

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

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

PRESENT

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI A.V. HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO. 232/87

P.Kumaresan .. Applicants
P.Ranganathan ..

v.

1. The Chief Engineer(Construction),
Southern Railway, Egmore, Madras-8.
2. The General Manager, Southern Railway,
Madras-3.
3. The Dy. Chief Engineer(Construction)
Southern Railway, Palayamcottai.
4. The Divisional Railway Manager,
Southern Railway, Trivandrum. .. Respondents

M/s.K.Balachandran & .. Counsel for the
V.Ajit Narayanan applicants

Smt.Sumathi Dandapani .. Counsel for the
respondents

ORDER

Shri S.P Mukerji, Vice-Chairman

In this application dated 23rd February, 1987 filed under Section 19 of the Administrative Tribunals Act, the two applicants who have been working as Project Casual Labourer in the Southern Railway have prayed that the respondents be directed to re-employ them and grant temporary status with all consequential benefits of back wages. The brief facts of the case are as follows.

2. The applicants were initially engaged as Casual Labourer Khalasi in June and August, 1978 in connection with the construction of a new broad gauge line from Thirunelveli to Trivandrum Central with a branch line from Nagercoil to Kanyakumari. On completion of these works,

the applicants along with other Casual Labourers working under various sub-ordinates were proposed to be progressively retrenched with effect from 5.1.82 on the basis of a decision taken by the respondents that those who were engaged on or after June, 1978, but before 31st August, 1978 should be discharged on 5.1.82. The applicants, however, were retained beyond that date on the basis of the interim order issued by the High Court in O.P No.121 of 1982.

After the Original Petition was disposed of by the High Court through their judgment dated 7.2.84, the two applicants were retrenched on 15.3.84 with all payments admissible under the Industrial Disputes Act. In the meantime a number of Project Casual Labourers approached the Supreme Court of India for grant of temporary status and the Supreme Court in their celebrated judgment in *Inderpal Yadav and others v. Union of India and others*, (1985) 2 SCC 648) modified the scheme of the Railway Board for decasualisation of Project Casual Labourer who had put in 360 days of continuous employment and directed that all those Project Casual Labourer who were in service as on 1st January, 1981 and have completed 360 days of continuous service should be given temporary status on the pattern of the scheme formulated by the Railway Board. The applicants moved the High Court of Kerala in O.P No.8454 of 1985 R seeking direction to the respondents to re-engage the petitioners in service with all consequential benefits in accordance with the judgment of the Supreme Court in

Inderpal Yadav's case. The High Court of Kerala allowed the petition on the basis of an assurance given by the Railway Administration that the petitioners' cases will be considered in the light of the Supreme Court's decision. The applicants' case is that they had completed 360 days of service as on 1.1.81 and they are entitled to be treated as on temporary status with effect from that date. Since the respondents did not take any action, but continued to retain persons junior to them, they moved the Tribunal with this application.

3. According to the respondents, both the applicants were included in the combined integrated seniority list for the Project Casual Labourers in the Engineering Department of Trivandrum Division on the basis of the number of days of service put in by them. They have assured that they will be considered for re-engagement according to their position in the seniority list and that conferment of temporary status can be given after re-engagement. They have clarified that the persons named by the applicants as junior to them and retained in service belong to Madurai and not Trivandrum Division.

4. 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 have been included in the integrated seniority list of Project Casual Labourers of Trivandrum Division.

The applicants seem to be in the dark about their position in the combined seniority list and do not seem to have been given any opportunity to verify the number of days put in by them, on the basis of which their seniority has been determined. 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 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} 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.

5. There will be no order as to costs.



(A.V. HARIDASAN)
JUDICIAL MEMBER



(S.P. MUKERJI)
VICE CHAIRMAN

n.i.i.