

PETITIONER:  
HIMACHAL PRADESH HOUSING BOARD

Vs.

RESPONDENT:  
OM PAL & ORS.

DATE OF JUDGMENT: 01/11/1996

BENCH:  
S.C. AGRAWAL, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.C. AGRAWAL, J, :

Delay condoned.

Special leave granted.

These appeal are directed against the judgment of the Himachal Pradesh Administrative Tribunal (here in after referred to 'the Tribunal') dated July 31, 1995 in O.A. No. 43 of 1991 and the order dated November 17, 1995 passed by the Tribunal in Review Petition No. 38 of 1995 filed by the appellant for review of the order dated July 31, 1995 in O.A. No. 43 of 1991.

Himachal Pradesh Housing Board (here in after referred to as 'the Board') has been established under the provisions of the Himachal Pradesh Housing Board Act, 1972 to organise and promote the construction of townships, housing colonies, etc. in the State of Himachal Pradesh. The respondents were engaged as daily wage labourers on muster roll basis. Their services were dispensed with by the Assistant Engineer of the Board on December 1, 1990. Feeling aggrieved by the termination of their services, the respondents filed O.A. No. 43 of 1991 before the Tribunal where in it was submitted that the Board is an "industry" under the U.P. Industrial Disputes Act, 1947 and that the respondents are "workmen" under the said Act and that the termination of their services had been effected without complying with the requirements of the said Act. It was also submitted that persons junior to the respondents were still working with the Board and that construction work is still going on in and around Una and that the principle of 'last come first go' has not been followed. By order dated January 1, 1991 the Tribunal passed an interim order directing that the respondents be reengaged in the same capacity and at the same place forthwith and they should be directed to report for duty on or before January 24, 1991 to the Assistant Engineer of the Board at Una Sub Division. The Board filed a reply to the said petition of the respondents wherein it was submitted that the respondents were engaged purely on daily wage basis and their services had been dispensed with after completion of work for which they were engaged. It was denied that the persons junior to the respondents are still

working with the Board at Una Sub Division and that the work has not been completed at Una and that the principle of 'last come first go' has not been following by the Board. It was also submitted that the Tribunal had no jurisdiction to entertain the application.

By order dated July 31, 1995 the Tribunal disposed of the said application filed by the respondents whereby of Board has been directed to consider the case of the respondents for regularisation on merits in accordance with the law and in the light of the judgment of this Court in Mool Raj Upadhyaya v. State of Himachal Pradesh & Ors., 1994 Supp. (2) SCC 316, within a period of six months with liberty reserved to the respondents to move the Tribunal application if any of them is still aggrieved. It was also directed that the respondents who were disengaged and were subsequently reengaged by the order of the court were continuously working, the break that occurred in the meanwhile due to the impugned termination order shall be taken into consideration for the purpose of counting service for regularisation but they shall not be paid back wages on the basis of 'no work no pay'. The Board was directed to pay the respondents the enhanced wages effect from January 1, 1994 as per the judgment of this Court in Mool Raj Upadhyaya (supra).

The Board filed a petition for review of the said order dated July 31, 1995. The said petition for review was dismissed by the Tribunal by order dated November 17, 1995. Hence this appeal.

We have heard the learned counsel for the parties.

On a perusal of the impugned order dated July 31, 1995 it appears that the Tribunal has finally disposed of O.A. no. 43 of 1991 filed by the respondents and has given directions regarding regularisation of the said respondents without examining the legality of the termination of their services with effect from December 1, 1990. The question of regularisation of the respondents of the could arise only, if the termination of their services with effect from December 1, 1990 was found to be invalid. The claim of the respondents in their application before the Tribunal that the termination of their services was illegal had been refuted by the Board in its reply. Without holding that the termination of the services of the respondents with effect from December 1, 1990 was invalid and that the respondents and that the respondents continued in service, the Tribunal was in error in giving directions regarding their regularisation and payment of enhanced wages to the respondents with effect from January 1, 1994 as per the judgment of this Court in Mool Raj Upadhyaya (supra). The impugned judgment dated July 31, 1995 and the order dated November 17, 1995 cannot, therefore, be upheld and have to be set aside and O.A. No. 43 of 1991 has to be remitted to the Tribunal for consideration of the question regarding validity of the termination of the services of the respondents with effect from December 1, 1990.

The appeal are, therefore, allowed, the impugned judgment dated July 31, 1995 and the order dated November 17, 1995 are set aside and O.A. No. 43 of 1991 is remitted to the Tribunal for consideration on merits. No order as to costs.