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Applicant

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M/s. B. Nayak
A. K. Dora
B. B. Mohapatra

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1. Union of India represented through the Secretary
Ministry of Human Resources and Development,
Shastri Bhavan, New Delhi

2. Director General, Archaeological Survey of India,
Janapath, New Delhi-11

3. Superintending Archaeologist, Archaeological
Survey of India, Bhubaneswar Circle, Old Town,
Bhubaneswar

... Respondents

By the Advocates in both the O.A.s Mr.B.Das, A.S.C.

O R D E R

MR.B.N. SCM, VICE-CHAIRMAN : Since the points in issue involved in both the above mentioned Original Applications are one and the same, this common order is being passed. For the sake of convenience, we may as well deal with the O.A.215/96.

2. Shri Nabina Kandi (applicant) has filed this Original Application praying for direction to Respondents to grant him temporary status in accordance with the Scheme vide Annexures-2 and 3 and to take further appropriate steps for regularising his service in Group D post. The allegation of the applicant is that although he is engaged as casual labour by Respondent No.3 since 1984 till to-day, he has not been granted temporary status although a scheme to that effect has been framed by the Respondents. He has, therefore, assailed the action on the part of the Respondents as malafide, illegal and discriminatory attracting the provisions of the Article 16 of the Constitution. The applicant has further alleged that having not applied the scheme in his favour, the Respondents have also violated the instructions of the Government in the matter of recruitment and regularisation of casual workers, issued under Memo No.F.No.49014/2/86-Estt.(C)

dated 7.6.1988 by the Department of Personnel & Training, and that they have not maintained any seniority list of casual labours nor have they framed any time bound review case till now. The applicant has also furnished information to the effect that the persons, who had joined the organisation later as casual labours have been granted temporary status ignoring his claim.

3. The Respondents have denied these allegations by filing a counter. They have stated that the applicant was engaged by them as casual worker against seasonal work and that during the period from 1986-87 to 1995-96 excepting for the last two years, i.e., 1994-95 and 1995-96, he had never worked for 240 days during a year. It is because of this fact when the scheme for grant of temporary status and regularisation of casual workers was introduced the applicant had not fulfilled the two basic conditions as enshrined at Para-4.1 of that scheme and that is how, he could not be brought under the scheme.

4. We have also heard Shri B.M.Nayak, learned counsel for the applicant and Shri B.Dash, learned Addl. Standing Counsel (separately in both the OAs) and perused the records placed before us.

5. The learned counsel for the applicant have made two submissions (i) that the Respondents should have granted temporary status to the applicant under the scheme, and (ii) if for some technical reasons they were not able to confer the benefit of the scheme on him the applicant was entitled to regularisation of his service under the Government orders dated 7.6.1988 (Annexure-A/2). Shri

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Nayak also submitted that the applicant has been working for more than 240 days continuously, every year since 1994 thus not absorbing him on regular basis is an act of injustice.

6. Shri B.Dash, the learned Addl.Standing Counsel invited our attention to the decisions of the Hon'ble Apex Court in Civil Appeal No.3221/2000 (Punjab State Electricity Board & Another vs. Wazir Singh) and No.3168/2002 dated 29.4.2002 (Union of India & Another vs. Mohan Pal etc. etc.) wherein the Apex Court held that the scheme of September, 1993 was not an ongoing affair. Their Lordships in the case of Punjab State Electricity Board (Supra) observed that "since the circular issued by the appellant board stipulated two conditions, viz., that the concerned daily wage worker should not only put in 500 working days in service upto the cut off date, but should be actually in service on the date issuance of the circular, the 2nd condition regarding continuance in service cannot be ignored as done by the High Court". He, therefore, submitted that in view of the above judgments of the Hon'ble Apex Court and in view of the facts of the case that the applicant had not worked continuously at least for one year as on 1.9.1993, he could not have been granted temporary status by the Respondents. During the oral argument, we had called for the records to verify the actual period of service that he rendered prior to 1.9.1993 and also to see whether he was on the rolls of the Respondents on that crucial date, i.e., 1.9.1993. Unfortunately both the tests failed. In view of the aforesaid, there appears to be no case for the applicant to claim

temporary status under the scheme as discussed earlier.

7. However, while going through the various records of service pertaining to the applicants and others, especially the statement regarding grant of adhoc bonus to the temporary status holder casual workers, we found that the applicant was engaged on a continuous basis by the Respondents for more than 240 days every year from 1994-95 to 2001-02 and like him there are others also who have been doing more than 240 days for years together. In fact from the list submitted to us about the casual workers who were entitled to bonus for the years from 1995-96, we found that the number of casual workers who are entitled to adhoc bonus and who are engaged over 240 days (many of them have been engaged for 365 days also) is an increase. This would mean that there is regular job under the Respondents-Department for watch and ward duties requiring full-time employment round the year. That being the fact of the matter, the question arises if the applicants' case could be considered for regularisation under the Government Order dated 7.6.1988 (Annexure-A/2). The answer is, ^{however,} in the negative, because, in that order all the Administrative Ministries/Departments were called upon by the Government to undertake a review of the system of appointment of casual workers with three fold objections, namely, (i) that all eligible casual workers were to be adjusted against regular posts as available (ii) the rest of the casual workers not so adjusted but whose retention is considered absolutely necessary and is in accordance with the guidelines (as formulated in that letter) are to be paid emoluments strictly in accordance

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with the guidelines (emphasis supplied) and, (iii) the remaining casual workers not covered by the earlier two conditions are to be discharged from service. This Govt. order dated 7.6.1988 was issued in pursuance of the judgment delivered by the Hon'ble Apex Court on 17.1.1986 in the case of Surinder Singh, to implement the principle of equal pay for equal work. In the process it not only laid down an equitable formula for payment of emoluments to the casual workers on an equal basis, it also enunciated the principles of regularisation of services of the casual workers. All the Administrative Ministries/Departments were, therefore, asked to prepare time bound programmes to regularise all eligible casual workers against the regular posts to the extent such regular posts were justified. Thereafter in the light of the judgment of the Principal Bench of this Tribunal, delivered on 16.12.1990 in Raj Kamal's case, the Union Government introduced Casual Labours (Grant of Temporary Status and Regularisation) Scheme for grant of temporary status to the casual employees working under various Administrative Ministries/Departments. With the introduction of the said scheme, regularisation of casual workers in the Administrative Ministries/Departments under the Central Government will be done within the parameters of the scheme so worked out. In the circumstances, what survives of the Govt. order dated 7.6.1988 is that if the casual workers are to be employed by any Department even after the introduction of the scheme, they should follow the guidelines stipulated in the said letter, viz., under what condition(s) they

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could be recruited/retained and what wages are to be paid to them if they were entrusted with work which is the same as that of the regular employees, they are to be paid at the 1/30th of the pay at the minimum of the relevant pay scale + D.A. and in cases where the work done by the casual workers is different from the work done by the regular employee the casual workers may be paid only the minimum wages as notified by the Ministry of Labour, Government of India or the State/Union Territory Administration, whichever is higher.

9. The learned Addl. Standing Counsel Shri B. Dash has repeatedly drawn our attention to the fact that the scheme of 1.9.1993 has been held by the Apex Court as not an ongoing scheme and in the circumstances, the prayer made by the applicants is not sustainable. While disposing of the Civil Appeal (Civil) No.2224/2000, the Apex Court ^{view} kept in mind that some of the casual labours were engaged by the Department even after commencement of the scheme, had rendered service for more than one year, but were not given temporary status. But the Court did not think it fit to interfere with the same. It was, however, observed by their Lordships that "of course, it is upto the Union Government to formulate any scheme as and when it is found necessary that the casual labours are to be given temporary status and later they are to be absorbed in Group-D posts". In these circumstances, we conclude that it is for the Respondents-Department to take a view about the requirement of employment of casual labours on a long term basis round the year and how to give them

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long term job security and other service benefits to enable them to meet the necessary requirements of life. We hope and trust that the Respondents will keep in view the needs and aspirations of the workers on whom they depend for the upkeep of their valuable monuments and premises and provide them not only fair wage but social security also, of course, commensurating with the ways and means at their disposal. We also believe that the upkeep of these monuments, which are the cultural wealth and national heritage of our nation, require a well trained and well-groomed band of workers to take proper and expert care with a view to achieve the aims and objectives of the Department. Therefore, the Department should be well advised to formulate sooner than later a long term ^{system} manpower/rather than depending on ad hoc system as it is now.

9. With the above observations, we dispose of the O.As. No costs.

J. Mohanty
(M.R. MOHANTY) 16/04/03
MEMBER (JUDICIAL)

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(B.N. SOM)
VICE-CHAIRMAN

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