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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 341 OF 1996
Cuttack, this the 10th day of October, 2001

Mrs. Lilima Singh and three others... Applicants

Vrs.

Union of India and others... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes,
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
10.10.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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ORIGINAL APPLICATION NO. 341 OF 1996
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CORAM;

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

....

1. Mrs.Lilima Singh, aged about 28 years, wife of Rajgopal Singh, resident of Deulisahi, Tulsipur, P.S-Bidanasi, District-Cuttack.
2. Miss.Pravat Nalini Tripathy, aged about 24 years, D/o Daitary Tripathy, resident of village-Fullara, P.S-Kisannagar, District-Cuttack, at present residing at Qrs.No.C-18/12, Doordarshan Staff Colony, P.O-Sainik School, Bhubaneswar-5, District-Khurda.
3. Miss. Kalpana Das, aged about 26 years, D/o late Bauribandhu Das, resident of village Amaranga, P.S-Nimapara, District-Puri, at present C/o J.K.Pattnaik, office of Director of Technical Education & Training, Killa Maidan, Cuttack-1.
4. Md.Enayatullah, aged about 25 years, son of Md.Abdullah, resident of Alisha Bazar, P.S-Lalbagh, District-Cuttack

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Applicants

Advocates for applicants - M/s K.C.Kanungo
B.D.Rout
S.S.Behera

Vrs.

1. Union of India, represented through Secretary, Ministry of Information & Broadcasting, Shastri Bhavan, New Delhi-1.
2. Director General, Doordarshan, Copernicus Marg, Mandi House, New Delhi-1.
3. Director, Doordarshan Kendra, P.O-Sainik School, Bhubaneswar-5, District-Khurda, Orissa.
4. Superintending Engineer, Doordarshan Kendra, PO-Sainik School, Bhubaneswar-5, District-Khurda, Orissa
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Respondents
5. Mrs.Smita Jena, aged about 29 years, D/o Antaryami Jena, at Rout Sahi, Indupur, Dist.Jajpur, at present working as Technician (Casual Basis) at LPT Centre(Doordarshan), Kendrapara Town, P.O/Dist.Kendrapara
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Intervenor.

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Advocates for intervenor - M/s G.Rath
S.N.Misra
T.K.Prahraj

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the four petitioners have prayed for a direction to the respondents to re-engage them as Casual Technicians till regularisation of their services. The second prayer is for a declaration that termination of services of the applicants is illegal and for a direction to the respondents to pay the applicants usual wages drawn before termination till re-engagement. The third prayer is for regularisation of their services.

2. The case of the applicants is that in response to an advertisement in newspaper on 15.12.1993 (Annexure-1) they applied for the post of Technician, having the requisite qualification for the same. They were called to the workshop test and interview in letter at Annexure-2. The applicants have stated that they were selected for appointment to the post and in letters issued at Annexure-3 series they were informed that they are being considered for appointment to the post of Technician and were asked to complete the necessary documentation. The applicants have stated that a merit list of successful candidates was prepared and five candidates out of the merit list were appointed to the post of Technician. The applicants have stated that they were engaged as Casual Technician on 2.1.1995. The applicants continued as such with artificial breaks on Sunday and holidays and got Rs.75/- per day towards daily wages. At Annexure-5 series are documents showing payment of wages to the applicants. The grievance of

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the applicants is that some of the successful candidates in the merit list who ranked below the applicants were engaged as Casual Technician in L.P.T.Centres, Dhenkanal, Kamakhyanagar and Cuttack. The applicants were engaged as Casual Technicians at Bhubaneswar. Some others were engaged at Dudurkote, Banapur, Talcherr, Athamallick, Tirtol, Narasinghpur, Kendrrapara and Paradeep. Some of the persons have been engaged on casual basis without subjecting them to any test or interview. The applicants have stated that they discharged their duties till 29.2.1996 when they were disengaged from 1.3.1996 violating the principle of "last come first go". The applicants have stated that they were discharging the same duties as regular Technicians in the scale of Rs.1200-1800/-, and in the context of the above, they have come up in this petition with the prays referred to earlier.

3. In their counter the respondents have admitted that the petitioners applied for the post of Technician in response to the advertisement at Annexure-1. It is also admitted that a merit list was prepared and five persons were appointed out of the merit list. The applicants did not qualify to be appointed to the five vacancies which were filled up as a result of the selection process in 1994. *S. Jam* The respondents have stated that after making substantive appointment to the five posts, necessity was felt for engaging casual hands to manage day-to-day affairs. The applicants were asked to offer themselves for casual employment. The applicants having offered themselves to be appointed on daily wage basis, were engaged as such. The respondents have mentioned that the applicants were not appointed as casual hands because of their position in the select list. The respondents have also stated that the

applicants were engaged on daily wage basis at Doordarshan Kendra, Bhubaneswar or in other subsidiary Kendras. The respondents have stated that Technicians were engaged on daily wage basis in different Kendras according to necessity after the authorities were satisfied that persons engaged are capable of doing the job. In view of the above, the respondents have stated that there is no question of regularising the services of the applicants. It is further stated that in Bhubaneswar Kendra there is no work for casual hands and because of this, the applicants had to be disengaged. The applicants initially refused to be engaged on daily wage basis in any Kendra other than Bhubaneswar. It is stated that casual hands have been engaged in other Kendras and there is no common seniority between the casual workers at Bhubaneswar and other LPT Centres. In view of this, the claim of the applicants to be engaged in other Kendras to the detriment of the persons engaged there is not acceptable. It is further stated that Miss. Smita Jena and Sri Bibhuti Bhusan Swain had opted to be engaged on daily wage basis at Kendrapara and Athamalick, and their engagement as casual labourers there has nothing to do with the select list. In view of the above, it is urged that no illegality has been committed in disengaging the applicants as there is no work at Bhubaneswar.

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4. Miss. Smita Jena working as Casual Technician at LPT Centre, Kendrapara, was allowed to intervene. She was represented by her counsel, but she did not file any counter.

5. We have heard Shri K.C. Kanungo, the learned counsel for the petitioners, Sri Ashok Mohanty, the

learned Senior Standing Counsel for the respondents, and Shri G.Rath, the learned counsel for the intervenor, and have also perused the record.

6. The admitted position is that in response to an employment notice at Annexure-1 the four petitioners applied for the post of Technician. In this notice the vacancies were notified as three and places of duty were mentioned as L.P.T., Dhenkanal and L.P.T., Kamakhyanagar. Admittedly, a merit list was drawn up and the applicants found place in the merit list. But five posts were filled up from the merit list. The applicants have made no grievance with regard to filling up of the five posts of Technician on regular basis. The respondents have stated that those who got higher position in the merit list were appointed as Technician. The applicants have stated that as their names were included in the merit list, they were given appointment as Casual Technician. From the documents showing payment to the applicants enclosed at Annexure-5 series it appears that the applicants were engaged as Casual Technicians on daily wage basis. The applicants' grievance is that they had come out successful in the selection procedure and they were included in the merit list. Because of absence of vacancies they were engaged as Casual Technicians. Later on more vacancies have up and therefore, they should be given appointment. We have perused the pleadings of the parties and the documents enclosed by them carefully, and on perusal of this it is not possible to accept the above contention of the applicants for the following reasons. Firstly, in the employment notice advertisement was made for only three posts. It was also specifically mentioned that the places of

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duty are at Dhenkanal and Kamakyanagar. The respondents have averred intheir reply to one of the M.As. that out of 19 posts in Orissa Region, only 5 posts were under the control of Doordarshan Kendra, Bhubaneswar and the other posts were under the control of Doordarshan Kendras, Bhawaniptna, Berhampur and Sambalpur. It is also the admitted position that the applicants were engaged as Casual Technicians in Doordarshan Kendra,Bhubaneswar. From this it is clear that their engagement as Casual Technician has nothing to do with the merit list which was drawn up for filling up three posts of Technician at Dhenkanal and Kamakyanagar, against which ultimately five regular appointments were made. The respondents are right in stating that after regular appointments have been made out of the merit list, the merit list has spent itself. In view of this, the prayer of the petitioners for regularisation of their services as Technicians because of their inclusion in the merit list as also their engagment as Casual Technicians from 2.1.1995 to 29.2.1996 is held to be without any merit and is rejected. Moreover, from the pleadings it appears that by notification dated 10.2.1995 Recruitment Rules for Technician (Group-C) have been brought into force and the posts have to be filled up in accordance withthe Recruitment Rules. The prayer of the applicants is also rejected on this ground.

7. The second prayer of the applicants is for regularisation on the basis of their work from2.1.1995 to 29.2.1996. The applicants admittedly were working as casual hands. A casual hand cannot be regularised straightforward. It is also clear that the applicants were working as casual hands at Bhubaneswar, and at Bhubaneswar there was no post against which they were engaged as Casual Technicians. Instructions are clear that a casual labourer

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cannot be regularised straightaway against any post. First he has to be conferred with temporary status and thereafter two out of every three vacancies in Group-D are to be filled up by casual labourers with temporary status. This Scheme circulated by Department of Personnel & Training is dated 10.9.1993 and provides that casual labourers who are on the rolls on the date of the scheme will be entitled to the benefit. The applicants having admittedly been engaged after this date, they are not entitled to be conferred with temporary status. Moreover, the conferment of temporary status scheme is confined to casual labourers who are to be ultimately regularised after granting of temporary status against Group-D posts. Technician is a Group-C post and therefore the applicants cannot be granted temporary status as Casual Technician which is also not their prayer in the O.A.

8. The last prayer of the applicants is regarding their re-engagement. They have prayed that their termination should be declared illegal and they should be allowed all the financial benefits as they were getting prior to their disengagement. They have also prayed that the respondents should be ordered to re-engage them because persons whose names appear below the applicants in the merit list of 1994 and the persons who had not appeared in the selection test have been engaged in different L.P.F. Centres as casual hands. The applicants were admittedly engaged as Casual Technician on daily wage basis. The respondents have mentioned that in Bhubaneswar Kendra there is no need for engagement of casual hands and therefore, the applicants were disengaged. Casual hands are engaged for attending to temporary and intermittent work of casual nature and when

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there is no need for such work, disengagement of such casual hands cannot be termed illegal. In view of this, the prayer of the applicants to declare their disengagement as illegal is held to be without any merit and is rejected.

9. The next prayer of the applicants is for a direction to the respondents to re-engage them. They have stated that while because of lack of work at Doordarshan Kendra, Bhubaneswar, they have been disengaged, persons who are below them in the select list have been engaged in other LPT Centres in Orissa. As we have noted earlier, casual hands are engaged not as a permanent measure. They are engaged in case of necessity by the local authorities. The respondents have stated that amongst the casual hands working in different LPT Centres throughout Orissa, there is no common list of seniority. When a casual worker is disengaged for lack of work, the principle of "first come last go" has to be observed and in case of re-engagement, the retrenched casual hands will have priority over fresh faces. The law on this point is well settled. Even then the applicants cannot claim that because of their higher position in the merit list in the selection of 1994 for the post of Technician meant for Dhenkanal and Kamakhyanagar, they should get priority in engagement as casual hands over other staff in different L.P.T.Centres in Orissa. In any case out of those L.P.T.Centres, only five L.P.T.Centres are within the control of Doordarshan Kendra, Bhubaneswar and one of the five is Bhubaneswar-II where apparently there is no need for casual hand. In view of this, the applicants' prayer for a direction to the respondents to re-engage them is held to be without any merit. The learned counsel for the petitioners has referred in detail to the interim order

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passed by the Tribunal on 21.8.1996. While passing an interim order the Tribunal does not take a final view on the contesting claims of the parties and therefore, an interim order passed during the pendency of litigation and view taken therein cannot be a binding precedent at the time of final adjudication of the matter.

10. In view of our above discussions, we hold that the O.A. is without any merit and the same is rejected. No costs.

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(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
10.10.2001
VICE-CHAIRMAN

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