

**(2012) 08 RAJ CK 0152**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 7191 of 2012**

Union of India and Others

APPELLANT

Vs

Chiranji Lal Chanda

RESPONDENT

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**Date of Decision :** 21-08-2012

**Acts Referred:**

**Citation :** (2012) 08 RAJ CK 0152

**Hon'ble Judges :** Narendra Kumar Jain, J; Dinesh Maheshwari, J

**Bench :** Division Bench

**Advocate :** V.K. Mathur, for the Appellant; Manoj Bhandari, for the Respondent

**Final Decision :** Allowed

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## Judgement

1. By way of this writ petition, the petitioners, Union of India and its officials in the Central Excise and Customs Department, have questioned the order dated 13.01.2012 as passed in Original Application ("OA") No. 227/2008 whereby the Central Administrative Tribunal, Jodhpur Bench, Jodhpur ("the CAT") has, in terms of the opinion of majority (2:1), accepted the claim of the applicant (the respondent herein) for grant of minimum pay scale of Group "D" employee and for regularisation on Group "D" post; and has issued the following directions:-

(i) The applicant shall be paid minimum of pay scale allowable to an ordinary Group "D" employee doing the similar job.

(ii) The respondents are directed to consider the fitment of the applicant into an appropriate pay level and state of employment within three months next.

(iii) Till effective finalization of applicant's fitment into an appropriate pay level and status of employment, he shall be deemed to have been engaged at a monthly pay of Rs. 3,000/- per month and shall be paid all arrears at this rate from 15.02.2007 to till date without any interest, if paid within three months next and with 18% interest if paid beyond that.

The CAT has issued yet further direction that:

(i) The applicant shall be considered for regularization as obviously Group "D" post is still in existence and he is still doing the job of a Group "D" employee and when this shall be done the Hon'ble Apex Court's judgments relating to administrative fairness of authority shall be kept in mind to the fullest extent.

2. The order as passed and the directions as issued by the CAT have been questioned in this writ petition as being contrary to the record and particularly the decisions already rendered in the case of the applicant-respondent, who was held to be a part-time casual labourer and who, according to the petitioners, is not entitled to make any claim towards Group "D" post, or regularisation, or any pay scale.

3. After having heard the learned counsel for the parties at length, having perused the material placed on record, and having examined the divergent views expressed by the learned Members of the CAT, we have formed an opinion that the matter is required to be remanded to the CAT for consideration afresh. In this view of the matter, only a brief reference to the background aspects, so far relevant for the present purpose, would suffice.

4. The applicant-respondent was initially engaged by the petitioners as contingent Farrash on 01.01.1996 on monthly wages of Rs. 300/- which were revised to Rs. 500/- from the month of January 1997. The applicant alleged that he was entitled for grant of temporary status and regularisation on a Group "D" post in terms of Casual Labour (Grant of Temporary Status and Regularisation) Scheme, 1993 as put into effect by the Government of India but, instead of extending the due benefits, his services were ordered to be terminated by verbal orders. While assailing the alleged verbal termination order and seeking other reliefs, the applicant preferred an OA bearing number 275/2000 before the CAT that was dismissed on 22.10.2001; but the order so passed by the CAT was not approved by this Court; and while allowing CWP No. 266/2004 on 28.07.2005, this Court remanded the matter to the CAT for decision of the OA afresh.

5. It is noticed that in the original order dated 22.10.2001, the OA was dismissed by the CAT essentially with reference to the decision of the Hon'ble Supreme Court in the case of Secretary, Ministry of Communications & Ors. Vs. Sakkubai & Anr.: 1998 SCC (L&S) 119 wherein it was held that the part-time casual labourers were not entitled for grant of temporary status and regularisation. The Division Bench of this Court, in the order dated 28.07.2005 as passed in CWP No. 266/2004, did not approve the order so passed by the CAT essentially with the observations that the order impugned lacked in reasons and had been passed without noticing the issues between the parties. This Court observed that the precedent could be applied only on the facts admitted or found; and in case of dispute, the facts necessary for the purpose have to be found on the basis of material on record. This Court proceeded to set aside the order and remanded the matter to the CAT with a direction to decide the questions germane to the controversy and particularly to carry out inquiry into the fairness of the order terminating the services and the nature of the duties discharged by the

applicant; and as to whether he was discharging the duties as part-time or whole-time employee and whether he was engaged in connection with sovereign functions of the State, or if he was entitled to any benefit under the provisions of the Industrial Disputes Act. This Court, *inter alia*, said:-

7. In these circumstances, the order under challenge cannot be sustained and, therefore, has to be quashed. The writ petition is, therefore, allowed. The order dated 22.10.2001 (Annexure 3) passed by the Tribunal is set aside. The Tribunal is directed to decide the Original Application afresh by considering the rival contentions including objections to the termination of the services after four years continuous service. It is only, if the termination is found to be valid that the question of grant of the status of regularisation will become germane for consideration. The question as to validity of termination order needs a detail enquiry into the fairness of terminating the services, the nature of the duties discharged by the petitioner. In order to find out whether he was engaged and discharging his duties as part time or whole time employee and whether he was engaged in connection with sovereign functions of the State or otherwise, if he was not engaged under the Sovereign function of the State, whether he is entitled to any benefit of the provisions of the Industrial Disputes Act. All these questions are germane for deciding the validity of the termination, which have not been adverted to by the Tribunal, but which the Tribunal is required to consider while considering the validity of oral termination after four years of continuous service.

8. The Original Application of the petitioner be decided expeditiously as early as possible, preferably within a period of three months.

6. The CAT took up for consideration the said OA (No. 275/2000) afresh in its order dated 21.12.2005. It appears that before the CAT, a point was sought to be asserted that the applicant was a full-time worker and not a part-time one but with reference to the material on record, ultimately, it was conceded on behalf of the applicant that he "may be taken as a part-time casual labour". The case as canvassed and the submissions as made before the CAT were noticed in paragraph 6 of the order dated 21.12.2005 in the following terms:-

6. The learned counsel for the applicant has embarked very heavily on the point that the applicant was a full time worker and not a part time worker. For this purpose, he made me to traverse through the photocopies of the attendance register in addition to certain other documents. He has submitted that the applicant was engaged as a full time worker like other persons and not as a part time worker as contended by the respondents. He was confronted with a question from the Court regarding the validity or otherwise of Annexure A/10 filed by the applicant along with the additional affidavit wherein applicant's controlling authority has indicated him to be as a part time daily wager. He was at a difficulty to answer the same and finally submitted that the applicant may be taken as a part time casual labour and his case may be adjudicated upon accordingly.....

7. The CAT, thereafter, proceeded to consider the question of validity of the termination order and held it to be illegal and inoperative in the following:-

8. I have anxiously considered the rival contentions put forth on behalf of both the parties. As regards the termination as contended by the applicant or an abandonment of as contended by the respondents, there is no denial to the fact that the applicant was on leave from 27.12.1999 to 09.01.2000. There is also no denial that the applicant submitted a representation on 12.01.2000 in regard to not taking on duty and the alleged termination. The respondents have not revealed the action which was taken on his representation. They have in fact said nothing on this except that the applicant himself did not turn up for duties. I find that the respondents have neither issued any show cause notice nor replied his representation and there is no material on the records in support of their contention. I have absolutely no reason to disbelieve the version of the applicant that he was not allowed to resume his duties and his services were terminated through oral order from 10.01.2000. The defence version of the respondents is also otherwise falsified with the volte face assertion in the reply in para 2(i) that the applicant was engaged for certain work as part time contingent worker and on completion of work his engagement was discontinued. In this view of the matter, the termination of the applicant shall have to be construed as illegal and inoperative.

8. The CAT, however, rejected the case of the applicant about applicability of the said Scheme of 1993 after finding that the applicant was admittedly not in employment as on 01.01.1993 and the question of rendering one year's continuous services on that date did not arise. The CAT also found that the said Scheme was not a continuous one and the applicant was not entitled to any benefit thereunder. The CAT ultimately proceeded to allow the OA but directed reinstatement of the applicant "on the job on which he was last employed" while, of course, holding him entitled to all consequential benefits. Significantly, the other reliefs as prayed were declined. The operative part of the order dated 21.12.2005 reads as under:-

11. The upshot of the aforesaid discussion is that the Original Application merits acceptance in part and the same stands allowed accordingly. The oral termination order dated 10.01.2000 stands set aside. The respondents are directed to reinstate the applicant on the job on which he was last employed and he shall be entitled to all consequential benefits except the back wages. Other reliefs stand denied. No order as to costs.

(emphasis supplied)

9. The petitioners attempted the question the aforesaid order dated 21.12.2005 by way of a writ petition bearing number 1814/2006 that was considered and dismissed by a Division Bench of this Court on 17.08.2006. This Court noticed that in consideration of the matter after remand, the CAT found that the original applicant admitted himself to be a part-time employee; and observed that the

only relief granted to the applicant under the impugned order was of reinstatement on the job on which he was last employed with no back wages though he was held entitled to other consequential benefits. This Court found that there being no provision for oral termination, it was required to be held that no termination order came into existence by which the services of the applicant were put to an end. This Court ultimately observed that the finding of the CAT that the services of the applicant had not been validly terminated called for no interference; and also that the relief had been granted while denying any emoluments for the period he had not worked and the claim for regularisation had not been entertained. In this view of the matter, this Court found no ground for interference and dismissed the writ petition while observing, inter alia, as under:-

In that view of the matter, the finding of the Tribunal that the services of the respondent No. 1 has not been invalidly terminated does not call for interference. Since the relief has been granted by denying any emoluments for the period the respondent No. 1 has not discharged his functions and claim for regularisation has also not been entertained, we do not find any ground for interference at the behest of the petitioners.

(emphasis supplied)

10. The case of the applicant in the present OA (No. 227/2008) had been that since after decision of the previous OA (No. 275/2000), he was making continuous representations and when nothing was done even after decision of the High Court, a contempt petition was filed before the CAT in which, the respondents stated that he had been reinstated on 15.02.2007, i.e., after about 6 months from the date of the order of High Court. In any case, the contempt matter was closed as infructuous. The applicant referred to the further representations and to the orders passed by the petitioners declining his other claims and stating that he would be paid the wages from 15.02.2007, the date of reinstatement. The applicant submitted that the respondents stated on 13.03.2008 about pendency of a petition for special leave to appeal before the Hon'ble Supreme Court and informed him that he would be taken on duty only after the judgment of the Hon'ble Supreme Court. The applicant submitted that the present petitioners were acting de hors the directions given by the CAT as affirmed by the High Court; and he had not been paid anything for the work done by him and, therefore, appropriate directions were required to be issued for compliance.

11. The applicant further averred that instead of complying with the orders of the CAT as affirmed by the High Court, the respondents (present petitioners) had undertaken selection process against Group "D" posts that was indicative of the fact that they were in need of the Group "D" employees and when there were specific directions to reinstate the applicant and to continue him against Group "D" post, there was no reason to deny and deprive him of reinstatement with all consequential benefits.

12. With the submissions foregoing and while questioning the acts and omissions on the part of the present petitioners as being wholly illegal and arbitrary, the applicant prayed for the following reliefs:-

(i) by an appropriate order or direction, the orders dated 13.3.2008 (Annex-A/1) and 26.10.2007 (Annex-A/2) may kindly be declared illegal and be quashed and set aside.

(ii) by an appropriate order or direction, the respondents be directed to take the applicant back on duty forthwith with all consequential benefits including the salary w.e.f. 1.9.2006 till 28.2.2008 along with interest @ 24% per annum from the date the same had become due till the date of payment.

(iii) by an appropriate order or direction, the respondents be directed to consider the case of the applicant for regularization against Group-D post along with consequential benefits and arrears of salary w.e.f. the date the same had become due till the date of payment along with interest @ 24% per annum from the date the same had become due till the date of payment.

(iv) Any other appropriate order or direction which this Hon''ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

13. The present petitioners, the respondents in the OA, submitted in their reply that they had been regularly offering payment to the applicant against the work done by him. The petitioners alleged that the applicant was not accepting the amount payable for extraneous considerations and for the period from 15.02.2007 until the month of October 2008, a total amount of Rs. 10,250/- was kept in an undisbursed account. The petitioners further asserted that the applicant had already been taken on duty and was working as a part-time labour w.e.f. 15.02.2007. The petitioners submitted that even if they were in need of Group "D" employees, there was no question of selection of the applicant thereto as he was only a contingent part-time worker and was mainly performing the job of cleaning the tables and chairs of the office and arranging drinking water from the water tap to the water pot.

14. The applicant-respondent in his rejoinder submitted that a payment of meagre amount of Rs. 500/- per month was based on exploitation and it was much less than the minimum wages payable. The applicant also produced a copy of the order passed by the Hon''ble Supreme Court in SLP No. 7094/2007 wherefrom it appeared that the said SLP against this Court's order dated 17.08.2006 was dismissed as back as on 17.08.2007.

15. It appears that the OA (No. 227/2008) leading to this writ petition was initially considered by a Bench of two learned Members of the CAT, who proceeded to put forward divergent views in the order dated 06.05.2011.

16. The learned Member (Judicial), after taking note of the facts of the case, referred to the constitutional scheme and the pronouncements of the Hon''ble

Supreme Court requiring harmony and balance between the fundamental rights and directive principles as essential features of the basic structure of the Constitution. The learned Member also observed that in the process of adjudication, a situation may arise wherefor the legislature concerned had not made any provision but the Constitution has vested the discretionary powers in the higher Courts to fill-in the lacunae. The learned Member, then, referred to the principles enunciated in several of the judgments on the cause of "equal pay for equal work" and observed that the State has a responsibility of ensuring the livelihood of its employees. The learned Member further referred to the decision of the Hon"ble Supreme Court in the case of State of Karnataka and Others Vs. M.L. Kesari and Others, and observed that therein, the Hon"ble Supreme Court has held that Secretary, State of Karnataka and Others Vs. Umadevi and Others, had cast a duty on the employer to take steps to regularise the services of those irregularly appointed employees who had served for more than 10 years. The learned Member observed that as the applicant had been appointed on 01.01.1996 and would be treated continuous in service, this possibility (of regularisation) was also open to the administration to consider. The learned Member, thereafter, proceeded to summarize the cumulative effect of the facts noticed and in the process, while referring to the reply of the respondents that the nature of the work of the applicant was of cleaning the tables and chairs of the office and arranging drinking water from the tap to the pot, observed that "he was doing the job of an ordinary Group "D" employee". The learned Member also observed that the applicant had already become over-aged and cannot hope to get another Government engagement; and the best part of his life was spent in the service of the petitioners. The learned Member further observed that the Court was enjoined to act as a purposeful adjudicator looking to the entirety of the things; and that it was the duty of the Court to take into consideration the subsequent developments and mould the relief according to the situation. The learned Member took the view that Uma Devi's judgment and further explanations by the Hon"ble Supreme Court have come to the rescue of the applicant for his having completed 10 years of service. In view of the foregoing, the learned Member (Judicial) considered it proper to issue the directions as noticed at the outset.

17. The learned Member (Administrative), however, had total disagreement with the order as proposed by the learned Member (Judicial). The learned Member (Administrative) referred to the above quoted part of paragraph 6 of the order dated 21.12.2005 wherein, it was conceded on behalf of the applicant-respondent that his case could be adjudicated while taking him as a part-time casual labour. Then, with reference to the operative portion of the order dated 21.12.2005 whereby the applicant was ordered to be reinstated on the job on which he was last employed; to the order dated 17.08.2006 as passed by this Court in CWP No. 1814/2006; and to the order dated 17.08.2007 whereby the Hon"ble Supreme Court dismissed the SLP filed by the present petitioners on the ground of delay, the learned Member expressed the view that the applicant could

only be re-employed on the job he was last employed. The learned Member further expressed the view that the benefit of regularisation could not be conferred on the applicant, who was only a part-time labourer; who had never been recruited after due process of selection; to whom no order of appointment had been issued; and who had been engaged only on fixed monthly honorarium basis. The learned Member referred to the dictum of Uma Devi (supra) as explained in the later decisions and observed that in the wake of the order dated 21.12.2005 and on the facts, no case was made out for any other relief to the applicant beyond that already granted. The learned Member (Administrative), therefore, proceeded to hold that the OA was required to be dismissed.

18. For the difference of opinion between the two learned Members, the matter was referred to the third learned Member (Judicial) of the CAT. The referee Member took note of the facts of the case and the divergent views expressed and observations made by the other two Members. The referee Member, thereafter, referred to the principles enunciated in Uma Devi as explained in M.L. Kesari (supra) and proceeded to observe that the engagement of the applicant was not illegal but was irregular and he was entitled to be regularised in view of paragraph 53 of the judgment in Uma Devi; and for this reason, disagreed with the views of Member (Administrative) and expressed his agreement with the views of the Member (Judicial) while observing as under:-

19. Applying the ratio decided by the Hon''ble Supreme Court in the case of Umadevi (3) and M.L. Kesari (supra), it is not disputed that the applicant was appointed on 1.1.1996 as part time casual labourer and as per judgment in the case of M.L. Kesari, the applicant has worked for more than 10 years. The appointment of the applicant cannot be said to be illegal at the most appointment of the applicant as part time casual labourer is irregular appointment and he is entitled to regularization in terms of para-53 of the judgment in the case of Uma Devi (3). As the respondents have employed the applicant as part-time casual labourer and allowed him to work on the said post continuously for more than 10 years, the appointment of the applicant cannot be said to be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the person appointed does not possess the prescribed minimum qualification, the appointment should be considered as illegal but here in the instant case the applicant's appointment is not illegal but irregular and he is entitled to be regularized in view of para-53 of the judgment in the case of Uma Devi (3). Therefore, I am not agree with the view expressed by the Hon''ble Member (A) as the Hon''ble Member (A) is in agreement to the extent of reappointment of the applicant on the job on which he was last employed and is only entitled to a fixed remuneration. The Hon''ble Member (J) has taken care of this aspect and the judgments referred before him have been thoroughly considered by the Hon''ble Member (J) and therefore, I am in agreement with the view expressed by the Hon''ble Member (J) as the Member (J) has rightly directed the respondents that the applicant shall be paid minimum of pay scale allowable to an ordinary Group "D" employee doing similar job and



further directed to consider the case of applicant for regularization on the post of Group "D".

20. As discussed hereinabove, I am not in agreement with the view expressed by the Hon'ble Member (A) but fully agree with the view expressed by the Hon'ble Member (J).

19. The net result of the order passed by the CAT, per majority, is that the petitioners are required: (i) to pay the applicant in the minimum of the pay scale allowable to an ordinary Group "D" employee doing the similar job; (ii) to consider fitment of the applicant into an appropriate pay level; (iii) to treat the applicant as having been engaged at a monthly pay of Rs. 3,000/- until effective finalization of his fitment and to pay the arrears at that rate within three months without interest and beyond three months, with interest @ 18% per annum; and (iv) to consider the applicant's case for regularisation on a Group "D" post.

20. Questioning the order so passed and directions so issued, the learned counsel for the petitioners has strenuously contended that the CAT has seriously erred in law in giving the directions aforesaid without considering the decisions earlier rendered in the case of the applicant. It is submitted that in the earlier decisions, it was clearly found that as a part-time casual labourer, the applicant was not entitled to be granted temporary status and regularisation in view of the decision of the Hon'ble Supreme Court in the case of Sakkubai (supra). It is further submitted that the CAT has proceeded to take an over-sympathetic view and in doing so, has over-stepped its jurisdiction by fixing the applicant in a monthly pay of Rs. 3,000/- without any material on record to show that the nature of the work done by the applicant entitles him to such a monthly salary. It is also submitted that the CAT was not justified in directing fixation of the pay of the applicant in the minimum of pay scale available to Group "D" employee as the same amounts to granting him the status of Group "D" employee. It is yet further submitted that even on the principles of equal pay for equal work, the applicant will not be entitled to a monthly pay of Rs. 3,000/- looking to the casual part-time work done by him. Apart from the above-referred decisions in M.L. Kesari and Sakkubai, the learned counsel for the petitioners has also referred to the decision in Union of India (UOI) and Another Vs. Mohan Pal, etc. etc., .

21. The learned counsel for the applicant-respondent, on the other hand, has referred to the said decisions in Uma Devi and M.L. Kesari and so also in Randhir Singh Vs. Union of India (UOI) and Others, and Union of India (UOI) and Others Vs. Dineshan K.K., the later two decisions being related with the principles of equal pay for equal work. The learned counsel contended that the ultimate order as passed by the CAT remains just and proper and in accord with the facts of the case and the law applicable. It is submitted that with the concluded orders in his favour, the respondent would be deemed to be in continuous service from 01.01.1996 and entitled to all consequential benefits and hence, the minimum of the benefits as granted by the CAT for allowing him minimum of the pay of the

Group "D" post and for considering his fitment to an appropriate pay level and until finalization, for payment @ Rs. 3,000/- per month are all the directions in accord with law and equity both. It is also submitted that the CAT has not ordered regularisation but has only passed the order for considering the applicant's case for regularisation as Group "D" posts are still in existence. It is submitted that there is no reason that the petitioners are not allowing even the minimum of the pay to the applicant and seeking to continue him only on Rs. 500/- per month.

22. After having given anxious consideration to the rival submissions and having scanned through the record with reference to the law applicable, we are, with respect, unable to approve the impugned order passed per majority view of the CAT in this case; and even when the matter relates to a low paid casual worker getting Rs. 500/- per month, have no option but to remand the matter for reconsideration.

23. We feel constrained to remand the matter essentially for the reason that the CAT in its majority view, particularly as expressed in the initial order dated 06.05.2011 by the learned Member (Judicial), appears to have over-stepped its jurisdiction too far beyond the subject-matter of OA before it and in the process, appears not to have taken up for determination the core and relevant questions relating to the nature of duties discharged by the applicant and the nature of his engagement; and appears to have overlooked the effect of the binding orders that have been passed in relation to the applicant.

24. True it is that the applicant was engaged from 01.01.1996 but this engagement had only been as contingent Farrash, initially at Rs. 300/- per month that was enhanced to Rs. 500/- per month. His services were sought to be terminated by an oral order and aggrieved, he approached the CAT. The CAT, in the first place, rejected the OA (No. 275/2000) by the order dated 22.10.2001 with reference to the decision in Sakkubai's case (supra). This Court, however, did not approve the aforesaid order dated 22.10.2001 and remanded the matter for the reason that the Tribunal did not examine the nature of engagement of the applicant and the nature of duties discharged by him to find as to whether he was working as part-time or whole-time employee and other ancillary questions. Thereafter, in the repeat consideration of OA No. 275/2000 in the order dated 21.12.2005, the basic factual aspect was rather a matter of admission on behalf of the applicant where it was conceded that his case be adjudicated as being a "part time casual labour" [vide paragraph 6 of the order dated 21.12.2005 as reproduced hereinabove]. The significant part of the matter is that the OA aforesaid was allowed only in part and too, for the basic reasons that the present petitioners were unable to rebut the case of the applicant that his services were terminated through oral order; and their case that the applicant did not turn up for duties was not accepted. The CAT, however, declined the other part of the relief claimed by the applicant for regularisation with reference to the Scheme of 1993. While setting aside the oral termination order dated 10.01.2000, the CAT

directed reinstatement of the applicant "on the job on which he was last employed"; and held him entitled to all consequential benefits except back wages. However, and significantly, in the operative portion, the CAT specifically declined the other reliefs while saying: "Other reliefs stand denied".

25. Thereafter, in the order dated 17.08.2006, as passed in CWP No. 1814/2006, a Division Bench of this Court took note of all the facts and circumstances of the case and the implication of the order as passed by the CAT; and declined to interfere in the writ petition filed by the present petitioners while specifically taking note of the fact that the claim for regularisation had not been entertained.

26. On a comprehension of the lead order as passed in the majority view of the CAT in the present case, it appears that the said part of the order dated 21.12.2005, whereby the applicant's claim for regularisation was not accepted, got overlooked; and, even the last significant part of the operative portion of the said order dated 21.12.2005, whereby the other reliefs were declined, also got omitted from consideration. Even the reference to the order of this Court dated 17.08.2006 had not been complete in all respects and the fundamental fact taken note of by this Court that the CAT did not entertain the relief of regularisation, again, appears to have escaped due consideration. The learned Member (Judicial) has proceeded to refer to several of the principles related with the Directive Principles of State Policy and Equal Pay for Equal Work and those in the cases of Uma Devi and M.L. Kesari (supra) but coming to the facts of the case, appears to have proceeded an assumption that the applicant was "doing the job of an ordinary Group "D" employee". We are unable to find in the order impugned a cogent basis for such an assumption and deduction. The other observations, more on sympathy and concern, rather than on legal rights, could not have resulted into granting of such nature reliefs which were beyond the case as set up by the applicant and contrary to what has already been held in the concluded orders. Further, it appears that the learned referee Member, to whom the matter was referred after difference of opinion, merely proceeded to rely on paragraph 53 of Uma Devi's judgment as explained in M.L. Kesari (supra) and observed that the applicant's appointment was not illegal but was irregular and hence, he was entitled to be regularised. It appears, again, that entire of the orders as passed in the earlier round of litigation have not gone into the process of consideration of the learned majority of the CAT; and the questions relating to nature of duties discharged by the applicant and the nature of his engagement, have not been determined.

27. For want of determination of the root questions arising in the matter, and for want of consideration of the implication of the orders earlier passed in relation to the applicant; and in an overall view of the matter, we are of the considered opinion that the OA (No. 227/2008) needs re-consideration by the CAT particularly with reference to all the relevant factual aspects and then, with application of the relevant legal principles.

28. In the aforesaid view of the matter we need not discuss all the principles

emanating from the cited decisions; and would prefer leaving the entire matter for reconsideration by the CAT in accordance with law.

29. Accordingly, and in view of the above, this writ petition succeeds to the extent indicated. The impugned orders as passed in OA No. 227/2008 are set aside; and OA No. 227/2008 shall stand restored for re-consideration by the CAT in accordance with law. The parties through their counsel shall stand at notice to appear before the CAT on 24.09.2012. No costs.