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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 478

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~~W.A. No.~~

DATE OF DECISION 14-6-1988

SHRI GAGOO DEVRA & OTHERS

Petitioner

SHRI P.H. PATHAK

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS.

Respondent

SHRI 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*

- (9)
1. Gagoo Devra
 2. Vijaykumar Bhaishanker,
 3. Suresh Ramji,
 4. Suvalal Ladhuram
- All addressed to near
Nagar Panchayat Office,
Dwarka. Dist. Jamnagar.

.. Petitioners

Versus

1. Union of India, through
General Manager,
W.Rly., Churchgate,
Bombay - 400 020.
2. Executive Engineer (C),
V.O.P. Construction Project,
Western Railway,
Jamnagar.

.. Respondents.

O.A./478/87

J U D G M E N T

14.6.1988.

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

In this application filed under section 19 of the Administrative Tribunals Act, 1985, on 1.10.1987, the petitioners namely, (1) Gagoo Devra, (2) Vijaykumar, Bhaishanker, (3) Suresh Ramji and (4) Suvalal Ladhuram have challenged the validity of the orders whereby their services are terminated with effect from 10.9.1985. The petitioners have challenged the validity of the impugned order on the grounds inter alia that the provisions of retrenchment contained under section 25F of the Industrial Disputes Act and Rule 77 of the Rules framed thereunder and the principles of 'last come first go' are not followed. Identical notices dt. 8/9-8-1985 terminating the services of the petitioners which are issued by the Executive Engineer (C), Conversion Project, Jamnagar, is found at Annexure A which reads as under :-

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"To,

Shri Gagoo Devra/M.B.T. No. P-29
of PWI/C/I-DWK

(Through PWI/C/I/DWK)

Sub : Notice for Termination of
service of Casual Labour

Consequent upon the reduction in work your service no longer required as such your service will stand terminated with effect 10.9.1985 in terms of para 25-F(a) of the Industrial Disputes Act.

This may be treated as ONE MONTH NOTICE. Please acknowledge receipt."

2. The petitioners have prayed that the impugned notices be declared illegal, inoperative in law and the respondent - railway administration be directed to reinstate them with continuity in service and full back wages. Notices were issued to the respondents in response whereof Mr. B.R. Kyada, the learned counsel appeared for the respondents. However, the respondents have not preferred to contest the application by filing any reply. When the matter came up for hearing, we have heard Mr. P.H. Pathak and Mr. B.R. Kyada, the learned counsel for the petitioner and the respondents respectively.

3. The main grievance of the petitioners is that they have completed more than 2 years of service as Casual Labourers on the project and they have acquired temporary status under the relevant rules. According to them, the respondents have not paid any retrenchment compensation admissible to them and no seniority list has been published as required under rule 77 of the Industrial Disputes Rules framed under Industrial Disputes Act which render termination bad in law. In support of their case, they have relied on the service card issued by the railway authority.

4. Mr. B.R. Kyada, the learned counsel for respondents vehemently contended that the application filed by the petitioners is barred by limitation as they have not exhausted the remedy available to them and hence the application deserves to be rejected. Mr. P.H. Pathak for the petitioner, however submitted that the petitioners are poor casual labourers and the delay if any, is caused in filing the application can be condoned by the Tribunal as the same is with its discretion as the ^{cause} in the application has accrued within 3 years preceding to the establishment of the Tribunal i.e. 1.11.1985. According to him at the most, the fact of the delay, may be weighed with the Tribunal in the matter of allowing back wages while reinstating them. In support of his submissions, he has relied on the decision in Jai Bhagwan v. The Management of Ambalal Central Co-op. Bank Ltd. and Anr. (A.I.R. 1984 S.C. 286).

5. Now in view of the particulars regarding the services of the employees enumerated in Annexure B, B-1 and B-2 (service cards), it is clearly established that the petitioners are in the employment of the railway administration since the year 1983 i.e. for more than 240/120 days as Casual Labourers which entitle them to acquire temporary status and benefits under section 25 of the Industrial Disputes Act. Admittedly, no divisionwise seniority list as envisaged in the case of Indrapal Yada 1985 S.C.C. (LS) 526 has been produced or shown to have been published as required under rule 77 of the Industrial Disputes (Central) Rules, 1957.

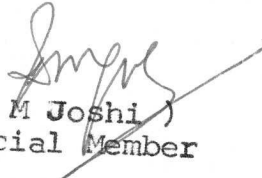
6. The notices served upon the employees concerned do not speak about the retrenchment compensation. The

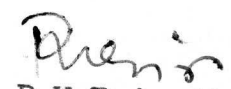
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settled legal position is that essential requirements of 25F of the Industrial Disputes Act are required to be strictly complied with before the services of such employees are terminated. In the instant case admittedly, the principle of 'last come first go' does not seem to have been followed. The breach of this rule vitiates the action of the respondent - railway administration in terminating the services of the aforesaid employees. The present application is clearly covered by common judgment rendered by this Bench in O.A./331/86 Sukumar Gopalan v. Union of India & Ors. For the reasons stated above and also in our aforesaid common judgment, the impugned order of termination cannot be sustained.

7. In this view of the matter, the impugned notices dt. 8/9-8-1985 terminating the services of the petitioners are hereby quashed and set aside. However, having regard to the fact that the petitioners have approached the Tribunal after a considerable delay without doing anything in the meanwhile to question termination of their services there will be no award for back wages prior to the institution of the application. It is therefore, directed that the respondents shall reinstate the petitioners in service with continuity of service from the date on which their services were terminated and ^{pay} back wages from the date of the institution of the application i.e. 1.10.1987. The respondents are directed to reinstate the petitioners and work out the back wages payable to the petitioners and pay the same within 3 months from the date of this order.

The application stands disposed of with
aforesaid directions. There will be however, no
order as to costs.


(P M Joshi)
Judicial Member


(P H Trivedi)
Vice Chairman