(20) In view of the above, it is held that the suit filed by the plaintiff-respondents to challenge the compromise decree is not maintainable in view of the specific bar contained under Order 23 Rule 3-A of the Code of Civil Procedure. Accordingly, the judgments and decrees passed by the learned Courts below are set aside and consequently, the suit is dismissed with no order as to costs.

R.N.R.

Before M.M. Kumar & Sabina, JJ.

UNION OF INDIA & OTHERS,—*Petitioners*

versus

SATNAM SINGH & OTHERS,—*Respondents*

C.W.P. No. 12000/CAT of 2005

8th May, 2008

Constitution of India, 1950—Art. 226—Administrative Tribunals Act, 1985—S. 21—Central Administrative Tribunal Rules of Practice, 1993—Rl. 154—OA filed after about 5 years of passing of termination orders—Time barred—Objection raised by petitioner before the Tribunal should have been accepted—Merely names of respondents kept alive on live casual labour register by petitioners would not furnish them cause of action for grant of relief of regularization—Casual/temporary employees do not have any right to regular or permanent public employment—Order of Tribunal suffers from illegality and non-application of mind—Petiton allowed.

Held, that it is evident from the perusal of Section 21(1)(a) of the Act that once a final order has been passed then OA is required to be filed within one year from the date such final order has been made. However, according to sub Section 3 of Section 21 of the Act the period of limitation has been extended by six months provided the applicant satisfies the Tribunal that he had sufficient cause for not making the application within the specified period. It is thus obvious that OA filed by the applicant-respondents in the year 2003 was hopelessly time

barred whereas cause of action had arisen in the year 1988 and the objection raised by the petitioner before the Tribunal should have been accepted. The mere fact that the names of the applicant-respondents have been kept alive on the live cause labour register by the petitioners would not furnish them cause of action for grant of relief of regularization because cause of action had arisen on 21st September, 1988 when the services of the applicant-respondents were terminated.

(Para 11)

Further held, that the judgment of Hon'ble the Supreme Court in the case of **State of Karnataka** *versus* **Uma Devi (2006) 4 SCC 1** has now authoritatively held that casual/temporary employees do not have any right to regular or permanent public employment because such an employee must be deemed to have accepted the *adhoc*/daily wage employment fully knowing the nature of it and the consequences flowing therefrom. It has been opined that regularization cannot be made a mode of appointment because engagement of a casual employee is not based on proper selection as recognized by relevant rules or procedure.

(Para 12)

Constitution of India, 1950—Art. 226—Central Administrative Tribunal Rules of Practice 1993—Rl. 154(c) Appendix VII, Entry II—Appendix VIII provides that Single Bench Member could decide only specific class of cases—Matter concerning regularization of *ad hoc* appointment—Required to be decided by two Member Bench of the Tribunal under Appendix VII—Order of Single Member set aside.

Further held, that a Single Bench Member of the Tribunal could not have dealt with the issue because as per Appendix VII, Entry II read with Rule 154(c) of the Rules the matter concerning regularization of *ad hoc* appointment is required to be decided by two Member Bench of the Tribunal namely one comprising of Judicial Member and the other one being Administrative Member. It is also evident from Appendix VIII read with Rule 154(c) of the Rules that Single Bench Member could decide only specific class of cases.

(Para 14)

Puneet Jindal, Advocate for the petitioner (Union of India)

None for the applicant-respondents.

M.M. KUMAR, J.

(1) This petition filed by the Union of India and others is directed against order dated 13th May, 2005 (Annexure P. 6) passed by the Single Member of the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity 'the Tribunal') in OA No. 1208/HR/2003. The Tribunal has held that applicant-respondents are entitled to be considered for their regularisation according to their seniority and if any process of selection as per advertisement was to be completed then the petitioners were directed to ask the applicants to submit their applications for consideration of their cases for fresh appointment as per law. It was further directed that if the selection process has already been completed then the petitioners or their officers were to consider the case of the applicant-respondents for their regularisation/absorption according to their seniority in the live casual labour register against the available vacancy in any of the unit or department under their control in Ambala Division.

(2) Brief facts of the case are that respondent nos. 1 to 9 were engaged as casual Khalasi by the petitioners on different dates and they were dis-engaged by a verbal order on 29th January, 1988. Respondent nos. 1 to 9 filed Original Application before the Tribunal for a direction to consider and appoint them against the newly created and advertised posts on preferential basis. However, on the basis of stand taken by the petitioners in their reply the prayer made in the OA was amended by the petitioners after obtaining permission from the Tribunal. The O.A. was finally heard by a Single Bench member of the Tribunal and,—*vide* orders dated 13th May, 2005 the Single Bench Member disposed of the O.A. on 17th May, 2005 by issuing afore-mentioned directions to the petitioners. Feeling aggrieved the petitioners have approached this Court.

(3) When the matter came up for motion hearing on 4th August, 2005, the petition was admitted and operation of the impugned order dated 13th May, 2005 (Annexure P. 6) was stayed.

(4) The Tribunal considered the objection regarding the issue of limitation raised by the petitioners. The petitioners have questioned the filing of Original Application by arguing that the cause of action had arisen in the year 1988 when the services of the applicant-respondents were terminated and under Section 21 of the Administrative Tribunals Act, 1985 (for brevity 'the Act') the O.A. could have been filed within a period of one year. The O.A. having been filed in the year 2003 was clearly time barred and there was huge delay of 15 years. However, the Tribunal while rejecting the afore-mentioned argument observed as under :—

> "Admitted position in the present case is that the applicants had worked as casual Khalasi at the relevant point of time. Their services were orally terminated and lateron they were also conferred with temporary status. Their names are continuously maintained up to date in the live casual labour register by the respondents. However, it is not clear as to whether this live casual labour register pertains to the store depot at Jagadhri or to the Jagadhri workshop. The applicants were also admittedly asked to furnish their relevant documents duly attested,—*vide* Annexure A. 3, dated 18th February, 2003. Respondents have also admitted in written statement that applicants would be absorbed/ regularised as per their seniority in the Jagadhri Depot of Railways. Therefore, plea of limitation as raised by the respondents that O.A. being time barred is not tenable as recurring cause of action in favour of the applicants is still alive. Thus, the present O.A. is held to be not hit by Section 21 of the Administrative Tribunals Act, as the O.A. has been filed by the applicants in the year 2003."

(5) The petitioners have also raised the issue that there was no prayer made by the applicant-respondents for regularisation of their services even after amendment and in the absence of such a prayer no relief could have been granted to them. Even the afore-mentioned objection raised by the petitioners has been rejected by the Tribunal by observing as under :

> "In view of this position, that cases of the applicants are under consideration for their regularisation as per averments of

the respondents in their written statement, therefore, the second plea as raised by the respondents that the applicants have not prayed for their regularisation of the O.A. is also not sustainable as this prayer is already there in the mind of the respondents and they have also rebutted the averments in the O.A. as well as in the rejoinder in this regard. Thus, their prayer for regularisation cannot be ignored on this technical objection as taken by the respondents".

(6) The applicant-respondents were working in Store Depot at Jagadhri where there were no posts of Khalasi against which they could be regularised. The Tribunal found that there were a number of vacancies with the petitioners at Jagadhri workshop. It has been opined that the applicant-respondents could be adjusted against these posts. It has quoted para 2.1 and 3.1 of the notification RBE No. 145/97 dated 23rd October, 1997 (Annexure R.1) in support of that view. The afore-mentioned paras reads thus :

"2.1 In the instructions issued recently, in the context of regularisation of all casual labour on roll as on 30th April, 1996, by 31st March, 1998, however, it has been provided that after the screening of casual labour against vacancies in the department has been completed, the left over unscreened casual labour in the department should be screened for regularisation in other departments in the same division/extra divisional unit/work shops situated in the same division (where vacancies exist after regularisation of casual labour/substitutes in the respective departments/ units/workshops) and, therefore, in other divisions where vacancies exist but which have no casual labour."

"3.1. It may be added that it follows from the above that casual labour may be regularised, if any, of the department (seniority unit) where they are working or have worked, wherever their turn for regularization comes up first, depending on the availability of vacancies and their seniority in such departments (seniority unit) and it may happen that they get regularised in a department where they may have not been put in maximum number of years of service."

(7) The Tribunal construed the afore-mentioned provisions of the notification by observing that regularisation of casual labour is not confined to one wing alone which has been expanded division-wise. As a result of the interpretation, the plea raised by the petitioners that the applicant-respondents who were working only in Jagadhri Store depot and could be considered for regularisation in that unit alone was rejected. It has been further held by the Tribunal that the applicant-respondents have also attained temporary status. After recording the afore-mentioned finding, the Tribunal went on to apply the judgement of Hon'ble the Supreme Court in the case of **Nar Singh Pal** *versus* **UOI (1),** holding that the applicant-respondents were on better footing because no notice before terminating their services was given to them and their services were terminated by a verbal order in violation of Article 14 of the Constitution. The Tribunal also placed reliance on the judgement of Hon'ble the Supreme Court in the case of **UOI** *versus* **Mohan Pal (2),** in support of the view that the casual labourers who have acquired temporary status could not be removed at the whims or fancy of the employer. It further held that if there was sufficient work and more casual labourers were to be employed by the employer for carrying out work then the casual labourers who had acquired temporary status were not to be removed from service. Holding that there was constant need of Khalasis in the railways particularly in Jagadhri workshop and the names of the applicant-respondents having been kept on live casual labour register till that date the Tribunal held that the applicant-respondents did have cause of action for regularisation/ absorption.

(8) Mr. Puneet Jindal, learned counsel for the petitioners has raised the following contentions before us :—

(1) That the relief of regularisation could not be granted to the applicant-respondents as their services were terminated in the year 1988 especially when they had worked only for a period of two years. In support of his submission, learned counsel has placed reliance on a Constitution Bench judgement of Hon'ble the

(1) (2000) 3 SCC 588
(2) (2002)4 SCC 573

Supreme Court in the case of **Secretary State of Karnataka** *versus* **Uma Devi** (3). According to the learned counsel the case of the applicant-respondent is not covered by any of the instructions nor their services could have been ordered to be regularised in the department other than Store depot at Jagadhri where they had served ;

(2) That there was no prayer made by the applicant-respondent in their O.A. even after amendment for setting aside the termination order nor any prayer was made by them for regularisation of their services. In that regard he has drawn our attention to the unamended and amended prayer clause in their O.A. at pages 33 and 65, Learned counsel has pointed out that initially when O.A. was filed, the relief claimed was that the petitioners be restrained from engaging new persons against newly sanctioned posts through direct recruitment against advertisement dated 13th June, 2003 by putting forward the plea that the applicant-respondents were born on live casual labour register. The Original Application was then amended and even in the amended application the prayer at page 65 was for issuance of appropriate directions to the petitioners to consider and appoint the applicant-respondents to Group "D" cadre of Khalasis etc. againt the vacancies lying vacant under the petitioner or in any other railway division where the vacant posts of Group "D" were available. Further relief claimed was that the applicant-respondents be declared lawfully entitled for consideration for appointment against the vacant posts on preferential basis on the ground that their names appeared in the live casual labour register. Learned counsel has maintained that there was no prayer made for regularisation of the services by the applicant-respondents.

(3) (2006) 4 SCC 1

3. Mr. Jindal has then contended that the Central Government has framed Central Administrative Tribunal Rules of Practice 1993 (for brevity 'the Rules') in exercise of powers conferred under Section 22 of the Act. As per Rule 154 the classification of dispute has been given and certain disputes could be decided by a Single Member Bench of the Tribunal whereas more important subject could be decided only by two Member Bench of the Tribunal (consisting of one judicial member and one administrative member). Rule 154(c) read with Appendix VII, Entry 2 deals with *ad hoc* appointment/regularisation which is required to be decided by two Member Bench. A single Member Bench according to appendix VIII could decide only following class of cases namely allotment or eviction from government accommodation; claims of medical reimbursement, leave, joining time, LTC and over-time; Compassionate appointment/ appointment of dependents dying in harness; cross of efficiency bar; date of birth; 'entry in character rolls;' confidential record/service record, made otherwise than as a measure of penalty under Central Civil Services (Classification, Control and Appeal) Rules, 1965; fixation of pay; grant of passes to railway employees; grant of pension, family pension, other retirement benefits and interest on retirement benefits; grant or refusal to grant advances/loans; grant, refusal or recovery of allowances; posting/transfers and stagnation increment.

(9) No one has put in appearance on behalf of the applicant-respondents.

(10) After hearing learned counsel for the petitioner, we are of the considered view that there is merit in the submission made by him. There is no dispute on facts that services of the applicant-respondents who were engaged as casual khalasis were dis-engaged on 21st August, 1988. They had worked only for about two years before

their dis-engagement. There is no explanation for such a huge delay in approaching the Tribunal. Section 21 (1)(a) of the Act in un-mistakable terms provides a maximum period of one year for approaching the Tribunal from the date cause of action had arisen. Section 21 (1)(a) of the Act reads thus :

> "**21. Limitation.**—(1) A Tribunal shall not admit an application,—(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made ;
>
> (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.
>
> (2) Notwithstanding anything contained in sub-section (1), where,—(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
>
> (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.
>
> (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of

sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

(11) It is evident from the perusal of Section 21(1)(a) of the Act that once a final order has been passed then O.A. is required to be filed within one year from the date such final order has been made. However, according to sub-section (3) of Section 21 of the Act the period of limitation has been extended by six months provided the applicant satisfies the Tribunal that he had sufficient cause for not making the application within the specified period. It is thus obvious that O.A. filed by the applicant-respondents in the year 2003 was hopelessly time barred whereas cause of action had arisen in the year 1988 and the objection raised by the petitioner before the Tribunal should have been accepted. The mere fact that the names of the applicant-respondents have been kept alive on the live casual labour register by the petitioners would not furnish them cause of action for grant of relief of regularisation because cause of action had arisen on 21st September, 1988 when the services of the applicant-respondents were terminated.

(12) We are further of the view that the judgement of Hon'ble the Supreme Court in the case of **Uma Devi** *(supra)* has now authoritatively held that casual/temporary employees do not have any right to regular or permanent public employment because such an employee must be deemed to have accepted the *ad hoc*/daily wage employment fully knowing the nature of it and the consequences flowing therefrom. It has been opined that regularisation cannot be made a mode of appointment because engagement of an casual employee is not based on proper selection as recognised by relevant rules or procedure. In para 45, 46 and 47 of the judgement, it has been held that neither there are any legitimate expectation by such an employee nor obligation on the part of the employer to absorb them on the post. The following para represent the view of the Constitution Bench which reads thus :

"45. While directing that appointment, temporary or casual be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary

or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and tc take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them....."

(13) The afore-mentioned judgement has been followed and applied by Hon'ble the Supreme Court in the cases of **National Fertilizers Ltd.** *versus* **Somvir Singh (4), Ram Pravesh Singh** *versus* **State of Bihar (5),** and **Punjab State Ware Housing Corporation** *versus* **Manmohan Singh (6).**

(14) We also find merit in the contention raised by the learned counsel that a Single Bench Member of the Tribunal could not have dealt with the issue because as per Appendix VII, Entry II read with Rule 154(c) of the Rules the matter concerning regularisation of *ad hoc* appointment is required to be decided by two Member Bench of the Tribunal namely one comprising of Judicial Member and the other one being Administrative Member. It is also evident from Appendix VIII

(4) (2006) 5 SCC-439
(5) (2006) 8 SCC-381
(6) (2007) 9 SCC-337

read with Rule 154(c) of the rules that Single Bench Member could decide only specific class of cases which includes allotment or eviction from government accommodation; claims of medical reimbursement, leave, joining time, L.T.C. and over-time; Compassionate appointment/ appointment of dependents dying in harness; cross of efficiency bar; date of birth; entry in charactor rolls;' confidential record/service record, made otherwise than as a measure of penalty under Central Civil Services (Classification, Control and Appeal) Rules, 1965; fixation of pay; grant of passes to railway employees; grant of pension, family pension, other retirement benefits and interest on retirement benefits; grant or refusal to grant advances/loans; grant refusal or recovery of allowances; posting/transfers and stagnation increment.

(15) The judgement of Hon'ble the Supreme Court in the case of **Mohan Pal** *(supra)* on which reliance has been placed by the Tribunal deals with Casual Labourer (Grant of Temporary Status and Regulations) Scheme 1993. According to Clause 3 of the Scheme, as noticed in para 2 of the judgement, the Scheme is not to apply to railway and tele communication departments. Therefore, the application of 1993 Scheme to the employees of the railways like the petitioners has been excluded and the Tribunal has committed grave error in law by ignoring the afore-mentioned aspect. Likewise the judgement in **Narsingh Pal's case** *(supra)* would also have no application to the facts of the present case because there the employee has worked for more than 10 years and had acquired temporary status. There was no delay on the part of the employee to approach the Tribunal. Therefore the view taken by Hon'ble the Supreme Court has no application to the facts of the present case. In any case all judgements of this nature are deemed to be overruled as per declaration made by the Constitution Bench of the Hon'ble Supreme Court in the case of **Uma Devi** *(supra)*. The order of the Tribunal thus suffers from illegality and non application of mind as pointed out in the preceding paras.

(16) For the reasons stated above, this petition succeeds. The order dated 13th May, 2006 (Annexure P-6) passed by the Single Member of the Tribunal in O.A No. 1208/HR/2003 (Annexure P-6) is hereby set aside.

R.N.R.