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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 327 OF 1987
~~TA No.~~

DATE OF DECISION 22-11-1988

SHRI Z.B. MAKWANA & 8 ORS. Petitioners

MR. Y.V. SHAH Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS. Respondents

MR. R.M. VIN 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 ? *No*
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*

8

1. Zikubhai Bhikhabhai Makwana
2. Ashok Vashram
3. Arvind M.
4. Jayantilal Maganlal
5. Dhanji Bijal Bariya
6. Harshad Popatbhai Makwana
7. Mansukh Rajabhai Bariya
8. Hanif Babubhai
9. Zahidkhan Dilavarkhan,
C/o. Chief Tele-Communication
Inspector - Maintenance,
Western Railway,
Bhavnagar Para.

.... Petitioners.

(Advocate: Mr. Y.V. Shah)

Versus.

1. Union of India,
through the General Manager,
Western Railway,
Churchgate, Bombay-20.
2. Divisional Railway Manager(E),
Western Railway,
Bhavnagar Para.
3. Mr. A.N.Rohit or his
successor in the office
Chief Tele-communication
Inspector-Maintenance,
Western Railway,
Bhavnagar Para.

.... Respondents.

J U D G M E N T

O.A.NO. 327 OF 1987

Date: 22.11.88

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

The petitioners, (9 in all referred to in the title) have filed this application on 14.7.87 under section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act"). The petitioners have challenged the action of the respondents-railway administration, whereby they are retrenched by oral order dated 16.4.1985/ 20.4.1985. According to them, they are engaged as casual labourers since November 1982 and were

working under Respondent No.3. It is alleged that the impugned action of the respondents is illegal and violative of Rules and the Regulations governing the services of the casual labourers. The petitioners have prayed that the impugned action be quashed and set aside and the respondents be directed to give all benefits including backwages and seniority above juniors.

2. The respondents-railway administration in their counter contended that the petitioners were initially engaged after 14.7.1981 as casual labourers when a ban was imposed in engagement of new face as casual labourer and as such their services were discontinued with effect from 16.4.1985/20.4.1985. According to them, the petitioners were engaged on Divisional Organisation and not on 'Project'; where they are known as Project Casual Labourer. It was further submitted that the petitioners had not worked for one year continuous or even 240 days service in year preceeding to their dis-continuance and as such, they were not due for retrenchment benefits, notice pay etc.

3. When the matter came up for hearing we have heard Mr. Y.V.Shah & Mr. R.M. Vin, the learned counsel appearing for the petitioners and the respondents respectively, along with other cases of casual labourers wherein common questions of law were raised. But, we have not preferred to render a common judgment as each case represented different set of facts and circumstances. Both the sides were called upon to supply the informations and materials in terms of our directions issued on 16.6.1988 and in terms thereof they have placed the documents on record.

4. The main grievance of the petitioners is that they had worked more than 120/180 days and having acquired temporary status, their services can not be terminated without following the provisions of Section 25F, 25G, 25H & 25N of the Industrial Disputes Act, 1947 and Rules made thereunder. According to them, the action of the respondents-railway administration is violative of the scheme of absorption introduced by the railway board and accepted by the Supreme Court of India, as reported in 1985(2) S.C.C. 648 & A.I.R. 1987 S.C. 1153. The stand of the respondents-railway administration is that the petitioners had worked in broken spell and not acquired temporary status and as such, their services were governed by the rules regarding unscreened casual labourer without temporary status as per para 2505 of I.R.E.M. which reads as under :-

2505. Notice of termination of service:- Except where notice is necessary under any statutory obligation, no notice is required for termination of service of the casual labour. Their services will be deemed to have terminated when they absent themselves or on the close of the day.

NOTE :- In the case of casual labourer who is to be treated as temporary after completion of six months' continuous service, the period of notice will be determined by the rules applicable to temporary Railway servants.

5. Mr. B.S. Mainee, in his Book on Railway Establishment Rules and Labour Laws (17th Edition 1988) while quoting Railway Board's letter dated 30.11.1971 at page 423 as explained the utility

and the importance of the service card and the entries of service made therein as each subordinate officers are required to make them without fail before discharging a casual labourer. When casual labourer is on authorised absence that does not constitute a break for counting towards the four month's period for conferring temporary status. It is undisputed that such "authorised absence" has to be shown as service. No separate entry for such break is necessary. In the case of loss of card, it should be reported to the nearest police station and a copy of F.I.R. lodged with the police should be furnished to the railway authorities.

6. At the very outset it may be stated that even though it is strongly asserted that the petitioners were engaged as casual labourers since November 1982 and worked continuously till the date when the services were discontinued, they have not produced their service cards in support of their assertions. The reasons for their non-production are not found satisfactory. However on the basis of the relevant documents and the materials placed on record by the respondents, it is clearly established that the petitioners had not worked continuously as alleged. The period during which the petitioners worked as casual labourer, is shown as per the following table :

Sr. No.	Name (S/Shri)	Period from	Worked to.	Period for which they were not in service.
1.	2.	3.	4.	
1.	Zahikhan D. (see R46, R47, R38)	16-11-82 22-6-83 9-7-84 1-1-85 3-4-85	2-2-83 29-9-83 6-9-84 16-3-85 20-4-85	2-9-83 to 21-6-83 30-9-83 to 8-7-84 7-9-84 to 31-12-84 17-3-85 to 2-4-85 331 days.
2.	Hanif B. (see R46, R47, R 38)	16-11-82 22-6-83 9-7-84 1-1-85	1-2-83 24-9-83 6-9-84 10-3-85	2-2-82 to 21-6-83 25-9-83 to 8-7-84 7-9-84 to 31-12-84 304 days
3.	Zilubhai B. (see R46, R47, R 38)	17-11-82 22-6-83 9-7-84 1-1-85	1-2-83 29-9-83 6-9-84 16-3-85	2-2-83 to 21-6-83 30-9-83 to 8-7-83 7-9-84 to 31-12-84
4.	Jayantilal M. (see R46, p.4, S.No.9, R47, p.2, S.No.10, R28, p.1, S.No.1)	17-11-82 22-6-83 9-7-84 1-1-85	1-2-83 29-9-83 6-9-84 16-3-85	2-2-83 to 21-6-83 30-9-83 to 8-7-84 7-9-84 to 31-12-84
5.	Dhanji B. (see R46, R47, R 38)	17-11-82 22-6-83 9-7-84 1-1-85	1-2-83 29-9-83 6-9-84 16-3-85	2-2-83 to 21-6-83 30-9-83 to 8-7-84 7-9-84 to 31-12-84

6.	Ashok V. (see R46, R47, R 38)	17-11-82	1-2-83	2-2-83 to 21-6-83
		22-6-83	29-9-83	30-9-83 to 8-7-83
		9-7-84	6-9-84	7-9-84 to 31-12-84
		1-1-85	10-3-85	
7.	Harshad P. (see R46, R47, R38)	17-11-82	1-2-83	2-2-83 to 21-6-83
		22-6-83	29-9-83	30-9-83 to 8-7-84
		9-7-84	6-9-84	7-9-84 to 31-12-84
		1-1-85	16-3-85	
8.	Mansukh R. (see R46, R47, R48, R 38)	29-11-82	1-2-83	2-2-83 to 17-7-83
		18-7-83	29-9-83	30-9-83 to 8-7-84
		9-7-84	6-9-84	7-9-84 to 31-12-84
		1-1-85	16-3-85	
9.	Arvind M. (see R46, R47, R38)	17-11-82	1-2-83	2-4-83 to 21-6-83
		22-6-83	29-9-83	30-9-83 to 8-7-84
		9-7-84	6-9-84	7-9-84 to 31-12-84
		1-1-85	16-3-85	

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7. On the plain reading of the aforesaid details of the engagement of the petitioners as casual labourer, it is evident that they had not worked for four months after February 1983, later on, after their brief engagement they had not worked for nearly 10 months i.e. from 29.9.83 to 9.7.84 and later on, they had not worked for nearly three months after 6.9.1984. Now having regard to the fact that

in none of the spells, they had completed 120 days. Evidently, therefore the petitioners can not be said to have acquired temporary status as asserted by them. When a casual labourer had not acquired temporary status, his service comes to an end of close of establishment on a working day. No notice is required to terminate the service of such a casual labourer. The petitioners have failed to establish that they had worked continuously for a requisite period which may entitle them to claim notice or retrenchment compensation. The provisions of the rules alleged to have been violated are not attracted in the case of the petitioners. Several decisions including those reported in A.I.R. 1978 S.C. 8 & A.I.R. 1986 S.C. page. 132 are quite distinguishable and not relevant for consideration in the present case. The present petitioners are not project casual labourers and accordingly, they can not claim any benefit of the scheme introduced by the Railway Board in pursuance of the judgment in Indrapal Yadav as referred to and relied upon by them.

8. In the facts and circumstances of the case, it is clear that the petitioners ~~have~~ failed to establish their claim. Accordingly, the application has no merit and liable to be dismissed. The application, therefore, stands dismissed with no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER


(P.H. TRIVEDI)
VICE CHAIRMAN