IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 412 1990
T.A. No.

DATE OF DECISION 28.6.1990

P.B Babu & 2 others — Applicant (s)

M/s PS Biju & CS Ramanathan — Advocate for the Applicant (s)

Versus

Union of India rep. by the Flag Officer Commanding in Chief, Southern Naval Command, Naval Base, Cochin & Another — Respondent (s)

Mr.SV Balakrishna Iyer, ACGSC(for R.1&2) — Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

As sponsored by the Employment Exchange, Civil Station, Kakkanad, Ernakulam, applicants were engaged as Casual Labourers by the second respondent w.e.f. 15.3.'90. No formal order of appointment was issued to them. While they have been working as Casual Labourers, the office of the second respondent informed them that their services would be terminated w.e.f. 30.5.1990. Aggrieved by that the applicants have filed this application praying for a direction to the respondents not to terminate their services otherwise than in accordance with the provisions of Industrial Disputes Act, 1947. It is also stated in the application that they have reliable information that while

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proposing to terminate the applicants' services w.e.f. 30.5.1990, the second respondent has requested the Employment Exchange for sponsoring 40 more candidates to be engaged as Casual Labourers.

2. In the reply statement filed on behalf of the respondents 1 & 2 it has been contended that the establishment of the second respondent is not an industry and the applicants are not entitled to any relief in accordance with the provisions under the Industrial Disputes Act, that the applicants were engaged solely for the purpose of doing the loading and unloading work specifically for the purpose of shifting the office from Naval Base to the new building put up at Trikkakara, that 26 more Casual Labourers were engaged on19.3.1990, that as the shifting work could not be completed the workers were asked to work upto 30.3.1990, that as the shifting work could not be completed even then, 30 more new hands were engaged through Employment Exchange, and that as the shifting work is over now the respondents cannot provide continued employment to the applicants. It has been further contended that since the applicants are not entitled to continuity in employment as they were specifically engaged for a purpose totally unconnected with the regular functioning of the establishment, the application is devoid of any merit and that it may be dismissed with costs.

3. We have heard the arguments of the learned counsel and have also perused the records.

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4. The case of the applicants is that they are workmen, and that as the establishment of the second respondent is an industry under the Industrial Disputes Act, their services cannot be terminated otherwise than in accordance with the provisions of Industrial Disputes Act. In the reply statement, the respondents have contended that the NPOL is not an industry within the purview of the Industrial Disputes Act, and that the applicants who were engaged specifically for doing the loading and unloading work in connection with the shifting of the office of the NPOL from Naval Base to the newly put up building in Trikkakara, are not workmen as defined in the Industrial Disputes Act and that for these reasons the applicants are not entitled to claim any protection under the Industrial Disputes Act. Even if NPOL is held to be an industry, the applicants who were engaged on a casual basis for loading and unloading work in connection with the shifting of the office of the NPOL cannot be considered as workman within the definition of workman in the Industrial Disputes Act. The term "Workmen" has been defined in the Section 2(j) of the Industrial Disputes Act is as follows:

> "Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward whether the terms of employment be express or implied, and for the purpose of any proceeding under this

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Act in relation to an industrial dispute, ~~includes~~ includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950(45 of 1950), or the Army Act, 1950(46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

A reading of the definition would make it clear that to be a workman under the Act, one should be employed in any industry. In Safdar Jung Hospital Vs. Kuldip Singh Sethi, (1970)1 SCC 735, the Supreme Court has held that only such employees are covered by the definition"workman" who in conjunction with their employers can be considered as industry under Section 2(j). The applicants in this case who were engaged only for the purpose of loading and unloading work in the process of shifting the office of the NPOL to a newly constructed building cannot be considered as persons employed in the industry even if NPOL is

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considered to be an industry. The explanation "Employed in any Industry" coming within the definition of the Workman under Section 2(j) of the Industrial Disputes Act has been interpretted to include workers incidentally connected to the main industry, in J.K.Cotton Spinning & Weaving Mills Vs. Badri Mali, AIR 1964 SC 737. The applicants herein cannot be considered to have been employed in any work incidentally connected to the main industry. Therefore, we are of the view that the applicants cannot be considered as workman coming within the definition of "workman" in the Industrial Disputes Act, and that therefore, they are not entitled to claim any protection under Chapter V(a) of the Industrial Disputes Act, merely for the reason that they have been engaged for a few days on casual basis to do loading and unloading work in connection with the shifting of the office of the NPOL to the new premises. Now that the respondents have stated in the reply statement that the entire work of shifting is over and that the NPOL has started functioning in the new premises, there is no basis for the claim of the applicants that they should be directed to be retained in service of the respondents.

5. In view of what is stated above we find that the application is devoid of any merit and hence we dismiss the application without any order as to costs.

28/6/90

(A.V.HARIDASAN)
JUDICIAL MEMBER

28.6.90

(S.P.MUKERJI)
VICE CHAIRMAN

28.6.1990