

(2001) 02 AHC CK 0024

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No"s. 16879 of 1999 and 37858 and 47921 of 2000

Net Singh

APPELLANT

Vs

Labour Secretary, U.P. Shasan and Others
Ramesh
Kumar Singh Vs State of U.P. and Others
Sanjaya
Kumar Verma and Another Vs Rajya Krishi Utpadan Mandi
Parishad and Others

RESPONDENT

Date of Decision : 05-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 UPLBEC 757

Hon'ble Judges : Yatindra Singh, J

Bench : Single Bench

Advocate : Bhuneshwar Prasad, B.N. Singh, V.K. Shukla, Mahima Maurya, Ashok Trivedi, Mahendra Pratap Singh, Pramod Kumar Rai and S.C. Dwivedi, for the Appellant; B.D. Madhyan and S.C., for the Respondent

Judgement

Yatindra Singh, J.—No decision is approved for reporting (AFR) unless it decides an important question of law. However, this decision does not decide any question of law, much less an important question of law, it is merely an interim order. Then, why have I marked it AFR? Let me clarify, I have marked it AFR to emphasise :

(i) Court management, and

(ii) Good administration.

2. Edison.-Yet to find suitable filament for incandescent bulb-was asked by his friends if he hadn't failed in his many attempts. "No; he answered. "I have found out what will not make good filament". Well, the controversy involved in these cases and the course charted by it in this Court tells us about Court management and good administration-how these two may not be practised.

THE FACTS

3. The petitioners in these writ petitions were adhoc, or muster roll, or temporary, or work charge, or daily wage employees, of the Rajya Krishi Utpadan Mandi Parishad, Lucknow (the Parishad) or the Krishi Utpadan Mandi Samiti of different areas (the Samitees). There is some difference in these five kinds of appointments. But nothing turns upon their distinction in these cases. For convenience, I will be using one word namely "ad-hoc" for all of them. The petitioners were appointed after 1.4.1996 without following the rules and regulations. These appointments were irregular. There were other employees similarly situated that is other ad-hoc employees whose appointments were also irregular. The State Government divided them into three groups "Ka", "Kha", and "Ga" by a GO dated 12.2.1999 (the GO) and directed termination of services of all irregular appointments made between 1.4.1996 to 30.10.1997. This was to be done according to the procedure prescribed in that GO. Subsequently, the Parishad also resolved to follow it by its decision dated 3.3.1999.

4. The Parishad or the Samitees, who in the first place had made the appointments, terminated the services of these persons, numbering more than thousand (the terminated employees), in pursuance of the aforesaid decision. They have also followed the procedure indicated in the GO and have offered retrenchment compensation.

5. The terminated employees filed writ petitions. In some writ petitions, there was only one petitioner, in some, there were many. Some writ petitions were filed at Allahabad and some were filed at Lucknow. These writ petitions are for quashing :

- * the direction of the State Government dated 12.2.1999;
- * the decision of the Parishad dated 9.3.1999;
- * the termination orders passed by the Parishad or by the Samitee.

Though in many of them, relief in this form is not prayed for.

6. These writ petitions filed at Lucknow or Allahabad involved same points. Unfortunately they were taken up at different times, by different Judges, with different results. This has not only resulted into wastage of time but may have resulted in miscarriage of justice and bickering. The present seven writ petitions are the ones that could not be decided and have come up before me for decision. I am not sure if there are still few more. Before I deal with them, let us see how this controversy has been dealt by this Court.

DECISIONS OF THIS COURT

7. Some of these writ petitions came up before Justice D.K. Seth and were dismissed, One such writ petition is WP No. 11447 of 1999, Qmar Bishal Siddiqui v. Director, Krishi Utpadan Mandi Samiti. by a detailed and reasoned order. I understand special appeals are pending at the instance of private parties.

8. One writ petition came up before Justice V.M. Sahai in Mukesh Chcrnd case, Mukesh Chand v. State of U.P : 2001 (1) ESC 558. and was allowed. The Court held that:

(i) The State Government has classified the terminated employees in three groups by the GO. The terminated employees falling in group "Ga" are entitled for reinstatement till regular selections are made. But those in group "Ka" or "Kha" are not entitled to reinstatement.

(ii) The terminated employees were employed under fixed pay that is less than the regular salary. This amount to "Begar" within meaning of Article 23 of the Constitution.

(iii) The terminated employees are entitled to difference in salary paid to them and the regular pay scale from the date of appointment. Those who are not reinstated will get it till date of termination, and those reinstated will continue to get it.

The Court also issued directions for holding regular selections within six months and few other directions. The Parishad has filled Special Appeal No. 1194 of 1999, Rajya Krishi Utpadan Mdndi Samitee v. Mukesh Chandra. There is partial stay but order of reinstatement is not stayed.

9. Justice Sakha Ram Singh in Vinay Kumar Case, W.P. No. 955 of 2000 in Vinay Kumar Shukla v. State of UP., decided on 24.7.2000. followed Mukesh Chandra case and granted relief in the same terms. Though the Court did not go into the question whether the petitioner in that case was of group "Ka", "Kha", or "Ga" of the GO.

10. Justice Bhanwar Singh consolidated most of the writ petitions pending before the Lucknow Bench (102 to be precise) and in Mukesh Kumar case, W.P. No. 1436 of 1999. Mukesh Kumar v. U.P. Rajya Krishi Utpadan Mandi Parishad, decided on 1,1.8.2000. allowed all of them. The Court recorded following findings :

(i) The GO is arbitrary, unreasonable, and illegal.

(ii) The termination orders (falling in any group namely "Ka" or Kha" or "Ga") in pursuance of the GO were set aside.

(iii) Petitioners were put back in their original position. They were to get the same salary as they were getting at the time of their appointment. However, they were not to get their back wages,

(iv) The Parishad was also directed to formulate a policy regarding their service after giving due consideration to its resolution regarding regularisation.

11. A Division Bench at Lucknow consisting of Justice AN Trivedi and Justice RD Mathur in Rajnish Varshneya case, W. P. No. 537 of 1999. Rajnish Farshneya v. State of UP and Ors., decided on 6.9.2000. allowed the writ petition accepting

the reasoning of Mukesh Kumar case on the concession of the parties.

12. However, another Division Bench consisting of Justice SHA Raza and Justice RP Nigam in Anshuman Misra case, W.P. 1093 of 1999. Anshuman Mishra v. State of U.P. and Ors., decided on 13.11.2000. held Rajnish Varshneya case to be per incuriam and dismissed the writ petition.

13. This matter had earlier come before me and I, with help of Counsels, tried to consolidate the writ petitions at Allahabad. Fifty-six of them were taken up together and in Manoj Kumar Case, Writ Petition No. 25376 of 1999. Manoj Kumar and Ors. v. U.P. Rajya Krishi Utpadan Mandi Parishad and Ors., decided on 10.10.2000. they were allowed in terms of Mukesh Kumar case. This was in fact a consent order, though not so recorded. The State and the Parishad at that time had decided to abide by the decision in Mukesh Kumar case.

14. Unfortunately all cases in Allahabad could not be consolidated. Some of them remained pending. One of them came up before Justice O.P. Garg. By this time the State and the Parishad had changed their mind. There was already a Division Bench decision in Anshuman Misra case in their favour. Justice Garg in Anil Kumar case, Writ Petition No. 20060 of 1999. Anil Kumar Azad v. State of U.P., decided on 10.1.2001. allowed the writ petition in the same terms as in Mukesh Kumar case on the reasoning that the State and the Parishad have implemented Mukesh Kumar case.

PARTIES SUBMISSIONS

15. Now these seven writ petitions that involve same points have come up before me. I am not sure if there are not many more. I have heard Sri Bhuneshwar Prasad, Sri B.N. Singh, Sri V.K. Shukla, Ms. Mahima Maurya, Sri Ashok Trivedi, Sri Hemendra Pratap Singh, Sri Pramod Kumar Rai, Sri SC Dwivedi, Counsels for the petitioners, Sri BD Madhyani for the Parishad and the Samittees, and the Standing Counsel for the State Officials.

16. The petitioners submit that:

- * The direction of the State Government dated 12.2.1999 is unreasonable and illegal. Petitioners should be reinstated on the reasoning of Mukesh Kumar case. The petitioners do not rely on Mukesh Chand case so far as reinstatement is concerned as this case does not grant reinstatement to the petitioners falling in group "Ka" and "Kha" to which most of them belong.

- * Petitioners should be regularised in the vacancies in existence and in case there are no vacancies then posts may be created. There is a direction in Mukesh Kumar case to formulate a policy regarding it.

- * They are being offered fixed wages that is much less than the regular salary. It is "Begar ". They may be given regular salary, This time petitioners rely upon Mukesh Chand case. They do not rely upon Mukesh Kumar case. Mukesh Kumar case puts them back in the same position. It neither grants them regular salary

nor back wages.

17. The respondents submit that the decision of the State Government in the GO is reasonable. It was taken in view of following facts:

(i) There were many appointments in the Parishad and the Samittees contrary to the rules and regulation. A Division Bench while deciding Mithlesh Kumar case, Writ Petition No. 41671 of 1996 Mithlesh Kumar Pandey v. State of U.P. and Ors., decided on 5.3.1997. adversely commented upon this. The Bench observed as follows :

"Government agency exists to make appointments legally and lawfully with full knowledge of the general public. According to the verdict of the Supreme Court appointments should generally be made and preceded by sufficient advertisement but further comment in this connection are avoided by this Courts concerning the said appointment and transfer orders because the State Government has to look into the matter and do the needful".

(ii) Thereafter decision was taken and necessary circulars were issued on 8.10.1997, 13.10.1997 and 17.11.1997 banning ad hoc appointments. No irregular appointment has been made after 30.10.1997 in view of these circulars. They are also willing to cancel any irregular appointment if there is one after 30.10.1997 till today.

(iii) The services of several adhoc employees were terminated and writ petitions against the same were dismissed. Some of the such dismissed writ petitions are-

(a) WP No. 3583 of 1997, Employees Union of Mandi Samittee v. Director, decided on 20.11.1997 and upheld in Special Appeal No. 8 of 1998, decided on 12. 1 .1998.

(b) WP No. 414 of 1998, Ram Autar Singh v. Director, decided on 16.2.1998.

(c) WP No. 22452 of 1998, Virendra Kumar Tiwari v. Krishi Utpadan Mandi Samittee, decided on 16,7.1998.

(d) WP No. 12200 of 1999, Arvirnd Kumar v. Director, decided on 2.4.1999.

(iv) The Director again referred the matter for regularisation. The State Government refused it by letter dated 17.3.1999 in view of its decision dated 12.2.1999.

(v) The direction of the State Government dated 12.2.1999, contained in the GO, is a policy decision taken on the basis of observations of this Court, finance, number of posts available and nature of appointment. No irregular or ad-hoc appointment has been made after 30.10.1997 and in any case the Parishad and the Samittees are willing to cancel any such appointment made after..... 30.10.1997, if there is one. This is a policy decision that is not absurd unfair or arbitrary. It cannot be set aside., Indian Railway Service: of Mechanical Engineers Association and Ors. v. Indian Railway Traffic Service Association and Anr., Indian

Railway Service of Mechanical Engineers Association and Others Vs. Indian Railway Traffic Service Association and Another, Krishnan Kakkanth Vs. Government of Kerala and others, .

(vi) If one implements the Mithlesh Kumar case, the orders are set aside: if one doesn't follow it, then it is said that one is ignoring the High Court. "What should we do?" they ask.

18. Respondents, on the question of regularisation, submit:

(i) Right to livelihood or right to work is not included in Article 21., Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, (paras 12, 13 and 16). Petitioners can not be regularised in view of the following factual situations;

(a) Non-availability of the sanctioned posts and funds.

(b) Numbers of the casual and irregular employees are too high and there are no vacancies.

(c) The initial appointments admittedly have been made contrary to the Service Rules and Regulations.

(d) There is no legal and enforceable right with the petitioners to be absorbed, or to claim regularisation,

(ii) Regularisation contrary to the rules can not be made. It can only be done in accordance with the rules., State of U.P. and others Vs. U.P. Madhyamik Shiksha Parishad Shramik Sangh and another, ; E. Ramakrishnan and Others Vs. State of Kerala and Others, .

(iii) If appointments are made against the Rules and Regulation then no claim for regularisation can be made., Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, (paras 12, 13 and 16). Petitioners' entry in the service is illegal and void. There is no vacancy and the question of regularisation does not arise. Petitioners have not been working for long. Humanitarian considerations can not be countenanced., Ashwani Kumar v. State of Bihar 1997 SCC 1 .

(iv) Direction to create post can not be given., State of U.P. and others Vs. U.P. Madhyamik Shiksha Parishad Shramik Sangh and another, ; E. Ramakrishna v. State of Kerala 1996 (1) SCC 565.

(v) Retrenched staff can not be regularised. Regular appointments can be given only if vacancies are existing., Union of India v. Dinesh Kumar Saxena. (1995) 3 UPLBEC 1756 .

(vi) There can not be regularisation in view of Mithlesh Kumar case.

19. According to the respondents, petitioners are not entitled to regular salary. They submit that :

(i) The petitioners are irregularly appointed ad-hoc employees and are not entitled to the same salary as regular employees. They are only entitled to minimum pay if any prescribed for them., State of U.P. and others Vs. U.P. Madhyamik Shiksha Parishad Shramik Sangh and another, ; State of Haryana and Others Vs. Jasmer Singh and Others, (paras 5, 8 and 10); Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others,

(ii) Payment of wages less than minimum wages is forced labour (Begar)., Sanjit Roy Vs. State of Rajasthan, (para 3). The Parishad and the Mandi Samittees are paying wages more than the one under the Minimum Wages Act. It can not be said that there is any Begar or forced labour. The petitioners are not entitled to more than what was paid to them.

POTENTIALS FOR DETERMINATION

20. In view of submissions of parties following points arise for determinations:

(i) The State Government had issued the GO dated 12.2.1999 terminating the services of irregularly appointed ad-hoc employees between 1.4 1996 to 30.10.1997. Has the State Government power to issue such direction?

(ii) Whether the aforesaid direction is unreasonable or Arbitrary?

Whether the out-off date is arbitrary, illegal and without any rationale.

(iii) In case answers to above points are in favour of the petitioners, then whether all of them are entitled to reinstatement or only those falling in group "Ga" as held in Mukesh Chand case.

(iv) Whether the petitioners were appointed de-hors the rules and without there being any vacancy. Can they claim any right or lien over on any post? In case they are reinstated then, are they entitled to regularisation-?

(v) The petitioners were appointed without any advertisement. They are not regularly appointed. Their appointment was for a limited period on a fixed salary. Is it "Begar"? Are the petitioners entitled to regular pay scale?

REFERENCE AND THE INTERIM ORDER

21. The services of the employees were terminated in pursuance of the GO. Numerous writ petitions were filed challenging these orders. In these writ petitions similar points were involved. Yet they were taken up separately with different results. It is correct that principle of precedent (except may be to interim orders) is applicable that binds us. Yet for one reason or other, we have come with different results. Justice Michael Kirby says :, On the willing of Judgments. The Australian Law Journal. Volume 64, page 641,

"The daily experience of the Courts demonstrates the differing skills of advocates and judges in oral communication. It also demonstrates that on some days the most brilliant advocate is tongue tied and the sharpest judicial mind, listless or distracted. It should therefore not surprise the reader of judgments that some

who write them are better than others, or that the quality of the same pan varies over time and even changes from day to day;

This could be reason for our results.

22. Some writ petitions have been dismissed and some writ petitions have been allowed; in some only persons in group "Ga" have been reinstated and in some all have been reinstated in some regular salary has been given and in some regular salary has not been given. It is often debated whether Article 14 is applicable or not in discharge of judicial functions and whether judiciary while exercising judicial functions is State within meaning of Article 12 or not Yet - irrespective of result of this debate it is not good to pass different orders in the same controversy. Similar controversies may receive similar treatment unless bound by resjudicata and one wrong order does not entitle others to get similar wrong orders. And there could be variations while passing interim orders.

23. There is difference in opinion among the judges. The questions, framed by me (paragraph 20) are engaging attention of Division Bench in Special Appeal No. 1194 of 1999, *Rajya Krishi Utpadan Mandi v. Mukesh Chand and Ors.*. In view of this it is appropriate that these writ petitions along with the question framed may be referred to a Larger Bench to be decided along with this special appeal. There is no interim order at present in these cases. Should any interim order be granted?

INTERIM ORDER

24. Few writ petitions have been dismissed by Single Judges. There are no interim orders in the special appeal. One writ petition has been allowed and other dismissed by different Division Benches in Lucknow. One does not know their fate before the Apex Court. The rest of the writ petitions (about 170) have already been allowed. Generally there is no interim order in the special appeals but in some, there is partial interim order. However, this interim order does not stay reinstatement but merely stays award of regular salary and holding of Inquiry. Most of the dismissed employees have been reinstated. They are getting wages on which they were appointed but not the back wages. In view of this it would be appropriate that petitioners should also be granted interim order staying operation of orders terminating their services. This will entitle them reinstatement and salary on the same term on which they were appointed but will not entitle them back wages.

25. I have granted interim orders in terms of the order at present operative in *Mukesh Chandra* case or *Mukesh Kumar* case or *Manoj Kumar* case. In case any other order becomes applicable in these cases or there is any other order in any case, I am informed by the Counsel for the Petitioner that there is a special leave petition before the Apex Court in *Rajnish Varshney* case. Involving same controversy because of any appellate order, then it would be open to the respondents to file an application for modification of this order before the Larger Bench.

SPECIAL APPEALS AND WRITS BE CONSOLIDATED

26. All these writ petitions were not heard together. There are contrary decisions. This mistake may not occur at appellate stage. In order to avoid it, the Parishad may, through its Counsel, inform the Court about all similar special appeals and writ petitions pending before Allahabad and Lucknow Bench. These cases pending at Lucknow and Allahabad may be heard at one place, or by a Bench may be nominated to hear them at Allahabad or Lucknow, or at least all cases in Allahabad may be heard together in Allahabad and the cases in Lucknow may heard together there.

THE OTHER CASES (NOT COVERED BY THE GO)

27. These cases with which I am dealing at present are of ad-hoc employees whose services have been terminated in pursuance of the GO. According to this GO services of ad-hoc employees, appointed between 1.4.1996 to 30.10.1999, were to be terminated. There were other ad-hoc employees who were appointed earlier than 1.4.1996 and their services were terminated earlier in pursuance of Mithlesh Kumar case (paragraph 1.7 (i) of this judgment), or even otherwise as not required. Thus among the ad-hoc employees whose services have not been terminated on disciplinary ground, or not fit for employment there are following three groups of petitions :

- (i) Services terminated in pursuance of GO (Group -1).
- (ii) Services terminated in pursuance of Mithlesh Kumar Case (Group 2):
- (iii) Services terminated other than above two groups (Group 3).

28. The number of ad-hoc employees whose services have been terminated on disciplinary ground or not fit for employment is very small and they fall in different class. Their petitions are to be judged on different principles. But services of ad-hoc employees in abovementioned three groups have been dismissed on similar grounds and except for length of services there position is the same. They have also tiled writ petitions. Some of them have been dismissed. Some are pending. The petitioners in many of these cases were appointed prior to the persons whose services were; terminated in pursuance of the GO. What should happen to them? They were appointed before the person in group-1. Don't they have better claim? Should not they be also reinstated? If a scheme of regularisation as suggested in Mukesh Kumar case is to be accepted then should they be left behind? Decisions in the cases arising out of termination orders in pursuance of the GO (group 1) will have impact on the other cases falling in other groups (2 and 3). What will it be, I don't wish to speculate; they are not before me. The other cases may also be classified and grouped.

29. All cases decided along with Mukesh Kumar case and Manoj Kumar case ought to be of group-1. However, I am informed that some cases decided along with them include cases of ad-hoc employees in group-2 and group-3. It would be appropriate that the Parishad may supply three different lists of cases falling

in three different groups mentioned in paragraph 27. In order to facilitate this process, the Counsels may also supply the list of their cases falling in different groups to the Counsel for the Parishad and the samittees. They may also be placed before the same Bench or at least be heard together.

COURT MANAGEMENT, GOOD ADMINISTRATION AND RECOMMENDATIONS

30. The pressure upon the modern judges-at first instance and on appeal-is, in most instance much grater than it was in case of their forebears¹, Justice Michal Kirby : On the writing of Judgements. The Australian Law Journal (Volume 64) page 641. And we have one of the lowest number of judges permission of population in the world, And many of our vacancies are not filled up. We are at present working at half of our sanctioned strength. The Court management and good administration are more relevant today than ever.

COURT MANAGEMENT

31. Here the service of more than 1000 employees were terminated in terms of the GO dated 12.2.1999 and the decision of the Parishad dated 9.3.1999. While terminating their services, the procedure indicated in the GO dated 12.2.1999 was followed. The basic questions in all the writ petitions are same. This was argued at different time before different judges with different results. Was it not better that, these cases were consolidated and heard by one judge. Many object to it this takes away variety of views; difference in opinion. But we have to consider the time constraint, lakhs of cases are pandering; there are no judges to hear them. They ought to have been consolidated and dealt by one Judge. If there was any mistake it can always be corrected by the Appellate Court.

32. Apart from it, if these cases were consolidated and heard together, this would have led to-better understanding of the problem; saving time, efforts, and finance. This would have saved some embarrassment and anxiety-among the lawyers, as well as the litigants. Many appointed subsequently arc working but those appointed earlier so to speak are still on the road. We should evolve a procedure to track these cases and decide them together.

33. Classification of cases was started in this Court in 1978-79. It was done manually and now is being done through computer. A code is allotted and fed at the time when cases are tiled. Old cases have been codified to a large extent, though it is not complete. We can find out cases in one category that is cases of adhoc employees who were in service of a local body, or Corporation, or the State Government. But this kind of grouping to find out the writ petitions of the terminated employees in view of the GO (as in these seven writ petitions) is not possible; at least not with the computerisation that we have today. We have classification section with few judicial officers. They look into each file and categorise old cases. They perhaps could do it, but they have their limitations. And finding a few hundred cases from lakhs of cases perhaps may not be worthwhile. We should have better methods to trach them.

34. One method is to seek more information in a pro-forma from lawyers to be fed in the computers. This additional information may help us in clubbing cases of similar nature. But lawyers have to cooperate too. I have no reason no doubt that they will not. They are as much part of this Court as we are. They are equally keen to solve arrears and other problems of this Court. We have to solve them together. There are few other options.

35. The terminated employees have engaged different Counsels. It is difficult for them or their Counsels to give details of these cases but contesting respondent in all these cases is the Director of the Parishad. He has knowledge about these cases. Notices have been issued and reply has to be filed in these cases. His office could have sorted out all these cases and given a list to its Counsel for information to the Court. Then these cases could have been decided together.

36. The State Government or its Departments or its agencies or the Corporations (like the Parishad) are the biggest litigants in this Court. This kind of sorting could be better managed at their level, The State Government or the different departments already have legal officers. If they don't, then they may have a litigation in-charge to look after these matters. They can easily supply such lists to the Court through their Counsels so that cases may be decided together. This will not only save the time of the Court but the time and finances of the State Government and its departments. This Court and the State Government, its departments and agencies may consider improving communication between classification and Computer section of the High Court and legal cell of the State Government and its departments to track these cases.

37. We have work force. We have judicial officers; well trained for judicial work but not for Court management. It is still dormant and does not appeal to many. We still think that our job is to decide cases and not to manage them. But if we wish to reduce arrears then this attitude has to change. If one has to cut a tree in eight hours one does not have to chop it constantly for eight hours. One has to spend time to sharpen ones axe. It is equally important. But where one can find material for it.

38. We have good material available. There are reports of different committees for reducing the arrears. The report of the arrears committee 1989-1990 constituted by the Government of India on the recommendation of the Chief Justices "Conference is a good" "source material". This is to be implemented and staff to be trained. We do have Judicial Training Institute; Court management may be compulsory part of judicial officer training. No one may be appointed, or promoted unless he has gone through training in Court management. Merely training is no sufficient It is to be constantly practiced.

GOOD ADMINISTRATION

39. While we are discussing about Court management and talking about appointing law officers or litigation in-charge, I would like to point out on few other things. Many of the writ petitions are entertained because of mal-

administration; and many others can be easily avoided with some effort.

40. There are few fundamentals for good administration.

(i) Decision may be taken only after affording opportunity to the concerned parties.

(ii) If controversy is similar or affects many persons then the claims may be decided together rather than separately.

(iii) The officer passing the order should have authority to pass the order,

(iv) There should be reasons for taking the decision. It restricts arbitrariness.

(v) Decision be taken within reasonable time and communicated to the party concerned.

41. It is not only important that previously mentioned points are practised but also they should appear from the order that they were followed in any particular case. These points may have been followed-yet writ petitions are entertained as at the time of ex parte motions the Court has an order that does not indicate it. And the State Machinery is too slow in getting instructions for various reasons. It would be better if every order indicates at least following things:

(i) How effected parties were afforded opportunity?

(ii) The source of power (details of sections or rules or regulations if it is taken under any such provision).

(iii) Brief reasons for taking the decision. In case only brief reasons are given and there are detailed reasons elsewhere then it may also be indicated in the order that they can be provided on request on payment of reasonable fee.

(iv) The details of statutory remedy, if any, available against the decision.

REPRESENTATION LITIGATION

42. It is correct that the executive may redress grievances and inform about it only if it is under statutory duty to do so. However, often grievances are raised that are not statutory and the executive chooses to ignore them. But, as judges are here to decide cases, This is how David Pannick puts it in his book "Judges" "Judges do not have an easy job. They repeatedly do what ,the rest of us seek to avoid; make decisions. They carry out this function in public. Rabelats's Judge Bridlegoose decided cases by throwing dice (Gargantua and Pantagruel. transl. J. M, Gohen (Penguin Classics, 1955), Bk. 3 chs. 39-48). Most Judges obey the job requirement that they "must not spin a coin or consult an astrologer" (Rv. Deputy Industrial Injuries Commissioner exparte Moore (1965) 1QB 456 (Lord Justice Diplock). See also ch, 8, n.21.) but must give reasons for their decision." the executive is here to listen to public grievances and redress them. If it is raised then-even if it is not statutory-it has to be replied, decisions have to be taken even to the extent that no decision is required or it is not possible for

reasons indicated in the reply. This reply may be sent on persons supplying duly stamped self addressed envelope so there may not unnecessary burden on the state.

43. There is some litigation, Only a survey can say if it is an understatement, I have mentioned it in this way in order to emphasise the difficulty faced by the public at large. in this Court for directing the Executive to decide representation. Sometimes we think that a grievance raised may be raised first before the authorities below. In lighter vein, it is referred to as "Representation Jurisprudence", 24. Many of us think that no writ lies if a representation is not statutory. Mandamus lies for performance of statutory duties. Many think that if grievance is raised then it is public duty to reply and mandamus lies. In any case we should not confine to technical limitations of writ jurisdiction. But all this, at some other time, in some other case. I would prefer to label it "representation litigation". It has another offshoot-contempt applications: when the orders to decide representations are not obeyed. Often this litigation is frivolous. The orders are there but neither communicated nor filed And then second round of litigation starts if the representations are rejected. Some modification in practice, some in attitude of sending replies to the grievances will reduce this kind of unnecessary litigation. A reply that no decision reply is required is also a decision and sufficient reply in many cases. At least the persons comes to know of the stand.

44. The executive may also go through some training on good administration before they are posted in key posts. May be they do go through some training but it has to be practiced too. The legal officer or litigation incharge may ensure that requirement indicated in paragraph 41 are mentioned in the order sent to the affected party. This will also reduce litigation at least at the High Court level.

CONCLUSIONS

45. My conclusions at this stage are as follows :

(i) Orders terminating petitioners" set vices are stayed. They are put back to original position. However, this will not entitle them to claim any back wages, This is subject to the final decision in the writ petition.

(ii) These seven writ petitions along with the questions (mentioned in paragraph number 20) are referred to a Larger Bench, They may be heard by the Bench hearing special Appeal No. 1194 of 1999.

(iii) The Parishad and the Samittees any file an application indicating all cases arising out of terminations order in pursuance of the GO dated 12.2.1999 (group-1 paragraph 27) so that they may be consolidated and heard together.

(iv) The Parishad and the Samittee may also sort out the other cases of termination that are not in pursuance of the G.O. dated 12.2.1991 but where the decision in the cases arising out of termination in pursuance of GO dated 12.2.1999 may have impact (group 2 and group 3 paragraph 27). They may also

be heard by the same Bench atleast together.