

OA, 196/96

For hearing.

Sabra Bench
12/11/81Ob. Ob. 11. 01

Learned lawyers have abstained from Court work due to "puri" incident involving lawyers and police.
adjourned to 13. 11. 01.

S. J. M.
vice-chairman
6/11

Order dated 13.11.2001

This matter came up for hearing on 11.8.1999 on which date ~~none~~ appeared for the petitioner and therefore, the matter was ordered to be listed in its turn. The matter again came up on 6.11.2001 in its turn when the learned counsels were abstaining from attending Court work protesting against law and order incident involving Lawyers and Constables at Puri. In view of this the matter was ordered to be posted to this day for hearing and final disposal. Learned counsel for the petitioner Shri B.K.Bura and his Associates are absent on call. There has been no request on their behalf seeking adjournment. This being a matter of 1996 cannot be allowed to drag on indefinitely, more so in the absence of any request for adjournment. In view of this I have heard Shri A.K.Bose, learned Sr. Standing Counsel for the respondents and perused the records. In this O.A. the petitioner has prayed for a direction to respondents to immediately reengage him as Daily Rated Mazdoor from the date of his disengagement and to grant him all service benefits as admissible.

The case of the applicant is that he was recruited as Daily Rated Mazdoor in Telecom Engineering District, Sambalpur on 18.4.1984 and he has been working as such in two spells for 377 days and 254 days in the Construction work in the District. Due to closure of the work he was disengaged on 1.9.1992. He has stated that in accordance with the circular dated 22.1.1994 and 22.3.1994 he is entitled to be reengaged

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and Telecom District Engineer Sambalpur, in his letter dated 1.2.1995 (Annexure-5) recommended for his reengagement. In this letter Telecom District Engineer ~~ji~~ mentioned about acute shortage of daily rated mazdeer in the Telecom District, Sambalpur. Applicant has stated that ~~such~~ on such recommendation other retrenched daily rated mazdeers have been reengaged, but his case has been ignored. In the context of the above the applicant has come up in this petition with the prayers referred to earlier.

Respondents in their counter have opposed the prayer of the applicant. They have stated that the applicant was engaged as casual worker on 18.4.1984 and his engagement as casual worker with breaks was dispensed with on 1.12.1985 as the work was completed. It is stated that the applicant has further been allowed to work for 254 days in 1991-92 in violation of the ban order issued on 31.3.1985 and 18.7.1985 prohibiting engagement of daily rated casual workers. Respondents have further stated that in pursuance of the direction of the Hon'ble Supreme Court, as a scheme has been framed on 7.11.1989 for regularisation of casual labourers engaged prior to 30.3.1985. It is stated that the applicant has worked as casual labour for 377 days with breaks upto 30.3.1985 on casual basis and thereafter he left his engagement on his own accord. He had never returned to enquire about the availability of further work. Respondents have also denied that some other retrenched daily rated casual mazdeers like the applicant have been engaged ignoring the case of the applicant. It is stated that engagement of casual mazdeers has been banned and all works to be done departmentally are taken up through the contractors and therefore, there is no scope for reengaging the applicant as daily rated mazdoor as there is no work. In the context of the above respondents have opposed the prayer of the applicant.

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No rejoinder has been filed.

From the pleadings of the parties it is clear that admittedly the petitioner was engaged as casual labour and therefore he worked as such with breaks for 377 days prior to 30.3.1985 and again for 254 days in 1991-92. Respondents have stated that in order dated 30.3.1985 engagements of casual mazdeens/daily rated mazdeens were completely banned. Notwithstanding ~~that~~ ^{this} the applicant was engaged for 254 days unauthorisedly in violation of the ban order. Even if it is so, no fault lies with the applicant for such engagement.

Admittedly he has worked for 377 days prior to 1985 and again for 254 days in 1991-92. In the present application his prayer is for direction to respondents to reengage him as casual mazdoor, from the date of his disengagement in 1992. Applicant has made a vague averment that certain other persons, like him who were disengaged had been taken back in engagement as casual mazdeens, but his case has been ignored. This has been denied specifically by the respondents in their counter. Applicant has not mentioned names of any such retrenched casual mazdeens who have been reengaged ignoring his case. In view of the above, this contention in the pleadings of the applicant cannot be accepted. Respondents have stated that at present there is no work and no casual mazdeens are being engaged.

Admittedly the applicant is a retrenched casual mazdoor and under the law as laid down by the Hon'ble Supreme Court in a series of decisions the applicant has a right to be considered for fresh engagement over fresh faces as casual mazdeens and if and when respondents engage casual mazdeens/daily rated casual mazdeens for any work. In view of this, the O.A. is disposed of with a direction to respondents 2 and 3 that if and when Res. 3 engages any daily rated casual mazdoor/casual labour the case of the applicant for engagement should be considered and he should be given

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Free copy of
the order dt. 13-XI-01
given to the both
counsel.

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Pray
S.O

preference over fresh candidates and also
over other retrenched casual mazdeers whose
dates of initial engagements are after
18.4.1984.

O.A. is disposed of as above. No costs

S. J. Ammu M. V. Varghese
VICE-CHAIRMAN
13.11.2001