

(W)

OA/191/88

Shri Magan Mohan & Co.
C/o. Association of Rly. & Post
Employee Union,
37, Pankaj Society,
Paldi, Ahmedabad.

.. Applicant

Versus

1. Union of India,
Notice to be served through
The General Manager (W.R.)
Churchgate, Bombay.
2. Inspector of Works (C)
Near Railway Station,
Porbandar.

.. Respondents

ORAL ORDER

Date: 29/7/1988

Per: Hon'ble Mr. P.H. Trivedi

: Vice Chairman

Heard learned advocates Mr. P.H. Pathak and Mr. B.R. Kyada for the applicants and the respondents. The petitioner has been transferred from Porbandar to Bhuj on 8/3/1988. His originating division is Bhuj according to the petitioner. According to the petitioner he is given the benefits of temporary status. There is no transfer order served upon him, but it is contended only in the letter of the Executive Engineer, annexed to the petition. According to the respondent there is no transfer but in the exigencies of the service only deputation for a short period and for this, necessary duty pass and transferring expenditure allowances have been allowed. If the employer is not free to transfer on deputa^{tion} the casual labour in the exigencies of service, there may be jeopardy to the administration of the respondent.

Hamel

According to the Railway's Establishment (M.C. Jand) page 4, deputation means appointment made by transfer on a temporary basis to other department and State Govt. provided the transfer is outside the normal field of deployment and is in the public interest.

(9)

There is force in the petitioner's contention that transfer has been effected and that to not by any order directed to the petitioner but by communication between two of the employees of the respondent railway authorities. In terms of para 2501 under chapter XV governing transfer of casual labour is stated that "it is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour". ^{The} mere fact ~~is~~ that the temporary status might have been given does not ~~mean~~ that such labour is under the liability of transfer until he is regularised and made Class IV employee. There is therefore no justification for the plea that this transfer is permissible. We are also not persuaded that this petition can ^{disguise} ~~discuss~~ the fact of ^{transfer by the} ~~so far as~~ casual labour is concerned, he has not given his consent and there is ^{basis for holding that there is any} ~~no~~ distinction between deputation and transfer according to the rules which have been produced before us. Mr.B.R.Ky la learned advocate for the respondent states that the petitioner has already been taken back in Porbandar.

> plea of deputation

Accordingly, the petition is found to have merit and is allowed. The impugned order dated 8.3.1988 is held to be invalid and ~~to be~~ ^{quashed} and set aside. With this observation, the case is disposed of and there will be no order as to costs.


(P.H.Trivedi)
Vice Chairman