

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED THURSDAY THE SEVENTH DAY OF SEPTEMBER ONE THOUSAND
NINE HUNDRED EIGHTY NINE

P R E S E N T

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI A.V HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.142/87

1. S.Balraj
2. J.Appukuttan
3. J.Devadasan
4. I.Subramaniam
5. C.Jestus
6. P.Devadas
7. C.Devadhasan
8. C.Thankanadar
9. C.Lukose
10. K.Mani
11. K.Velaiah
12. P.Iyyappan Pillai
13. K.Lieson
14. N.Kuttappan Thampi
15. K.John Rose
16. S.Chekkadurai
17. J.Christudas
18. P.Imar
19. D.Sankaran
20. K.Padamanabha Das
21. M.Charles
22. V.Natarajan
23. V.Vempu
24. N.Paul Raj
25. O.Chithamparan
26. O.Ayyappan
27. R.Johnson
28. V.Paul Pandiyan
29. G.Sunder Rajan
30. V.Kumara Velu
31. D.Sobhanam
32. S.Anthonymuthu
33. C.Kurusumuthu
34. A.H.Johnson
35. A.Selvaraj
36. R.Palayyan
37. D.Antony Arul
38. S.Thankavel
39. S.Muthuswamy
40. D.Sukumaran

.. Applicants

v.

1. General Manager, Southern Railway, Madras-3.
2. Dy.Chief Engineer(Construction), Southern Railway, Trivandrum-14.
3. Divisional Railway Manager, Southern Railway, Trivandrum-14.
4. Divisional Personnel Officer, Southern Railway, Trivandrum.

.. Respondents

M/s. K.Balachandran &
V.Ajith Narayanan

.. Counsel for
the appli-
cants

Smt.Sumathi Dandapani

.. Counsel for
the respon-
dents.

ORDER

Shri S.P Mukerji, Vice-Chairman

In this application dated 1st February, 1987 the forty applicants who have been working as Project Casual Labourers in the Southern Railway have prayed that the respondents be directed to empanel them for regular absorption with effect from 1.1.83 with all consequential benefits of arrears of pay etc. They have also prayed that their seniority as Project Casual Labourer in Trivandrum Division should be determined on the basis of their total service as Casual Labourer in accordance with the judgment of the Supreme Court in Inderpal Yadav's case reported in (1985) 2 SCC 648. The brief facts of the case are as follows.

2. The applicants were originally engaged for the construction of a new broad gauge line between Trivandrum Central and Nagercoil and Thirunelveli with a branch line from Nagercoil to Kanyakumari on various dates between 6.11.78 and 22.1.1980. On completion of the works they were retrenched mostly with effect from 1.8.81 except a few who were retrenched with effect from 5.12.80. The latter were retrenched on 5.12.80 on the basis of the unit of seniority at the level of senior sub-ordinates. The Casual Labourers engaged on or after on or after 1.10.78 were retrenched with effect from 1.8.81 in accordance with the Industrial Disputes Act. Those who had rendered less than one year of service on the date of retrenchment were not

given retrenchment compensation as they were not eligible for the same. Others were paid so along with notice pay and settlement wages. According to the applicants since they had been engaged prior to 1.1.81 and they had completed more than 360 days of service, they were entitled to temporary status and regular pay scales. They filed a Writ Petition No.5365 of 1981 before the High Court of Kerala. The Writ Petition was disposed of on 12.3.82 with a direction to the respondents that the petitioners should be considered for regular appointment to Class IV posts in accordance with the number of days of service put in by them. A decision was to be taken within a period of three months. The applicants were informed that they were junior to the juniormost Casual Labourer retained in service and thus they were not given re-employment and empanelment. The applicants moved the High Court of Kerala again in O.P No.8673 of 1982. The Writ Petition was disposed of by the High Court with the direction that the applicants may be absorbed in accordance with the scheme of decasualisation and absorption of Project casual workers as approved by the Supreme Court in Inderpal Yadav's case, ((1985) 2 SCC 648), keeping the relevant date for consideration as 1.1.81.

Before the High Court the counsel for the respondents indicated that the petitioners will be given the benefits of empanelment and absorption in terms of the formula as contained in the above decision in accordance with their seniority among retrenched casual employees. A copy of the

Supreme Court's judgment is at Annexure A-2. The grievance of the applicants, before us, is that in spite of the aforesaid judgment, the respondents have not taken any action to re-engage the applicants and empanel them despite several representations. They have indicated the instances of a number of casual workmen junior to them who have been retained in Trivandrum Division. The respondents have conceded that the Railway Board in compliance of the order of the Supreme Court in Inderpal Yadav's case, has introduced the scheme of granting temporary status to Project Casual Labourers who were in service as on 1.1.81. The Railway Board has not issued any order regarding reinstatement and absorption of Project Casual Labourers in regular Class IV service. They have stated that in compliance of the Railway Board's scheme issued by their letter dated 11.9.86 regarding grant of temporary status from 1.1.81, since the applicants were not in employment and the services rendered by them could not be verified as the original service cards had been handed over to them at the time of their retrenchment on 5.12.80 and 1.8.81, they could not be granted temporary status. They have, however, clarified that in compliance ^{of} ~~with~~ the directives of the Supreme Court, the names of the applicants retrenched from service from 1.8.81 have been included in the integrated combined seniority list of Project Casual Labourers of Trivandrum Division. The respondents have assured that the applicants will be considered for re-engagement, according to their turn, in the combined seniority list and granted

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temporary status immediately on re-engagement duly counting their previous service. They have further clarified that the thirty two Casual Labourers mentioned in the Original Application as junior to the applicants, but retained in service, belong to Madurai Division and not in Trivandrum Division, where the seniority of the applicants is maintained. They have indicated that after the Supreme Court's order dated 11.8.86 no new recruitment of Casual Labourer has been made.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The respondents have indicated that the names of the applicants who were retrenched on 1.8.81 have been included in the integrated seniority list of Project Casual Labourers of Trivandrum Division. However, they have expressed their helplessness in verifying their casual service, as the original service cards are in the possession of the applicants. The applicants also seem to be in the dark about their position in the combined seniority list which will be the determining factor for their re-engagement or granting of temporary status. We are also not able to appreciate the stand taken by the respondents that the question of grant of temporary status will be considered only on their re-engagement. In accordance with the scheme of the Railway Board as quoted and discussed in the judgment of the Supreme Court in Inderpal Yadav's case, "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 scheme also envisages that those who did not complete 360 days on 1.1.31, but would do so after that date would also be treated as temporary on completion of 360 days of service. Para 2501 of the Indian Railway Establishment Manual also states that Casual Labourer is treated as temporary after expiry of six months of continuous employment and he acquires temporary status. This means that the question of conferment or grant of temporary status does not arise. The Casual Labourer automatically acquires and is treated as one with temporary status automatically as soon as he completes a certain period of casual service. In L. Robert D'Souza v. the Executive Engineer, Southern Railway, 1982(I)SLR 864, in the matter of acquisition of temporary status prior to the termination of service, the Supreme Court observed as follows:-

" Had his service not been terminated, the Railway administration could not have denied him the status and this status he would have acquired long back. If by operation of law, to wit Rule 2501 the appellant had acquired the status of temporary railway servant by rendering continuous uninterrupted service for more than six months, his service could not have been terminated under rule 2505."

Thus it is clear that by efflux of ^{prescribed} time and operation of law the Casual Labourer acquires temporary status automatically even before termination of his service. Thus the question of grant of temporary status and that also after such a disengaged labour is re-engaged does not arise. In the facts and circumstances we allow this application to the extent of the directions as indicated below:-

- (a) The applicants are directed to make a representation within a period of one month from the date of communication of this order along with all necessary

evidence regarding their period of casual employment, to seek conferment of temporary status in accordance with the directions given by the Supreme Court in Inderpal Yadav's case. The respondents thereafter should dispose of the representations after taking into account the evidence produced by the applicants as also the records available with the respondents and pass suitable orders about conferment of temporary status within a period of three months from the date of receipt of the representations.

- (b) The respondents are directed to bring to the notice of the applicants within a period of one month from the date of communication of this order the seniority list as on 1.1.81 prepared in accordance with the directions of the Supreme Court and invite representations from the applicants within a period of one month thereafter. The representations, if any, against the integrated seniority list should be disposed of within a period of two months from the date of receipt of the representations.
- (c) Based on the seniority of the applicants, as determined through the disposal of their representations as directed in (b) above, the respondents are directed to give to the applicants notional dates of re-engagement reckoned by the dates of engagement of their immediate juniors. The applicants should be given all benefits of seniority, temporary status, absorption in the regular cadre and re-engagement and other consequential benefits but without arrears of pay on the basis of the dates of notional re-engagement. Action on the above lines should be completed within a period of three months from the date of disposal of the representations under (b) above.

4. There will be no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


7.9.89
(S.P. MUKERJI)
VICE CHAIRMAN