
(1996) 05 MAD CK 0009
In the Madras High Court

A. Ilango and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-05-1996

Acts Referred:

Administrative Tribunals Act, 1985 — Section 2(d)
Constitution of India, 1950 — Article 145
Industrial Disputes Act, 1947 — Section 2(s)

Citation : (1996) 2 MLJ 275

Hon'ble Judges : AR. Lakshmanan, J

Bench : Division Bench

Judgement

AR. Lakshmanan, J.—All the above writ petitions were filed for the issuance of a writ of certiorarified mandamus, calling for the records relating to the Order, dated 12.5.1992 bearing No. 7175 of 1992 (Estt.) on the file of the third respondent and to quash the same and direct the respondents to reinstate the petitioners in service with back wages and continuity of service. Under the order impugned the services of the petitioners, who are daily rated casual labourers of the Legislative Assembly Department were terminated with effect from the forenoon of May, 13, 1992. The case of the petitioners is common in nature:

2. In the Legislative Assembly Department, Government of Pondicherry, a large number of daily rated casual Labourers are employed from time to time. They were given salary for the days they worked. They were assigned to work, even during Government holidays. They were allowed to work for years. They were assigned different types of work in different places. Some were employed in the M.L.A.'s. hostel and were assigned the work of room/call boys, to attend to all and sundry works assigned to them both by the higher Authorities and by those who stay in the rooms. Some of them were assigned the work of attending to the TV room in the same hostel. A few others were assigned the work of attending to the internal telephone exchange in the hostel and also at the reception counter. Apart from the work in the M.L.A.'s hostel, the daily rated casual labourers were given duties in the Legislative Party Office in the Offices of the Speaker, Deputy

Speaker in the Assembly Press and in the Office of the Assembly Department also, which are located far away from the M.L.A.'s hostel. The Senior most of the daily rated casual labourers were considered and absorbed permanently and posted in various departments. The petitioners were given appointment as daily rated casual labourers in the Pondicherry Assembly Department by orders of various dates in the month of June/July, 1990 and March 1991. The petitioners' service particulars are as follows: The appointment order reads thus:

S. No.

W.P. Nos.

Name of the petitioner

Date of Appointment Termination

No. of days worked 90-9-92

1.

503 of 1993

Illango

22.6.90

13.5.92

195-360-114=669

2.

504 of 1993

G. Sankar

25.6.90

13.5.92

190-365-132=687

3.

505 of 1993

S. Mani

9.7.90

13.5.92

176-365-113=674

4.

506 of 1993

A. Nelson Belmond

25.6.90

13.5.92

190-365-134=689

5.

507 of 1993

L. Udayakumar

11.7.90

13.5.92

174-350-84= 608

6.

508 of 1993

K. Jeyasankar

11.7.90

13.5.92

174-365-131=670

7.

509 of 1993

R. Damodaran

22.6.90

13.5.92

195-365-132=692

8.

510 of 1993

D. Gunasekaran

21.6.90

13.5.92

195-365-115=675

9.

511 of 1993

S. Srinivasa Perumal

9.7.90

13.5.92

176-365-134=675

10.

512 of 1993

D. Selvaraj

22.6.90

13.5.92

195-365-133=688

11.

513 of 1993

R. Subramanian

22.6.90

13.5.92

195-350-102=647

12.

514 of 1993

G. Dhanaraju

21.6.90

13.5.92

195-365-131=691

13.

515 of 1993

K. Subramanian

22.3.91

13.5.92

285-130 =415

14.

516 of 1993

S. Shanmugham

21.6.90

13.5.92

195-365-110=670

15.

517 of 1993

C. Murugan

9.7.90

13.5.92

176-365-134=675

16.

518 of 1993

P. Jeevanandarn

11.7.90

13.5.92

174-365-130=669

17.

519 of 1993

M. Perisamy

22.6.90

13.5.92

195-345-105=645

18.

520 of 1993

G. Thamizharasan

10.7.90

13.5.92

175-365-113=653

19.

521 of 1993

G. Vaithiyanathan

22.6.90

13.5.92

195-360-89= 644

20.

522 of 1993

K. Manogarane Marc

22.6.90

13.5.92

195-365-133=688

21.

523 of 1993

A. Saravana Coumar

22.6.90

13.5.92

195-365-130=690

22.

524 of 1993

M. Ghana Segaram

10.7.90

13.5.92

175-365-112=673

23.

525 of 1993

R. Sinouvassin

9.7.90

13.5.92

176-365-128=669

24.

526 of 1993

R. Manimaran

21.6.90

13.5.92

195-360-133=688

25.

527 of 1993

N. Subramanian

22.6.90

13.5.92

195-365-128=688

26.

528 of 1993

A. Thanikkachalam

21.6.90

13.5.92

195-300-115=600

27.

542 of 1993 "

B. Ezhumalai

29.6.90

13.5.92

185-365-135=685

The appointmnet order reads thus:

GOVERNMENT OF PONDICHERRY LEGISLATIVE ASSEMBLY DEPARTMENT No.
7175/90-LA (Estt) Pondicherry, the July, 2, 1990

OFFICE ORDER

Sub:- Legislative Assembly Department - Engagement of Daily Rated Casual Labourers -Appointment orders - issued.

Thiru A. Illango, is appointed as Daily rated Casual Labourer in the Legislative Assembly - Department, Pondicherry, against the existing vacancy with effect from the forenoon of June, 22, 1990.

He will be paid wages in accordance with the rates prescribed G.O. Ms. No. 32/90F3, dated 10-4-1990 of the Finance Department, Pondicherry.

He is informed that the appointment is purely on daily wages basis and his services are liable to be terminated at any time without notice and without assigning any reason therefor.

Sd/- (S. RAMAMOORTHY) Editor of Debates.

As seen above, the appointment was purely on daily wages basis and the services of the petitioners are likely to be terminated at any time without prior notice and without assigning any reason therefor. The petitioners were paid Rs. 43 as their wages for a days work. Ever since their appointment they had worked most sincerely without giving any room for any complaint and as a matter of fact there was no complaint whatever against them. All on a sudden their services were terminated by a cryptic order, dated 12.5.1992 with effect from the afternoon of 13.5.1992.

Along with the petitioner in Writ Petition No. 503 of 1993 fifty five other daily rated casual labourers were also terminated from service on the very same day by similar cryptic orders without assigning any reason therefor. All the petitioners have put in more than 240 days of continuous service within a period of less than two years of their employment, as could be seen from the chart extracted above. It is also contended that the persons who came to be appointed as daily rated casual labourers subsequent to the appointment of petitioners and that too after the change of Ministry which held office then, were allowed to continue in service. In other words, persons who entered the service later were retained and those who entered the service earlier were retrenched. The petitioners filed? Original Applications before the Central Administrative Tribunal, Madras Bench, calling in question the order of termination of their services on several grounds.

3. The respondents filed a counter-affidavit and made an attempt to justify their stand with regard to the termination of the petitioners' services and the services of 54 others by making general and sweeping allegations of dereliction of duty. However, when the applications came up for hearing, the respondents took a preliminary objection stating that u/s 2(d) of the Administrative Tribunal's Act, 1985, the Tribunal has no jurisdiction to entertain their applications on the ground that they were employed in the Secretarial Service of the Legislature. The Central Administrative Tribunal by order, dated 17.12.1992 accepted the contention of the respondent and held that the petitioner's applications were not maintainable since the Tribunal does not have jurisdiction. It was under those circumstances, the petitioners were constrained to approach this Court, alleging that the order terminating their services is illegal, arbitrary, mala fide and one intended to subserve oblique purpose and against the principles of natural justice and also discriminatory.

4. It is further stated that out of 55 persons, 13 of them were favoured with re-employment which fact prove clearly that the wholesale orders of removal were

made improperly without application of mind. According to the petitioners, since they have put in long continuous service, they are entitled to be made permanent in the post and therefore their removal from service is illegal and amount to unfair labour practice by the State.

5. The respondents filed a separate counter-affidavit in all those writ petitions, denying the allegations contained in the affidavits filed in support of these writ petitions. In paragraph 2 of the counter-affidavit, it is stated that the petitioners were employed as casual labourers as desired by the Honourable Speaker of the eighth Legislative Assembly Pondicherry to cater to the needs of the Members of the Eighth Legislative Assembly of Pondicherry which came into being on 5th March, 1990 and dissolved on 4th March, 1991. It is further stated that the petitioners and others who were similarly appointed do not hold any civil post and that their services were liable to be terminated any time without any notice and without assigning any reasons whatsoever. They were not appointed through Employment Exchange, Pondicherry and that they are not entitled for regularisation of their services on the ground of working more than 240 days. The Ninth Legislative Assembly was elected and came into force from 4th July, 1991 and the new Speaker was elected by the members of the Legislative Assembly. On the basis of the representation made by some of the Members of the Legislative Assembly, the Speaker of the Ninth Legislative Assembly decided to terminate the service of the petitioners on the ground of non-suitability. On the basis of the directions of the Speaker of the Legislative Assembly, a decision was taken to terminate the services of the petitioners and others by passing the impugned order simplicitor. According to the respondents, the petitioners being daily rated casual workers, they are workmen within the meaning of Section 2(s) of the Industrial Disputes Act and they have efficacious remedy before the Labour Court. The order sent by the third respondent is not an arbitrary one passed by the second respondent, but it was as per the direction of the Speaker of the Ninth Legislative Assembly, Pondicherry, which direction was processed administratively to pass the impugned order.

6. I have heard the arguments of Mr. G. Masilamani, learned Senior Counsel appearing for the petitioners and Mr. P. Krishnamoorthy, learned Government Pleader (Pondicherry) appearing for the respondents. I have also gone through the contents of the affidavits filed in support of these writ petitions and the counter-affidavit and also the documents filed in form of typed sets, furnishing full particulars in regard to the names of persons re-employed, the names of persons who were made permanent and the names of the persons who were appointed later than the petitioners, but retained in service. Both the learned Senior Counsel appearing for the petitioners and the learned Government Pleader (Pondicherry) have reiterated the averments made in the affidavits and the counter-affidavit in support of their respective stand. In my opinion, the individual orders passed by the respondents and the action of the third respondent in terminating the services of the individuals are arbitrary. It is seen from the affidavits filed in support of these writ petitions that about 56 persons,

who were employed as daily rated casual labourers were terminated on the very same day by similar orders passed by the respondents without disclosing any reason therefor. From the particulars furnished in the Chart extracted above, it is seen that each of the petitioners has put in more than 240 days of continuous service within a period of less than two years of their employment. It would be relevant to refer here that the post to which the petitioners were appointed remains unabolished and the need and necessity for the post is perennial, continuous and subsisting. As a matter of fact, the third respondent has filled up all the posts on the same terms of their appointment, with hand picked men of their choice, after removing him and the other persons from service. This has not been denied by the respondents in the counter-affidavit filed by them. Further, the persons who came to be appointed as daily rated casual labourers subsequent to the petitioners' appointment and that too after the change of Ministry at that point of time were allowed to continue in service. In other words, persons who entered the service later were retained and those who entered service earlier were retrenched. The principles of "last come, first go" was not observed in the case of the petitioners. The impugned order, therefore, in my opinion, is discriminatory, arbitrary and illegal since the persons who came to service later than the petitioners on the same terms and conditions and for a similar post were retained whereas the services of the petitioners were terminated without any justification. As has been rightly pointed out by Mr. G. Masilamani, learned Senior Counsel, for the petitioner the act of the respondents is contrary to the Well-established principles viz., last come first go and that the impugned order is violative of the principles natural justice and fair play since the petitioners were removed from service without any prior notice to them and Without affording any opportunity to them to explain against their removal from service, especially when their removal is sought to be justified on the ground of dereliction of duties. As seen already, the post from which the petitioner was removed, continues, and the need and the necessity for the post subsist and as a matter of fact the said post was filled up again by a hand picked daily rated casual labourers. Therefore, there is merit in the contention of learned Senior Counsel for the petitioners that the petitioners were removed from service in an arbitrary fashion in order to favour some one else and that therefore the impugned order is illegal.

7. Per contra, Mr. P. Krishnamoorthy, learned Government Pleader (Pondicherry) appearing for the respondents contended that the petitioners were removed from service on the allegation of dereliction of duties. No scrap of paper was placed before this Court to show that any notice has been given to the petitioners, enabling them to explain the allegation levelled against them. As already seen, the petitioners were terminated without any enquiry whatsoever. As such the impugned order is violative of the principles of natural justice and fair play and it amounts to unjust trade practice. In my opinion, the allegation of dereliction of duty made generally against a class of persons was only an after thought since the same does not find a place in the removal order. Further, the allegations are

made against all the 55 persons, whose services were terminated on the very same day. Out of these 55 persons, 13 of them were favoured with re-employment, which fact, in my opinion indisputably establish that the wholesale orders of removal were made improperly and without application of mind and they were intended to subserve oblique purposes rather than public interest and in the interest of efficient administration. It is further contended that two persons who were removed from service on the same day along with the petitioner viz., S. Radjasegarane and P. Ravichandran, who were employed in PBX (Internal Telephone Exchange) in the M.L.A.'s hostel and to whom the general allegations of dereliction of duty, shall apply were given re-employment without any enquiry to clear them from the allegations. Thus, it is aeparent from the above facts that the allegations were not true, and that therefore some of the persons removed from service were given re-employment at the unfettered and arbitrary discretion of the third respondent.

8. A seniority list of daily rated casual labourers is maintained in the Department and the candidature of the senior most persons were considered and they were appointed on permanent basis as and when vacancy arose in the respondent-Department and other Departments. As a matter of fact several permanent vacancies had arisen just before and after removal of the petitioners from service and the petitioners being seniors in service would have been considered and permanently appointed had only, if they had not been removed from service arbitrarily and unjustly. As rightly pointed out by Mr. G. Masilamani, learned Senior Counsel for the petitioners, the petitioners and others were removed from service to achieve two illegal things viz.,

(1) to accommodate the favourite candidates of the respondents for too obvious reasons and

(2) to favour the Juniors to the petitioners and to the other 54 persons with permanent employment since these juniors were given appointment after the present Ministry came into power.

The petitioner in W.P. No. 503 of 1993 contends that he has put in long continuous service as mentioned in paragraph 5 of the affidavit filed in support of the said writ petition and that therefore he is entitled to be made permanent in the post. Even though he was senior to more than, 13 persons who were re-employed, he was subjected to hostile discrimination and denied re-employment. One thing is very dear The petitioners had been removed from service by way of victimisation with a stigma which is evident from the stand taken by the respondents in their counter-affidavit before the Central Administrative Tribunal Bench. Such a removal from service without any enquiry and without giving an opportunity to the petitioners so as to enable them to submit their explanation is clearly illegal and arbitrary. I am therefore of the clear opinion that the petitioners are entitled to succeed in the writ petitions.

9. My attention was drawn to the typed set of papers filed along with these writ

petitions. A list containing the names of 13 persons who were re-employed with the place of their work at the time of removal from service is found available at page no. 40 of the typed set. Another list containing full particulars of daily rated casual labourers who were made permanent is also found available at page Nos. 41 and 42 of the typed set. The said list discloses the place of work before made permanent, date of permanent appointment and the place of posting after permanent appointment. Another list showing the persons who were appointed later than the petitioners, but retained in service, numbering about 19, their names, dates of appointment and the place of their work is also found available at page No. 43 of the typed set. There is no denial on the said of the respondents with regard to the persons re-employed, persons who were made permanent and persons who were appointed latter than the petitioners, but retained in service.

10. At the time of hearing, Mr. G. Masilamani, learned Senior Counsel appearing for the petitioners drew my attention to the decision reported in Jarnail Singh and Others Vs. State of Punjab and Others, in support of his contention that the petitioners who are seniors were not considered for retainment and persons who are juniors to the petitioners were retained in service. In the decision reported in Jarnail Singh and Others Vs. State of Punjab and Others, , it has been held as follows:

In the instant case, ad hoc services of the appellants have been arbitrarily terminated as no longer required while the respondents have retained other Surveyors, who are juniors to the appellants. Therefore, on this ground also, the impugned order of termination of the services of the appellants are illegal and bad being in contravention of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India.

After a careful perusal of the record, we are satisfied that the juniors to the petitioner are retained. Therefore on this ground also the termination order is liable to be quashed.

11. Per contra, Mr. P. Krishnamoorthy, learned Government Pleader (Pondicherry) contended that since action had been taken as per the direction of the Speaker of the Ninth Legislative Assembly of Pondicherry and that in relation to matters of the Pondicherry Legislative Assembly, the decision of the Speaker is final and that therefore, the decision taken by the Speaker is not amenable to the jurisdiction of this Court. I am unable to agree with the said contention.

12. It is useful to refer to the land mark decision of the Honourable Supreme Court reported in I. Manilal Singh Vs. Dr. H. Borobabu Singh and another, . Five Honourable Judges of the Apex Court while dealing with a similar situation have observed as follows:

The power of the Supreme Court in such matters is not confined merely to the provisions of the Contempt of Courts Act, 1971 and the Rules framed thereunder but is plenary to punish any person for contempt of court, and for that purpose to require his presence in person in court in the manner considered appropriate

in the facts of the case. Some such provisions are particularly Articles 129 and 142 apart from Article 145 of the Constitution of India. In such a case, it cannot be said that the contemner was immune from the process of Supreme Court even in a contempt proceedings when a prima facie case of criminal contempt was made out against him requiring his personal present to answer that charge and to be present at the hearing. The immunity given by Article 361 of the Constitution is not a Speaker. Accordingly, Supreme Court directed the Government of India to produce the contemner, in person in Supreme Court on the next date of hearing, taking such steps as were necessary for the purpose and was further clarified that the Government of India would be entitled to take all such steps, which were necessary including the use of minimum force which would be required for compliance of Court's order.

It is also useful to extract paragraphs 20, 21 and 25 in this context:

Para 20: Article 129 says that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Para 21: Article 142 provides for enforcement of decrees and orders of Supreme Court and lays down that the Supreme Court shall have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself. Article 141 declares the binding effect of the law declared by the Supreme Court which is a clear provision to indicate that the meaning of law is to be understood as declared by the Supreme Court. Obviously, it is not for any one else including the Speaker to decide what the law is, and make an interpretation of the law contrary to the declaration of law made by the Supreme Court. Article 144 contains the constitutional obligation of all authorities in the territory of India to act in aid of the Supreme Court. These provisions are well known and they are mentioned in this order once again in the present case merely for the benefit of the contemner who has wilfully and deliberately refused to obey and ignored not merely the orders of this Court but has also chosen to ignore the provisions in the Constitution itself, to which he must have sworn allegiance before taking his seat as a Member of the Manipur Legislative Assembly.

Para 25: It is our constitutional duty which requires us to make this order, to uphold the majesty of law and justify the confidence of the people, that no one in this country is above the law and governance is not of men but of the "rule of law". It is unfortunate that this action has to be taken against a person, who happens to be the Speaker of a Legislative Assembly, but that does not permit us to apply the law differently to him when he was wilfully and contumaciously driven the court to this course. We must remind ourselves that the rule of law permits no one to claim to be above the law and it means "be you ever so high the law is above you". It was said long back "to seek to be wiser than the law, is forbidden by the law."

Therefore it is very clear that even the Speaker of the Legislative Assembly is amenable to the jurisdiction of the court and that the court shall have every power to make any order for the purpose of securing the attendance of any person, including the Speaker of the Legislative Assembly, the discovery or production of any documents, or the investigation or punishment of any contempt of itself. It is to be seen that the above decision of the Supreme Court was taken by the Supreme Court as against the action taken by the Speaker of a Legislative Assembly. In view of the verdict of the Supreme Court, the contention of learned Government Pleader (Pondicherry) that the Speaker of a Legislative Assembly is not amenable to the jurisdiction has got to be rejected.

13. In this case, the services of the petitioners were terminated on the ground that their services were not required, but however, many juniors of the petitioners were retained in service, which according to the petitioners is wholly illegal. In support of his contention, Mr. G. Masilamani, learned Senior Counsel appearing for the petitioner also invited my attention to paragraph 6 of the decision of the Supreme Court in *Om Prakash Goel Vs. The Himachal Pradesh Tourism Development Corporation Ltd., Shimla* and another, which reads thus:

In this context, the learned Counsel also questioned the termination order from another angle. In that order it is mentioned that the services of the petitioner are no longer required, therefore, they are terminated. But from the record it is clear that juniors to the petitioner are retained and they are continuing in service. In the affidavit it is clearly mentioned that juniors whose names are given there are retained in service in violation of Articles 14 and 16 of the Constitution. In the counter-affidavit only a vague reply is given simply stating that the averments made by the petitioner are not correct. In *K.C. Joshi Vs. Union of India (UOI) and Others*, it is observed that "If it is discharged simpliciter, it would be violative of Article 16 because a number of store keepers junior to the appellant are shown to have been retained in service.

In the decision reported in *R. Christopher Vs. Executive Engineer, Irrigation Workshop and Others*, a learned single Judge of Allahabad High Court has observed thus:

The words "Civil Post" are not defined in the constitution. The various relevant provisions in the Constitution. The various relevant provisions in the constitution indicate that a civil post means a post other than a post connected with defence, and a person who is serving under the State in a civil capacity is ordinarily a person who holds a civil post. There should generally exist a relationship of master and servant between the State and the employee, and even if such a post is temporary, it can be called a civil post within the meaning of Article 311(1) of the Constitution....

This decision has been cited by learned Senior Counsel for the petitioners in answer to the contention of learned Government Pleader (Pondicherry) that the petitioners were not holding any civil post and that therefore the Department is

justified in terminating the services of the petitioners by passing the order simpliciter. My attention was also drawn to (Ar. LJ) my earlier decision in P.R. Ramachandran and Others Vs. Tamil Nadu Water Supply and Drainage Board and Another, In that case the writ petitioners had challenged the orders of termination of services of all the nominal muster roll workers (NMR) by the Tamil Nadu Water Supply and Drainage Board. It was contended on behalf of the writ petitioners that they had already completed their respective stipulated term of office and that therefore, they cannot be terminated without a reasonable cause. Even if the first respondent is entitled to advise his subordinate Officers to terminate the services of the employee, so as to avoid giving the statutory benefits, it does not enable the subordinate Officers, including the second respondent not to comply with the other provisions of the Labour Legislations. On a careful consideration of the entire materials and the decisions cited by the parties, this Court came to following the conclusion:

In the instant case, the respondents have acted quite contrary to the principles of natural justice and all accepted rules of procedure and when admittedly, the impugned orders were passed in utter violation of the principles of natural justice, this Court should not only come to the aid of the aggrieved party, but it has a duty to do so.

In an identical situation, Raju, J rejected the plea of driving the workman to forums under the Act and held that for non-compliance of Section 25F of the Act, writ remedy is very much available and directed the workmen's reinstatement with back wages. The said decision of Raju, J was also confirmed by a Division Bench of this Court in W.A. No. 1161 of 1993, dated January, 31, 1994 and the SLP filed against the Division Bench judgment (W.A. No. 1161 of 1993) was also dismissed by the Apex Court.

14. Mr. Krishnamoorthy, learned Government Pleader (Pondicherry) cited a decision in Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, to show that the right to work and livelihood has not yet been recognised as a fundamental right though it has been broadly interpreted in the context of Article 21 that its deprivation must be in accordance with the procedure established by law. In that case, certain workers (petitioners) filed writ petitions under the Jawahar Rozgar Yojna Scheme, for their absorption as regular employees in the Development Department of the Delhi Administration and for an injunction prohibiting the termination of their services and also for the difference in wages paid to them and those paid to the regular employment. The said writ petitions were resisted on behalf of the respondents, contending that there is no scope for the absorption of the petitioners, as they were employed on daily wages with a clear understanding that the schemes under which they were employed had no provision for regularisation of any workman. In the said decision, the Supreme Court observed that the object of the scheme was not to provide the right to work as such even to the rural poor-much less to the unemployed in general. No fault can be found with the limited object of the

scheme given the limited resources at the disposal of the State. Those employed under the scheme, therefore, could not ask for more than what the scheme intended to give them. To get an employment under such scheme and to claim on the basis of the said employment, a right to regularisation, is to frustrate the very scheme itself. No court can be a party to such exercise. It is wrong to approach the problems of those employed under such schemes with a view to providing them with full employment and guaranteeing equal pay for equal work. These concepts in the context of such schemes are both unwarranted and misplaced. It was under those circumstances, the Honourable Supreme Court declined to accede to the request of the petitioners that the respondents be directed to regularise them. The most that can be done for them is to direct the respondent Delhi Administration to keep them on a panel and if they are regularised with the Employment Exchange and are qualified to be appointed on the relevant posts, give them a preference in employment whenever there occurs a vacancy in the regular posts, the Supreme Court further directed.

15. In my opinion, the above decision of the Supreme Court is not applicable to the facts and circumstances of the present case and is distinguishable. In the abovesaid case, the Union of India evolved several schemes to provide income for those who are below the poverty line and particularly during the periods when they are without source of livelihood and therefore without any income whatsoever. The schemes were further meant for the rural poor, for the object of the schemes was to start tackling the problem of poverty from that end. Under these programmes, works in the rural areas, resulting in durable community assets, social forestry, village roads etc., were taken up. The entire work was done by providing daily wage employment 10 rural workers including the petitioners. It was under those circumstances, the Supreme Court has held that the petitioners have absolutely no right to claim regularisation of their service and that therefore the public interests are jeopardised. In the case on hand, even though the petitioners were appointed temporarily as daily rated casual labourers, their services were terminated by the respondents without any prior notice. Therefore, the case on hand stands on a different footing. I have also referred in my earlier Judgment

P.R. Ramachandran and Others Vs. Tamil Nadu Water Supply and Drainage Board and Another, a decision of the Supreme Court in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, and extracted the following observation of the Supreme Court in the said Judgment at page 459:

The employment under the public undertaking is a public employment and a public property. It is not only the undertakings but also the society which has a stake in their proper and efficient working. Both discipline and devotion are necessary for efficiency. To ensure both, the service conditions of those who work for them must be encouraging, certain and secured, and not vague and whimsical. With capricious service conditions, both discipline and devotion are endangered, and efficiency is impaired. The right to life includes right to

livelihood. The right to livelihood therefore cannot hand on to the fancies of individuals in authority. The employment is not a bounty for them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when, work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill afford to be consigned to the limbo of underlined premises and uncertain applications. That will be a mockery of them.

16. For all the foregoing reasons, I am of the view that the orders impugned in all these writ petitions are ex facie illegal and they are liable to be set aside and accordingly, they are set aside and all the writ petitions are liable to be allowed. Consequently,

- (a) The orders impugned in all these writ petitions are quashed;
- (b) All the writ petitions are allowed;
- (c) The respondents are directed to reinstate the petitioners with all attendant benefits, including the regularisation of service, promotion etc., with effect from the date of their initial appointment;
- (d) Clause (c) above shall be implemented within a period of six weeks either from the date of receipt of a copy of this order from this Court or from the date of production of a copy of this order by the petitioners whichever is earlier; and
- (e) No costs.