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SLP(C)No. 20672 OF 1998

ITEM No.2

Court No.10

SECTION XIA
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.20672/1998@@
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(From the judgement and order dated 25/08/1998 in OJC-4420/95
of The HIGH COURT OF ORISSA AT CUTTACK)

NOTIFIED AREA COUNCIL, PIPILI & ANR.

Petitioner (s)

VERSUS

GAHAR MOHAMMAD & ANR.

Respondent (s)

(With prayer for interim relief) (With Office Report)
(For Final Disposal)

With
SLP(C)No.3/1999
[With prayer for interim relief and Office Report]
(For final disposal)

Date : 14/02/2001 These Petitions were called on for hearing today.@@
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CORAM :

HON'BLE MR. JUSTICE D.P. MOHAPATRA
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Petitioner (s) Mr. Janaranjan Das, Adv.
Mr. D.P. Mohanty, Adv.
Mr. K.K. Mahalik, Adv.

For Respondent (s) Mr. Parmanand Gaur, Adv.

UPON hearing counsel the Court made the following

O R D E R

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Leave granted.
The Civil Appeals are allowed in terms of the Signed
Order. No order for cost.

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(Subhash Chander)
Court Master

(S. Malkani)
Court Master

[Signed Order is placed on the file]

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1267 OF 2001@@
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[Arising out of S.L.P.(C) No.20672 of 1998]

Notified Area Council,
Pipili & Anr.

... Appellants

Versus

Gahar Mohammad & Anr.

... Respondents

W I T H@@
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Civil Appeal No.1268 of 2001@@
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[Arising out of S.L.P.(C)No.3 of 1999]

O R D E R@@
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Leave granted.

In this appeal filed by the Notified Area Council Pipili in the State of Orissa and its Executive Officer the judgment rendered by the Orissa High Court on 25th August, 1998 in Original Jurisdiction Case Nos.4419 and 4420 of 1995, is under challenge. The writ petitions were filed by the respondent No.1 herein (in both the appeals) who were engaged as Octroi Tax Peon and Cycle/Vehicle Guard respectively on daily wage basis. Subsequently, attempt was made to make regular appointments to the said posts. The local employment exchange was requested to recommend names. Names of the said respondents having been recommended, they were issued appointment letters on 22nd March 1995 in which it was stated inter alia that the appointees should join the posts within three days of receipt of the letter and produce the documents, like copies of certificates in support of age, qualification, experience, medical fitness, character certificate and copies of passport size photographs. The respondents having failed to produce certificates their appointments came to be cancelled on 29th March 1995 as evident from the letter issued by the Executive Officer of the NAC. Thereafter a resolution was passed by the NAC on 27th October 1995 in which a decision was taken to abolish the system of engaging workers on daily wage basis including the engagement of the two respondents. Being aggrieved by the said decision of the NAC, the respondents filed the writ petitions in the High Court, which were disposed of by the judgment dated 25.8.1998, which is under challenge in these appeals.

The High Court, in its judgment, has quashed the resolution dated 27th October 1995 terminating the services of the writ petitioners, respondents herein, and has directed the opposite parties in the writ petitions, the appellants herein, to allow the petitioners to join and discharge their duties in their respective posts within a period of sixty days. The High Court made it clear that the petitioners would not be entitled to any back-wages, but would be deemed to be continuing in service from the date of their respective appointments for the purpose of seniority and retirement benefits.

From the discussions in the judgment, it is manifest

that the High Court "has not appreciated" the the resolution of the NAC abolishing the engagement of daily wage workers and has also taken exception to the Executive Officer terminating the appointments of the respondents who were appointed by resolution passed by the Council. From the materials available on record, it is clear that on both the counts the High Court fell into error. The position is fairly well settled that continuance or abolition of posts is within the power of the employer and any decision in that regard is not available to be interfered with by the court unless it is held to be vitiated by mala fide or arbitrary. From the discussions in the judgment under appeal, we do not find that the High Court took into consideration any material on record to come to the conclusion that the resolution passed by the NAC, dispensing with the engagement of daily wage workers, was vitiated on any count. If the employees could not continue as daily wage workers, then the question of their regularisation in the post did not arise. It is relevant to note here that the regular appointments purportedly made by the letter dated 22nd March 1995 had been cancelled within a week, by the letter dated 29th March 1995. Therefore, when the matter was being considered by the High Court, the case of the respondents could only be considered as daily wage workers and not as regular employees.

On consideration of the entire matter, we have no hesitation to hold that the judgment/order passed by the High Court is unsustainable and should be set aside. But the respondents, who were working as daily wage workers under the NAC will be considered for any future vacancy as daily rated worker or regular employee according to law, on priority basis, by waiving age bar if any. The judgment/order dated 25th August, 1995 is set aside. The appeals are allowed with the above observations/directions. No order for cost.

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.....J.
[D.P. MOHAPATRA]

.....J.
[BRIJESH KUMAR]

New Delhi.
February 14, 2001.@@
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