

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.144/87

1. P.Lakshmanan
2. S.Madaswamy
3. P.Arumugham
4. S.Mani
5. K.Velu
6. K.Sambasivan
7. C.Kasi
8. R.Duraipandi
9. M.Shanmugham
10. S.Mayandi
11. T.Kalimuthu
12. P.Panneerselvam
13. R.Murugan
14. L.Mayandi
15. S.Nainar
16. S.Azhukamuthu
17. R.Ganapathi
18. S.Esakeki
19. T.Natarajan
20. A.Mani
21. P.Thankavelu
22. A.Devadas
23. M.Chelladurai

.. Applicants

v.

1. The General Manager, Southern Railway, Madras.
2. Deputy Chief Engineer(Construction) Southern Railway, Palayamcottai
3. The Divisional Railway Manager, Southern Railway, Trivandrum.
4. The Executive Engineer(Construction) Southern Railway, Palayamcottai.

.. Respondents

M/s. K.Balachandran,
V.Ajitnarayanan

.. Counsel for
the applicants

Smt.Sumathi Dandapani

.. Counsel for
the respondents

O R D E R

Shri S.P Mukerji, Vice-Chairman

In this application dated 1st February, 1987
the twenty three applicants who have been working as
Project Casual Labourers in the Southern Railway, have

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prayed that they may be included in the seniority list of Project Casual Labourers of Trivandrum Division, re-engaged by the respondents and conferred temporary status. The brief facts of the case are as follows.

2. The applicants claim that they were engaged as Project Casual Labourers on various dates between 4.5.73 and 30.6.1980. The respondents however indicated that except for applicants 12 and 18, others were engaged as Project Casual Labourers in connection with the construction of a new broad gauge line from Tirunelveli to Trivandrum with a branch line from Nagarcoil to Kanayakumari. In respect of applicants No.12 and 18 the respondents do not appear to have the records available in the office, but their cases can be verified when the original service cards which are with the applicants are produced. According to the respondents the applicants were engaged from 11.2.1981 and all of them were retrenched on 1.8.81. Since none of them had completed six months of service, they were not entitled to any retrenchment compensation under the Industrial Disputes Act. The respondents however paid them settlement dues. On termination of their service, the applicants moved the High Court of Kerala in Writ Petition No.6894 of 1981-B which was disposed of by them by the judgment dated 8.8.85 with the direction that the Railwa Administration should confer on them the benefits of re-engagement or absorption in service in accordance with the directions of the Supreme Court in Inderpal Yadav's

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case (1985(2) SCC 648). In accordance with the directions of the Supreme Court, the Railway Board issued orders on 11.9.86 indicating the dates from which the Project Casual Labourers who have been in service as on 1.1.81, have to be treated as with temporary status. It was also decided to have Divisionwise seniority list of Project Casual Labourer based on the length of service. The grievance of the applicants' is that despite the judgment of the Supreme Court, that of the High Court and the scheme of decasualisation, the respondents have not taken up any action to empanel the applicants to confer temporary status and re-engagement. On the other hand, they have retained in service persons who joined later than the applicants. The respondents have stated that all the applicants except applicant Nos. 12 and 18, have been included in the integrated seniority list of Project Casual Labourers of Trivandrum Division which was published for information. The applicants will be considered for re-engagement according to their position in the seniority list and will be given temporary status only after such re-engagement. As regards the persons whose names have been indicated in the application as those junior to the applicants but retained, the respondents have stated that they have been retained in the Madurai Division and not the Trivandrum Division where the applicants are working.

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

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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 1.1.81 , 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 Labour 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

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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".

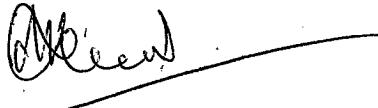
Thus it is clear that by efflux of time and operation of law the Casual Labourer acquires temporary status automatically even before termination of his service. Thus the question of grant of temporary status and that also after such a disengaged labour is re-engaged does not arise. In the facts and circumstances 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