

Trinath Haricharan & Ors.

Vs

Chairman, Paradeep Fort Trust

(S. B. Majmudar, M. Jagannadha Rao JJ)

05.02.1998

JUDGMENT

S.B.MAJUMDAR J

1. Leave granted in both the Special Leave Petitions.
2. With the consent of learned advocates appearing for the contesting parties these appeals were taken up for final hearing and after hearing them they are being disposed of by this judgment.
3. The appellants in these appeals represent 332 workmen who claim to be treated as regular workmen entitled to be covered by the Paradeep Port Clearing, Forwarding and Handling Workers (Regulation of Employment) Scheme, 1994 (hereinafter referred to as "CFH Scheme"). It is their contention that they are so entitled pursuant to the recommendations of a High Power Committee called Khanna Committee appointed by this Court by its judgment in Paradeep Port Trust and another Vs. Paradeep Port and Dock Mazdoor Union and other in Civil Appeal No.1422 of 1990 reported in AIR 1990 SC 1125 and the subsequent order of this Court approving the said report by its decision dated 31st January, 1995 in Special Leave Petition (Civil) No.13490 of 1994. 170 of these appellants have felt aggrieved by the judgment and order of the High Court of Orissa at Cuttack in OJC No.12149 of 1996 and the remaining appellants out of the said 332 agitating workmen who are petitioners in S.L.P (C) No.14312 of 1997 out of which the companion appeal arises have felt aggrieved by the common decision of the same High Court disposing of number of writ petitions including OJC No.3308 of 1995 whereby the said appellants Intervention Application was disposed of.
4. In order to appreciate the grievance of the appellants which is common to both these group of appellants it will be necessary to note a few facts leading to these proceedings. Background Facts.
5. Paradeep Port Trust is situated in the State of Orissa. It is governed by the Major Port Trusts Act, 1963 (hereinafter referred to as the Act). As per Section 42 of the said Act a duty is cast on the major port governed by the Act to undertake and perform services mentioned therein. In the exercise of powers conferred by Section 42 of the Act the Board of Trustees of Paradeep Port which is duly constituted under Section 3 of the Act framed a scheme in connection with the handling of cargoes at the said port. The said scheme was styled as the Paradeep Port Cargo Handling Scheme of 1979. As per clause 2 of the said scheme Paradeep Port Trust had to undertake the supply of cargo handling workers to the licensed stevedores and to the trade for all operations on the Board of

vessels and for begging, stitching and sealing operations on berth respectively. Clause 18 of the said Scheme Prescribed composition of gangs of workers to be entrusted with the said task. Sub-clause (III) of the said Clause related to stevedoring gang and sub clause (IV) related to shore gang. The said 1979 Scheme came into force with effect from January 1980. Under the said Scheme two lists of workmen were prepared-(1) Main List and (2) Subsidiary/Standby List. Under the said Scheme of 1979 the Paradeep Port directly under took the following services to facilitate the movement of cargo, outward and inward at the said port. The said services comprised of the following categories :

- (a) Handling of all cargoes on shore (including Cargo in bulk) in the course of landing or shipment ;
- (b) Intraport transportation ; and
- (c) Any other operations, directly connected with landing and shipment of Cargo but not including bagging, stitching and sealing. The categories of Cargo Handling workers to whom the said 1979 Scheme applies are mentioned in Schedule II to the Scheme as under:
 - (a) Winchman
 - (b) Signalman
 - (c) Gang Leader
 - (d) Mazdoor
 - (e) Tally clerk
 - (f) Supervisor
 - (g) Deck foreman.

It appears that some disputes arose amongst the dock workers in connection with the right to be employed for carrying out all the aforesaid services at the Paradeep Port. Different trade unions of workmen raised diverse claims which ultimately came to be considered by this court in an appeal against the decision of the High Court of Orissa in OJC No.2539 of 1985. In the decision rendered by this Court in Civil Appeal No.1422 of 1990 (supra) this court observed that the benefit of decasualisation of the workers should be in conformity with the Paradeep Cargo Handling (Regulation of employment) Scheme, 1979. In order to work out the said benefit in an appropriate manner this Court in the aforesaid decision appointed a High Court Committee under the chairmanship of a retired Judge of this Court justice H.R.Khanna who was to be associated with two experts in the field. Justice Khanna Committee after due deliberation spread over couple of years submitted its report now known as Khanna Committee Report or High Power committee report. The said High Power Committee though identified and noticed increased workload in respect of Paradeep Port, did not recommend the cases of 332 workers who have been working in the Port for few years on the ground that they cannot be considered because they have not worked for sufficiently long period. The said High Power Committee fixed the criteria for enlisting appropriate number of workmen for the work of clearing, forwarding and handling of cargo at the Paradeep Port. The said Report was submitted by the High Power Committee on 18th July, 1993. As per the said Report Paradeep Port Trust Management Committee, respondent no.2 in these appeals framed another Scheme in 1994 called Paradeep Port Clearing, forwarding and handling workers (Regulation of Employment) Scheme 1994, which as noted earlier, is known as CFH Scheme.

Pursuant to the said Scheme apart from 1500 workers cleared by the High Power Committee by placing them in the main list, a provisional list of 437 standby workers was prepared by respondent no.2. As the High Power Committee had not recommended the cases of 332 workmen, some of them are the appellants before us in these appeals, they came to this court after having unsuccessfully approached the Orissa High Court. In their S.L.P.(c) no.13490 of 1994 this Court on 31st January 1995 while disposing of their petition laid down as under:

"The respondents will give preference in the vacancies that may be available with them, to the standby workers first. If there are more vacancy or vacancies which are not filled in by the standby workers, the respondents will go according to their record, and give preference to the other workmen found to have worked under them as per their record, including the petitioners and the members of the other Unions. The job should be given strictly according to seniority. These proceedings stand closed. "It therefore, becomes obvious that this court while upholding the High Power Committee Report and the CFH Scheme accordingly framed by respondent no.2 authority in the light of the said Report clearly laid down that the available vacancies must first be filled in by standby workers and after exhausting their claim if any more vacancies were left then the respondent authorities had to go according to their record and give preference to the other workmen found to have worked under them as per their record including the 332 appellants before the Supreme Court and the jobs could be given strictly according to seniority. This Court directed that the proceedings should stand closed. Unfortunately the desire of this Court to bring down the curtain on this simmering controversy and dispute between the parties did not fructify, as will be seen presently.

6.A spate of writ petitions came to be filed in the Orissa High court after this court's order dated 31st January, 1995. The appellants in appeal arising out of S.L.P (C) No.9719 of 1997 filed OJC No.121149 of 1996 before the High Court of Orissa. The prayer in that petition read as under:

"Under the circumstances stated above, the petitioners most respectfully pray that this Hon'ble court may be graciously pleased to issue a writ or writs in the nature of writ of mandamus directing the opp. parties to declare the present petitioners as listed 1994 scheme workers:". In short they contended before the High Court that even if the High Power Committee might not have given them any preference in the light of the decision of this Court in S.L.P.(C) No.13490 of 1994 decided on 31st January 1995 they were entitled to be considered for regular listing as there were vacancies available after the claims of eligible stand by workers were considered and got exhausted. Their main grievance in the petition was that pursuant to the CFH Scheme most of the eligible standby workmen kept sitting on the fence and as they were not inclined to put forward their claims for being listed as workmen under the said CFH Scheme and as they were all the while thinking that they were entitled to the benefit under the statutory scheme of 1979, they did not offer themselves for medical examination as required under the Scheme of 1994. Not only that but even after inclusion of 125 workmen in the stand by list of 1994 Scheme, for the remaining vacancies respondent No.2 gave number of notices and opportunities to the remaining standby workmen to put forward their claims under the Scheme for being listed as regular workman and get themselves medically examined but they did not opt out for the same. Number of opportunities were given for the medical test to these workmen. According to the appellants 14 such opportunities were given

ranging from 23rd March 1993 upto 20th May 1995, but they did not come forward for getting the benefit of the 1994 Scheme. The appellants submitted that the Union representing the standby list of workman filed with application being OJC No.674 of 1996 praying therein to give one more chance to them for their medical examination, as intention of the standby workers to join 1994 Scheme was not very clear, despite the High Court giving several chances to their Union to file individual affidavits of the standby workmen who wished to appear for medical test only four affidavits of standby listed workmen were filed and the rest did not do so. In the meantime according to the appellants respondents as No.2 authorities in the light of the increasing workload at the port had to fill up the vacancies which remained unfilled under the 1994 Scheme as sufficient number of standby workman who were given priority by the High Power Committee Report did not come forward to fill up these vacancies. Respondent No.2, therefore, undertook that exercise and pending the aforesaid OJC No.674 of 1996 before the High Court passed a resolution after considering the seniority of 332 workmen 170 of the whom are the appellants before us, and decided to appoint them on ad hoc basis as casual workmen awaiting the final result of the aforesaid OJC. The said OJC was disposed of by the Orissa High Court on 26th April 1996 in the following terms: "Since only four persons have filed affidavits standing by stand of Utkal Port and Dock Workers Union inspite of directions given by this Hon'ble Court that affidavits of all the persons whose cause is supposed to be espoused by the petitioner union, we do not entertain this application filed on behalf of the petitioner. The writ application is disposed of accordingly. "The appellants, therefore, contend that at least 174 workmen who were found eligible to be offered ad hoc appointments as casual workmen after the disposal of the aforesaid writ petition of the Union of standby workmen are required to be considered to have been regularly appointed on the available 174 vacancies under the CFH Scheme as regularly listed workmen just below the 125 standby workmen who had already got the benefit of the said Scheme. The aforesaid contention of the 174 petitioners in OJC No.12149 of 1995 was sought to be repelled by the other respondents who had filed diverse writ petitions in the High Court for getting the benefit of 1994 CFH Scheme. Amongst them were also some of the standby workmen who had not opted out for medical examination earlier but also individually filed writ petitions in the High Court for getting one more chance for being medically examined. The High Court by the impugned common judgment thought it fit to give one more chance to these standby workmen who had also been given appropriate priority in the Report of the High Power Committee and directed that after giving them one more chance for opting out for the said Scheme after undertaking the medical tests, they be considered for regular employment. It was then observed by the High Court in the penultimate paragraph of its common judgment of the following effect :

".The vacancies remaining after accommodating these writ petitioners may be made available for the intervenes upon proper consideration. "Having said so, in the last paragraph of the impugned judgment it was observed that all the aforesaid writ petitions were disposed of. Thus, not only the writ petitions filed by left-out standby workmen were allowed by giving them one more chance for getting themselves medically examined for obtaining eligibility for regular employment under the CFH Scheme. Writ Petition being OJC No.12149 of 1996 filed by the appellants-174

workmen who were given ad hoc appointments by respondent No.2 also got disposed of without any express consideration of their claim in the said writ petition.

7.As noted earlier, out of the aforesaid 332 workmen after excluding 174 workmen who had filed OJC No.12149 of 1996 the remaining 121 workmen filed an Intervention Application In OJC No.3308 of 1995 which was filed by another group of workmen for being included in the residuary category of workmen to whom the balance of vacancies could be made available in the light of the High Power Committee Report and also in the light of further direction of this Court dated 31st January 1995 in S.L.P.(C) No.13490 of 1994.Thus, there were rival claims for getting residuary vacancies after exhausting the claims of standby workmen. They were put forward by the petitioners in OJC No.3308 of 1995 on the one hand and the 121 workmen who through their Union submitted their intervention application claiming the same vacancies in the residuary category, on the other. In addition to these two groups of rival claimants, one another group of workmen claiming top seniority for allotment of residuary vacancies filed another intervention application in OJC No.3308 of 1995.Those intervention applications got disposed of as the OJC No.3308 of 1995 was itself disposed of by the impugned common judgment. The High Court found that petitioners in OJC No.3308 of 1995 were not entitled to be considered for employment in residuary vacancies. Their petition was dismissed on merits. We are informed that the S.L.P. filed by the petitioners arising out of OJC No.3308 of 1995 is already dismissed by another Bench of this Court. Therefore, petitioners in OJC No.3308 of 1995 before the High Court are no longer in the field of controversy at this stage. We may mention that their learned counsel tried to submit an I.A. for intervention in the present appeals but as the decision of the High Court against them has become final upto this Court such intervention application obviously could not be entertained and was, therefore, not entertained. However, 158 workmen out of 332 who claim to be listed in the residuary category under the CFH Scheme and whose 170 colleagues have filed the companion civil appeal arising out of S.L.P.(C) No.9719 of 1997, made a grievance before us that at least their claim may be considered. As their intervention application in the High Court was filed in OJC No.3308 of 1995 which no longer survives for consideration their intervention application obviously cannot survive by itself. Therefore, if they have any independent claim for being considered for remaining vacancies after the claims of eligible standby workmen are satisfied then it will be for them to approach the High Court of Orissa by filing a substantive application under Article 226 of the Constitution for ventilating their grievance. We, therefore, dispose of their civil appeal arising out of intervention application in OJC No.3308 of 1995, without expressing any opinion on merits of their claim and reserving liberty to them to agitate their claim and contentions in substantive writ petition before the Orissa High Court if they so choose and think fit to stake their claim for being considered for regular employment under the CFH Scheme. As and when such claim is put forward it is obvious that the High Court will decide the same strictly on its own merits in the light of the High Power Committee Report which is accepted by this Court and also in the light of the decision of this Court in S.L.P.(C) No.13490 of 1994 dated 31st January 1995.

8.It is now time for us to consider the main contentions canvassed by learned senior counsel Shri G.B.Pai in support of the appeal on behalf of 170 workmen who were petitioners before the High Court in OJC No.12149 of 1996.In the said appeal arising out of S.L.P.(C) No.9719 of 1997 Shri Pai submitted that these appellants were appointed by Paradeep Port Trust authorities because it was found that available vacancies were not filled in by eligible standby workmen who did not come forward their claims for the same and hence the said vacancies should have been given to the remaining workmen in the light of their seniority as directed by this Court by its order dated 31st January 1995 in S.L.P.(C) No.13490 of 1994.It is true that by resolution dated 09th February, 1996 of the Committee of Management of the Paradeep Port Trust, respondent No.2 herein, these 174

workmen were given ad hoc appointment as casual labourers but that was done only because of the pendency of the earlier writ petition being OJC No.674 of 1996. But once that petition was disposed of on 26th April 1996, they should be treated to have continued as regular workmen. Shri Pai next contended that their inter se seniority was considered for such appointments by the Committee of Management vis-a-vis those who were claiming to be included in the residuary category of workmen entitled to be considered against the available vacancies after the claims of standby workmen were considered and got exhausted. It was submitted by Shri Pai, that so far as 138 workmen who have filed intervention application being I.A.No.4 of 1997 in the present proceedings through their Union are concerned, a sub-committee of Paradeep Port Trust had considered the relevant seniority of the claimants for residuary vacancies and, therefore, the decision of the Committee of Management dated 09th February 1996 was binding on them. Shri Pai also tried to contend that the High Court was not justified in giving a fresh opportunity to left-out standby workmen for getting one more chance to be considered for regular appointment under the CFH Scheme as 14 times in past they were offered such opportunities but they did not avail of the same. However, when it was pointed out to Shri Pai that the decisions rendered in their favor in their writ petitions which were also disposed of by the very same common judgment by which the appeal in OJC No.12149 of 1996 was disposed of, were not made subject matter of challenge in the present appeals and the S.L.P.(C) No.9719 of 1997 only challenged the decision of the High Court in OJC No.12149 of 1996, Shri Pai, learned senior counsel for the appellants, fairly stated that in view of this technical hurdle he does not challenge the said benefit made available to 114 such stand by workmen pursuant to the common order of the High Court in their favor in their writ petitions being OJC No.10957 of 1996, 11618 of 1996, 11900 of 1996 and 12575 of 1996. Thus 114 standby workmen covered by the decisions in the aforesaid writ petitions who have got the benefit of the common judgment of the High Court and who, after medical test have already been appointed as regular workmen under CFH Scheme cannot in any way be affected by any decision to be rendered in favour of the present appellants. In other words, the claims of the present 170 appellants will have to be decided in connection with only remaining vacancies after excluding vacancies filled in by these 114 eligible standby workmen.

9. Shri Pai, however, contended that when leaving aside these 114 standby workmen who have joined the group of their brethren namely 125 standby workmen who had already been treated as eligible workmen under the CFH Scheme the balance of the vacancies after excluding the vacancies filled up by 239 standby workmen should be made available to these 170 appellants who should be accommodated in these remaining vacancies as their higher seniority qua the other remaining workmen claiming to be included in the residuary category is already recognized by the Committee of Management on the basis of the sub-committee report as noted in the resolution of the Management Committee meeting dated 09th February 1996. Shri Pai submitted that these grievances of the appellants squarely put forward before the High Court in OJC No.12149 of 1996 were not at all considered by the High Court and that save and except noting, their contentions in paragraphs 8 and 20 of the impugned judgment and the High Court has not come to the grips of the problem put forward by the appellants in their writ petition being OJC No.12149 of 1996 and has abruptly disposed of it along with other matters in paragraph 48 of the common judgment, as noted earlier, Shri Pai, learned senior counsel for the appellants, in this connection submitted that under these circumstances in normal course this writ petition would have been required to be remanded to the High Court for decision on merits. It is argued as these 170 appellants, writ-petitioners before the High Court, have already been filtered for appointment by the Committee of Management of the Port Trust and they have been found to be sufficiently senior for claiming vacancies available in the residuary category their prayer in the writ petition deserves to be granted straightaway and out of

the remaining vacancies 170 vacancies may be made available to these appellants and the balance of vacancies may be left open for consideration of the claims of the rival claimants raised in the remaining writ petitions pending before the High Court and in any other writ petition which this Court may deem it fit to permit to be moved before the High Court in this connection.

10. Refuting the aforesaid contentions, learned senior counsel Shri Milon K. Banerjee, for respondent No.2 and learned counsel for the contesting rival claimants whose intervention applications was disposed of by the High Court and who have filed a similar intervention application being I.A, No.4 of 1997 and also learned senior counsel for the 77 sardars of standby workers who have filed I.A.No.3 in these proceedings submitted that the Committee of Management of the Port Trust by the resolution of 09th February 1996 had not undertaken the exercise of considering the seniority of 170 workmen, appellants in the present case, vis-a-vis, the seniority of other rival claimants and they were merely given ad hoc appointments as ad hoc casual workmen and consequently they cannot be permitted to steal a march over other claimants without undertaking a comprehensive exercise of finding out relevant seniority of these rival claimants for being accommodated in the remaining available vacancies in Paradeep Port Trust as per the CFH Scheme of 1994. Consideration of the rival contentions.

11. We shall first deal with the claims put forward by learned counsel for the interveners in I.A.Nos.3 and 4 respectively. I.A.No.3 is moved by 77 Sardars of standby workmen who according to the learned counsel appearing for them have been inadvertently left out by the High Power Committee and they deserve consideration as Mazdoors and they would be as good as standby workmen and if that is so they will be covered by the sweep of the recommendations of the High Power Committee in favor of standby workmen and would naturally become eligible for getting regular employment under CFH Scheme of 1994. Whether the 77 sardars of standby workmen can be bracketed with the treated as Mazdoors falling in the category of standby workmen is a question which has first to be examined by the Orissa High Court. These 77 applicants cannot straightaway file on I.A. before this Court in the present appeal which represents only a limited controversy raised by 170 workmen who though working as casual workmen claim regular appointments under CFH Scheme of 1994 and who allege that their seniority is already recognized by the Committee of Management of the Port Trust. These 77 workmen, therefore, cannot be permitted to seek intervention in the present proceedings without there being any decision rendered in connection with their claim, by the High Court. We, therefore, express no opinion on the merits of their claim as put forward before us and relegate these applicants to the remedy of filing a writ petition, if so advised, under Article 226 of the Constitution for consideration by the High Court on its own merits. The High Court obviously will consider the said writ petition on merits as and when such occasion arises and that decision only will have to be rendered in the light of the High Power Committee Report which has stood accepted by this Court and also in the light of the general directions issued by this Court in S.L.P.(C) No.13490 of 1994 decided on 31st January 1995. It will be for the High Court to decide this question in accordance with law after hearing the parties concerned. We have nothing to say in this connection save and except reserving the aforesaid liberty to these applicants for filing a writ petition before the High Court, if so advised.

12. That takes us to the considerations of I.A.No.4 of 1997. These applicants were interveners, in Writ Petition 3308 of 1995. They are 138 applicants who also stated their claim for being appointed as regular workmen, under the CFH Scheme of 1994. Their intervention application was disposed of by the High Court while disposing of Writ Petition No.3308 of 1995 by observing, as noted earlier, that vacancies remaining after accommodating the standby workmen whose writ petitions were allowed as aforesaid by the High Court may be made available for interveners upon appropriate

consideration. Once the main Writ Petition No.3308 of 1995 in which the wanted to intervene has stood disposed of upto this Court, as seen earlier, this intervention application also must fall through on a party of reasoning by which we have disposed of the claim of the appellants in appeal arising out of S.L.P.(C) No.14312 of 1997 moved on behalf of 112 workmen out of 332 workmen and whose intervention application in the same Writ Petitions No.3308 of 1995 was disposed of by the High Court in the aforesaid terms.I.A.No.4 of 1997 is also, therefore, disposed of reserving liberty to the applicants to file substantive writ petition for ventilating their grievance before the High Court if they deem it fit. We express no opinion on the merits of the controversy raised in this I.A. by the applicants. Their grievances will have to be decided if properly raised before the High Court in the substantive writ petition and the same will have to be resolved by the High Court after hearing the parties in the light of the High Power Committee Report accepted by this Court as well as in the light of the decision of this Court in S.L.P.(C) No.13490 of 1994 decided on 31st January 1995.

13.After having disposed of these I.As. now remains the consideration of the main contentions canvassed by learned senior counsel Shri Pal in support of the appeal on behalf of 170 workmen. It is of course true, as submitted by Shri Pai, that despite 14 opportunities given to the remaining standby workmen to get themselves medically examined and despite further opportunity given to them by the High Court in their Union's Writ Petition being OJC No.674 of 1996 only 4 workmen filed affidavits for availing the further opportunity of getting themselves medically examined for being eligible for appointment as regular workmen. It is also true that pending the said writ petition the Committee to Management by its resolution dated 09th February 1996 decided to fill up the available vacancies on ad hoc basis by appointing the present 170 appellants and they are so working. However, the short question is whether their claims for regular employment under the CFH Scheme was considered in the light of appropriate seniority of claimants for these residuary vacancies after the claims of standby workmen were fully considered. Shri Pal submitted that the claims were so considered and the seniority question is no longer res intergra, while learned senior counsel for the respondents on the other hand submitted that it is not so and that question was kept open and it was only the limited inter se seniority of the group of 332 workers which was considered from the limited point of view of appointing them as casual workmen on available 174 vacancies for filling up 174 vacancies from that group of 332 workers. Our attention was invited to the proceedings of the meeting of the Committee of Management held on 09th February 1996 and Resolution No.43/96 which was passed therein. Clause (iv) of the said Resolution deserves to be noted in this connection :

"(iv) VERIFICATION OF LIST OF 332 GROUP WORKERS-On a question raised by Shri A.Ranachandol, Member, it was clarified that the Sub-Committee constituted for the purpose shall submit their report towards end of this month. The question of booking of 41 workers of Steel Gang and 125 group of standby workers for unloading of coal wagons was discussed. Sri Ranahandol, Member insisted that booking for additional workers should be taken up together with verified workers of 332 group. In the above context, the Committee was informed of the writ petition filed by some of the standby workers in the High Court of Orissa for their medical examination and inclusion in the CFH Scheme. Since the matter is subjudice and no orders has been passed as yet, the Committee decided that the verified workers of 332 group can only be booked on casual basis for the time being. It was decided to convene an extraordinary meeting of the Management Committee after receipt of the report of the Sub-Committee. "A mere look at the aforesaid Clause (iv) of the Resolution shows that the claims of the only the group 332 workers was considered

and that too for being appointed as casual labourers pending the writ petition of standby workmen through their Union as aforesaid. The said Clause (iv) nowhere provides that the seniority of 332 workers, vis-a-vis, other contesting claimants seeking for regular employment in the residuary vacancies was at all considered by the Committee of Management. Not only that but as pointed out by Shri Banerjee, learned senior counsel for respondent no.2, by a latter resolution, Annexure P-2 dated 07th March 1996 of the Management Committee produced in the High Court in OJC No.3308 of 1995 and which is noted by the High Court in paragraph 16 of the impugned common judgment, booking of 145 workers and other workers as may be recommended by the said Committee had to be done purely on casual basis with a view to carry on day to day work and that no worker shall have any right or claim on the basis of present casual engagement in future. It, therefore, becomes clear that no appropriate exercise for deciding the seniority of rival claimants for the residuary vacancies as contemplated by the order of this Court in S.L.P.(C) No.13490 of 1994 decided on 31st January 1995 was at all undertaken by the Management Committee at any stage and these rival claims remained to be adjudicated upon in the pending writ petitions in the Orissa High Court. It is also not disputed by learned senior counsel for the appellants that all these 170 workmen are working only as casual workmen on ad hoc basis. Under these circumstances it is not possible to agree with his contention that their seniority is finally decided vis-a-vis all other claimants who have staked their claims for being considered for regular employment in the residuary vacancies after fully meeting the claims of standby workmen. As that comprehensive exercise has not been undertaken by the Management Committee the ad hoc appointments given to 174 workmen as casual workmen and the work that is being carried on by them at the Paradeep Port cannot by themselves given them an edge or priority over other claimants till their seniority, vis-a-vis, these other claimants is finally decided. As that exercise is not undertaken by respondent no.2 Management Committee nor such an exercise is undertaken even by the Orissa High Court in pending writ petition in which the rival claims will have to be adjudicated upon on merits in the light of the High Power Committee Report and the decision of this Court in S.L.P.(C) No.13490 of 1994 decided on 31st January 1995, no direction can be issued to straightaway appoint them as regular workmen. It will, therefore, be premature to direct at this stage that all these 174 workmen should be appointed as regular workmen under the CFH Scheme.

14. Similarly, the contention of learned senior counsel Shri Pai against the merits of the claim of 138 workmen who have moved I.A.No.1997 before us cannot be considered at this stage as we have already relegated the said workmen to the remedy of filing a writ petition before the High Court. As and when such writ petition is filed naturally the appellants who have a rival claim will be entitled to be heard on merits and it will be open to them to point out all their objections regarding the locus standee of these 138 workmen.

15. However, one contention of Shri Pai requires closer scrutiny. He submitted that the 174 petitioners contention in OJC No.12149 of 1996 which was already noted the High Court in the impugned common judgment at paragraphs 8 and 20 have not at all been considered by the High Court while disputing of the appellants writ petition along with other writ petitions by the same common judgment. To that extent Shri Pai is right. Consequently, even though we are not inclined to go into the merits of the case of appellants in this appeal arising out of the decision of the High Court in OJC No.12149 of 1996, it will be in the interest of justice to allow this appeal by quashing

the order of the High Court disposing of OJC No.12149 of 1996, to the extent that the claims of these 174 persons were not considered. It will have to be remanded to the High Court of Orissa for a fresh decision on merits in accordance with law after hearing the parties concerned in the light of the High Power Committee Report which was approved by this Court and which culminated into Paradeep Port Trust Scheme of 1994 and also in the light of the direction of this Court in S.L.P.(C) No.13490 of 1994 decided on 31st January 1995.

16.It is now time for us to take stock of the situation. Pursuant to our present order liberty is being reserved to applicants of I.A.Nos.3 and 4 as well as the appellants in the companion civil appeal arising out of S.L.P.(C) No.14212 of 1997 to move, if so advised, three separate writ petitions for putting forward their grievances for consideration of the High Court. In addition to these three writ petition, if they are filed, the fourth additional writ petition will also have to be considered by the High Court as we are, by our present order, remanding OJC No.12149 of 1996 for fresh considerations of the High Court on merits, allowing the appeal arising out of S.L.P.(C) No. 9719 of 1997 to the aforesaid limited extent. In addition to these four writ petitions, we are informed that number of other writ petitions are pending in the High Court which are moved by left-out stand by workmen and also other claimants. All such writ petitions which are at present pending in the Orissa High Court in connection with the claims of workmen concerned for being included in the CFH Scheme of 1994 shall be decided by the High Court conjointly with the aforesaid four writ petitions covered by this order so that the High Court can have a comprehensive idea about the claims of the rival claimant-workman for being included in the residuary category as listed workmen under the said Scheme in vacancies left after accommodating all eligible standby workmen, of course in the light of their inter se seniority which may be ascertained by the High Court. We however, note that these claims are in a melting pot since 1979 and despite the High Power Committee's efforts spread over more than three years and despite the Report of the said Committee being accepted by this Court and despite this Court's pious wish reflected by the order dated 31st January 1995 in S.L.P.(C) No.13490 of 1994 that the proceedings may be closed, the simmering discontent continues in connection with the CFH Scheme. It is, therefore, in the fitness of things to direct in exercise of our powers under Article 142 of the Constitutions of India that all writ petitions pending in the High Court pertaining to the claims of rival claimants, to be included in the CFH Scheme of 1994 for getting regular employment under the said Scheme for working at Paradeep Port as clearing, forwarding and handling workers, shall be decided by the High Court with the aforesaid four writ petitions only pursuant to the present order. But the High Court shall not entertain any more writ petitions pertaining to the said Scheme and the date of our present order shall be taken as a cut-off date beyond which no new writ petitions in this connection shall be entertained by the High Court. Only those writ petitioners who have approached the High Court prior to this cut-off date will be entitled to get their claims decided by the High Court on merits along with the four writ petitions which will be considered by the High Court pursuant to our present order wherein three writ petitions would be fresh writ petitions permitted by us and one writ petitions being OJC No.12149 of 1996 which is restored to the file of the High Court pursuant to the present order for being decided afresh on merits.

17.We have clarified about this cut-off date so that no fresh spate of litigation in connection with the CFH Scheme of 1994 would be filed in the High Court and the claims of rival claimants that will be on the anvil of the High Court for scrutiny as per the said cut-off date will get crystallized and frozen. The next question which remains for consideration is as to vis-a-vis which number of vacancies the High Court should consider the rival claims of these claimants left in the arena of contest. This exercise is necessary for us to shorten litigation before the High Court so that the High Court will be able to effectively bring down the curtain on this dispute in a comprehensive manner.

The claims of the aforesaid rival claimants shall be examined in the light of their inter se seniority for being considered for getting accommodated in available vacancies. These vacancies as on date are computed by us as under. Respondent No.2 by way of additional affidavit has made the following pertinent observations in paragraphs D (a) to D (g) as under:-

"(a) Optimum requirement of workers for CFH operations as assessed by High Power Committee vide para : 15.14 :

Mazdoor Supervisors Total

(i)Workers handling 1182491231 coal and other bulk cargo.

(ii)Truck unloading or iron ore and Chrome ore 1286134

(iii)Bag and Bale workers 36215377

(iv)Iron and steel workers 544581726741800

(b)Presently Iron & Steel cargoes are not available for handling by C&F workers and therefore, there is no requirement of iron and steel workers. The Iron and Steel workers have been accommodated in thermal coal unloading. Therefore, the requirement of Mazdoors and Supervisors will stand reduced as under :

Mazdoor.1672 Supervisors.701742

(c)No.of Mazdoors presently available and the vacancies to be kept for mazdoors of various groups is as under :

Group Mazdoors

i)Thermal coal and other bulk cargo handling 673

ii)Truck unloading of iron 46 ore and chrome ore

iii)Bag and Bale cargo 396

iv)Iron & Steel 49

v)Standby group of workers who have joined the Scheme on 14.3.96 125

vi)No.of standby workers who have joined the CFH Scheme as per High Court order dated 26.2.97 114

vii)No.of cases pending for medical and Judicial clearance 15

viii)Vacancies to be kept for accommodation of surplus Sardars 1291574 The requirements of Supervisors as per recommendations of High Power Committee for above is 70. Therefore, the total work force available can be taken as 1617 as against 1742.

(d)As per recommendation of the HPC in Para : 15.18 129 Sardars who are declared

surplus may give their willingness to join as Mazdoors and 395 standby workers can be absorbed in the remaining vacancies. Out of 395 stand by workers, 125 standby workers had joined w.e.f.14.03.1996.

(e)As per the direction of Hon'ble Orissa High Court, 115 standby workers had attended medical examination and 114 have joined the Scheme w.e.f.11.09.1997.

(f)The remaining vacancies are 155.

(g)Out of 155 vacancies, 54 vacancies are to accommodate the 54 Mazdoors of the Steel group as there is no work of steel handling for the present and there is no likelihood of any work for them for the coming two years. "It, therefore, becomes clear that the existing vacancies are 155 after accommodating 114 standby workers who have joined the CFH Scheme as per the High Court's common order dated 26th February 1997. Respondent No.2 has also added 15 cases of standby workmen who have claimed medical and judicial clearance and whose writ petitions are pending in the High Court as on date and which will also have to be examined by the High Court as indicated in the present order. It is, therefore, obvious that if the High Court of Orissa in the writ petitions of 15 standby workmen decides in their favor the vacancies would remain 155 as for these 15 persons there is already a provision made by respondent No.2 in the aforesaid affidavit and their vacancies are already treated as being allotted to them subject to the result of the writ petition. Thus claim of these 15 standby workmen is taken care of while computing these 155 vacancies. It is obvious that if the claim of these 15 standby workmen for being included in CFH Scheme gets rejected by the High Court then the remaining vacancies would naturally increase to 170 (155+15).

18. Now remains the question whether any additional vacancies can be made available for being filled up by the residuary category of workmen after exhausting the requirements of standby workmen and who may be found eligible according to their inter se seniority for filling up these vacancies. In this connection, we may usefully refer to the affidavit of Shri Antaryami Patnaik, Secretary of the Paradeep Port Clearing, Forwarding and Handling Agents' Association which is styled as Preliminary Affidavit on behalf of Paradeep Port Clearing, Forwarding & Handling Agents's Association and who are the employees of these CFH workmen. Para 3(c), (d) and (e) of the said affidavit read as under :

"3(c). That consequent to submission of the Report of the High Power Committee several steps were taken by the C.F.H. Agents to go in for higher productivity and the Paradeep Port and Dock Mazdoor Union and agreed to undertake unloading of two 8-wheeler wagons per gang and consequent to introduction of unloading of two wagons, requests were made by them to consider a change in the manning scale. Having realized and experiencing the practical difficulties, the C.F.H. Agents had discussed the matter with the Union representatives and it was agreed that one Supervisor per Gang be deployed either as Supervisor Gr.-I or as Supervisor Gr.-II by redesigning the Sardars as Supervisor Gr.-II without, however, any change in the pay scales. This was necessary to take care of the shortage of Supervisors for all the gangs. Accordingly, a proposal was submitted by the C.F.H. Agents to the Management Committee and presently this deployment pattern has been introduced on an experimental basis. This matter was also discussed with other groups of

workers represented by Paradeep Port Workers Union but, they have so far not come forward with any of their suggestion. If this is agreed to, all the gangs will be booked for work with 9 persons as against the recommendation of the High Power Committee for 8.33 persons. In this connection, it may be further clarified that prior to the recommendation of High Power Committee, all the gangs were booked with the composition of 8 Mazdoors+Sardar+1 Supervisor (total 10 per gang).The High Power Committee recommended in (Para-14.45 Annexure-XIV) that a gang should consist of 8 Mazdoors and one Supervisor for three gangs-8.33 persons per gang. This recommendation could not be carried out as the same was not workable and consequently discussions were held with the Union to go in for a more suitable and workable composition of gang and it was agreed with one of the Unions handling bulk cargoes that the present composition should be 8 Mazdoors+one Supervisor (total 9) with a provision that all Sardars would be redesignated as Supervisors Gr.II. Although this would mean that some number of Supervisors will be appointed in excess of the recommendation of the report of High Power Committee the employers feel that this would be beneficial to all concerned. This could not be made applicable to all groups of workers in view of the fact that all other unions handling bag and bale cargoes has not given consent to the proposal.

(d)That as per the recommendations of the High Power Committee, all the surplus Sardars (127) working in the Clearing, Forwarding operations were required to exercise option to work as Mazdoors but in view of practical difficulties explained above, the Sardars may be redesignated as Supervisor Gr.II. If this is agreed to, calling for options from Sardars to work as Mazdoors shall not necessary. This respondent prays that the report of the High Power Committee be amended suitably modified to this extent. Keeping in view the present exigency and in the interest of smooth operation of work. This suggestion is acceptable to most of the workers and would be generally beneficial to them as it would create additional requirement of work force.

(e) Once the proposal for redesignation of the Sardars as Supervisor-II is agreed to, the net vacancy for Mazdoors will work out to $155+127=282$."

19.It is of course true that the proposal put forward in the said preliminary affidavit by the employer of these CFH workmen would require an extension of the coverage permitted by High Power Committee whose report is accepted by this Court. In this connection we must observe that as the report of the High Power Committee which had taken great pains spread over more than three years in trying to resolve the conflict and in deciding the rival claims so that the working in the Paradeep Port Trust could go on more peacefully and efficiently and as the said Report is accepted by this Court it has to be accepted as comprehensive and fully binding on all concerned and cannot be tinkered with in connection with its basic recommendations. However, so far as the limited question of increase of vacancies is concerned, necessary modification regarding re-designation of workmen concerned can be made by consent of all the contesting parties. If this is done by consent of all the rival claimants for employment in CFH Scheme, the basis of the Scheme will not get adversely affected. We are happy to know that all the learned counsel representing different groups of workmen claiming to be included in the CFH Scheme and who are the rival claimants in the writ petitions which are now to be decided by the High Court pursuant to the present order have agreed that a limited exercise for increasing the balance of available vacancies which would obviously be beneficial to all rival claimants may be undertaken by their consent. All the contesting unions of workmen were agreeable to the said exercise as submitted by their respective counsel before us.

Learned senior counsel Shri Banerjee appearing for the Management Committee, respondent No.2 herein, fairly left that question to us. His only rider was that the Report of the High Power Committee as accepted by this Court and which is a product of immense pain and efforts put forward by learned Judge Shri H.R.Khanna and his colleagues should not be in any way adversely affected. We entirely agree with him and make it clear that we are seeking to extend the coverage of the said Report for the benefit of all workmen concerned by their consent. We also make it clear that our present exercise is confined only to the question of ascertaining available vacancies as on date and nothing more and nothing less. We have already seen earlier that as per the Additional Affidavit of respondent No.2 the remaining vacancies are 155. As per the aforesaid preliminary affidavit of the employer of these CFH workmen if the gang is to consist of Mazdoor plus one Supervisor, total 9 instead of 8 Mazdoors plus one Supervisor for three gangs, that is, 8.33 persons per gang as recommended by the High Power Committee and as earlier accepted by this Court more Mazdoors will get accommodated. Hence, 127 Sardars of standby workmen will now be treated as re-designated Supervisors Grade-II with the result that they will release 127 vacancies in the Mazdoors quota and these may more vacancies will be added to the vacancies of Mazdoors. They will, therefore, work out to 155+127 vacancies, in all 282. We grant this much modification in the report of High Power Committee and consequently in CFH Scheme by consent of all the parties and direct re-designation of 127 Sardars as Supervisors Grade-II. Thus the coverage of High Power Committee Report will stand extended keeping in tact the said Report in all other aspects and will remain binding and operative at the Paradeep Port Trust while it works out the CFH Scheme of 1994. It is also made clear as agreed to between the contesting parties that 127 re-designated Sardars as Supervisors Grade-II will be continued to be employed on the same terms and conditions and on same wages by the employer, namely, the Paradeep Port Clearing, Forwarding and Handling Agent's Association as agreed to by them in their affidavit. The net result is that the available vacancies of Mazdoors for being covered under CFH Scheme of 1994 will be 155+127+282 as on date. These available vacancies will, of course, further get enlarged by 15 vacancies more if ultimately the writ petitions filed by the 15 left-out standby workmen get rejected by the High Court. In that eventuality the available vacancies as on date will be treated as 282+15 = 297 and if the writ petitions of these 15 stand by workmen are granted by the High Court then obviously the cake of the residuary vacancies for distribution amongst the eligible claimants will be confined to 282. It is for these ascertained vacancies as existing on date that the High Court will undertake the exercise of finding out the eligible claimants whose writ petitions will be examined by the High Court as per the present order and in the light of their vis-a-vis inter se seniority their claim for being appointed as regular employees under the CFH Scheme will be worked out qua these available vacancies. In short, once these available vacancies are ascertained and if the High Court is not apprised of any further increase or decrease in the vacancies by the parties concerned due to any future contingencies then on the basis of these 282 available vacancies as on date, the rival claims of the contesting claimants in the pending writ petitions and in the writ petitions that will be placed before the High Court for consideration pursuant to the present order, will have to be examined and decided by the High Court. The appeal is allowed as aforesaid with no order as to costs.