. We are surprised as to how the dictum laid down by Their Lordships in a plethora of judicial pronouncements directing preparation of a scheme and fixing the seniority of the casual labourers and regularly absorbing the casual labourers has not been affected, In the present case if ^{it is} correct as submitted _{by} by Mr.Nayak learned counsel appearing for the petitioner. We are in complete agreement with the submission of Mr.Pal that unless the version of the Departmental authorities are heard, it would not be possible to</p>


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		<p>come to a conclusion regarding the reason for which the aforesaid procedure has not been adopted, if not already adopted. Therefore, at this stage, we refrain ourselves from express any opinion.</p> <p>We have no doubt in our mind, in view of the Annexure 1 that the petitioner had rendered service as a casual labourer at different intervals with effect from 4.7.1967 and it is submitted by Mr. Nayak learned counsel appearing for the petitioner that the petitioner is still working till today and he apprehends termination of service perhaps by the sun set of this day. Hence a restraint order has been prayed for. Though Mr. Nayak strenuously urged before us that keeping in view the contents of Annexures 3 and 5 that there is heavy load of work for the past several years and abruptly such work cannot cease to exist yet the petitioner should not be disengaged. In this connection Mr. Nayak relied upon a judgment of the Hon'ble Supreme Court reported in AIR 1992 SC 2130 (State of Harayana and others Vs. Piara Singh and others) Their Lordships in the concluding portion of the paragraph 25 of the judgment were pleased to observe as follows:</p> <p>"So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do</p>

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		<p>commend the orders of the Government of Haryana (contained in its letter dated 6.4.90 referred to hereinbefore) both in relation to workcharged employees as well as casual labour."</p> <p>In the present case from the records, we find that the petitioner has been employed since July, 1967 and has been working till today as submitted by Mr. Nayak.</p> <p>At the cost of repetition we may say Annexure 1 contained in the working days of the petitioner from 4.7.1967 to 30th September, 1989 with intermittent breaks has been certified to be correct by the Station Superintendent, South Eastern Railway, Khurda Road.</p> <p>Therefore, in our opinion a presumption arises in favour of the petitioner that work is available and under such circumstances, we would say that following the dictum laid down by Their Lordships, ^{that} the petitioner should not be disengaged and work should be given to him. We would also point out the observations made by Their Lordships in another case reported in AIR 1990 SC 883 (Bharwad Distt. P.W.D.L.D.W Asscn. V. State of Karnataka) ^{Hon'ble} Mr. Justice Ranganath Mishra, the Hon'ble Chief Justice of India speaking for the Court at paragraph 23 of the judgment was pleased to observe as follows:</p> <p>" We can well realise the anxiety of the petitioners who have waited too long to share the equal benefits mandated by Part IV of the Constitution in respect of their employment. At the same time, we cannot overlook the constraints arising out of or connected with availability of State resources. Keeping both in view and reposing our trust in the relevant instrumentalities of the State that may be connected with the implementation of the scheme to act with a sense of fairness,</p>

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		<p>anxiety to meet the demands of the human requirements and also anxious to fulfil the constitutional obligations of the State, the directions which we give below will give a final shape to the scheme thus:</p> <p>1. The casual/daily rated employees appointed on or before 1.7.1984 shall be treated as monthly rated establishment employees at the fixed pay of Rs.780/- per month without any allowances with effect from 1.1.1990. They would be entitled to an annual increment of Rs.15/- till their services are regularised. On regularisation they shall be put in the minimum of the time scale of pay applicable to the lowest Group D cadre under the Government but would be entitled to all other benefits available to regular government servants of the corresponding grade.</p> <p>Those belonging to the B or C Groups upon regularisation shall similarly be placed at the minimum of the time scale of pay applicable to their respective groups under Government service, and shall be entitled to all other benefits available to regular government servants of these grades.</p> <p>2. From amongst the casual and daily rated employees who have completed ten years of service by 31.12.1989, 18,000 shall immediately be regularised with effect from 1.1.1990 on the basis of seniority cum suitability.</p> <p>There shall be no examination but physical infirmity shall mainly be the test of suitability".</p> <p>In view of the above discussion, we would direct that the petitioner be given work in view of the presumption laid down by Their Lordships and he should not be disengaged.</p> <p>Thus, the application is accordingly disposed of. No costs.</p> <p>Send a copy of this order to the Opposite Parties and a copy of this order be made available to the counsel for the petitioner.</p> <p style="text-align: right;">  Vice Chairman Member (Admn.) </p>