

FORM NO. 4
(SEE RULE 24)
CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH:

- 1. Original Application No. _____
- 2. Misc Petition No. _____
- 3. Contempt Petition No. _____
- 4. Review Application No. 3/06 in O.A 292/05

Applicant(S) Sri Amarjit Kaur
Respondent(S) u. O. P. Gaur

Advocate for the Applicant(S) K.K. Birmay.....

Advocate for the Respondent(S) G. Bainsya & Co. Chd......

Notes of the Registry	Date	Order of the Tribunal
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This Review petition 20.12.06 has been filed by the Counsel for the petitioner w/s 22 of the CAT Act, 1985 read with Rule 17 of the CAT Procedure Rule, 1987 for reversing the order dated 10.8.06 passed by this Honble Court in O.A 292/05, however, this Review petition has been placed before the Honble V.C. and Honble Member(A) for circulation before placing the Honble Court.

Judgment delivered in open Court.
Kept in separate sheets. Application is dismissed.

Vice-Chairman

Leid for circulation before the Honble V.C. and Honble Member(A).

16.10.06
Secretary

Hon'ble

It can be disposed of
by circulation. Some
work is to be done further
(Proceeding)

23/10/06.

Play 'A' may kindly
be seen. As per para 1(2)
substitution, petition may
be circulated to the Members
who passed the judgment.

In the present case
Honble Mr. G. Ray, Member (A)
is one of the Member.

Therefore, the same may be
sent to his Bangalore Bench
for his Lordship's opinion.

Submitted to the order.

by
8.11.06
CO.

DR
Hon'ble

Shree
6/11/06

22/1/07

Copies of the Judgment
has been sent to the
Office for issuing the
line to the applicant
as well as to the Hon'ble
etc

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

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R.A. No.3 of 2006 (O.A.292/2005)

DATE OF DECISION 20.12.2006

Smti. Amarjit Kaur

.....Applicant/s

Mr. K.K.Biswas

..... Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors.

.....Respondent/s

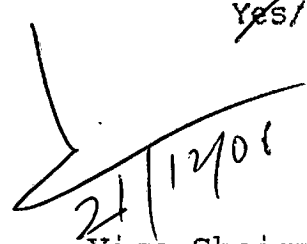
Mr.G.Baishya, Sr.C.G.S.C

.....Advocate for the
Respondents

CORAM

THE HON'BLE MR. K.V. SACHIDANANDAN, VICE CHAIRMAN

1. Whether reporters of local newspapers may be allowed to see the Judgment? ~~Yes~~/No
2. Whether to be referred to the Reporter or not? ~~Yes~~/No
3. Whether to be forwarded for including in the Digest Being complied at Jodhpur Bench & other Benches ? ~~Yes~~/No
4. Whether their Lordships wish to see the fair copy of the Judgment? ~~Yes~~/No


Vice-Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Review Application No.3 of 2006

In

Original Application No. 292 of 2005.

Date of Order: This, the 20th day of Dec., 2006

THE HON'BLE MR. K.V.SACHIDANANDAN, VICE CHAIRMAN

THE HON'BLE MR.GAUTAM RAY, ADMINISTRATIVE MEMBER

Smti. Amarjit Kaur
Ex. Sweeper/Safaiwala under
Geological Survey of India
Mineral Physics Division
North Eastern Region
Lower New Colony
Shillong.

..... Applicant/petitioner

By Advocate Mr.K.K.Biswas.

- Versus -

1. Union of India represented by
The Director General of India
Geological Survey of India
Chowranghee Lane
Kolkata 700 001.
2. Dy. Director General
Geological Survey of India
North Eastern Region
Shillong - 793 001.
3. Regional Administrative Officer
Geological Survey of India
North Eastern Region
Shillong - 793 003.

.....Respondents/Opposite Parties

By Mr.G.Baishya, Sr. C.G.S.C.

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O R D E R

SACHIDANANDAN, K.V., (V.C.):

This Review Petition has been filed by the review petitioner under Section 22 of the Central Administrative Tribunals Act, 1985 read with Rule 17 of the CAT Procedure Rules, 1987 for review of the judgment and order dated 10.8.2006 passed by this Tribunal in O.A. No. 292/2005.

2. The order was passed by the Division Bench and the Hon'ble Administrative Member is functioning in Bangalore Bench, and therefore, the Review Application is considered by circulating the same and disposed of by the same Bench. The case of the Applicant is that she was engaged as Sweeper/Safaiwala under the Respondent No.2 right from 1985 and all of a sudden she was terminated w.e.f. August 2001 without serving any notice of termination and without observing provisions of law. The matter was taken before the Industrial Tribunal but her claim was rejected on the question of jurisdiction. Thereafter she filed O.A. No.292 of 2005 before this Tribunal and after elaborate discussion and deliberation this Court passed an order on 10.8.2006 dismissing the claim of the Applicant against which



this Review Application has been filed with the following prayer:-

"In the premises above, it is, therefore, prayed that your Lordships may be magnanimous enough to call for the records, examine the case on merits and thereby disseminate justice for redressal of the long standing grievances of this Applicant/Petitioner as prayed in the Original Application and may kindly Review your decision/orders dated 10/8/06, herewith submitted as **Annexure-B**, above and issue suitable orders/directions to the Respondents 1 to 3 as deem fit and proper so as to redress the long standing grievances of this helpless woman who rendered 15 years of continuous dedicated service to the cause of the Respondents, and may be pleased encomium to succor the survival of this Petitioner and her little children."

3. Admittedly, the Applicant herself pleaded that she was a substitute labourer has worked continuously till August 2001 and the Respondents promised that she would be regularised by reckoning the artificial break. But the promise for absorption was not fulfilled. Instead her services were terminated in a most irregular, unfair, unlawful, whimsical, arbitrary and unconstitutional manner. The Applicant had filed a Misc. Petition No.35/2006 in O.A.292/2005 for production of essential records and this Court disposed of the same with the following order:-

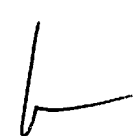
" This Misc. Petition is for production of record as mentioned in paragraph 4 of the petition. Mr.

G.Baishya, learned Sr.C.G.S.C. for respondents submitted that he has no objection, but the documents are not specified. The respondents are directed to produce available records by the next hearing date.

M.P. is closed."

The order itself is quite clear that the Applicant herself was not able to pinpoint as to what are the documents that were required to be produced by the Respondents. However, the Respondents were directed to produce available records, which was not done by the Respondents on the ground that no records were available with them. The Review Applicant was making an attempt for a roaming enquiry without producing any relevant documents, nor listing the required documents for cause production. This is not in the spirit of order 11 Rule 14 of the Civil Procedure Code. It cannot be a ground for review.

4. Apart from that it is germane to look into the dispute/issue involves in this case, is purely legal where admittedly "a substitute employee who was not selected through proper selection does have a legal right of regularisation and could continue in employment?" This Court has considered the various aspects of the matters decided by the Hon'ble Supreme Court (i) **Life Insurance Corporation of India vs. J.C. Biswas** 2006 SCC 562, (ii) **Steel Authority of India Ltd and Others vs. National Union Waterfront Workers and**



Others reported in (2001) 7 SCC 1, (iii) Secretary, State of Karnataka and Others vs. Umadevi (3) and Others reported in (2006) 4 SCC 1 and (iv) Avas Vikas Sansthan And Another vs. Avas Vikas Sansthan engineers Association & Others reported in 2006 SCC (L&S) 613 and finally came to a finding that the applicant is not entitled to the relief as claimed and dismissed the O.A.

5. On going through the pleadings in the Review Petition it is very clear that the applicant is seeking to reargue the matter as if in an appeal and wanted to adduce fresh evidence under the pretext of question of facts, which according to us, is not within the scope of Section 22 (3) (f) of the Administrative Tribunals Act. The decisions in the cases (supra) and the grounds raised in the O.A. have been considered by this Tribunal and as such the decision of this Tribunal even if erroneous in law cannot be ground for review, as there is no error apparent on the face of the record. Review is not a remedy admissible to the Applicant in law.

6. [We have carefully considered the contentions of the Review Applicant and the materials placed on record and it is a settled law that review is maintainable on an error apparent on the face of the record or on discovery of new material which even

exercise of due diligence could not be procured by the concerned party.

7. The Apex Court in **Meera Bhanja vs. Hirmala Kumari Choudhury**, AIR 1995 SC 455 held that "error apparent on the face of record" means an error which strikes one on mere looking at record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions."

8. In **Ajit Kumar Rath vs. State of Orissa & Ors.** 1999 (9) SCC 596 Hon'ble Supreme Court has made the following observations:-

"Power of review available to an Administrative Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person, on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be procured by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of record or for any other sufficient reason. A review cannot be sought merely for a fresh hearing or arguments or correction of an erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. the expression "any other sufficient reason" used in

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Order 47, Rule 1 means a reason sufficiently analogous to those specified in the rule." page 144 A-4

In Lily Thomas vs. Union of India, 2000 (6) SCC 224 similar observation has been made by the Apex Court.

9. Therefore, in review under Section 22(3)(f) of the Administrative Tribunals Act, 1985 no party is entitled to make a grievance that grounds not argued were not considered. The Tribunal cannot sit in appeal or judgment over the conclusions arrived at in order to substitute a different view. A mistake should be apparent on the face of record and should not involve a long drawn process to find it. Re-examination of the matter is not permissible in law. Review is not an appeal in disguise. It judicially connotes re-examination or reconsideration. This power can be exercised for correction of a mistake but not to substitute a law. Review cannot be sought for fresh hearing or arguments or correction of an erroneous view taken. An erroneous view in law is subject to further remedy.

10. From the above, we are of the considered view that the Tribunal has considered all the aspects and passed a reasoned order and there is no mistake apparent on the face of the record. Para 53 in the case of **Secretary State of Karnataka -vs- Uma Devi** reported

in (2001) 4 SCC 1 as relied and quoted by the Review Applicant in the Review Petition is only a passing remarks and not a finding itself. Therefore, we cannot re-examine the judgment sitting over it as an appeal. We cannot substitute the view already taken which is not within the scope of review.

11. In the result, for the forgoing reasons, the Review Petition is not maintainable in view of Section 22 (3) (f) of the Administrative Tribunals Act, 1985 and is accordingly dismissed. There shall, however, be no order as to costs.


(GAUTAM RAY)

ADMINISTRATIVE MEMBER



(K.V. SACHIDANANDAN)
VICE CHAIRMAN

/BB/

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
AT GUWAHATI

22 of A.T. Act, 1985 and Rule
(A Petition U/S 17 of the Administrative Tribunal Act (Procedure) Rules, 1987)

R. A. No.3..... of 2006
arising out of Original Application No. 292 / 2005.

Smti. Amarjit Kaur,
Ex. Sweeper / Safaiwala under
Geological Survey of India,
Mineral Physics Division,
North Eastern Region,
Lower New Colony,
Shillong.

..... Applicant / Petitioner.

- Vrs -

1. Union of India, represented by,
The Director General of India,
Geological Survey of India,
Chowranghee Lane,
Kolkata - 780001.
2. Dy. Director General,
Geological Survey of India,
North Eastern Region,
Shillong - 793001.
3. Regional Administrative Officer,
Geological Survey of India,
North Eastern Region,
Shillong - 793003.

..... Respondents / Opposite Parties.

IN THE MATTER OF :

Review of the order passed by the Hon'ble CAT in
the above O.A. on 10-08-2006 ;

- And -

Contd.....P/2 - In the matter of.

Filed 15/08/06
New Boro
Advocate

A J. KAUR

IN THE MATTER OF :

An application under Section 22 of the Administrative Tribunal Act, 1985 read with Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, in the nature of Review Petition submitted by the Applicant before this Hon'ble Tribunal for enforcement of Petitioner's Fundamental and legal rights ;

- And -

IN THE MATTER OF :

Violation of Principles of Natural Justice, Rules and guidelines and mandatory instructions meant for termination of services ;

The Petition of the above named Petitioner most respectfully sheweth :

- 1) That the Applicant / Petitioner's 15 yrs. continuous service from 1985 in the capacity of Safaiwala under the Respondents were terminated in august/2001 in a most irregular, unfair, unlawful, whimsical, arbitrary and unconstitutional fashion abruptly without serving a notice of whatsoever nature.
- 2) That against such arbitrary and unlawful termination the Applicant / Petitioner above named filed the aforementioned O.A. in this Hon'ble Tribunal for justice and redressal of grievances.
- 3) That for the adjudication of the case the Applicant / Petitioner filed Misc. Petition No. 35 of 2006 on 01-05-06 praying for submission of certain essential records / documents required for the case for the ends of justice.
- 4) That the Hon'ble Tribunal was pleased to pass an order dated 26-5-2006 that "the Respondents are directed to produce available records by next hearing date."

A photocopy of the above ORDER is enclosed as ANNEXURE-A.

Comd.....P/3 – That the Hearing.

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Neelam
15/9/06
Advocate

AJKAUR

5) That the Hearing of the above O.A. was fixed on 10-8-2006, but the Respondents did not file any record / document in spite of the above direction of the O.A., and the Hon'ble Tribunal also passed the order without the records / documents as prayed for by the Applicant / Petitioner vide its ORDER dated 10-08-2006.

A photocopy of the above ORDER is enclosed as ANNEXURE-B.

6) That the Petitioner begs to state that by passing the above ORDER the Hon'ble CAT has erred in law, as the Hearing of the above O.A. was in an exparte fashion albeit the Hon'ble CAT exhaustively dealt with the case by citing various case-laws, never-the-less the merits of the case could not be examined by penetrating the required records / documents which were never produced by the Respondents at any point of time.

7) That it is respectfully submitted that the above case suffers for want of denial of the Principles of Natural Justice and non-protection of the means of livelihood and thereby attracts the constitutional provisions of Arts 14, 16 (i), 38, 39 (a) & 39 (d), in addition to the miscarriage of justice caused by the Respondents all along by not following the provisions of the Minimum Wages Act, 1948.

8) That it is respectfully submitted that even in the case of Secy. State of Karnataka – VS – Uma Devi, reported in (2001) 4 Sec. 1 their Lordships of the Hon'ble Apex Court opined under para-53 of Page 42 :

“One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments as explained in S. V. Narayanappa, R. N. Nanjundappa and B. N. Nagarajan and referred to in para – 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the interventions of the court or tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of this judgement. In that context, the Union of India, the state Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of Tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wages are being now employed.”

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W. S. S. S.
15/9/06
Advocate

AJKAUR

9) That this petition is bonafide and for the cause of justice and without having the records / documents prayed for in the aforementioned Misc. Petition and ordered by this Hon'ble Tribunal for productions by the Respondents which the Respondents did not produce at all, the proper discernment of the case cannot be given and a conclusive decision cannot be arrived at in administering the case and disseminate justice.

10) That the Respondents 1 to 3 have been repeatedly violating the provisions of Fundamental Rights under Articles 14 and 16 of the Constitution and cardinal principles of Natural Justice and Fair Play of the Administrative actions in the case of the Applicant / Petitioner.

11) That your humble Petitioner begs to submit that it is a fit case where your Lordships may interfere for giving justice to the Petitioner.

12) That your humble Petitioner begs to state that there being no any alternate remedy, this petition is filed for the ends of justice.

13) That your humble petitioner begs to submit that this Petition is filed bonafide and in the interest of justice.

14) That with regard to the above submission it is humbly submitted that the grounds are well-founded as mentioned in the O.A. and the Respondents have not filed relevant documents in support of their submissions along with their written statement as directed by this Hon'ble Tribunal.

In the premises above, it is, therefore, prayed that your Lordships may be magnanimous enough to call for the records, examine the case on merits and thereby disseminate justice for redressal of the long standing grievances of this Applicant / Petitioner as prayed in the Original Application and may kindly Review your decision / orders dated 10/8/06, herewith submitted as Annexure - B, above and issue suitable orders / directions to the Respondents 1 to 3 as deem fit and proper so as to redress the long standing grievances of this helpless woman who rendered 15 years of continuous dedicated service to the cause of the Respondents, and may be pleased encomium to succor the survival of this Petitioner and her little children.

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15/9/06
Advocate

AJ. KALUR

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15/9/06
Advocate

And for this act of your kindness, as in duty-bound, the Applicant /
Petitioner shall pray and remain ever grateful.

VERIFICATION

I, Smt. Amarjit Kaur, wife of Sri Mangal Singh, aged about 40 years,
resident of Shillong Cantonment Colony, Near Anjali Cinema Hall do hereby
solemnly affirm and verify that the contents of this Petition are true to my
knowledge, information, belief and faith and I have not suppressed any material
facts.

And I sign this verification on this 15th day of September 2006.

AJ. KAUR

Signature of the Petitioner

Place : Guwahati.

Date : 15-09-2006.

Contd.....P/6 – Affidavit.

AFFIDAVIT

I, Smt. Amarjit Kaur, wife of Sri Mangal Singh, aged about 40 years, resident of Shillong Cantonment Colony, Near Anjali Cinema Hall do hereby solemnly affirm and declare as follows :

1. That I am the applicant in this petition and as such I am well conversant with the facts and circumstances of the case and I swear this affidavit.
2. That the statements made in this affidavit and in paragraphs 1 to 14 of the petition being matters of records are true to my knowledge and information derived therefrom which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this Affidavit on this 15th day of September, 2006.

AJ. KAUR

DEPONENT

Solemnly affirmed and declared
before me by the deponent who is
identified by Sri K. K. Biswas,
Advocate, on this 15th day of
September, 2006.

Identified by :



Advocate

Mrcinal Kanti Majumdar

ADVOCATE

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERS SHEET

1. Original Application No. _____
2. Misc. Petition No. 35/06 in O.A 292/05
3. Contempt Petition No. _____
4. Review Application No. _____

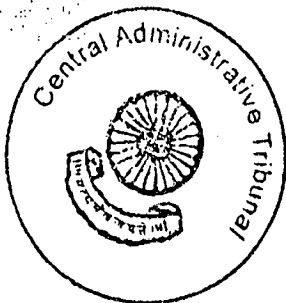
Applicant(s) Amarjeet Kaur

Respondents U.O.I. Govt

Advocate for the Applicant(s) K.K. Biswas

Advocate for the Respondant(s) case

Notes of the Registry | Date | Order of the Tribunal



26.05.2006

This Misc. Petition is for production of record as mentioned in paragraph 4 of the petition. Mr. G. Baishya, learned Sr. C.G.S.C. for respondents submitted that he has no objection, but the ~~document~~ documents are not specified. The respondents are directed to produce available records by next hearing date.

M.P. is closed.

Sd/VICE CHAIRMAN

Memo No 561

Jd. 31-5-06

Copy for information and necessary action to:

- 1) Mr. K.K. Biswas, Advocate, Guwahati High Court.
- 2) Mr. G. Baishya, Sr. C.G.S.C., C.A.T., Guwahati Bench, Guwahati.

attested
15/9/06
Advocate

Section Officer (I)
dt 29/5/06

BY POST/ BY HAND.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:.....GUWAHATI.

Applied

DESPATCH NO. CAT/ GHY/ JUDL/ _____ / DTD. GUWAHATI THE

✓ ORIGINAL APPLICATION NO. 292 / 200 5
MISC. PETITION NO. _____ / 200
CONTEMPT PETITION NO. _____ / 200
REVIEW APPLICATION NO. _____ / 200

Smti' A. Kaur

APPLICANT(S)

VERSUS

U.O.I. in Ops.

RESPONDENT(S)

To

Smti' Amarjit Kaur,

*Ex. Sweeper/ Safaiwala under
Geological Survey of India,*

Mineral Physics Division, NER,

Lower New Colony, Shillong.

Please find herewith a copy of Judgment/Order dated

10.8.06

passed by the Bench of this Hon'ble Tribunal

Comprising of Hon'ble Justice Shri *K. V. Sachidanandan*

Vice-Chairman and Hon'ble Shri *Gautam Ray*

Member (Admn) in the above noted case for information and necessary action, if any.

Please acknowledge receipt of the same.

Enclo : As above.

(Copy of the Original

Application in O.A. No. _____)

By Order

SECTION OFFICER (JUDL).

Memo. No.

Dtd.

Copy for information to :

1. Mr./Mrs. *G. Baishys,*

/Sr. CGSC, Addl. CGSC.

2. Mr./Mrs. _____

/Rly. Standing Counsel/
Govt. Advocate

*attested
15/9/06
Advocate*

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 292 of 2005.

Date of Order: This, the 10~~th~~ day of August, 2006.

THE HON'BLE MR. K.V.SACHIDANANDAN, VICE CHAIRMAN

THE HON'BLE MR. GAUTAM RAY, ADMINISTRATIVE MEMBER

Smti. Amarjit Kaur
Ex. Sweeper/Safaiwala under
Geological Survey of India
Mineral Physics Division
North Eastern Region
Lower New Colony
Shillong.

..... Applicant.

By Advocate Mr.K.K.Biswas.

Versus -

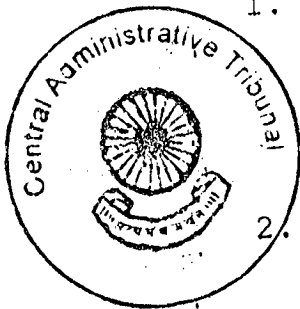
1. Union of India represented by
The Director General of India
Geological Survey of India
Chowranghee Lane
Kolkata 700 001.

2. Dy. Director General
Geological Survey of India
North Eastern Region
Shillong - 793 001.

3. Regional Administrative Officer
Geological Survey of India
North Eastern Region
Shillong - 793 003.

..... Respondents.

By Mr. G. Baishya, Sr. C.G.S.C.



Attested
15/8/06
Advocate

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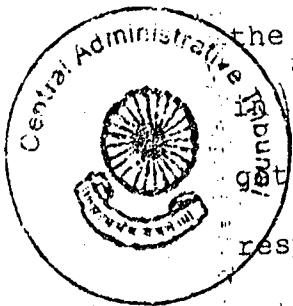
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O R D E R

SACHIDANANDAN, K.V., (V.C.):

The case of the applicant is that she was engaged as Sweeper/Safaiwala under the second respondent right from 1985 and all of a sudden her services were terminated with effect from August 2001 afternoon without serving any notice of termination and without observing provisions of law. She approached the respondents for reinstatement in service since she had rendered more than 15 years of service in the same establishment continuously without any break though artificial break were shown by the respondents and maximum period of her life she spent in the Organisation losing all hopes and aspirations to get any appointment in other establishments. Though the respondents had all along assured her absorption in the establishment of the Geological Survey of India (GSI in short) in regular Group-D employment, they did not comply with the promise. She, through her union, placed the issue before the Labour Commissioner and the matter was referred to the Ministry of Labours and finally to the Industrial Tribunal for adjudication. The Industrial Tribunal rejected the claim on the question of jurisdiction. The respondents have caused labour exploitation, and therefore, committed offences in not paying the minimum pay during her service of 15 years right from 1985 till

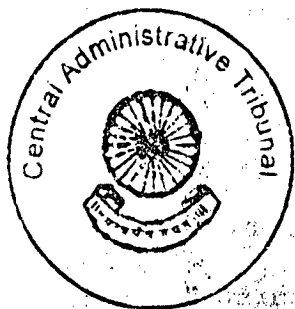
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termination from service. Being aggrieved, the applicant has filed this Original Application seeking the following reliefs:-

- (i) Quashing the miscarriage of justice caused by the Opposite Parties/Respondents by terminating her services abruptly after 15 years without issuing any notice of termination and giving her any reasonable opportunity as ought to have been given to a "temporary employee" under Article 311(2) of the Constitution of India.
- (ii) For reinstatement in service with the existing pay scale, capacity, allowances, seniority and other benefits admissible with all back wages as per extant Rules from the date of termination.
- (iii) For absorbing the Applicant in a regular Cadre of Group-D establishment of the Opposite Parties as per extant Rules and prevailing system.
- (iv) Any other relief(s) as this Hon'ble Tribunal may deem fit and proper."



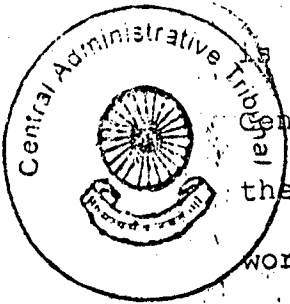
2. The respondents have filed a detailed reply statement, contending that no assurance for absorption in the department was given to the applicant as per records available. She was engaged as Sweeper/Safaiwala in the Mineral Physics Division of GSI purely on contract basis only during the absence of regular Safaiwalas going on earned leave etc. and a lump sum amount was offered to her, which she accepted. Any person, thus appointed, will have no right to claim for further employment in GSI. No

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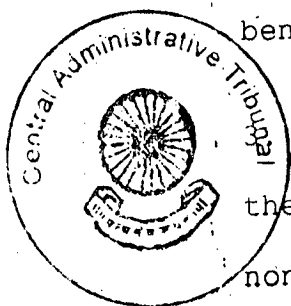
appointment order was issued to her for the contract work. The contract work automatically ended on expiry of the period agreed upon and also as soon as regular Safaiwala joined duty. Hence, the question of termination of her service without observing provisions of law does not arise. When the union raised the dispute before the Industrial Tribunal, the Tribunal gave a finding that GSI is not an industry as per definition given under Section 2(J) of the Industrial Dispute Act, 1947. A written statement was filed by them before the Industrial Tribunal raising non-applicability of Industrial Dispute Act, which is having no jurisdiction to arbitrate the matter, which is purely a service matter of Central Government and the Central Administrative Tribunal, Guwahati Bench is having the jurisdiction. The ban on engagement of contingent workers on continuous basis provides for purely temporary engagement of Mazdoors (unskilled) for short duration to meet the exigencies of work in public interest. Applicant's engagement purely on contract basis on payment of lump sum amount is evident from the vouchers. In para 9 of the reply statement the respondents have mentioned four names of regular Safaiwalas and in their absence going on leave the applicant was given the duty to clean the laboratory, toilets in the Mineral Physics Division. At the most her job was required for about 1 hour only before the office opens and her whole day's presence was not

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required. The wages were paid as per the rate prescribed by the Govt. of Meghalaya to other workers whose hours of work was 8 hours per day. But in the present case, the wages were paid to the applicant on lump sum basis as the duration of work is about 1 hour only and thus, the Govt. rate notified by the Govt. of Meghalaya could not be applied in her case. Moreover, no wage rate has been prescribed by the Govt. of Meghalaya for the Safaiwalas. Therefore, the applicant has no right claiming the benefits.

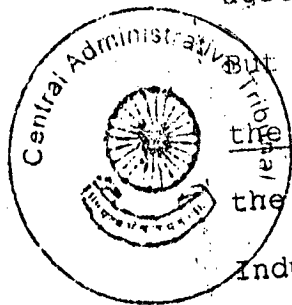


The applicant has filed a rejoinder reiterating the contentions made in the O.A and further added that her non-regularisation is clear violation of principles of natural justice. We have heard Mr. K.K.Biswas, learned counsel for the applicant and Mr.G.2aishya, learned Sr.C.G.S.C. for the respondents. Counsel for the applicant argued that applicant has put in more than 15 years of service and she was getting Rs.450/- P.M. and all of a sudden, her services were terminated which is against natural justice and hence she is entitled for reinstatement, regularisation and absorption in Group-D post since she had already completed 240 days of service in a year. The Sr.C.G.S.C., on the other hand, submitted that she was intermediately engaged as substitute casual labour in the place of regular Safaiwalas going on earned leave, maternity leave etc. and she is having no

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indubitable right to claim for regularisation or engagement.

4. We have given due consideration to the arguments advanced by the counsel for the parties and the materials and evidence placed on record. Counsel for the respondents has submitted that this case has been filed before this Tribunal after five year's of delay and hence the same is hopelessly barred by limitation. He also took our attention to a decision of the Hon'ble Supreme Court of India in the case of **Life Insurance Corporation of India vs. J.C. Biswas** 2006 SCC 562. We are in respectful agreement with the dictum laid down in the said decision. But according to us, the facts of that case do not suit the present case. The applicant agitated her case before the Industrial Tribunal and only after four years the Industrial Tribunal gave its verdict rejecting her claim for want of jurisdiction and that too on the strength of the written statement filed by the respondents that jurisdiction lies with Central Administrative Tribunal. The said Industrial Dispute was initiated on strength of the union, and therefore, the applicant cannot be faulted in not projecting the case before the appropriate forum. The delay that has been caused in filing the present O.A. has been taken note of at the admission stage of the case and the O.A. was admitted. Therefore, after having admitted the matter when it came up for final hearing, the



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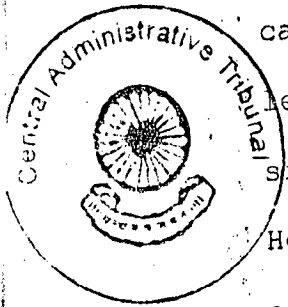
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respondents, are not justified in raising the technical plea and hence their contention that the Original Application is barred by limitation will not hold good and cannot be sustained.

5. On going through the merits of the case it is apparent that, admittedly no appointment order was issued to the applicant. The case of the applicant is that she had worked for more than 15 years right from 1985 till his termination in August 2001, and therefore, she is entitled for regularisation as she had already completed 240 days of service in a year. The specific case of the respondents is that the applicant was only engaged as a substitute casual labourer in place of regular Safaiwalas going on leave and she was given a lumpsum amount of Rs.450/- p.m. since her required work was only for an hour per day. However, though the respondents stated that the vouchers are available the same were not produced. The facts always remains that the applicant had worked for 15 years whether as a substitute casual labourer or as a casual labourer. The contention of the respondents is that in the present situation, all the labour laws completely permit disengagement of contract labourer on the wish of the respondents. Mr. Biswas, on the other hand, had taken our attention to a decision of the Hon'ble Supreme Court in the case of Steel Authority of India Ltd and Others vs. National Union Waterfront Workers and Others reported in

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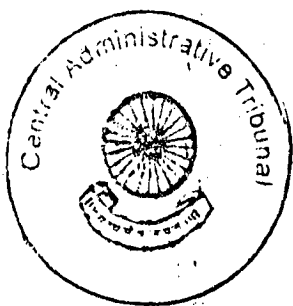
(2001) 7 SCC 1 relevant paragraphs of which are quoted below:-

"8 Before taking up these points, it needs to be noticed that the history of exploitation of labour is as old as the history of civilization itself. There has been an ongoing struggle by labourers and their organizations against such exploitation but it continues in one form or the other. The Industrial Disputes Act, 1947 is an important legislation in the direction of attaining fair treatment to labour and industrial peace which are the sine qua non for sustained economic growth of any country. The best description of that Act is given by Krishna Iyer, J., speaking for a three-Judge Bench of this Court in *LIC of India V. D.J. Bahadur*³ thus: (SCC P.334, para 22)

22. The Industrial Disputes Act is a benign measure which seeks to pre-empt industrial tensions, provide the mechanics of dispute resolutions and set up the necessary infrastructure so that the energies of partners in production may not be dissipated in counterproductive battles and assurance of industrial justice may create a climate of goodwill.

102. In *Gujarat Electricity Board case*³¹ a two-Judge Bench of this Court has held that if there is a genuine labour contract between the principal employer and the contractor, the authority to abolish the contract labour vests in the appropriate Government and not in any court including industrial adjudicator. If the appropriate Government abolishes the contract labour system in respect of an establishment, the industrial adjudicator would, after giving opportunity to the parties to place material before it, decide whether the workmen be absorbed by the principal employer, if so, how many of them and what terms, but if the appropriate Government declines to abolish the contract labour the industrial adjudicator has to reject the reference. If, however, the so-called contract is not

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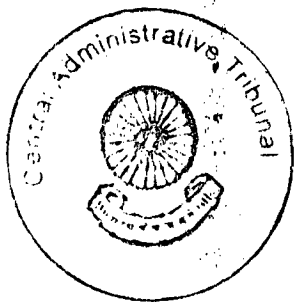


genuine but is a sham and camouflage to hide the reality, Section 10 would not apply and the workmen can raise an industrial dispute for relief that they should be deemed to be the employees of the principal employer. The court or the industrial adjudicator would have jurisdiction to entertain such a dispute and grant necessary relief.

104. For reasons we have given above, with due respect to the learned Judges, we are unable to agree with their reasoning or conclusions.

106. We have gone through the decisions of this Court in *VST Industries case*⁴⁰, *G.B. Pant University case*⁴². All of them relate to statutory liability to maintain the canteen by the principal employer in the factory establishment. That is why in those cases, as in *Saraspur Mills case*²⁹ the contract labour working in the canteen were treated as workers of the principal employer. These cases stand on a different footing and it is not possible to deduce from them the broad principle of law that on the contract labour system being abolished under sub-section (1) of Section 10 of the CLRA Act the contract labour working in the establishment of the principal employer have to be absorbed as regular employees of the establishment.

111. In *Shivnandan Sharma case*²⁷ the respondent Bank entrusted its Cash Department under a contract to the Treasurers who appointed Cashiers, including the appellant Head Cashier. The question before the three-Judge Bench of the Court was: was the appellant an employee of the Bank? On the construction of the agreement entered into between the Bank and the Treasurers, it was held that the Treasurers were under the employment of the Bank on a monthly basis for an indefinite term as they were under the complete control and direction of the Bank through its Manager or other functionaries and, therefore, the appointees including the appellant (nominees) of the Treasurers, were also the employees of the Bank. This Court laid down: (AIR p.411, para11)



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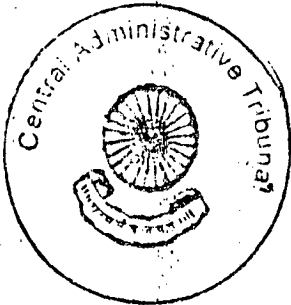
If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servants of the master.

121. The leftover contention of Ms Indira Jaising may be dealt with here. The contention of Ms India Jaising that the principles of contract law stricto sensu do not apply to the labour and management is too broad to merit acceptance.

144. This appeal arises from the judgment and order dated 19-8-1999 of the High Court of Patna, Ranchi Bench, in LPA No.214 of 1999 (R). The Division Bench declined to interfere with the order of the learned Single Judge dismissing the writ petition filed by the appellant.

145. The case arose out of the award dated 3-10-1996 passed by the Central Government Industrial Tribunal I directing the appellant to absorb the contract labour. The Tribunal, on appreciation of the evidence, found that the contract labourers were not regularised to deprive them from the due wages and other benefits on a par with the regular employees under sham paperwork by virtue of the sham transaction. It was also pointed out that the workmen on order coal washery were regularised. The claim of the appellant that the washery was given to the purchaser was not accepted as being a sham transaction to camouflage the real facts. The learned Single Judge on consideration of the entire material confirmed the award and the Division Bench declined to interfere in the LPA. We find no reason to interfere with the order under challenge. The appeal is, therefore, dismissed with costs."

But going through the aforesaid decision we found that the main dispute in that case is with regard to the principal



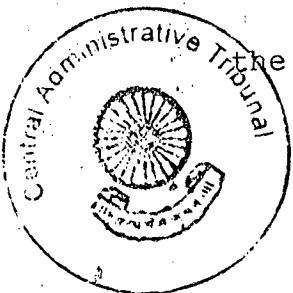
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employer and the intermediary who engages the contract labour. The Hon'ble Supreme Court held that in such cases, the principal employer has got nexus with employment and they can be directed to regularise the service of the labourers in the establishment concerned subject to fulfillment of other conditions. A broad proposition of law as to the contractual obligation between the principal employer and the labourer has been discussed which is not germane in the present case.

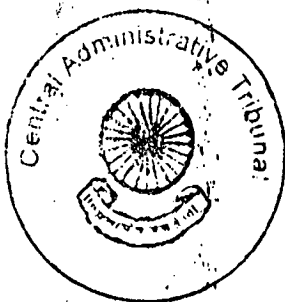
6. The labour laws regarding regularisation of contract labourer have taken changes in legislation and that of judicial pronouncements. Counsel for the respondents has taken our attention to the celebrated decision of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and Others vs. Umadevi (3) and Others**, reported in (2006) 4 SCC 1 in which it is declared that casual labourer/temporary employee do not have any right to regular or permanent public employment and further it is held that temporary, contractual, casual, adhoc or daily-wage public employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it. Interpreting provisions of the Constitution of India

The Supreme Court observed as under:-

16. In *B.N. Nagarajan V. State of Karnataka*⁸ this Court clearly held that the words



"regular" or "regularisation" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This Court emphasised that when rules framed under Article 309 of the Constitution are in force, no regularisation is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised and that it alone can be regularised and granting permanence of employment is a totally different concept and cannot be equated with regularisation.

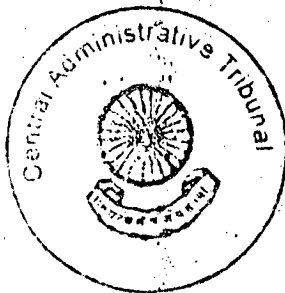


19. One aspect arises. Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department of the instrumentality of the project is also of equal concern for the State. The State works out of the scheme taking into consideration the financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularisation or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the court ought not to impose

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a financial burden on the State by such directions, as such directions may turn counterproductive.

26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent - the distinction between regularisation and making permanent, was not emphasised here. - can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in para 50 (of SCC) of *Piara Singh*⁵ is to some extent inconsistent with the conclusion in para 45 (of SCC) therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.

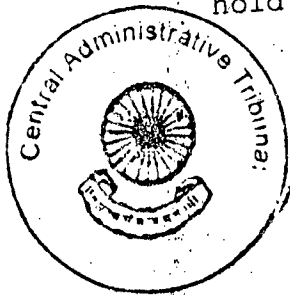


47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any

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promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief or being made permanent in the past."

The above celebrated decision declares that casual labourer/temporary employee/contract labourer does not have any right to regularisation or permanent public employment. The said issue is also discussed in another decision in the case of **Avas Vikas Sansthan And Another vs. Avas Vikas Sansthan engineers Association & Others** reported in 2006 SCC (L&S) 613 in which the Hon'ble Supreme Court of India discussing various earlier decisions and legal points declared that casual labourer/temporary employee/daily wages employee has no parity with regular employees and they cannot, by any stretch of imagination, be put on a par with regular employees. In para 57 of the said decision the Apex Court hold as under:-



"With regard to the appointment of 46 daily-wage employees after the dissolution of the Society, we hold that, in the facts the circumstances of this case there is no right on the part of any employee to be re-employed. Also daily-wage employees cannot, by any stretch of imagination, be put on a par with regular employees under any law prevalent as of date. The finding of the Division Bench that they can be treated on a par with regular employees and be given various reliefs is wrong and erroneous under law. Therefore, we are not granting any relief to the daily-wage employees as their

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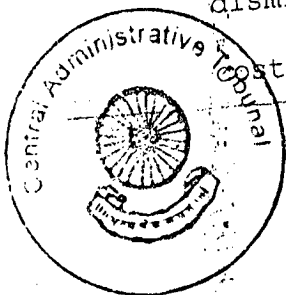
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claim is not justified under law. However, the Government of Rajasthan may sympathetically consider absorption of these employees in the vacancy available if any in future by giving them preference over other new applicants in any of their local bodies."

7. It is clear from the above, that casual labourers/substitute casual labourers or, contract labourers have no fixity of employment, and therefore, the reliefs that have been prayed by the present applicant cannot be granted by this Tribunal. We place on record our appreciation for Mr.G.Baishya, learned Sr. C.G.S.C. for the respondents for the good arguments advanced by him.

8. In the conspectus facts and circumstances of the case and the legal position as discussed above, we are of the considered opinion that the applicant cannot have the legal right for regularisation as claimed in this case, and therefore, the reliefs claimed in the Original Application cannot be granted to the applicant and hence the same is liable to be dismissed.

Accordingly, the present Original Application is dismissed. In the circumstances, there is no order as to



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प्रतिनिधि

18-8-06

अनुभाग अधिकारी

Section Officer (Judl)

(Central Administrative Tribunal)

न्यायाधीश

BEACH

16/8/8

Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)