

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(92)

O.A. No. 147 OF 1987.
~~XXXXXX~~

DATE OF DECISION 14.7.1988

SHRI GANGARAM SHANKAR & ORS. Petitioners.

MR. K.K. SHAH Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents

MR. B.R. KYADA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No*

1. Gangaram Shankar,
2. Tapoo Ravji,
3. Kalu Chatur,
4. Ramesh Varshi,
5. Laxmi Tangavel,
6. Popat Wagha,
7. Bhavsi Mohan,
8. Doraiswamy Chellamuthan.

..... Petitioners.

(Advocate: Mr.K.K.Shah)

Versus.

1. Union of India,
Notice to be served through
the General Manager,
Western Railway,
Churchgate, Bombay-20.
2. The Chief Engineer (C)
Western Railway,
Ahmedabad.
3. The Executive Engineer (Constr.)
Western Railway,
Surendranagar.

..... Respondents.

(Advocate: Mr.B.R.Kyada)

J U D G M E N T

O.A.NO. 147 OF 1987

Date: 14.7.1988.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioners viz; (1) Gangaram Shankar, (2) Tapoo Ravji, (3) Kalu Chatur, (4) Ramesh Varshi, (5) Laxmi Tangavel, (6) Popat Wagha, (7) Bhavsi Mohan, & (8) Doraiswamy Chellamuthan, in this application, filed under section 19 of the Administrative Tribunals Act, 1985, on 30.3.1987, alleged that their services were terminated in the month of November 1980 by the Respondents-Railway Administration, stating that their services were no longer required by them. According to them, they were appointed as Casual Labourers under I.O.W.(C) Western Railway,

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Surendranagar and after serving for more than a year, their services are terminated without assigning any reasons. The particulars of the date of their engagement and termination are furnished in para 6 of the application, which read as under :-

| S.No. | Name | Date of appointment. | Date of termination. |
|-------|-----------------------------|----------------------|----------------------|
| 1. | Gangaram Shankar | 15.11.79 | 19.5.80 |
| 2. | Tapoor Ravji | 12.11.79 | 10.11.80 |
| 3. | Kalu Chatur | 15.11.79 | 10.11.80 |
| 4. | Ramesh Varshi | 17.1.80 | 10.10.80 |
| 5. | Laxmi Thangavel | 21.12.79 | 10.11.80 |
| 6. | Popat Wagha | Oct.1979 | 11.11.80 |
| 7. | Bhavsi Mohan | 14.11.79 | - |
| 8. | Doraiswamy Chellamuthan. | - | - |

2. The petitioners initially claimed the following reliefs :-

- (A) this Hon'ble Tribunal may be pleased to issue appropriate writ, order or direction to the respondent authorities to reinstate the applicants in service with full backwages and the respondents be further directed to fix the seniority of the applicants in Rajkot Division;
- (B) this Hon'ble Tribunal may be pleased to further direct the respondent authorities to treat the applicants as regular employees and to provide them all the facilities as per Supreme Court Judgment dated 23.2.87 that are extended to other employees of the respondent-railway administration;
- Anex. 'D'
- (C) be pleased to declare that the order terminating the services of the applicants are illegal, null and void and against the principles of natural justice;
- (D) be pleased to hold and declare that the impugned action of termination of the applicants' services is contrary to the provisions of the Industrial Disputes Act ;
- (E) be pleased to grant such other and further reliefs as deemed proper in the nature and circumstances of the case ;
- (F) be pleased to provide the cost of this application.

3. When the matter came up for admission on

31.3.1987 it was brought to the notice of Mr. K.K. Shah, the learned counsel for the petitioners that when the orders of termination under challenge which are alleged to have been passed in November 1980, it was a case of grievance in respect of an order passed beyond three years next before 1st November, 1985 and therefore it can not be taken cognizance by this Tribunal and redressed. Mr. Shah however stated that the relief he seeks is limited to the appointment of the petitioners at the first opportunity on the places from where they were retrenched and sought amendment of the application. Accordingly, reliefs at para 7(A), (C) & (D) were deleted and para 7(A) was added which is reproduced as under :-

Para 7-A The Hon'ble Tribunal may be pleased to issue appropriate writ, order or direction to the respondents authority to reinstate and regularise the applicant as per the Supreme Court judgment and also held that the applicants have the first opportunity for absorption after retraining in the same division or any where the work exist in Gujarat by maintaining their seniority in the original division with fixing their seniority as per the Supreme Court judgment in Indrapal Yadav V/s. Union of India and Daxin Railway Employees Union V/s. General Manager, Southern Railway.

4. It was ordered to issue notice on the respondents, pending admission after the applicant carried out the amendment. Mr. B.R. Kyada appeared for the respondents-railway administration and sought adjournment on two different occasions, however, on 7.7.87 the application was admitted. The respondents-railway administration resisted the petitioners application vide their counter, filed on 12.8.1987. According to them, the applicants are not entitled for re-engagement as there are many seniors who are in queue for employment. With regard to the applicant No.1, it was stated that he was re-appointed

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with effect from 3.8.83 under Permanent Way Inspector (C), Western Railway, Jamnagar, but immediately, he left the service in the said month voluntarily and therefore it does not lie in the mouth of the said applicant that he was retrenched.

5. When the matter came up for hearing we have heard Mr. K.K.Shah and Mr. B.R.Kyada, the learned counsel for the petitioners and the respondents respectively at a considerable length. He also filed a list of cases cited by him. After having gone through the same, suffice it to state that they are absolutely irrelevant as the petitioners have restricted his relief of absorption in terms of para 7-A of the application. In this regard, he has relied on the judgment of the Supreme Court in Indrapal Yadav V/s. Union of India & Ors. (1985(2) S.C.C.648) and Dakshin Railway Employees Union, Trivandrum Division V/s. General Manager, Southern Railway and Ors. (J.T.1987(1)S.C.531).

6. Before examining the rival contentions canvassed by the learned counsel for the parties it will be in the fitness to refer to the documents found at Annexure 'A', 'B' & 'C' which are relied upon by the petitioners in support of their case. Out of the said documents Annexure 'A' collectively consist of X'erox copies of three Service Cards, one of them is that of Kunarben, second one is of Gauri Bangaram and the third one pertains to one lady viz; Smt. Kanchanben. Now admittedly, none of this lady is a petitioner in the present application. No service Cards of the present petitioners are produced in this case. In support of the averment about the period of appointment and termination in respect of

petitioner No.1, Gangaram Shanker as shown in para 7 on of the application reliance is sought/the service card of Smt. Gauri Gangaram (15.11.79 to 19.5.1980) and in the case of Tapoor Ravji (No.2) and Kalu Chatur (No.3) such reliance is sought on the service card of Smt. Kanchanben (12.11.79 to 10.11.80) and Kunarben (15.11.79 to 10.11.80) respectively. We found that the service cards on which the petitioners rely are not of the petitioners but of some other persons. But for this discovery we would have been grievously misled and given an advantage to the petitioners to which they would have no claim. No reliance therefore can be placed on the particulars furnished in the application. Such particulars can not be regarded as the basis for the claim of absorption.

7. Before rendering judgment, we had specifically brought to the notice of Mr.K.K.Shah, the learned counsel for the petitioners on 12.7.1988 regarding the aforesaid major discrepancies, which we feel are quite gross. Mr.Shah however explained that the aforesaid service cards were produced through mistake by his clerk and he will be filing the affidavit of his clerk. Even, on perusing the affidavit dated 12.7.1988 of his clerk Mr.Sunil Shah, placed on record, we are clearly of the view that petitioners in this regard are not well advised.

We, are therefore, obliged to draw the legitimate inference and conclusions from the documents so presented.

8. Next, documents referred to in Annexure 'B' consist of two notices, whereby the services of Kalu Chatur (P.No.3) and Popat Wagha (P.No.6) were sought to be terminated with effect from 10.11.80. Annexure 'C' referred to is the memo issued by the



Executive Engineer (C) I, Western Railway, Jamnagar. It is borne out from the said memo that petitioner No.1, Gangaram Shanker was re-appointed as Casual Labourer purely for a period commencing from 3.8.83 and expiring date 10.6.1984. In this regard it is the version of the Respondents that said Gangaram, on his being re-appointed with effect from 3.8.83, he immediately left the service in the said month voluntarily. This fact has remained uncontroverted. Perhaps, for that reason question of re-appointment has not been referred to in the application at all. As per the averment, the services of the petitioner Gangaram Shanker has been terminated on 19.5.1980.

9. It is significant to note that the names of petitioner No.7 & 8 are added by the use of ink and no details regarding the date of appointment or termination is furnished in the respective column against the name of petitioner No.8, Doraiswamy Chellamuthan. Even the date of termination against the name of Bhavsi Mohan (P.No.7) is not indicated. The respective portion in the column against the names of both the said petitioners is found blank.

10. Now, turning to the claim of the petitioners for absorption, the reliance is sought on the scheme prepared by the railway administration. A Division Bench of the Supreme Court consisting of Desai & Ranganath Misra, JJ., gave certain directions in Indrapal Yadav (supra) modifying a scheme prepared by the railway administration for the purpose of absorbing "retrenched railway casual labour". Incorporating the directions of the Court the railway board issued circular to the General Manager of All India Railways. Paragraph 5.1 of which the

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relevant portion is reproduced as under :-

"5.1 As a result of such deliberations, the Ministry of Railways have now decided in principle that casual labour employed on projects (also known as "Project casual labour") may be treated as temporary on completion of 360 days of continuous employment. The Ministry have decided further as under :-

(a) There orders will cover :-

(i) Casual labour on projects who were in service as on 1.1.1981; and

(ii) Casual labour on projects, who, though not in service on 1.1.1981, had been in service on Railway earlier and had already completed the above prescribed period (360 days) of continuous employment or have since complete or will complete the said prescribed period of continuous employment on re-engagement after 1.1.1981.

(b) The decision should be implemented in a phased manner according to the schedule given below:-

| <u>Length of Service</u> <u>(i.e. continuous employ-</u> <u>ment.)</u> | <u>Date from which may be</u> <u>treated as temporary.</u> |
|--|---|
| i) Those who have completed five years of service as on 1.1.1981. | 1.1.1981 |
| ii) Those who have completed three years but less than five years of service as on 1.1.1981. | 1.1.1982 |
| iii) Those who have completed 360 days but less than three years of service as on 1.1.1981. | 1.1.1983 |
| (iv) Those who complete 360 days after 1.1.1981 | 1.1.1984 the date on which 360 days are completed which- ever is late." |

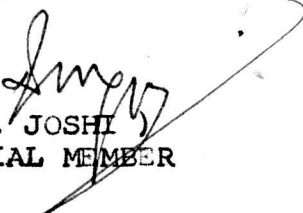
11. Admittedly, none of the petitioner was in service on 1.1.1981. In case of such casual labourers on project who was not in service on 1.1.1981 can be covered under the scheme provided he has already completed the prescribed period (360 days) of continuous employment. As discussed earlier there is not an iota of evidence on record to establish that anyone of them had completed the prescribed period of continuous employment as envisaged under the aforesaid scheme. Even on the basis of the averments made by the petitioners in para 6 of the application which are not

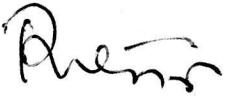
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held to be reliable at all, admittedly, the petitioners No.1,4,5,7 & 8 do not seem to have completed 360 days. In light of the materials placed on record we are unable to issue any direction to the respondents to include the petitioner or anyone of them in the scheme for absorption as formulated pursuant to the directions of the Supreme Court. At this stage it may be pointed out that Shri Krishna Murthy, the learned counsel for the Railway Administration in Dakshin Railway Employees Union (supra) brought to the notice of the Supreme Court, the difficulty which will be experienced by the railway administration, if without any limitation persons claiming to have been employed as casual labourers prior to January 1, 1981 keep coming forward to claim the benefit of the scheme. The Supreme Court in the said case understanding the difficulty of the administration, directed that all persons who desired to claim the benefits of the scheme on the ground that they had been retrenched from January 1, 1981, should submit their claims to the administration before March 31, 1987. This directions were issued on 23.2.1987 i.e., much prior to the institution of this application. It is not the case of the petitioners that they have registered their claim with the administration before their filing the application before the Tribunal. The petitioners were free to file their claims for absorption and perhaps even they may do now if they have any such claim and it will be for the respondents-railway administration to consider such claims.

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12. In light of the aforesaid discussion, we have no hesitation in holding that the petitioners have failed to establish their claim for absorption on the basis of the materials placed by them. Accordingly, the application fails and is dismissed with no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER


(P.H. TRIVEDI)
VICE CHAIRMAN

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