
(1999) 02 MP CK 0032

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 1981 and 5423 of 1998

Mineral Exploration Corporation Ltd. and Another	APPELLANT
Vs	
Mineral Exploration Corporation Employees' Union and Others	RESPONDENT

Date of Decision : 26-02-1999

Acts Referred:

Constitution of India, 1950 — Article 16, 227
Industrial Disputes (Central) Rules, 1957 — Rule 58(1)
Industrial Disputes Act, 1947 — Section 10, 18(1), 18(6), 19(6)

Citation : (2000) ILR (MP) 1368 : (2001) 3 LLJ 1307

Hon'ble Judges : G.K. Prasad, J

Bench : Single Bench

Judgement

G.K. Prasad, J.—In Writ Petition No. 1981 of 1998 filed under Article 227 of the Constitution of India, petitioner i.e., Mineral Exploration Corporation Limited prays for quashing of the award dated March 24, 1998 (Annexure P-2) of the Central Government Industrial Tribunal, Jabalpur whereby it directed for appointment of 64 persons on compassionate ground and further directed for treating 2145 temporary employees as permanent employees by issuance of the writ in the nature of certiorari or any other writ, order or direction. In W.P.No. 5423/1998, petitioner, Mineral Exploration Corporation Employees Union prays for modification of the aforesaid award and seek direction that the services of the workmen be regularised with effect from January 7, 1993 and they be paid regular pay scales from the said date. Both the writ petitions are being disposed off by this common order.

2. Facts necessary for the decision of the present writ petitions as pleaded in W.P. No. 1981/1998 are that the Government of India by its order dated January 7, 1993 referred the following dispute for adjudication by the Central Government Industrial Tribunal:

(i) Whether the action of the Management of Mineral Exploration Corporation Ltd., Nagpur in not regularising the services of Sri A.K. Janson and 2144 others

(As per Annexure "A" attached) and depriving them from all fringe benefits like permanent workmen is justified? If not, to what relief the concerned workmen are entitled to and from what date?

(ii) Whether the action of the management of MECL, Nagpur is not providing employment to Smt. Surya Gayee and 63 others (as per Annexure "B" attached) as the legal heirs dependents of deceased employees on compassionate grounds is justified? if not, to what relief are they entitled to and from what date?

3. Petitioner Mineral Exploration Corporation Limited (hereinafter referred to as the Corporation) is a Government company registered under the Companies Act. Its aims and objects are exploration of minerals for and on behalf of the Government of India and its undertakings. After the minerals are explored by the Corporation, mining operation is conducted either by the State Government or by the Central Government or its undertakings. Work of the Corporation is only to explore and assess the location, quantity and quality of the minerals.

4. According to respondent No. 1, i.e. Mineral Exploration Corporation Employees' Union (hereinafter referred to as the Union) 90% work of the Corporation is of permanent nature and for that regular employees ought to have been recruited, but the Corporation gives permanent employment only to 40% workmen and rest of the work is taken from temporary workmen. Accordingly the stand of the Union is that on account of the aforesaid policy, temporary employees get less wages and they further do not get leave, loan, advance and conveyance allowances or promotion. Stand of the Union further is that the employer pays different emoluments for the same work to various employees who perform same function. Further stand of the Union is that in the year 1989-1990 approximately 8,900 workmen were employed and in the last 18 years their number is about 5,800. According to the Union workmen who have put in work from two years to ten years have been kept as temporary employees by the employer. It has been further averred by the Union that whenever the employer undertakes new project, it starts the same with the employees of the old project. It has been further averred that temporary employees are transferred from one place to another by order of the employer. According to the Union all the projects of the employer is completed within a period of six years, still there are a large number of temporary employees who are working in the Corporation for more than ten years.

5. According to the Union there are bipartite committees of the workmen and the Management at corporate level, area level and project level and in the year 1985 the committee at corporate level constituted a sub-committee to look into the grievance of the temporary employees. According to the Union, committee in its report found that the employer requires 7,211 workmen which was accepted by the Corporation and it implemented its report in relation to the officers, but as regards the recommendation in relation to the workmen, it was sent to the National Productivity Council. According to the Union Corporation has not given compassionate appointment to the heirs and legal representatives of those

employees who died in harness, although it is moral obligation of the Corporation to do the same. In the aforesaid premises stand of the Union is that all temporary employees be made permanent, they be paid all the allowances and benefits from retrospective date. Union has also prayed for giving appointment to the heirs and legal representatives of all those employees who died while in service.

6. According to the Corporation it is engaged in two kinds of work; one in which it requires permanent employees and other which is of shorter period and the nature of work is non-technical. For non-technical work workmen residing near the site of the project are engaged and their services come to an end after the project is over. According to the Corporation for appointment of permanent employees, applications are invited from all over the country. Thereafter the applications are screened by Screening Committee and appointments made. Permanent employees are transferred from one project to another after completion of the project, but temporary employees are not allowed to continue after completion of the project, and they are not sent to another project.

7. It is the stand of the Corporation that an agreement was arrived at between it and the Union and in terms of the settlement; award was given on February 23, 1980 and in view of aforesaid, the present dispute cannot be raised. It has been further averred by the Corporation that in relation to the temporary employees, dispute arose between the Corporation and the Union and settlement was arrived at before the Regional Labour Commissioner on February 7, 1990 and on this ground also, Union is not entitled to raise the same dispute again. It is the stand of the Corporation that its financial position is very poor and right from the year 1991 to 1994 it has suffered loss in crores and hence it is not in a position to give employment on compassionate ground to the dependents of all those employees who died while in service.

8. On consideration of the rival stand and submissions, the Industrial Tribunal held that providing employment on compassionate ground to the dependents of the employees dying in harness is a social obligation of the employer and accordingly by the impugned award it directed for giving compassionate appointment to 64 dependent persons. It further found that a large number of employees are working for long period temporarily and some of the employees are working as such since 1979. Tribunal further found that temporary employees are transferred from one place to another and have been also promoted. It further held that temporary employees are not given salary in the regular scale of pay, but they are paid emoluments as daily wage employees. It further found that the temporary employees are not given the benefit of leave and other allowances, but Provident Fund deductions are made from them. It further found that they are given annual increment and without notice and payment of retrenchment compensation they are retrenched. Accordingly, it granted the relief aforesaid by the impugned award.

9. Mr. Ravindra Shrivastava appearing on behalf of the Union raises preliminary

objection about the competence of the Corporation to file the writ petition without clearance from the high power committee as envisaged by the Judgment of the Supreme Court in the case of Oil and Natural Gas Commission and Another Vs. Collector of Central Excise, ; as also the office memorandum dated February 1, 1994. It is the contention of Sri Shrivastava that the Corporation in effect and substance has challenged the order dated January 7, 1993 of the Government of India whereby it has referred the dispute to the Industrial Tribunal for adjudication. He further submits that after the award has been published by the Central Government, in sum and substance it has become the decision of the Government of India, hence before challenging the same it was obligatory on part of the Corporation to obtain clearance from the high power committee. Sri P.S. Nair appearing on behalf of the petitioner however, submits that in the present case what is under challenge is the award of the Industrial Tribunal, which is in relation to a dispute between workmen and the Corporation and the same cannot be said to be a dispute between a Government Department and a Public Sector undertaking of the Union of India.

10. It seems that frivolous litigations between the Government department and public sector undertaking of Union of India became rampant and when it came to the notice of the Supreme Court in the case of Oil and Natural Gas Commission (supra) it directed the Cabinet Secretary of the Government of India to take appropriate initiative in the matter. In the said case the Supreme Court reproduced the report of the Cabinet Secretary which reads as follows:-

"In his report the Cabinet Secretary has stated: I would also like to state that the Government respects the views expressed by this Honourable Court and has accepted them that public undertakings of Central Government and the Union of India should not fight their litigation in Court by spending money on fees on counsel, Court fees, procedural expenses and wasting public time. It is in this context that the Cabinet Secretariat has issued instructions from time to time to all Departments of the Government of India as well as to public undertakings of the Central Government to the effect that all disputes, regardless of the type, should be resolved amicably by mutual consultation or through the good offices of empowered agencies of the Government or through arbitration and recourse to litigation should be eliminated."

Thereafter the Supreme Court directed as follows:

"The Committee shall function under the ultimate control of the Cabinet Secretary but his delegate may look after the matters. This Court would expect a quarterly report about the functioning of this system to be furnished to the Registry beginning from January 1, 1992."

11. Thereafter the Government of India issued office memorandum dated February 1, 1994 inter alia providing that in case of dispute between one Government department and another, one Government department and a public enterprise or one enterprise and another same shall be referred to the

committee. It is not in dispute that the petitioner has filed this writ petition without the clearance of the committee. In my opinion, the case in hand does not pertain to a dispute between the Corporation and one of the department of Government of India. Merely the fact that the Ministry of Labour of Government of India has exercised its statutory power in making reference of dispute to the Central Government Industrial Tribunal and published the award of the Tribunal, same cannot be construed as a dispute between the; department of Government of India and a public enterprise so as to attract the provision of office memorandum dated February 1, 1994 and the Judgment of the Supreme Court in Oil and Natural Gas Commission and Anr. (supra). Hence I do not have the slightest hesitation in over-ruling this preliminary objection of Shri Shrivastava.

12. It is relevant here to state that a memorandum of settlement was arrived at between the Management of the Corporation and the Union u/s 18(1) of the Industrial Disputes Act read with Rule 58 (1) of the Industrial Disputes (Central Rules), 1957 on demand regarding wage revision and other: related matters. Prior to this a dispute was referred for adjudication to the Industrial Tribunal as to whether the action of the Management of the Corporation in not regularising their contingent workers employed for regular type of work and for long period of service is justified? When the aforesaid reference was pending before the Industrial Tribunal a settlement was arrived at between the Corporation and the Union and one of the terms of settlement was in relation to regularisation which reads as follows:-

"Regularisation: Regarding regularisation, a committee was appointed duly to assess jobs of continuous nature on which the representatives of the MECEU were also represented. The report of this committee has been received, recently, and its recommendations will be put up to the Board of Directors in its next meeting. Every efforts will be made to obtain the permission of the Director General, Employment and Training to fill the vacancies, which will thus be available, out of the contingent workmen based on their seniority and their suitability. The work of regularisation of such on contingent workers will be completed within a period of four months from the date of the approval of the Board of Directors."

The said settlement was filed before the Industrial Tribunal and the Tribunal on perusal of the terms of the settlement found the same beneficial to the parties and accordingly handed over award dated February 23, 1980 in terms of the settlement.

13. Shri Nair appearing in support of the writ petition (W.P. No. 1981 of 1998) contends that the settlement and award continue to be in operation as the same has not been replaced by a fresh settlement. He further submits that dispute in regard to the regularisation of service of the temporary employees having been covered under the settlement, no industrial dispute exists and hence reference is incompetent. In support of this submission that settlement and award continue to be in operation until they are replaced by a fresh settlement, he has placed

reliance on the judgment of the Supreme Court in the case of Life Insurance Corporation of India Vs. D.J. Bahadur and Others, : He has drawn my attention to the following passage 42 of the Judgment.

"The catena of cases we have briefly catalogued discloses an unbroken stream of case-law binding on this Court, the ratio whereof, even otherwise commends itself to us. The award or settlement under the ID Act replaces the earlier contract of service and is given plenary effect as between the parties. It is not a case of the earlier contract being kept under suspended animation but suffering supersession. Once the earlier contract is extinguished and fresh conditions of service are created by the award or the settlement, the inevitable consequence is that even though the period of operation and the span of binding force expire, on the notice to terminate the contract being given, the said contract continues to govern the relations between the parties until a new agreement by way of settlement or statutory contract by the force of an award takes its place. If notice had not been given, the door for raising an industrial dispute and fresh conditions of service would not have been legally open."

According to Shri Nair as the award and settlement continue, dispute in relation to regularisation is fully covered and once it is so, no dispute exists between the Corporation and the Union and hence according to his submission there can be no reference to the Industrial Tribunal. In support of his submission he has placed reliance on a large number of authorities including the case of Employers of Thungabhadra Industries Ltd. Vs. The Workmen and Another, , Management of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. The Workmen and Another, , decisions rendered by the Supreme Court. He has also placed reliance on the judgment of the Madras High Court in the case of the Ex. Sep. Sital Singh Vs. Union of India (UOI), , Kerala High Court in the case of J. Thomas and Company Pvt. Ltd. v. Govt. of Kerala 1977 Lab. I.C 1329 and Delhi High Court in the case of Blue Star Limited Vs. K.S. Khurana and Others, .

14. What is to be referred by the Central Government for adjudication to the Industrial Tribunal u/s 10 of the Industrial Disputes Act is the dispute between the workmen and the management and in case no dispute exists between the parties, no reference can be made. In view of the settled legal position it is inexpedient to refer to each of judgments relied on by Mr. Nair to contend that existence of Industrial Dispute is sine-qua non for reference of a dispute for adjudication to the Industrial Tribunal. However, the question for consideration is as to whether the settlement and the award referred to above still continue and whether the dispute which has been referred to the Industrial Tribunal which has led into passing of the impugned award was the subject matter of dispute in the earlier settlement and the award.

15. Mr. Shrivastava appearing on behalf of respondent No. 1, submits that the validity of the reference was not at all challenged before the Tribunal and accordingly no issue was framed. Accordingly his submission is that challenge to the existence of the industrial dispute and validity of reference cannot be

permitted to be raised for the first time in the present writ petition. He further submits that, in case, the petitioner was aggrieved by reference on any ground, the only remedy available was to challenge the same by means of a writ petition which the petitioner, did not avail. He further submits that u/s 10 of the Industrial Disputes Act the power to make reference rests with the appropriate Government and the Tribunal has jurisdiction only to adjudicate upon the reference. He further contends that the Corporation without raising any murmur allowed the entire adjudication to conclude before the Industrial Tribunal and only when the award has gone adverse to it, the validity of the reference, is being questioned. He submits that the same is not permissible and shall cause grave injustice to the Union.

16. He further submits that when the reference of industrial dispute is made by the appropriate Government, there is presumption about the existence of the industrial dispute. In support of his submission he has relied on a large number of authorities, i.e., *State of Madras Vs. C.P. Sarathy and Another*, : *Hochtief Gammon Vs. Industrial Tribunal, Bhubaneshwar, Orissa and Others*, , *Sadhu Ram Vs. Delhi Transport Corporation*, ; *The Workmen and Others Vs. Hindustan Lever Ltd.*, ; *Banaras Ice Factory Limited Vs. Its Workmen*, ; *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], ; *The Bata Shoe Co. (P) Ltd. Vs. D.N. Ganguly and Others*, ; *Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Others*, : It is relevant here to state that the Corporation in its claim laid before the Industrial Tribunal stated that the Union who has raised the instant dispute is a party to the agreement before the Central Government Industrial Tribunal on the basis of which the consent award was passed by the Tribunal on February 23, 1980. It has been further stated that in view of Section 18(6) of the Industrial Disputes Act, notwithstanding the expiry of the period of operation, the award shall continue to be binding on the parties until the period of two months have elapsed after notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award. It has been further stated in the statement of claim that no such notice as stipulated u/s 19(6) of the Industrial Disputes Act has been given and as such the award is still binding on the Union. It has also been stated that in relation to the present dispute bipartite settlement was arrived at on February 17, 1990 between the Corporation and the Union and the industrial dispute as raised by the Union in regard to regularisation and other benefits to the temporary and permanent workmen was closed.

17. It is relevant here to state that the memorandum of settlement arrived at between the management of the Corporation and their workmen represented by the Union u/s 18(1) of the Industrial Disputes Act was in relation to wage revision. In the award dated February 23, 1980 the dispute referred for adjudication was as to whether the action of the management of Mineral Exploration Corporation Limited in not regularising their contingent workers employed for regular type of work and having put in long years of service is justified? If not, to what relief the workers are entitled? As stated earlier the

award on the aforesaid reference was passed in terms of the settlement which inter alia provided that every efforts will be made to obtain the permission of the Director General Employment and Training to fill the vacancies which will be available to the contingent workers, based on their seniority and suitability. However, in the present case the dispute referred to is as to whether the action of the management in not regularising the services of the workmen and depriving them from all fringe benefits like permanent workers is justified. It is not the stand of the Corporation that the same enures to the benefit of 2,145 contingent workers who have been recruited after the award. The Corporation is not given the benefit of said award to the workmen whose regularisation has been granted by the Tribunal by the impugned award. I am of the opinion that the dispute which was subject matter of earlier award is not one and the same and therefore, it is inexpedient to go into the question as to whether the earlier award continues to be operative. I am of the opinion that the dispute has been rightly referred to by the competent Government and the Tribunal did not lack jurisdiction in adjudicating the said dispute. It is relevant here to state that the award dated February 23, 1980 relates to issues of regularisation and retrenchment of contingent workers recruited prior to 1979. Hence I am of the opinion that the petitioner can not be allowed to contend that the reference before the Tribunal was incompetent as no industrial dispute exists. I negative the submission of Sri Nair.

18. Shri Nair appearing on behalf of the petitioner submits that compassionate appointment can only be given when there is vacancy. According to him in the absence of vacancy question of compassionate appointment will not arise. He further submits that the claim of compassionate appointment cannot be granted as a matter of right. Mr. Shrivastava however, appearing on behalf of the Union submits that it is the obligation of every employer to give compassionate appointment to the dependents of the employees who die in harness. The Tribunal by the impugned award has considered that providing employment to the dependents of the deceased employee is a social obligation of every employer. No decision providing for compassionate appointment has been taken note of by the Tribunal. I am of the opinion that mere death of an employee does not entitle the family to compassionate appointment. Reference in this connection can be made to a judgment of the Supreme Court in case of Umesh Kumar Nagpal Vs. State of Haryana and Others, :

"It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above classes III and IV. We are also dismayed to find that the decision of this Court in Sushma Gosain v. Union of India, has been misinterpreted to the point of distortion. The decision does not justify compassionate appointment either as a matter of course or in employment in posts above Classes III and IV. In the present case the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II

posts.

However, it appears from the judgment that the State Government had made atleast one exception and provided compassionate employment in Class II post on the spacious ground that the person concerned had technical qualifications such as M.B.B.S., B.E., B.Tech., etc. Such exception, as pointed out above is illegal since it is contrary to the object of making exception to the general rule. The only ground which can justify: compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependent, nor the post which he held is relevant. It is for this reason that we are unable to understand the following observations of the High Court in the impugned judgment:

"We are of the view that the extraordinary situations require extraordinary remedies and it is open to the Government in real hard cases to deviate from the letter and spirit of the instructions and to provide relief in cases where it is so warranted. To hold as a matter of law that the Government cannot deviate even minutely from the policy of providing appointment only against Class II and Class IV posts would be to ignore the reality of life these days. It would be ridiculous to expect that a dependent of a deceased Class I officer should be offered appointment against a Class III or IV post. While we leave it to the Government to exercise its discretion judiciously in making appointments to Class I or II posts on compassionate grounds, yet a word of caution needs to be struck. It is to be noted that such appointments should be ordered in the rarest of rare cases, and in very exceptional circumstances. As a matter of fact, we would recommend that the Government should frame a policy even for such appointments.

5. It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate appointment in posts equivalent to the post held by the deceased employees and above Classes III and IV. It is unnecessary to reiterate that these observations are contrary to law. If the dependent of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity."

19. It is relevant here to state that the Tribunal without considering as to the number of posts which exist directed for appointment of the dependents on compassionate ground straightaway. According to Shri Nair, the mode adopted by the Tribunal is impermissible. In support of his contention, he has placed reliance on a judgment of the Supreme Court in case of Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, : My attention has been drawn to the following passage from the said judgment:-

"Having regard to the fact that there are large number of posts falling in Class IV and appointment on these posts is made by direct recruitment the object underlying the provision for giving employment to a dependent of a person employed on teaching/ non-teaching staff who dies in harness would be achieved

if the said provision in the Regulations is construed to mean that in the matter of appointment of a dependent of a teaching/non-teaching staff in a non government recognized aided institution dying in harness if a post in Class III is not available in the institution in which the deceased employee was employed or in any other institution in the district, the dependent would be appointed on a Class IV post in the institution in which the deceased employee was employed and for that purpose a supernumerary post in Class IV may be created. If the Regulations are thus construed the respondents- applicants could only be appointed on a Class IV post and they could not seek a direction for being appointed on a Class III post and for creation of supernumerary post in Class III for that purpose. We are, therefore, unable to uphold the direction given by the High Court in the impugned judgments whereby the respondents have been directed to be appointed on a Class III post if they possess the requisite qualifications for such a post and in case no Class III post is available, then a supernumerary Class III post be created for the purpose of such appointment."

(Italicising Mine)

20. Mr. Ravindra Shrivastava, however, appearing on behalf of the Union submits that it is the obligation of every employer to give employment on compassionate ground to the dependents of an employee who dies in harness and the Tribunal while handing over the award did not commit any illegality while directing for appointment of the dependents on compassionate ground. He further submits that the Tribunal having exercised its discretion in making award for appointment of the dependents on compassionate ground same does not call for interference by this Court in exercise of its power under Article 227 of the Constitution of India.

21. Having appreciated rival submission, I am of the opinion, that the appointment on account compassionate ground, cannot be claimed as a matter of right. No decision of the employer has been brought to my notice providing for appointment on compassionate ground and the Tribunal while handing over the award did not refer to any of such decision. The Tribunal, is of the view that giving appointment on compassionate ground is a social obligation of the employer. I am of the considered opinion that without ascertaining as to whether, the Corporation has vacant post for accommodating the dependents of the employees dying in harness, as also in the absence of any decision of the Corporation providing for appointment on compassionate ground. Tribunal erred in directing for appointment of 64 persons straightaway on compassionate ground. Purported social obligation of the employer to give appointment on compassionate ground cannot be granted without ascertaining the capacity of the employer to accommodate such persons. I am of the opinion, that the Tribunal lacked jurisdiction in straightaway directing for appointment of such persons on compassionate ground and the same deserves to be interfered by this Court in exercise of its jurisdiction. Accordingly, I am of the opinion that portion of the award which directs for appointment of 64 persons, on compassionate ground,

cannot be sustained.

22. Now, I consider the direction given by the Tribunal in the impugned award for regularisation of service of 2145 temporary employees. Shri Nair submits that various persons are employed on daily wages and they are retained in service during the subsistence of work and such employees cannot claim regularisation as a matter of course. He submits that the Corporation does not have such a large number of vacancies so as to give employment on regular basis to such a large number of persons. He submits that there are no vacancies for absorption of such a large number of employees and hence, direction given by the Tribunal to regularise them is clearly illegal. It is further contended by Shri Nair that the financial position of the Corporation is not satisfactory so as to absorb a large number of employees as directed by the Tribunal by the impugned order.

23. However, Shri Ravindra Shrivastava appearing on behalf of the Union submits that the Corporation's function is not of a limited duration and it has permanent continuous on going projects. He further submits that the bogey of financial constraint has been projected to deprive the employees regularisation. He submits that work of the Corporation is ever expanding and in fact it is diversifying its work and hence requires employees on permanent basis. He further submits that the temporary employees are not recruited on project basis which would be evident from the fact that they are transferred from one project to another. He further submits that the Tribunal has in fact not given a blanket direction for regularising the service of all workmen, but has directed for framing of a Scheme for regularisation with relevant guidelines and criteria for the same.

24. The Tribunal on consideration of the materials placed before it, has found that the temporary employees are working in the Corporation for long and some of them are working since the year 1979. It further found that some of the temporary employees are transferred from one place to another and have also been granted benefit of promotion. These temporary employees according to the Tribunal's finding, are not given emoluments in the regular scale of pay, but are given emoluments on daily wages. These employees, according to the Tribunal further are not being paid other allowances and also deprived of leave benefits.

Tribunal has further found that Provident Fund deductions are made from temporary employees and they are retrenched from service without any notice or retrenchment compensation and they are further not paid the annual increment. It is relevant here to state that in Paragraph 11 of the award, the Tribunal has posed a question and stated that in case the Union proves that the work performed by the temporary employees are of permanent nature and is not likely to come to an end then the conclusions have to be arrived at, according to the ratio laid down by the Supreme Court. Ultimately, the Tribunal directed to regularise the temporary employees in case they have completed 3 years of service from January 7, 1993, in one or the other project, they have worked for atleast 240 days in one year, workmen are skilled in their work, their conduct and behaviour are good. It further directed that seniority be given to such

workmen according to the period of service they have rendered.

25. Letter of appointments issued to the workmen clearly stated that their appointments are temporary on daily wages. It further stated that the contract of employment would terminate on completion of work or the date as specified in the appointment letter itself, whichever is earlier. It is relevant here to state that the Tribunal in its award has not referred to any of the decision of the Corporation providing for regularisation of service of temporary employees. In my opinion, regularisation of service of a temporary employee engaged on daily wages, is not a normal mode of recruitment, but an exception to enable the employer to regularise the service of temporary daily-waged employees. True, it is that the Tribunal in its award has stated that work of the Corporation is on going at different places in various parts of the country, but it has not recorded any finding that the work performed by these employees who have been directed to be regularised by the impugned award is of permanent nature or the same is likely to continue. It is also true that continuance of daily wagers for long, by an employer raises a presumption of permanent nature of work, but that presumption is not available in the case of employees working in projects. Here, in the present case, temporary employment on daily wages were offered to a large number of employees and notwithstanding the fact that some of them have worked for long, it cannot be inferred that the nature of work performed by them is of permanent in nature. Any project, it is inherent, has to come to an end one day or the other, and hence direction for regularisation of service of employees working in projects cannot be granted.

26. Decision of the Supreme Court in case of State of Haryana and others Vs. Piara Singh and others etc. etc., on which strong reliance has been placed by Mr. Shrivastava, is absolutely misplaced. In the said case the Supreme Court was considering the question of regularisation made to Class HI and Class IV services on ad hoc basis. In the said case it has been held as follows State of Haryana and others Vs. Piara Singh and others etc. etc., .

"Where a temporary or ad hoc appointment is continued for long, the Court presumes that there is need and warrant for a regular post and accordingly directs regularisation. While all the situations in which the Court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above. The principles relevant in this behalf are stated by this Court in several decisions of which, it would be sufficient to mention two decisions having a bearing upon the issue involved here. They are Dharwad Distt. P.W.D. Literate Daily Wage Employees Association v. State of Karnataka and Jacob M. Puthuparambil v. Kerala Water Authority. In the first case it was alleged that about 50,000 persons were being employed on daily-rated or on monthly-rated basis over a period of 15 to 20 years without regularising them. It was contended that the very fact that they are continued over such a long period is itself proof of the fact that there is regular need for such employment."

27. I am of the opinion that the case in hand is clearly distinguishable on facts from the case relied on by the learned counsel. Here, in the present case, the employees were appointed on daily wages in project and as noticed earlier the aims and objects of the Corporation is for exploration of minerals for and on behalf of the Government of India. It is not an employment which is of permanent nature and hence continuance of such employees for long and transfer from one place to another or even grant for promotion shall not lead to a presumption that the work is of permanent nature and continuance of such workmen on daily wages in such circumstances cannot be said to be unfair Labour practice. It is inherent in a project.

28. There is no merit in the submission of Shri Shrivastava that those who have worked for long cannot be regarded as temporary employees and his reliance on the judgment of the Supreme Court in case of N.S.K. Nayar and others Vs. Union of India and others, , is absolutely misplaced. In the aforesaid case it has been held as follows:-

"What emerges is that petitioner 1 retired from service after holding the post in STS for about 12 years and the other petitioners are holding posts in STS from 12 to 15 years. The grouse of the petitioners is that in spite of holding the posts in STS for such a long period they are not being treated as regular members thereof."

My further attention has been drawn to the following paragraph of the said judgment:-

"It could never be the intention of the framers of the rule to permit the appointments under the said rule to go on for 10 to 15 years. The appointments for such a long period cannot be considered to be purely temporary/ officiating or to hold charge. Taking work out of the petitioners in the STS posts for 10 to 15 years and denying them the right of regularisation and the consequent benefits in the said grade is wholly arbitrary and is violative of Article 16 of the Constitution of India."

In the aforesaid case permanent members of the Telegraph Engineering Service were promoted to the senior time scale and the question before the Supreme Court was as to whether the service rendered by such persons in the senior time scale for over a decade entitle them to claim that they are regular holders of the posts in the Senior Time Scale. In the backdrop of the aforesaid fact, the Supreme Court found that they cannot be regarded as temporary holders of posts. This decision is in relation to permanent employees promoted on super time scale whereas in the present case, I am concerned with the regularisation of the service of such employees who are working in a project.

29. It is relevant here to state that Shri Shrivastava appearing on behalf of the Union has referred to a large number of authorities to contend that persons working for uninterrupted long period give rise to a presumption that permanent nature of work exists and if that be so employer is under an obligation to frame

scheme for regularisation of such employees. Authorities referred to by the learned counsel are not in relation to employment in a project and in that view of the matter, I am not inclined to refer to the individual authorities. As held earlier, temporary employees were engaged in a particular project which is not of unlimited duration. Appointment letters of the employees clearly stated that their appointment would come to an end on a particular date or till completion of the project whichever is earlier. In such circumstances, I am of the opinion that the Tribunal erred in law in giving the impugned award directing the Corporation to regularise the service of 2145 employees.

30. In the result, W.P. No. 1981 of 1998 is allowed. Impugned award of the Tribunal is set aside. In view of the aforesaid, W.P. No. 5423/ 1998 has to be dismissed and is accordingly dismissed. In the facts and circumstances of the case there shall be no order as to cost in either of the petitions.