

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 675 OF 2008

SAMAL BARRAGE EMPLOYEES UNION & ANR. Appellant (s)

VERSUS

STATE OF ORISSA & ANR. Respondent(s)

(With office report)

Date: 01/06/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE C.K. PRASAD
(VACATION BENCH)

For Appellant(s) Mr. Raju Ramachandran, Sr. Adv.
Mr. Soumyajit Pani, Adv.
Mr. Mrigank Prabhakar, Adv.
Mr. Sunil Kumar Jain, Adv.

For Respondent(s) Mr. Sibor Sankar Mishra, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of
the signed order.

(Neetu Khajuria)
Sr.P.A.

(Phoolan Wati Arora)
Court Master

(Signed order is placed on the file.)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 675 OF 2008

SAMAL BARRAGE EMPLOYEES UNION & ANR. Appellant (s)

VERSUS

STATE OF ORISSA & ANR. Respondent(s)

O R D E R

This appeal is directed against orders dated 13.4.2005 and 21.12.2006 passed by the Division Bench of Orissa High Court in Writ Petition (Civil) Nos. 7902 of 2003 and 9787 of 2003 and Review Petition Nos. 40 and 41 of 2005 respectively.

The appellants filed two petitions under Articles 226 and 227 of the Constitution of India questioning the legality of communications dated 13.3.2003, 29.3.2003 and 30.6.2003 issued by the State Government, Department of Water Resources and Chief Engineer and Basin Manager, Brahmani Left Basin, Samal in the matter of retrenchment of work-charged employees. The thrust of the case set up by the appellants was that in view of the order passed by the Orissa Administrative Tribunal (for short, 'the Tribunal') in O.A. No. 122(C) of 2002, they could not have been retrenched and the respondents were duty bound to take action in terms of the order passed in O.A. No. 1560(C) of 1993 and batch.

In the counter affidavit filed on behalf of the respondents, an objection was raised to the maintainability of the writ petition on the ground that the only remedy available to the petitioners was to approach the Tribunal.

The Division Bench accepted the objection raised on behalf of the respondents and held that the writ petitions filed by the appellants are not maintainable.

The relevant portion of the order passed by the High Court is extracted below:

"Undisputedly, the members of the Petitioner-Union have approached the Tribunal by filing O.A. Nos.122(c) to 126(c) of 2002. In those original applications, the Tribunal has passed interim order protecting the interest of the employees. Since the employees have already approached the Tribunal, the present writ applications at their instance are not maintainable. Moreover, the employees represented by the Petitioner-Union are

working in the work-charged establishment and as such are holder of Civil Post under the State Government. Section 15 of the Administrative Tribunals Act, 1985 vests jurisdiction in the Administrative Tribunal to deal with all matters pertaining to service under the Government. Therefore, the Orissa Administrative Tribunal has ample power and jurisdiction to effectively deal with the grievances of the employees. In Deep Chand's case (supra), it was held by the Supreme Court that in respect of a claim by the daily wager employees, the remedy lies before the Tribunal not before the High Court. In view of such decision of the Apex Court, this Court is of the considered opinion that the remedy available to the present petitioners is to agitate their grievance before the Tribunal and not before this Court. Accordingly, this Court is constrained to hold that the present writ applications are not maintainable."

The Review Petitions filed by the appellants were dismissed by the High Court with an observation that order dated 13.4.2005 does not suffer from any error apparent and the power of review cannot be confused with the appellate power.

We have heard learned counsel for the parties and perused the record. Since the directions given by the concerned authorities for termination of the services of the employees fall within the definition of the term "service matters" contained in Section 3(q) of the Administrative Tribunals Act, 1985 (for short, 'the Act'), the High Court rightly held that the writ petitioners should first avail remedy by filing application before the Tribunal and in view of the law laid down by the larger Bench of this Court in *L. Chandra Kumar v. Union of India* AIR 1997 SC 1125, we do not see any reason to take a different view.

The appeal is, accordingly, dismissed, leaving the appellants free to avail remedy by filing appropriate application before the Tribunal.

Since the matter remained pending before the High Court and this Court for sufficiently long period, we deem it proper to make it clear that if the appellants file an application before the Tribunal within a period of one

month from today along with an application under Section
21(3) of the Act for condonation of delay, then the same
shall be entertained and the original application shall be
decided on merits.

.....J.
(G.S. Singhvi)

.....J.
(C.K. Prasad)

New Delhi,
1st June, 2010.