IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.569/90, O.A.829/90, O.A.1096/91
O.A. 1243/91, O.A 1411/91 and O.A 1830/91

DATE OF DECISION : 5.2.1993

O.A.569/1990

A.N.Kesavan Nair .. Applicant
M/s. B.N.Shiv Shankar & P.T.Jose .. Adv. for the Applicant

vs.

The General Manager,Southern Railway,Madras and another .. Respondents
M/s. M.C.Cherian, Saramma Cherian &
T.A Rajan .. Adv. for the Respondents

O.A.829/91

M.P.George .. Applicant
Mr.P.Sivan Pillai .. Adv. for the Applicant

vs.

Union of India through the
General Manager, Southern Railway,
Madras -3 and two others. .. Respondents
M/s. M.C.Cherian & T.A.Rajan .. Adv. for the Respondents

O.A.1096/91

M.G.Idichandi .. Applicant
Mr.P.Sivan Pillai .. Adv. for the Applicant

vs.

Union of India through the
General Manager,Southern Railway,
Madras-3 and another. .. Respondents
Smt.Sumathi Dandapani .. Adv. for the Respondents

O.A.1243/91

P.K.Janardhanan Pillai .. Applicant
Mr.P.Sivan Pillai .. Adv. for the Applicant

vs.

Union of India through the
General Manager,S.Railway,
Madras -3 and another. .. Respondents
Mrs.Sumathi Dandapani .. Adv. for the Respondents

O.A.1411/91

N.K.Sreedharan Pillai .. Advocate
Mr.P.Sivan Pillai .. Adv. for the Applicant

vs.

Union of India through the
General Manager, Southern Railway
Madras-3 and two others. .. Respondents
Smt.Sumathi Dandapani .. Adv. for the Respondents

...2

O.A.1830/91

P.C.Appachan .. Applicant

Mr.Ajith Prakash C.S. .. Adv. for the Applicant

vs.

Divisional Personnel Officer,
Southern Railway,Personnel Branch,
Trivandrum. .. Respondent

Smt.Sumathi Dandapani .. Adv. for the Respondent

CORAM

THE HON'BLE MR.S.P.MUKERJI, VICE CHAIRMAN

THE HON'BLE MR.A.V.HARIDASAN,JUDICIL MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the judgment? No
4. To be circulated to all Benches of the Tribunal? No

JUDGMENT

(Hon'ble Shri S.P.Mukerji,Vice Chairman)

Since common questions of facts, law and reliefs are involved in the aforesaid six cases, they are being disposed of by a common judgment as follows:

O.A 569/90

2. The applicant in O.A. 569/90 entered the Southern Railway Service on 19.8.1954 and was absorbed in the regular service as Gateman/Gangman 9.12.1969. He retired from the Railway service on 31.5.1989 on superannuation. For the purpose of pension his casual service from 1954 to 1969 was not taken into account. He claims refixation of his pension by taking his casual service from 1954 to 1989 into account. The respondents have contended that since he never attained temporary status or has drawn any benefits of temporary status, no part of his casual service prior to 1969 can be taken into account. The fact that in 1969 his pay was fixed at the minimum of the pay scale of Rs.70-85 shows that he had not attained temporary status , otherwise the period of casual service with temporary status would have been taken into account for giving him increments in that pay scale. They have argued that casual service was not pensionable till 1980. On 14.10.80 the Railway Board issued the order

(Ext.R1) by which half of casual service after attaining temporary status was allowed to count as qualifying service for pension. Since the applicant did not have any temporary status , he cannot get any benefit of his casual service.They have also drawn attention to the fact that pursuant to the Supreme Court judgment in Inderpal Yadav's case, the Railway Board issued orders dated 11.9.86 at Ext.R3 by which the project casual labourers on completion of certain length of casual service are to be treated as with temporary status from various dates on or after (but not before) 1.1.81. In the applicant's case also, temporary status cannot be given earlier than 1.1.81.

O.A.829/91

3. The applicant in O.A.829/91 was engaged intermittently as casual labourer from 16.4.56 to 12.10.58. On 13.10.58 he was engaged against a construction reserve post of Lascar and was transferred from place to place putting in continuous casual service till he was regularly absorbed in the construction reserve post of Lascar on 1.4.73. He retired on 31.12.90 from the same post. For the purpose of retirement benefits his qualifying service was taken only from 1.4.73. He claims that his entire service from 13.10.58 or 12.4.59 or 23.11.58 should be taken as qualifying and his pension should be revised and gratuity paid on the basis of that service along with the interest. The respondents have stated that the applicant worked as a daily rated casual labourer with intermittent breaks till 1.4.73. During this period he was working mostly in doubling works which are project works. When he was absorbed in regular service from 1.4.73 in the pay scale of Rs.196-232 he was given a starting pay of Rs.196/-. Being a project casual labourer he was not entitled to temporary status which was extended to project casual labourers only from 1.1.81 on the basis of the Supreme Court's judgment in Inderpal Yadav's case. Had he been given temporary status, he should have got his pay fixed at a higher stage taking into account his casual service with temporary status . Since he was not having any temporary status prior to 1.4.73, no part of casual service can be reckoned for pension.

...4

O.A.1243/91

4. The applicant in this application was initially engaged as a casual labour Khalasi against a regular construction reserve post on 1.7.72 and was granted scale rate of pay from 1.6.74 . He was regularly appointed as a Gangman on 28.1.80. He retired on 31.5.88. He was not granted pension as his entire casual service between 1972 and 1980 without any temporary status was ignored. His representations given during 1987, 1988, 1989 and 1990 did not evoke any response. According to him as a non-project casual labour he had attained temporary status on completion of six months of service which commenced from 1.7.72 and accordingly half of his casual service from 1.1.73 after he attained temporary status should have been taken into account for pension in accordance with the Board's circular dated 14.10.80 at Annexure A.IV. He has also argued that even if he is deemed to be a project casual labour who was granted scale rate of pay vide Annexure A2, in accordance with para 409 (ii) of the Manual of Pension Rules, 1950, half of his service paid from contigencies should have been allowed to count towards pension. He has challenged that provision in the aforesaid para 409 which excludes the project casual labour from pensionary benefit while allowing the same benefit to casual labour paid from the contingencies, on the ground that this is violative of Articles 14 and 16 of the Constitution and there is no rational nexus between such a differentiation and the object sought to be achieved by that para. He has prayed that this discriminatory provision in that para be declared to be unconstitutional and respondents be directed to pay him pensionary benefits by taking into account his casual service from 1.1.73 or half of his service from 1.6.74 to 20.1.80 by declaring that the project casual labours also are eligible for the benefit of para 409 (ii) of the Manual of Pension Rules. He has also prayed that the respondents be directed to extend

the benefit of the decisions in O.A.485/89, 443/91 and 762/90 to him also by counting his casual service after completion of six months from the date of initial engagement for the purpose of pension and other retiral benefits.

5. In the reply statement the respondents have stated that the applicant was engaged as a casual labour with effect from 1.7.72 in the Construction organisation for the laying of the new lines and was not granted temporary status since being in the Construction organisation he was a project casual labour. They have stated that in accordance with the direction of the Hon'ble Supreme Court in Inder Pal Yadav's case, casual labour under Construction organisation are granted temporary status only from 1.1.81. They have averred that prior to 21.1.80 the applicant was a project casual labour under the Construction organisation . His total qualifying service works out to 8 years 3 months and 16 days which falling short of 10 years did not qualify for pension. Since the applicant had already been absorbed in a regular post with effect from 21.1.80 and since the project casual labour were to be given temporary status after 1.1.81, the question of grant of temporary status to the applicant before his absorption did not arise. Since the applicant was not a casual labour paid from contingencies he was not entitled to count his casual service under para 409(ii) of the Pension Rules. They have explained that in Rule 102 of the Manual of Pension Rules, pension is granted on completion of ten years of qualifying service and by the order dated 14.10.80 (Annexure AIV) half of casual service rendered after attainment of temporary status is counted towards pension. Casual service as such does not count towards pension vide Rule 308(ii) of Manual of Pension Rules. They have also argued that since the applicant has already claimed gratuity under the Payment of Gratuity Act, for the casual service period between 1972 and 1980 vide his application at Exbt. R.3 he cannot claim pension for the same period. They have stated

...6

that since the applicant was engaged from 1972 in connection with the laying of new rail lines between Trivandrum and Kanyakumari he was a project casual labour.

6. The respondents have contended that all the works under the Construction Department are project works, that the applicant was given the minimum of the pay scale on 28.1.80 when he was regularly absorbed (which meant that he was not one with temporary status) and he had not challenged the same, that the benefits of para 409(ii) of the Manual of Railway Pension Rules (MORPR) is applicable only to those who are paid from the Contingencies and that the applicant was not paid from the Contingencies but only from the sanction of the project. They have however, conceded that both the staff paid from Contingencies and seasonal labour sanctioned for specific work of less than six months duration acquire temporary status after being employed for more than six months continuously in the same type of work but the project casual labour irrespective of duration is not granted temporary status. They have conceded that the Supreme Court in AIR 1982 SC 85 4 (L.Robert D'Souza v. The Executive Engineer,Southern Railway and another) had observed in respect of the project casual labour with several years of continuous service without any improvement in his status that " it is high time that the utterly unfair provisions denying socio-economic justice should be properly modified and brought in conformity with the mode and concept of justice and fairplay in the Railway Administration. They have argued that the Supreme Court did not strike down the classification between the casual labour paid from Contingencies and project casual labour but on the other hand ratified a scheme of grant of temporary status to the project casual labour in Inder Pal Yadav's case with effect from 1.1.81. The respondents have contended that the dictum laid down by the Madras Bench of the Tribunal in O.A.485/89 is wrong and the decision given in O.A. 431/89 should be followed.

7. In the argument notes the respondents have questioned the propriety of the applicant's amending the O.A. to seek an additional

relief for extending the benefits of the judgment in O.A.485/89,443/91 and 762/90. Regarding the judgment of the Madras Bench of the Tribunal in O.A. 485/88, it has been stated that the same has been challenged before the Hon'ble Supreme Court in an SLP which is still pending. They have conceded that in the SLP though a stay was sought, no stay was granted by the Hon'ble Supreme Court. They have referred to para 2501 of the Railway Establishment Manual wherein the staff paid from Contingencies and seasonal labour after completion of six months of continuous employment are granted temporary status but no such provision has been made for project casual labour irrespective of the duration of employment. Traversing the socio-economic ground the respondents have argued that Railway projects are under-taken for economic development of remote backward areas, the labour for the sake of economic development of those areas should justifiably be paid local wages i.e, the lower rates compared to those working in the open line. In other words they have stated that the project casual labour must accept the sacrifice by being paid lower wages so that more Railway lines can be laid in the backward areas. On that basis the respondents have justified the discrimination between the project casual labour and casual labour in the open line. They have referred to the observations made by the Supreme Court in Ramkumar and others vs. Union of India and others, AIR 1988 SC 390 wherein the distinction between these two categories before temporary status is acquired by them has been found to be difficult to be obliterated. Without giving any reasons it has been stated by the respondents that the distinction between construction activities in projects and open line activities is justified. They have, however, conceded that the Southern Railway have evolved a progressive scheme of considering the casual labours of open line and projects based on their total aggregate service for the purpose of screening and absorption against the vacancies in the open line. No reason has been given by them to disallow temporary status on completion of six months of service to project casual labour prior to 1.1.81. They have also conceded that

on the recommendations of Justice Miabhoy, the daily rates of wages of project casual labour after completion of six months of continuous service were revised with effect from 1.6.74. They have also conceded that for the purpose of screening for regularisation and after regularisation there is no distinction between the project casual labour and non-project casual labour. They have also stated that the scheme for grant of temporary status to project casual labour issued on the basis of the instructions dated 11.9.86 had been approved by the Hon'ble Supreme Court. They have however clearly conceded that the words "temporary status" which had not been used in the scheme submitted to the Hon'ble Supreme Court vide the Board's letter dated 1.6.84 were not there but were introduced in the instructions of 11.9.86. But they have stated that there is no distinction between "temporary" and "temporary status" in the usuage of the Manual. The respondents have conceded that para 409(ii) of the Manual of Railway Pension Rules 1950 should have been amended on the basis of the Board's instructions dated 14.10.80 and 28.11.86 on the concept of temporary status. The pensionary benefits of casual service after attainment of temporary status available to open line casual labour was extended to the project casual labour by the instructions dated 28.11.86. They have stated that the Manual of Pension Rules is only a compilation for guidance but the authoritative version is to be sought in the original orders and thus para 409(ii) of the Manual of Railway Pension Rules is subject to the Board's letters dated 14.10.80 and 28.11.86. They have conceded that the Manual of Pension Rules does not contain the expression "temporary status" but that should not, according to them, make any difference. They have clarified that the staff paid from Contingencies relate to Hot-weather establishment, upkeep of office, Safaiwalas, Malis etc. and that they are distinct from labour employed in projects for creation of new assets and development of railways.They have conceded that the benefit of half service after becoming temporary status on completion of six months continuous service was extended to the seasonal labour with effect from 1.1.61 and to the project casual labour with effect from 1.1.81.

...9

O.A. 1096/91

8. The applicant in O.A.1096/91 was initially engaged as casual labourer on 27.1.55. He was posted as Peon on 29.7.58 transferred from one place to another as a casual Lascar and was finally absorbed in the same post on 1.4.73 in the construction organisation. He was confirmed in the same post on 15.7.77 and retired on 30.6.1990. His grievance is that the casual service prior to 1.4.73 was not counted for pension. His representation was rejected on the ground that from 27.1.55 to 31.3.73 he was working as a casual labourer in the construction organisation. In the counter affidavit the respondents have referred to the orders of the Controlling Authority under the Payment of Gratuity Act and Assistant Labour Commissioner , Trivandrum "to the effect that he was working as a casual labour from 27.1.55 to 31.3.73 and hence he is eligible for the payment of gratuity under the Gratuity Act". On that basis, the respondents have argued that as a casual labour and having put forth a claim for gratuity, he is estopped from claiming another benefit of pension for the same period. They have also stated that may be that he was working continuously from 27.1.1955 is a fact, but being a project casual labour in the construction branch, he could not be given temporary status before he was absorbed on 1.4.73.

O.A.1411/91

9. According to the applicant he was initially engaged as a casual labour on 2.9.52 and later posted against a construction reserve post on 4.10.55. From 17.10.55 he has been working continuously against that post against which he was regularly absorbed on 1.4.73 and confirmed on 29.12.80. He retired on 31.1.1983. His grievance is that his casual service from 17.10.55 to 31.3.73 has been overlooked for purpose of pension and he was granted only gratuity on the basis of his service of nine years and ten months from 1.4.73. He moved the Tribunal in O.A.175/1986 for pensionary benefits but the same was rejected on 27.4.89 without adjudicating upon the issue of counting of his previous service for pension. He has also referred to

certain orders of the Railway Board by which fraction of six months of service exceeding three months is rounded off to full six months for the purpose of reckoning qualifying service. On that basis also he is entitled to pension. In the counter affidavit the respondents have conceded that the applicant is entitled to pension by rounding off his fractional service of nine years and ten months and proposal has been submitted to the associate accounts for arranging payment to the applicant. As regards his casual service they have stated that since he was working in the construction organisation prior to his absorption on 1.4.73, that service cannot count as qualifying service for pension because he was not granted temporary status at any point of time before 1.4.73.

O.A 1830/91

10. The applicant in O.A. 1830/91 was initially appointed as a Khalasi on 17.5.65 on a construction project. He was transferred as such on 16.9.68 and when the establishment was closed he was retrenched on 27.11.76. On 21.7.77 he was reengaged and absorbed as a Gangman on 20.9.77. He retired on 31.1.1991. He claims pensionary benefits on the ground that six months after his initial engagement on 17.1.65, that is on 18.11.1965, he had acquired temporary status and half of service after temporary status till 20.9.77 should be taken into account for pension. He has also argued that since he was retrenched for no fault of his, the break in his service between 27.11.76 and 21.7.77 should also count for pension. In the counter affidavit the respondents have stated that before 20.9.77 he was working as a project casual labour and as such was never granted temporary status. Under Rule 308 of MOPR casual service does not qualify for pension. A project casual labour could get temporary status only on or after 1.1.81. Since the applicant had already been absorbed as Gangman on 20.9.77 , the question of granting temporary status from 1.1.81 did not arise. In the rejoinder the applicant has relied upon the judgment of the Madras Bench of the Tribunal in K.G.Radhakrishna Panicker and others vs. Union of India and others, ATR 1991(1) CAT 578 in support of his claim. He has also

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referred to the judgment of the Supreme Court in AIR 1982 SC 854 to the effect that a project casual labour cannot be transferred, to contend that he could not be project casual labour as he was being transferred from place to place between 1965 and 1976. He has also referred to Chapter XXXVI of the Railway Establishment Manual laying down that any break after attaining temporary status due to closure etc. will not count as a break. He has also argued that every construction work is not a project.

11. We have heard the arguments of the learned counsel of rival parties in these applications and gone through the documents and argument notes carefully. The main question involved in these applications is whether the casual service rendered in projects qualifies for pension. It is admitted that in accordance with the Railway Board's order dated 14.10.80, half the casual service after attaining temporary status followed by regular absorption counts for pension. However, this benefit is not admissible to the project casual labour who are regularised before 1.1.81 like the applicants before us because there was no scheme of grant of temporary status to project casual labour from any date prior to 1.1.81. It was under the directions of the Supreme Court in Inderpal Yadav's case that the concept of temporary status was extended to project casual labour but such temporary status could not be acquired by such project casual labour before 1.1.81. The question whether there can be any discrimination between a project casual labour and other casual labour for the grant of temporary status prior to 1.1.81 was adjudicated upon by the Madras Bench of the Tribunal in their judgment dated 8.2.91 in K.G. Radhakrishna Panicker vs. Union of India and others, ATR 1991(1) CAT 578 in more or less a case identical with the cases before us. The applicants in that case also were 49 employees of the Southern Railway who had originally joined as casual labourers in the construction wing in various projects and they were absorbed in various capacities in regular service on different dates prior to 1.1.81. They had claimed that their casual service after completion of six months from the date of initial appointment should be considered for the purpose of retiral benefits like the pension,DCRG etc. The Tribunal felt that if project casual labourers

..12

who had not been regularised before 1.1.81 could be given temporary status with effect from 1.1.81 or a later date and count their service after attaining temporary status till their date of regularisation to the extent of 50% for pension, there is no reason why those project casual labourers who had been absorbed before 1.1.81 also should not be given temporary status to count part of their casual service before absorption, for pension. The following extracts from the judgment lucidly explains the logic and their conclusions:-

> "After serious consideration , we are averse to differently grouping or classifying the applicants on the basis of grant of temporary status for a number of reasons;firstly, it is a well-known established fact that temporary status is merely a concept and it has no formal existence like promotion or confirmation. Temporary status is merely acquired and is not granted or conferred to individuals even according to the railway rules. It is evident that a casual labourer in the Railways acquires temporary status after a continuous period of service of the prescribed period. There can be no doubt that by mere efflux to time, a casual labourers in continuous service in the Railways automatically acquires temporary status. There is no formality of accord or selection or approval required for acquiring the status. Admittedly, nothing is done by the respondents or required to be done by the casual labourers in order to gain that status which rather comes to them if they but merely continue in service without a break for the prescribed period.
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> "13. The acquiring of temporary status being of such a character, will it be justified and fair, if a section of the employees like the applicants are grouped together (to their disadvantage) apart from the others, merely because the concept to temporary status was not pronounced by the respondents before a particular date like 1984 or 1986? Further, if by the instructions issued in 1984 or 1986, persons who acquired temporary status in the past even in 1981 could be given such a status retrospectively , we do not see why the same conceptual benefits could not be given to the present applicants also, provided they satisfy the same requisite condition of continuous service. It has to be noted that the temporary status has a tangible result when it is followed by the privilege of adding 50% of the casual labour service for the purposwe of grant of retiral benefits.
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> " 14. So far as the applicants are concerned, they are bound to compare themselves with the Open Line Casual Labourers and more particularly with the other Project Casual Labourers, on the basis of heir continuous casual labour service followed by regularisation. It is not their fault that the respondents had not thought of conferring temporary status to them and it cannot be said that they have failed to satisfy any condition for the purpose of giving them such a status. When a casual labourers who joined later in 1981 in a project acquires temporary status after six months of his service and is later on absorbed, he becomes eligible for the concession in question. On the contrary, the applicants who had joined the project much earlier than such a casul labourer as is referred to above and who have been unfortunate enough to be regularised before 1.1.1981, is said not to be eligible for counting 50% of the casual labour service for the purpose of arriving

at the retiral benefits. We feel that it is an unjust discrimination and also an unfair treatment meted out to the applicants if their entire period of continuous casual labour service is ignored for the purpose of retiral benefits, whereas such a service is taken into account in respect of the later entrants in particular. We feel that such differentiation has no reasonable nexus with the object in this case. We further feel that the ratio of D.S.NAKARA Vs UNION OF INDIA ,1983(1) SC 304 is not irrelevant in throwing light for the resolution of the present dispute.

"15. We may also observe here that it is not as though the respondents have given due consideration to the claim of the applicants. It has merely been stated that the present or extant orders are not applicable in the case of the applicants.

"16. In the result we are of the opinion that the present application should be allowed and we allow the same as follows:

The impugned orders dated 30.11.1987 and 30.11.1988 are set aside. The respondents are directed to issue appropriate order and instructions to the effect that 50% of the service of the applicants after completion of six months from the date of their initial appointment as Casual Labour, should be reckoned as qualifying service for pension and other retiral benefits , on their eventual absorption in regular employment. This order shall be implemented within a period of six months from the date of receipt of a copy of this order.There will be no order as to costs."

We respectfully and wholeheartedly agree with the aforesaid finding which admittedly has not been set aside by the Supreme Court.

12. Even otherwise, we feel that the applicants working in the construction division from project to project continuously for long periods cannot be treated differently from the regular open line casual workers. Whether a casual worker working in the construction unit for a number years can be deemed to be a project casual labour so as to deny the benefit of temporary status , came before the Hon'ble Supreme Court in L.Robert D'Souza vs. Executive Engineer, Southern Railway, 1982(1) SLR, 864. The Supreme Court held that Shri D'Souza , who had been working as a casual labour continuously from 1954 to 1974, when his services were terminated, could not be considered to be a project casual labour as he belonged to Construction unit, as he was transferred from place to place , and was never shown to be only on project. The Supreme Court ordained that he has to be deemed to have attained temporary status and therefore his service could not be terminated without any notice. The Supreme Court further held that Rule 2501 which keeps casual labour without even temporary status for 20 years is unethical. It held that every

Construction work does not necessarily become work charged project as visualised in Rule 2501(b)(ii) of the Indian Railway Establishment Manual, disqualifying those working in the Construction work from temporary status, irrespective of period of employment. It held that a person belonging to the category of casual labour, but employed in Construction work other than work charged project and putting in more than six months of continuous service without break, would acquire temporary status by operation of statutory rule. It held that since the appellant was on continuous service for 20 years, it would not be fair to deny temporary status and treat him as casual labour. It also held that Construction unit, which is a permanent unit in all Railways, cannot be treated as project. It held that keeping workers for 10, 20 and 30 years of service at a stretch as casual labour is contrary to the Directive Principles of the Constitution.

13. The respondents have been heavily relying upon the judgment of the Hon'ble Supreme Court in Inderpal Yadav and others vs. Union of India and others, 1985(2) SLR 248 in which the scheme of ameliorating the condition of project casual labour was endorsed by them with the modification that the date '1.1.84' for giving effect to the scheme was to be preponed to '1.1.81'. We have gone through the judgment of the Hon'ble Supreme Court in which the relevant portion of the Scheme framed by the Railway Ministry was quoted. Para 5.1 of the Scheme as quoted in that judgment reads as follows:-

> "5.1. As a result of such deliberations, the Ministry of Railways have now decided in principle that casual labour employed on projects (also known as 'project casual labour') may be treated as temporary on completion of 360 days of continuous employment. The Ministry have decided further as under:-
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> (a) These order will cover:
> (i) Casual labour on projects who are in service as on 1.1.84; and
> (ii) Casual labour on projects who, though not in service on 1.1.84, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or will complete the said prescribed period of continuous employment on re-engagement in future.(A detailed letter regarding this group follows).

(b) The decision should be implemented in phases according to the schedule given below:

	Length of service (i.e.continuous employment)	Date from which may be treated as temporary	Date by which decision should be implemented
(i)	Those who have completed five years of service as on 1.1.84.	1.1.1984	31.12.1984
(ii)	Those who have completed three years but less than five years of service as on 1.1.1984.	1.1.1985	31.12.1985
(iii)	Those who have completed 360 days but less than three years of service on 1.1.1984.	1.1.1986	31.12.1986
(iv)	Those who completed 360 days after 1.1.1984.	1.1.1987 or the date on which 360 days are completed whichever is later.	31.3.1987 "

From the above it is clear that the Scheme as placed before the Hon'ble Supreme Court and endorsed by them did not anywhere mention the concept of 'temporary status'. The Scheme referred to the project casual labour being 'treated as temporary' which means 'treated as temporary Railway servants'. While changing the date from 1.4.84 to 1.1.81 to cover all those who had not approached the Hon'ble Supreme Court, that Court in their aforesaid judgment observed as follows:-

> "Burdened by all these relevant considerations and keeping in view all the aspects of the matter, we would modify 5.1(a)(i) by modifying the date from 1.1.1984 to 1.1.1981. With this modification and consequent rescheduling in absorption from that date onward, the Scheme framed by Railway Ministry is accepted and a direction is given that it must be implemented by re-casting the stages consistent with the change in the date as herein directed.
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> 6. To avoid violatioin of Art.14, the scientific and equitable way if implementing the scheme is for the Railway administration to prepare, a list of project casual labour with reference to each division of each railway and then start absorbing those with the longest service."
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> (emphasis added)

The emphasised portion in the extracts of the judgment fortifies our impression that the Scheme of the Railway Board as presented before the Hon'ble Supreme Court and as understood by that Court was about

absorption of the project casual labour as temporary Railway servants and not as a Scheme of grant of temporary status. Strangely enough the Railway Board in the same Scheme modified in accordance with the aforesaid judgment of the Supreme Court, in their letter dated 11.9.86 (Ext.R3) in O.A.569/90 added the words 'temporary status' in parenthesis after the word 'temporary'. The aforesaid same para 5.1 was substituted as follows:-

> "5.1 As a result of such deliberations, the Ministry of Railways have now decided in principle that casual labour employed on project (also known as "Project casual labour") may be treated as temporary(temporary status) on completion of 360 days of continuous employment. The Ministry have decided further as under:-
>
> (a) These orders will cover:-
>
> (i) Casual labour on projects who were in service as on 1.1.1981; and
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> (ii) Casual labour on projects, who though not in service on 1.1.81, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or have since completed or will complete the said prescribed period of continuous employment on re-engagement after 1.1.1981
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> (b) The decision should be implemened in a phased manner according to the schedule given below:-

Length of service (i.e.continuous employment)		Date from which may be treated as temporary (temporary status)
i)	Those who have completed five years of service as on 1.1.1981.	1.1.1981
ii)	Those who have completed three years but less than five years of service as on 1.1.1981.	1.1.1982
iii)	Those who have completed 360 days but less than three years of service as on 1.1.1981.	1.1.1983
iv)	Those who complete 360 days after 1.1.1981.	1.1.1984 or the date on which 360 days are completed whichever is later."

(emphasis added)

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We feel that importing the words 'temporary status' in the Scheme as originally approved by the Hon'ble Supreme Court in Inderpal Yadav's case, is without authority and has changed the entire complexion of the Scheme as endorsed by the Hon'ble Supreme Court, resulting in great disadvantage of the project casual labour, for whose benefit the Supreme Court approved the Scheme. The definiton of a 'temporary Railway servant' as given in para 2301 of the Indian Railway Establishment Manual excludes casual labour. The respondents have repeatedly stated in their counter affidavits that a casual labour even with 'temporary status' remains a casual labour. Thus, by introducing the words 'temporary status' after the Supreme Court had approved the Scheme for absorption of casual labour, the Railway Board has in effect deprived the project casual labour of the benefit of absorption as 'temporary Railway servant' as visualised in the Scheme placed before the Hon'ble Supreme Court. If the Railway Board had any doubt about the judgment of the Hon'ble Supreme Court, they should have sought clarification from that Court instead of unilaterally introducing the words 'temporary status' and thus, diluting drastically the benefits of that judgment.

14 In the above light, agreeing with the judgment of the Madras Bench of the Tribunal, we find that all the applicants before us, are entitled to count half of their casual service after completing six months of such service, for the purpose of pension.

15. A point which still remains to be considered is about the breaks in their casual service. In accordance with the Railway Board's letter dated 14.10.80 (Ext.R1 in O.A.569/90) the benefit of counting half of casual service for pensionary benefits , as available to service paid from Contingencies vide the Ministry of Finance's O.M. of 14th May,1968, was extended to casual labour who attained 'temporary status'. One of the conditisons laid down in the Ministry of Finance's O.M. of 14th May, 1968 for the service paid from Contingencies counting towards pension

is that "the service paid from Contingencies should have been continuous and followed by absorption in regular employment without a break". Accordingly, only that casual service put in by the project casual labour also after they attained temporary status shall be reckoned to the extent of 50% for pension, as was continuous and without break. For attainment of temporary status, however, casual service even though discontinuous can be taken into account. In their judgment in Ram Kumar and others vs. Union of India and others, AIR 1988 SC 390, the Hon'ble Supreme Court observed as follows:-

> "6. Admittedly the petitioners have put in more than 360 days of service. Though counsel for the petitioners had pointed out that the Administration was requiring continuous service for purpose of eligibility, learned Additional Solicitor General on instructions obtained from the Railway Officers present in Court during arguments has clarified that continuity is not insisted upon and though there is break in such continuity the previous service is also taken into account. Learned Additional Solicitor General has made a categorical statement before us that once temporary status is acquired, casual employees of both categories stand at par".
>
> (emphasis added)

Accordingly, the break in casual service is to be ignored for project casual labour for grant of temporary status. The period of breaks, however, when no casual service was rendered, will not count for reckoning six months of casual service for grant of temporary status.

16. In the above circumstances, we allow these applications to the extent of declaring that 50% of continuous casual service after the applicants had put in six months of such casual service, even with breaks, shall be reckoned for the purpose of pension. The breaks in casual service will not be taken into account for grant of temporary status but intermittent casual service shall be taken into account for computation of six months period for the grant of temporary status to project casual labour. The respondents are directed to refix the retiral benefits of the applicants on this basis and revise the retiral benefits accordingly and pay arrears ,if any. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.

5/2/93

(A.V.HARIDASAN)
JUDICIAL MEMBER

5.2.93

(S.P.MUKERJI)
VICE CHAIRMAN

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