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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No. 367 of 2010

Cuttack, this the 10th November, 2010

Punia Sahoo & 5 Others Applicant
Versus
Union of India & Others Respondents
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THE HON'BLE MR. C.R. MOHAPATRA, ADMN. MEMBER
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The orders under Annexure-A/13 series are under challenge in this Original Application filed U/s.19 of the A.T. Act, 1985 with further prayer to direct the Respondents to confer temporary status on the Applicants from the respective date on which the TSM status was conferred on the juniors or similarly placed Daily Rated Mazdoors in terms of the TSM Scheme, DOT order, award of the CGIT in TRID Case No. 268 of 2001 and the confirming judgment of the Hon'ble High Court of Orissa passed in WP (C) No.9101 of 2003 with all consequential benefits. Further prayer of the Applicants is to direct the Respondent No.3 to allow the Applicants to work in the post and place where they are working at present till conferment of such temporary status and to pay them their salary uninterruptedly. The order under Annexure-A/13 was issued pursuant to the order dated 06.04.2010 in OA No. 155 of 2010 of this Tribunal in which direction was issued to the Respondents to consider the representation, if filed by the Applicants within 15 days and pass a reasoned order intimating the result thereof to the applicant within 60 days from the date of receipt of the said order. The order under Annexure-A/13 reads as under:

"1. There is no Employer and employee relation between this Department and you as because were inducted solely through the Contractor. There is no transaction relating to you apart from transaction through the Contractor. However the Court has never declared the contract relating to your engagement through the

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Contractor as void but the deceleration relates to 158 workmen mentioned in the reference only.

2. In the long period of litigation neither you nor your union have intervened to include your name in the case and this fact has been admitted in your representation.

3. **It is settled law that the award of the industrial dispute is applicable to the parties only. Since you were not a party to the Industrial Disputes, the analogy of the award is not applicable to you.**

4. There is neither employer nor the employee relationship between this department and you at any point of time as have been claimed by you. So you are not entitled to any relief in the analogy of others as has been claimed by them.

Hence your claim for getting the award of Temporary Status is not at all tenable."

2. Respondents by filing counter have clearly stated in paragraph 2 of the said counter that **the claim raised by the Applicants in this OA are almost similar to the claims of 158 casual labourers which was subject matter of dispute before the Industrial Tribunal and is pending before the Hon'ble Supreme Court in Civil Appeal for decision.** But they have stated that in view of the pendency of the case before the Hon'ble Supreme Court and the Applicants are claiming relief as per the interim order of the Supreme Court the analogy of res subjudice clearly applies to the facts of the case and as such the applicants are not entitled to any relief during the pendency of the Civil Appeal before the Hon'ble Supreme Court. On the other hand, the Respondents have objected to the very maintainability of this OA on the ground of being hit by Section 21 and 28 of the A.T. Act, 1985. Section 21 of the A.T. Act, 1985 provides no application shall be entertained unless it is filed within the period of limitation and Sub section (a) & (b) of Section 28 of the A.T. Act, 1985 provides that on and from the date the powers and authority under the Act become exercisable by the Tribunal and in relation to the recruitment etc. no court except the Supreme Court or any Industrial Tribunal, Labour court or other authority constituted under the Industrial Dispute Act shall be entitled to exercise any jurisdiction, power or authority in

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relation to recruitment etc in service matters. Hence according to the Respondents Section 28 expressly ousts the jurisdiction of all other courts and Tribunals regarding service matter except the jurisdiction of the Supreme Court and the Industrial Tribunal or Labour courts. In the instant case, the award of labour court is the subject matter in civil appeal before the Hon'ble Supreme Court. The applicants have filed this original Application claiming relief in reference to the award of Industrial Tribunal as well as interim order passed by the Hon'ble Supreme Court and have compared themselves at par with the workmen in whose favour the award has been passed by the CGIT and on whom temporary status have been conferred as per the interim order of Hon'ble Supreme Court. Section 28 of the A.T. Act has kept intact the jurisdiction of the Supreme Court and Industrial Tribunal. In the present case both sub section 28(a) and 28(b) bars the jurisdiction of this Tribunal because the matter relates to both the award of the Industrial Tribunal and simultaneously under the interim order of Supreme Court. Therefore, the Applicants' claim in this Tribunal is not tenable. Further contention of the Respondents is that the Circular for conferment of temporary status was last issued in the year 1998. At present the applicants are not working in the BSNL/Department. Therefore, they are not entitled to the relief claimed in this OA.

3. Reiteration of the contentions made in the pleadings of the respective parties having been heard, perused the materials placed on record.

4. The short question that arises for consideration in this Original Application as to whether the Applicants having not been made as party to the litigation before the Industrial Tribunal are entitled to the benefits granted therein. In this connection it would suffice to rely on the decision of the Hon'ble Apex Court in the case **Maharaj Krishan Bhatt and Another Vs**

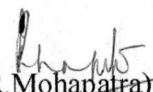
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State of Jammu and Kashmir and others (2008) 2 SCC (L&S) 783] and in the case of **Union of India and others v K.C. Sharma**, 2008(2) SCC (L&S) 783 in which law is well settled that once a judgment had attained finality, it could not be termed as wrong, and its benefit ought to have been extended to other similarly situated cases. It has been admitted by the Respondents in paragraph 2 of their counter, noted above, that the claim raised by the Applicants in this OA are almost similar to the claims of 158 casual labourers which was subject matter of dispute before the Industrial Tribunal and is pending before the Hon'ble Supreme Court in Civil Appeal for decision and as per the interim order granted by the Hon'ble Supreme Court the applicants therein have been granted the benefits which the applicants are not entitled to being not a party to the said litigation. It is the specific claim of the applicants that some of the applicants out of 158 are juniors to the present applicants so far as their engagement is concerned. In view of the above, I have no hesitation to hold that in view of the law laid down by the Hon'ble Apex^{Court}, the Respondents should examine the case of the each of the applicants with reference to the decision of the Industrial Tribunal confirmed by the Hon'ble High Court of Orissa and grant them appropriate relief as has been granted to others as I do not find any substance on the technical objection of limitation etc. raised by the Respondents in view of the fact that the claim of the applicants arose after the benefit was given to some of their juniors pursuant to the order of the Industrial Tribunal. The entire exercise shall be completed within a period of 120 days from the date of receipt of copy of this order.

5. In the result with the aforesaid observation and direction this OA stands disposed of. No costs.


(C.R. Mohapatra)
Member (Admn.)