**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

**CWP No. 1280 of 2019 along with**
**CWP Nos. 1312 and 1371 of 2019.**

**Reserved on : 7th December, 2020.**

**Decided on : 14th December, 2020.**

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**1. CWP No. 1280 of 2019**

Union of India & others **...Petitioners.**

Versus

Sanjay Kumar & Others ....**Respondents.**

**2. CWP No. 1312 of 2019**

Union of India & others **...Petitioners.**

Versus

Shakuntla Devi & Ors. ....**Respondents.**

**3. CWP No. 1371 of 2019.**

Union of India & Others **....Petitioners.**

Versus

Shakuntla Devi & others **....Respondents.**

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***Coram:***

***The Hon'ble Mr. Justice Sureshwar Thakur, Judge.***
***The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.***

*Whether approved for reporting?*[1] *yes*

**For the Petitioner(s):** Mr. Rajesh K. Sharma, ASGI.

**For the Respondents :** Mr. Ashwani Verma, Advocate in all petitions.

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**Per Sureshwar Thakur, Judge .**

Since, all the afore writ petitions are directed against the impugned verdicts made by the Central Administrative Tribunal, upon, O.A. No. 063/00873/2017, and, upon, OA No. 063/01526/2017, both whereof encapsulate similar subject matters, and, also since common question of facts, and, law are involved in all the afore writ petitions, thereupon, they are amenable for a common verdict being made thereon.

2. In the afore Original Applications hence instituted before the Central Administrative Tribunal, Chandigarh, the applicants therein were rendering duties under the respondents, purportedly against seasonal work, or on a casual basis, and, they reared therein, an espousal for quashing, and, setting aside the orders made on 1.03.2017, by the Superintending

[1] Whether reporters of the local papers may be allowed to see the judgment?

Archaeologist, ASI, Shimla Circle. In the afore Annexure A-1, the authority concerned, made a reference to DOPT OM No. 49014/2/86-Estt.(C) of 7.6.1988, hence containing instructions against the engagings, of workmen, on a daily wage(s) against those works of a regular nature, rather a mandate is cast therein for engagement of daily waged workmen, only against works of, a, casual or of a seasonal or of an intermittent nature, works whereof, do not require creations, of, substantive posts qua therewith. Consequently, therethrough, the respondents concerned, concluded that since the engagement(s), of, the applicants/workmen concerned, were made against works of a seasonal or intermittent nature, and, obviously when they became not engaged against works of a regular nature, (a) thereupon, their services were amenable for being retrenched, (b) and, furthermore therein, it is declared that the workmen/applicants, were not entitled, to, higher wages, at the rate of 1/30th, of the minimal pay-scale, (c) as the afore benefit is affordable only to such casual workmen, who stand engaged

against works, of, a regular nature. Obviously, aggrieved therefrom, the applicants/workmen instituted the afore O.As. Before the Central Administrative Tribunal, Chandigarh.

3. The Central Administrative Tribunal, Chandigarh, through orders, respectively made on 4.12.2018, and, on 7.12.2018, after making an allusion to the records, hence, granted the espoused relief(s) to the workmen/applicants concerned. The Union of India becoming aggrieved therefrom, hence, assails the validity of the afore verdicts, before this court, hence, through its instituting the extant writ petitions.

4. The learned Assistant Solicitor General of India, has made a vigorous submission, before this Court, hence, for scuttling the legal efficacy of the impugned verdict , inasmuch as he has alluded to the preliminary objection, reared in the reply filed by the petitioners herein, to the O.A., preliminary objections whereof, appertain(s) to the lack of jurisdiction, of, the Central Administrative Tribunal, to make a verdict on merits, upon the afore O.As., as, (a) there occurred, an, acerbic disputed

question(s) of fact(s), appertaining to the competing contention(s) reared therebefore by the litigants concerned, inasmuch, as, (b) the employer(s) contending that the applicants/workmen were engaged against seasonal work(s) or against a work(s) of an intermittent nature, whereas, the workmen contended, that they became engaged against works rather regular in nature, and, that they also rendered their duties, against the apposite work(s) hence assigned to them, on a day today basis; (c) the afore disputes, and, competing espousals raised respectively by the employer, and, by the workmen, constituted a industrial dispute inter se them, and, also enjoined the making, of, a reference by the apposite Government, to the Industrial Tribunal-cum-Labour Court concerned, for, ensuring the latter to make a verdict thereon(s), imperatively after issues being struck, vis-a-vis, the afore competing claims, and, also, upon, each of the contesting litigants being afforded an opportunity to adduce their best evidence(s) qua therewith. (d) since the material existing on

record, does not cement, the espousal of the workmen qua theirs being engaged against works, hence regular in nature, nor also when the documentary evidence, existing on record, displays, vis-a-vis, their receiving per diem wages from their employer, (e) thereupon, it became imperative for the Central Administrative Tribunal, to relegate the workmen/applicants, to settle the afore dispute, through ensuring, a valid reference qua therewith, being made by the appropriate government, to the Industrial Tribunal-cum-Labour Court concerned, rather than its making an affirmative verdict upon the OAs. concerned.

5. The afore made submission, would carry immense weight before this Court, and, would also coax this Court, to accept the afore submission, only upon, no credible evidence existing on record, hence, suggestive of its succoring the vigour of the workmen's espousal. Significantly, since existence of credible evidence, supportive of the workmen/applicants' espousal, would not render the contention contra therewith, raised by the employer, hence, to constrain this Court, to, yet

relegate the workmen/applicants, to the alternative remedy(ies) of theirs approaching the Industrial Tribunal-cum-Labour Court concerned, after a reference being made qua it, by the appropriate government, (i) rather when existence on record, of, unimpeachable credible evidence, supportive of the workmen's stand, would obviously rest, settle and also blunt, the negating thereto espousal, of the employer, (ii) thereupon, upon, existence(s), of the afore credible evidence rather supportive of the workmen's espousal, this Court would not proceed to accept the contention reared before this Court, by the ASGI.

6. Necessarily, for determining whether the afore credible documentary evidence, supportive of the workmen's espousal, hence existed before the Central Administrative Tribunal, Chandigarh, it is imperative to allude to the rejoinder instituted, by the workmen, to the reply furnished by the respondents/petitioner herein, to their O.A, (a) wherein, ad-nauseam allusions became meted to the Annexures A-5, A-15/A, A-15/B, A-15/C, A-15/D, A-2, A-20, A-15/G, A-15/H, A-15/I, A-15/F,

A-5, A-13, and, A-3, all annexures whereof, make patent displays, supportive of the workmen's espousal, and, in negation of the stand projected before this Court, by the learned Assistant Solicitor General of India. Though, the employer, Union of India, was yet holding an opportunity to repulse the efficacy, of the afore Annexures, hence appended with the rejoinder furnished by the workmen, to the reply of the respondents, nonetheless, the employer did not choose to do so. The effect of the afore omission rather gains a conclusion qua the employer accepting the veracity of the depictions, as, made in the afore annexures, (a) depictions whereof, are clearly, and, candidly suggestive qua the applicants/workmen, being engaged on a day today basis, and, also theirs being enlisted, on the afore basis, hence, in the muster rolls, as, became issued to them, (b) and, besides theirs also being paid per diem wages. Corollary, whereof, is, qua the contra therewith stand projected by the petitioners herein, qua theirs being engaged, on seasonal or on an intermittent basis, does obviously, for want of sur-rejoinder being furnished by the

petitioners herein, to the rejoinder furnished, by the applicants/workmen, upon, leave being granted to them, by the Central Administrative Tribunal, becomes completely repulsed, (c) rather the afore omission, reiteratedly mobilizes a conclusion qua the employer accepting the truth, and, veracity of the afore displays made in the afore annexures.

7. Be that as it may, since credence is to be meted to the afore alluded annexures, hence appended with the rejoinder furnished to the apposite reply, by the applicants/workmen, thereupon, the purported dispute appertaining to the engagement(s) of the applicants/workmen, against work(s) of a seasonal nature, or of an intermittent nature, or theirs working on a regular basis, when became therethrough clinchingly settled, (a) thereupon, it is unbefitting to insist upon the Central Administrative Tribunal to after ensuring, the rearing, of, an industrial dispute, qua therewith hence by the workmen, and, also theirs thereafter ensuring the making, of, an, apposite valid reference by the appropriate government, to the Industrial

Tribunal-cum-Labour Court concerned, to rather ensure its being adjudicated, upon, by the afore judicial forum. Moreover, the afore endeavour, is unnecessary, as its recoursing was permissible, only upon, a heavy contest rather emanating inter se the contesting litigants, and, it enjoining adduction, of, evidence before the afore judicial forum, whereas, it was not amenable to be recoursed, upon, credible documentary evidence, supportive of the workmen's stand, rather existing on record. Necessarily also when the recoursing of the afore remedy by the workmen, would bring, upon, them, the trauma, of, inordinate procrastination(s), and/or prolonged delays, whereupon, it would become an inefficacious remedy, thereupon, the Central Administrative Tribunal became vested with valid jurisdiction, to make an affirmative verdict, upon, the OAs concerned. Consequently, sequel thereof, is that, it was also not necessary for the Central Administrative Tribunal, to yet proceed, to in its impugned verdicts, rest the validity of the preliminary objections appertaining to the maintainability of the

O.A. before it nor it was sagacious for the Central Administrative Tribunal, to pronounce, vis-a-vis, the validity of the preliminary objections raised by the Assistant Solicitor General of India, inasmuch, as, its not holding jurisdiction to make a verdict upon the O.A., as, the workmen had the afore purported efficacious remedy.

8. For the foregoing reasons, there is no merit in the extant writ petitions, and, they are dismissed. Accordingly, the verdicts impugned before this Court are maintained, and, affirmed. All pending applications also stand disposed of.

**(Sureshwar Thakur)**
**Judge**

**(Chander Bhusan Barowalia)**
**Judge.**

**14th December, 2020.**
**(jai)**