(6)

Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No.45 of 1987

Siya Ram and 41 others ... Applicants

Vs.

Divisional Railway Manager, Central Railway Jhansi and 2 others .. Respondents.

Connected with

Registration O.A.No.99 of 1987

Chunwad and 2 others ... Applicants

Vs.

Divisional Railway Manager, Central Railway Jhansi and 2 others ... Respondents.

AND

Registration O.A.No.1172 of 1987

Munni Lal and another ... Applicants

Vs.

Divisional Railway Manager, Central Railway Jhansi and 2 others ... Respondents.

Hon.Ajay Johri, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

In these three petitions under section 19 of the Administrative Tribunals Act XIII of 1985, the applicants have challenged the validity of the orders of their retrenchment by the Assistant Engineer Central Railway Kanpur-respondent no.3 in all the petitions.

2. Since common questions of facts and law are involved in all these 3 petitions, they are being decided by this common judgement.

3. It is alleged that the applicant nos. 1, 9 to 12, 25 to 27 and 36 of petition no. 45 of 1987 were appointed as casual labour in the year 1976 in the Central Railway Kanpur. The applicant nos. 2,3,7,8,13 16 to 24,30,37 and 38 were appointed as casual labour in 1977. The applicant no.31 was appointed in 1979

the applicant nos.14 and 29 were appointed as casual labour in 1982, the applicant nos.15 and 28 were appointed as such in the year 1985 and the remaining applicants were appointed in 1978 in the Central Railway Kanpur. All the applicants were subjected to medical examination and were found medically fit for their jobs. In the screening the applicant nos. 4,7, 9 to 11, 18 and 20 were thereafter found successful. The applicant no.1 of O.A.No.99 of 1987 was appointed as casual labour on 29.1.1983 and the applicant no.2 was appointed as such on 27.9.1978. The applicant no.3 was appointed as casual labour in the year 1976 in the Central Railway Kanpur. All these applicants were subjected to medical examination and screening and were declared successful. The applicant no.1 in O.A.No.1172 of 1987 was appointed as casual labour in the year 1975 and the applicant no.2 was appointed as such in the year 1977 in the Central Railway Kanpur and on being subjected to medical examination, both the applicants were found medically fit for their jobs. The applicant no.1 was thereafter also subjected to screening test and he was declared successful.

4. In this way, all the applicants in these cases had worked for more than 240 days in a year and had acquired the status of temporary railway employees. Their allegation is that despite their satisfactory working, good conduct and sincerity, they were individually served with notice dated 19.10.1986 by the respondent no.3 stating that as no work was left to be done by the applicants, it has been decided

to terminate the employment of the applicants and the applicants were being informed that their services would stand terminated on 18.1.1987 and they shall be paid their dues. Aggrieved by these orders, the present petitions were filed praying that the said notices/orders issued by the respondent no.3 be quashed and the applicants be regularised in service on the ground that all the applicants have completed the service of more than 18 months and they could not be removed from service without any fault on their part and they will suffer a great hardship in case their interest is not protected. In petition no.99 of 1987, it was also pleaded that the applicants have not been paid retrenchment compensation in accordance with the provisions of S.25-F of the Industrial Disputes Act (for short ID Act) and their termination is illegal on this ground as well.

5. These petitions have been contested on behalf of the respondents and in the reply filed in O.A.No.45 of 1987 by the Addl.Divisional Railway Manager,Jhansi it was stated that none of the applicants has been working continuously till the date of the presentation of the petition. The applicant Siya Ram was appointed on 20.12.1976 and during a period of about 10 years, he could put the service for 1420 days only. Every casual labour has to undergo medical examination and screening before he can be absorbed as a regular class IV employee. The screening of the casual labour was held on 28/29th Aug.1986 but the result has not been declared so far and as such, no applicant is eligible for absorption in class IV without declaring fit in the same. There is no rule that the casual labour after completing 18 months

service cannot be retrenched. The applicants were retrenched under Para 149 of the Railway Establishment Code Vol.I (hereinafter referred to as the Code) as the administration had no productivity work for them. The present petition is barred by S.25-H of the ID Act. For want of work the applicants were retrenched following the principle 'first come last go'. The applicants have been merely retrenched and have not been removed from service. Out of the 42 applicants of this case, the applicant nos. 34,35,37 and 39 were removed after due notice on account of their service cards having been found to be fake. There is no merit in the case of the applicants and they are not entitled to the reliefs claimed.

6. In the rejoinder filed in O.A.No.45 of 1987 it was stated that the applicants have been regularly working in the Railway Department, some of them from 1976 and others from 1978,1982 or 1985 and the period of break is negligible. The applicants cannot be blamed for the delay in declaration of the result of the screening and the applicants are entitiled to be regularised in the railway service. The respondents did not pay any retrenchment compensation to the applicants as contemplated under the law and their retrenchment is illegal on this ground. It is wrong to say that the applicants were retrenched for want of work but in fact they were retrenched in order to accommodate some other persons in whom the administration was interested. The allegation that service cards of some applicants were fake is incorrect and the applicants are entitled to reinstatement in service.

7. A similar reply was filed in O.A.No. 99 of 1987 by the same officer on behalf of the respondents and it was also stated therein that this petition is not within limitation prescribed under Section 21 of the Act XIII of 1985. The applicants have not completed the requisite service as casual labour for acquiring temporary status and their retrenchment was made in accordance woth S.25-F of the ID Act and the contention of the applicants to the contrary is not correct. The applicants did not accept the retrenchment compensation and it is lying unpaid. In the rejoinder filed by the applicants in this case it was stated that no notice of retrenchment was served on the applicant and they were not paid any compensation which is a condition precedent for retrenchment. It was also alleged that some juniors have been retained by the respondents and the applicants being senior, have been retrenched.

8. In O.A.No. 1172 of 1987 too, the reply was filed by the Addl.DRM Jhansi on behalf of the respondents and it was stated therein that the applicants have not worked continuously and they never worked for more than 240 days at a stretch to acquire the legal status. The services of the applicants were retrenched in accordance with law for want of work and they have not acquired any right to remain in service.

9. At the time of arguments in these cases, it was not disputed that the applicants after completing the continuous service of more than 240 days had acquired the temporary status. The main question arising for determination in this case, therefore, is whether after acquiring the temporary status, the services of the applicants could

be dispensed with in the manner it was done by the respondents. ~~Similar~~ Identical notices were given to all the applicants stating that due to non availability of work, it has been decided that the services of the applicants who are casual labour be dispensed with and they were accordingly given 3 months notice to the effect that their services will come to an end on 18.1.1987 and they will be paid their salary. These notices were given on 19.10.1986. The contention of the respondents is that these notices fully complied the provisions of Para 2511 of the Indian Railway Establishment Manual (hereinafter referred to as the Manual) and S.25-F of the ID Act. It will be convenient to reproduce below S.25-F of the ID Act :-

> "**25-F. Conditions precedent to retrenchment of workmen-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-
>
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
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> (b) the workman has been paid,at the time retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
>
> (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

A perusal of this Section shows that for the retrenchment of a workman, the administration has to fulfil 3 conditions. The first condition is that he should be given a notice of one month in writing indicating ~~the~~ reasons for retrenchment

and before the retrenchment can take the effect, either the period of notice should expire or the workman is paid the wages in lieu of notice. The second condition is that the workman is paid at the time of retrenchment compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months. The wordings "the workman has been paid" used in clause (b) of S.25-F makes it amply clear that the payment of compensation as a pre-requisite and the retrenchment can take effect only if the compensation is paid. The third condition is that a notice to the appropriate Government or other authority is given. The compliance of clause (a) and (c) of S.25-F has not been disputed before us and the main stress of the applicants was that they were not paid the compensation required by clause (b) before the expiry of 3 months notice and as such, their retrenchment did not take effect in the eye of law or it was otherwise illegal and ineffective and they are entitled to reinstatement with all benefits.

10. In **H.D.Singh** Vs. **Reserve Bank of India** (1985 LIC-1733) it was held by the Hon.Supreme Court that non observance of the procedures prescribed by S.25-F renders the retrenchment invalid. In **Rajasthan State Road Transport Corporation** Vs. **Judge Industrial Tribunal** (1985 LIC 480.) it was held that the three conditions laid down by S.25-F for retrenchment are conditions precedent and unless they are fulfilled, the retrenchment will not take effect and the non-compliance of S.25-F will render the retrenchment invalid and inoperative. In **M/S.National Iron and Steel Co. Ltd.,** Vs. **State of West Bengal** (A.I.R.1967 S.C-1206), it was held by the Hon.Supreme Court that mere

informing the workman to collect his dues from the office on specified date was not sufficient and his dues should be paid forthwith when he is asked to go and he cannot be asked to collect the dues afterwards.

11. In **Mohan Lal** Vs. **M/S.Bharat Electronic Ltd.** (A.I.R. 1981 SC-1253) it was held that it is well settled that where three requisites for valid retrenchment as laid down in S.25-F have not been complied with, retrenchment bringing about termination of service is ab initio void.

12. We are, therefore, of the opinion that it is amply clear from the wordings of S.25-F that the retrenchment compensation has to be paid or tendered to the workman before asking him to go. The case law discussed above also leads to the same conclusion. The contention of the respondents in these cases is that the administration had tendered the compensation to the applicants but they themselves did not accept the same and it is lying deposited to their names. To verify this fact, they were asked to furnish the documentary proof to show that the compensation was offerred to them and on their refusal, it was kept in deposit. The respondents filed some documents in compliance but in our opinion they do not support their case. The respondents are shown to have filed three documents -annexures 1 to 3 to their application in compliance with the order dated 8.3.1988 of the Bench. The annexure numbers have not been noted on these papers. One of the papers filed by the respondents is the senior-

ity list of the casual labourers prepared on 18.12.1986. There is no mention of working out the compensation in this document. The other document contains the details of the working days of the applicants without any mention regarding the compensation payable to them on account of retrenchment. The annexures 2 and 3 mentioned in the application to show that the compensation offered to the applicants was refused and was deposited, have not been filed. Two bunches of loose sheets placed on record, if are taken to be annexures 2 and 3, about which mention has been made in the application filed by the respondents, in compliance with our order dated 8.3.1988, they do not appear to be the statements of compensation payable to the applicants.The compensation has to be worked out on the basis of principle laid down in clause(b) of Section 25-F of the I.D.Act with reference to the period of service of the casual labours. The documents filed by the respondents,thus,do not go to show that in fact any compensation payable to the applicants or any of them was ever worked out and notified to them for receiving the payment and on their refusal to accept the same, the compensation was deposited in any account in the office of the respondents.

13. We will further like to point out that in the application,filed by the respondents in compliance with our order dated 8.3.1988,there is no mention of working out of any compensation under Section25-F and this application talks only about

pay of the applicants in lieu of notice. We further find from the impugned order of retrenchment, a copy whereof is available as annexure-1 on the record, of OA No.45 of 1987, this speaks only about the payment of salary and not about the payment of any compensation. We are, therefore, of the view that in fact the respondents did not make the compliance of Section 25-F of the ID Act and neither any compensation payable to the applicants was ever worked out, nor was ever offered to the applicants and the question of its refusal, therefore, could not and did not arise. The retrenchment of the applicants in the absence of payment, or offer of compensation is in contravention of Section 25-F and cannot be upheld. In their reply to OA no.45 of 1987, the respondents have alleged that applicant nos.34,35,37, and 39 were removed after due notice on account of their service cards having been found to be fake. The respondents have not produced any material in support of this contention and as such it is liable to be ignored. There is no other point for consideration in these cases.

14. All the three petitions are accordingly allowed and the impugned orders of retrenchment of the applicants are hereby set aside and the applicants shall be treated to be continuing in service with all consequential benefits. The respondents will have a right of passing retrenchment orders afresh, if they may not have any work for them even at present according to law. Parties shall bear their own costs.

J.M.

A.M.

Kkb/1.6.1988