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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 18 & 19 OF 1988.

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DATE OF DECISION 4.10.1988

SHRI ADAM HASAM & ANRS. Petitioner_s

MR. C.D. FARMAR Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent s.

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.

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O.A.No. 18 OF 1988

Shri Adam Hasam,
Aged about 24 years
Add: Hapa Railway Station
Near Samat Pirni Dargah
Hapa,
Dist: Jamnagar.

O.A.No. 19 OF 1988

Shri Ramesh Lakha
Hindu, Aged about 23 years,
Add: Railway Colony
Near 'A' Cabin/Rly.Station(old)
Jamnagar.

..... Petitioners.

(Advocate: Mr.C.D.Parmar)

Versus.

1. Union of India
Owning and representing
Western Railway through:
The General Manager,
Western Railway
Churchgate, Bombay.
2. Chief Executive Engineer(C)
Western Railway,
Railway Station,
Ahmedabad.
3. Executive Engineer (C)
Western Railway,
Kothi Compound,
Rajkot.
4. Executive Engineer Construction,
Western Railway,
Jamnagar.

.... Respondents.

(Advocate: Mr. B.R.Kyada)

J U D G M E N T

O.A.NO. 18 & 19 OF 1988

Date: 4.10.1988.

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

The petitioners, viz; Shri Adam Hasam (in O.A. No. 18/88) & Shri Ramesh Lakha (in O.A.No. 19/88), have filed their applications on 30.10.1987 under section 19

of the Administrative Tribunals Act, 1985. They claim that they are engaged as casual labourer since 1983 at Jamnagar and thereafter they have been transferred from one place to another and while they were working at Porbandar, their services have been terminated with effect from 10.9.85. Both the petitioners have challenged the validity of the notice dated 9.8.85 issued by the Executive Engineer(C), Western Railway, Jamnagar; whereby their services were sought to be terminated. Identical notices have been served upon the petitioners. The impugned notice reads as under :-

Sub : Notice for termination of service of
casual labour.

Consequent upon the reduction in work your service is no longer required. As such, your service will stand terminated with effect from 10.9.85 in terms of Para 25-F(a) of Industrial Dispute Act.

This may be treated as one month's notice.
Please acknowledge the receipt.

Sd/-
Executive Engineer,
Construction
Western Railway
Jamnagar.

2. According to the case set up by the petitioners, sometime after their initial appointment as casual labourer, they were sent for medical examination and they have passed B-1 standard required for medical fitness as per the certificate dated 21.9.1984. It is alleged that similar notices were challenged by the employees and they have been declared null and void and they are ordered to be reinstated with full backwages and benefits, under common judgment rendered by this Tribunal dated 16.2.1987. They have therefore prayed that the impugned notice be held illegal and the petitioners be re-instated.

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3. The respondents-railway administration, in their counter, have contended inter-alia that the petitioners are not protected under any rule or directives issued by the railway administration as they were engaged from 26.10.83 to 30.4.1984 under an agreement duly signed by them. According to them, the petitioners are retrenched with effect from 10.9.85 after complying with the terms and conditions of the Industrial Disputes Act, as they were junior-most under P.W.I.

4. When the matter came up for hearing we have heard Mr. C.D.Parmar and Mr. B.R.Kyada, the learned counsel for the petitioners and the respondents respectively. The materials placed on record are also perused and considered.

5. The main grievance of the petitioners, is that they had worked as casual labourers for nearly two years and they had acquired temporary status under the rules governing the services of casual labourer and their services have been retrenched without following the provision laid down under section 25F of the I.D.Act and Rules framed thereunder and also the principles of "last come first go". The stand of the respondents is that the petitioners are engaged under a special agreement and that petitioners are retrenched, they were junior-most under the P.W.I.

6. It is significant to note that even though there is a specific defence of the respondents that the petitioners were engaged under an agreement, no attempt whatsoever has been made to rely thereon by producing the same. More over, even though it is stated that the petitioners were junior most, no seniority list has been brought on record in support

of their version. The fact that the petitioners were engaged as casual labourer from 26.10.83 and continued till 10.9.85 is not in dispute. Even otherwise this fact is sufficiently borne out by the service records produced by the petitioners. Even the respondents in their counter have conceded that in order to avoid retrenchment they had employed the petitioners at different places. The materials placed on record do not indicate that there was any break in the service of the petitioners during the relevant period.

7. It is significant to note that the very fact that the respondents have resorted to provisions contained under section 25 F of the I.D. Act they have not caused termination on the reliance of any specific agreement. Now having regard to the fact that the petitioners have worked for more than a year, they have acquired temporary status and are governed by the provisions of the Industrial Disputes Act. Evidently, no division-wise seniority list as envisaged in the case of Indrapal Yadav, 1985 S.C.C.(L&S) 526, has been produced. More over nothing has been shown that any such seniority list was published as required under Rule 77 of the Industrial Disputes (Central) Rules, 1957. Hence, in the instant case it is not possible to infer that the respondents have followed the principle of "last come, first go". Obviously, the breach of such a rule and the principle vitiates the action of the respondents-railway administration in terminating the service of the petitioners. The present application is clearly covered by our common judgment rendered in O.A.No. 331/86, Sukumar Gopalan V/s. Union of India & Ors. In light of the aforesaid discussion and for the reasons stated in our aforesaid

common judgment the impugned notice terminating the service of the petitioners can not be sustained.

8. It was strenuously urged by Mr. Parmar, the learned counsel for the petitioners that in case, the impugned notice are held to be illegal, the petitioners would be entitled to reinstatement and backwages. It was however contended by Mr. B.R.Kyada, the learned counsel for the respondents that the petitioners in their application have not made any claim for backwages and even otherwise when they have committed considerable delay in filing the application, they should not be awarded any backwages. We find great force in the submission made by Mr.Kyada. In similar matter relying on the decision of the Supreme Court in Jai Bhagwan V/s. The Management of the Ambala Central Co-operative Bank Ltd. & Ors. (A.I.R. 1984 S.C.286), we have not allowed backwages while directing the re-instatement of casual labourers.

9. In this view of the matter, the impugned notice dated 9.8.85 terminating the service of the petitioners, are hereby quashed and set aside. It is therefore directed that the respondents shall reinstate both the petitioners in service within two months from the date of this judgment. Consequently, we hold that there will be no break in their services. The respondents are therefore directed to retain continuity in the services of the petitioners. However there will be no award for backwages.

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The application therefore succeeds to the extent stated above and the same is allowed with the aforesaid directions. There will be however no order as to costs.

Sd/-

(P.M. JOSHI)
JUDICIAL MEMBER

Sd/-

(P.H.TRIVEDI)
VICE CHAIRMAN

ttc.