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Retrenchment

B (4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 208/89
T.A. No.

DATE OF DECISION 16th Sept., 1992.

Shri Naru Badia.

Petitioner

Mr. Y.V. Shah

Advocate for the Petitioner(s)

Versus

Union of India & others

Respondent

Mr. R.N. Vin

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V. Krishnan.
Vice Chairman

The Hon'ble Mr. R.C. Bhatt.
Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✗
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✗

Shri Naru Badia, M.B. Ramodi Dalsingh, F.B.
c/o. Permanent Way,
Inspector (R), Western Railway,
DHANDHUKA.

.....Applicant
(Petitioner)

(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.
3. Permanent Way Inspector (R)
Western Railway,
DHANDHUKA.

.....Opponents
(Respondents)

(Advocate : Mr. R. N. Vin)

J U D G E M E N T

O.A.208/89

Date : 16th Sept., 1992.

Per : Hon'ble Mr. N.V. Krishnan
Vice Chairman

1. The two applicants were Casual Labourers recruited on 21/7/83 under the PWI (Construction) Lalpur, Jamnagar, and continued as such till 16/1/85. They were transferred for engagement under the PWI(R) Dhandhuka, from 17/1/85 and they continued as such till 25/5/85. These services particulars are established by the document Annexure-A-1 which is the photocopy of their record of services as casual labourers.

2. It is alleged that from 26/5/85 the applicants were retrenched. It is contended that the retrenchment is bad in law as it is violative of the mandatory provisions of the Industrial Disputes Act, 1947.

3. The applicants have also alleged that though the Supreme Court has directed the respondent to prepare a scheme for the absorption of Project Casual Labourers who have been retrenched (1985(2) S.C.C. 648 and A.I.R. 1987 SC 1153), the respondents have not taken any action in this regard. The applicants have produced copies of the representations made by them, in this regard to the concerned authorities on 26/3/87 and 22/4/88 (Annexure A-2 and A-3) but they have not been replied.

4. The applicants state that, in a similar situation, this Bench has delivered judgement in O.A. /113/87, quashing the termination of services and directing the respondents to reinstate the applicant.

5. It is in these circumstances that the applicants have filed this application praying that the impugned orders of retrenchment be quashed and they be given the benefits available to similar persons in the light of the judgement, of the Supreme Court referred to above.

6. The respondents have filed a reply contending that the application is without merit and should be dismissed. It is admitted that the applicants were retrenched from 26/6/85 but this was done

after following the provisions of the Industrial Disputes Act, relevant rules and regulations and after paying them the necessary notice pay as well as compensation. They also do not dispute the engagement of the applicants from 17/1/85 to 25/5/85. The applicants were retrenched as they were rendered surplus, after following the requirements of the Industrial Dispute Act.

7. In regard to the challenge to retrenchment, the respondents have contended that this is barred by limitation. The respondents, have also denied receipt of the representations Annexure A-2, A-3. In these circumstances, it is contended that the application deserves to be rejected.

8. We have carefully perused the records and heard the learned counsel for the parties.

9. In so far as retrenchment is concerned, it was admittedly effected on 26/5/85 and, therefore, any challenge ^{as} to its validity is barred by limitation. Accordingly, the applicants are not entitled to any relief on this count. However, the other prayer made by them in the light of the decisions of the Supreme Court is a matter where they have a strong claim.

10. It is not denied that the applicants were initially engaged by the Permanent Way Inspector (Construction) Jamnagar on 21/7/83 and that they continued as such till 16/1/85. Thereafter, they were transferred to the PWI(R) Dhandhuka from 17/1/85 and retrenched from 26/5/85. The case of large numbers of Project Casual Labourers who were retrenched from the railways was considered by the

Supreme Court in the Inderpal Yadav case (1985(2)

Supreme Court Cases 648) and a direction to the respondents, was issued to prepare a scheme with a view to regularising them in the railway, for which purpose temporary status was granted from different dates to Project Casual Labourers who had been retrenched after being engaged for a specific period. The instructions issued by the Railways contemplate the regularisation of casual labour, who have been given temporary status in accordance with the scheme referred to above, against Group 'D' posts, in accordance with their seniority, after satisfying other conditions of eligibility for regularisation.

11. We are of the view that the applicants, being retrenched casual labourers, are entitled to the benefit of the scheme. The learned counsel for the applicants contended that this benefit ought to have been given to them suo motu by the respondent, without any application, from the applicant. We are unable to agree. As thousands of casual labourers were involved, the respondents had invited applications from retrenched casual labourers, and considered their cases on merits. Obviously, the applicants were not considered because they had not given any application until these proceedings were initiated. Therefore, they cannot be given any benefit in terms of this scheme, with effect from any date prior to this application, even though such benefits might have been given to their juniors.

12. ^u In terms of the guide lines given by the ^{me}Supreme Court, the applicants had become eligible for temporary status because they had completed 360 days of ^ucontinous services under the PWI (Construction) some time in 1984, they having been engaged from 1/7/83. The actual date from ^m which they ^ushowed ^{ul} get temporary status is to be finalised by the respondents in terms of the Scheme and the mandatory instruction. The date from which they are thus entitled to get temporary status is relevant for the purpose of determining their seniority for considering their claims qua the claims of others, as directed below.

13. In this view of the matter, we feel that the interest of justice will be served by issuing directions to the first and second respondents. Accordingly, these respondents are directed to consider the claims of the applicants on 8/3/89-i-e- the date on which this application was filed-or on any subsequent date, along with the cases of other persons, for being given the benefits, under the Scheme prepared, in pursuance to the decision of the Supreme Court in Inder Pal Yadav's Case, if otherwise found eligible and, grant the applicants the benefits under the Scheme, which have been given to any of their immediate juniors. This shall be done within three months from the

date of receipt of this order and the applicants shall be suitably informed about the action taken in this regard.

14. The application is disposed of as above. These will be to order as to costs.



(R.C. Bhatt)

Member (J)

16th Sept., 1992.


16/9/92

(N.V. Krishnan)

Vice Chairman

(16th Sept. 1992)