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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH:CUTTACK.

ORIGINAL APPLICATION NO. 553 OF 1995
Cuttack, this the 2nd day of May, 1997

Hemanta Kumar Jena and another

Applicants

Vrs.

Union of India and others

Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not? NO
- 2) Whether it be circulated to all the Benches of the NO. Central Administrative Tribunal or not?

Somnath S. Jena
(S. SOM) 2.5.97
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 553 OF 1995
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CORAM:

HONOURABLE SRI S. SOM, VICE-CHAIRMAN.

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1. Hemanta Kumar Jena, aged about 44 years, son of late Gangadhar Jena, working as Casual Labourer in the Eastern Regional Language Centre, Laxmi Sagar, Bhubaneswar.
2. Sk. Habibulla, aged about 31 years, son of Sk. Bahatullah, working as Casual Labourer in the Eastern Regional Language Centre, Laxmi Sagar, Bhubaneswar

.... Applicants.

-versus-

1. Union of India, represented through the Secretary, Ministry of Human Resources Development, Department of Education, Central Secretariat, New Delhi.
2. Director, Central Institute of Indian Languages, Manas Gangotri, Mysore-570 006, Karnataka.
3. Principal, Eastern Regional Language Centre, Laxmi Sagar, Bhubaneswar, District-Khurda

.... Respondents.

Advocates for applicants - M/s S.K. Mohanty & Siva Mohanty.

Advocate for respondents - Mr. Akhaya Ku. Misra, ASC.

O R D E R

S. SOM, VICE-CHAIRMAN

The applicants here are working as contingent paid casual labourers in Eastern Regional Language Centre at Bhubaneswar. In this application under Section 19 of the Administrative Tribunals Act, 1985, they have prayed for issuing a direction to the respondents to make payment of wages to them for Saturdays and Sundays of every month from 23.11.1990.

2. According to the application, applicant no.1 has been working as contingent paid casual labourer from 30.9.1974 and applicant no.2 from 16.10.1983. They had earlier filed OA No. 306/89

which was disposed of in order dated 23.11.1990, the date from which they have asked for wages for Saturdays and Sundays which are closed days for the Language Centre. In OA 306/89 a direction was issued that wages to the applicants should be paid strictly in accordance with Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Office Memorandum No.1490412/86-Estt.(C), dated 7.6.1988. It was also ordered that the applicants should be absorbed in regular employment according to the availability of vacancies, preferably at Bhubaneswar. The case of the applicants in the present application is that even though they are being paid at the daily wage rate which is 1/30th of the monthly pay of the regular employees working in corresponding grade, they are not being paid wages for Saturdays and Sundays which are holidays for the Language Centre which is observing five-day week.

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3. The respondents in their counter have alleged that applicant no.2 has been paid for 31 days in July and August, 1995 and for 29 days in September, 1995, but as applicant no.1 is not willing to work on Saturdays and Sundays, no wages are being paid to him for Saturdays and Sundays.

4. For determination of the dispute under consideration, it is necessary to quote relevant portion of Office Memorandum dated 7.6.1988. Paragraphs (iv) and (vi) are quoted below:

"(iv) Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.

(vi) The casual workers may be given one paid weekly off after six days of continuous work." xx xx

The respondents claim that they are strictly following the above

Office Memorandum and no further amount is due to the applicants. On the question of one paid weekly off day, the respondents have submitted that as the Language Centre works on five-day week basis, applicant no.1, who is not willing to work on Saturday and Sunday, does not put in work for six continuous days.

5. The question of paying for Saturday and Sunday to such casual labourers came up for consideration of the Hon'ble Supreme Court in Civil Misc.Petition No.21638/1988 in Writ Petition (Civil)No.1670/1986 (U.P.Income-tax Department Contingent Paid Staff Welfare Association v. Union of India & ors). The short order, dated 2.12.1988, of their Lordships, Hon'ble E.S.Venkataaramiah and Hon'ble N.D.Ojha,JJ., is quoted below in full:

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"Since the regularly appointed employees doing similar work are being paid on monthly basis, the Contingent Paid Staff Employees who have succeeded in this writ petition shall also be paid the minimum salary payable to regularly appointed employees doing similar work on monthly basis.Hence the question of paying or not paying any amount either for Saturday or for Sunday would not arise. We make this clarification in this case.The Civil Miscellaneous Petition is disposed of."

From the above order, it appears that in case of contingent paid workers in the Income-tax Department in Uttar Pradesh the order of the Hon'ble Apex Court was to pay them on monthly basis and in that context it was held by their Lordships that the question of paying or not paying amount to them either for Saturday or for Sunday would not arise. The logic of the above decision would seem to govern this case also. The only distinguishing feature in the present case is that it has been submitted by the respondents that the two applicants are being engaged purely on day-to-day basis paid out of contingency depending upon the need for work, availability of funds and workload of the Language Centre. I am afraid it is difficult to accept the above contention of the respondents in view of the fact that the two applicants have been engaged from

30.9.1974 and 16.10.1983, i.e., for more than 22 and 13 years respectively. It is not believable that persons working for such long years are being engaged on day-to-day basis. It is admitted by the respondents in the counter that the applicants are being paid from the contingency. They are, therefore, contingent paid casual labourers. The applicants in the rejoinder have mentioned that they have been working right from the date of their initial engagement continuously without any break. They are also working in the months of May and June when the Language Centre remains closed for Summer Vacation. It has been stated that the applicants are not being engaged on Saturday and Sunday of the week when the Language Centre remains closed and the applicants are not being paid during those days. On this basis, the applicants have claimed in their rejoinder that like regular employees of the Language Centre of the same level, they should get two weekly off days after working continuously for five days in a week. From the order of the Hon'ble Supreme Court, it is not clear if in the case of contingent paid workers of Income-tax Department in Uttar Pradesh, such workers were engaged and paid on whole month basis or on day-to-day basis. The claim of the applicants that they should get two paid weekly off days after working for five days must be rejected, because the Office Memorandum dated 7.6.1988 speaks of one paid weekly off day after six days of continuous work. Therefore, in order to avail of the weekly off day they must be prepared to work on the 6th day so that their working days become six continuous working days thus making them entitled to get one paid weekly off. The respondents in their counter have submitted that casual workers are being engaged even on holidays, but applicant no.1 is not prepared to work on Saturday and Sunday. If he works on Saturday, then he will not be required to work on Sunday which will become his weekly off day. Applicant no.2, according to the respondents,

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has been working on weekly off days and has been paid, as earlier mentioned, for each of the days of the months July and August, 1995.

6. In consideration of the above facts, it is ordered that in case the applicants work on the 6th day after five continuous working days, then they will be entitled to one paid weekly off, falling on the 7th day, in terms of the Office Memorandum dated 7.6.1988. This order will naturally take effect prospectively. The applicants have been working in the Language Centre for more than two decades in respect of applicant no.1 and more than a decade in respect of applicant no.2. Normally I would have thought that the departmental authorities would have on their own tried to regularise their services. In consideration of this, I hope that the respondents will not stop offering work to the applicants on the 6th day only for the purpose of depriving them of the one paid weekly off day. If the respondents act in that fashion, the applicants will be free to approach the Tribunal against such action.

7. In the counter, it has been submitted that the applicants have not been regularised because there is no post and they have been offered jobs in the Language Centre at Mysore. For Group 'D' staff it is difficult to go to Mysore for getting absorbed. Since the applicants have been working for such long years and that too without interruption, their continuous engagement to my mind makes out an unassailable case for creation of posts to cover their working. The departmental authorities should, therefore, move for creation of posts in respect of such of the contingent paid casual workers who have been working for years together. If and when such posts are sanctioned, the applicants' cases should be considered along with others for regular appointment against those posts strictly in accordance with rules.

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8. With the aforesaid observations, the Original Application is disposed of. No order as to costs.

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VICE-CHAIRMAN 2.5.97

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