IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 487/93. Dt. of Decision : 23.5.94.

Divisional Railway Manager (BG)
SC Rly, Sec'bad.

2. Permanent Way Inspector (Con)
SC Rly, Sec'bad.

3. Chief Signal Inspector,
Signal & Telecommunication Dept.
SC Rly, Sec'bad. .. Applicants

Vs

1. Shri L. Sathyam S/o. Narayana
YKC, Engineering workshops,
Lallaguda, SC Rly,
SEC'BAD - 500 017.

2. Presiding Officer, Labour Court,
Narayanaguda, Andhra Pradesh,
Hyderabad. .. Respondents.

Counsel for the Applicants : Mr. G. Bikshapathy

Counsel for the Respondents : Mr. N.R.Devaraj, Sr.CGSC.

CORAM:

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

THE HON'BLE SHRI T. CHANDRASEKHARA REDDY : MEMBER (JUDL.)

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6. On the question of jurisdiction of the Labour Court, the Applicants questioned the same even in their counters filed in the OMPs before the Labour Court. It was contended that the relief claimed by the Petitioners in the OMPs was not based on any right vested in them and that the Labour Court could not adjudicate claims by undertaking the task of interpreting rules or regulations for determining the existence of the right to such claims. The learned Presiding Officer, having noted the objection taken to his jurisdiction, merely left it at that without either examining the objection or giving a decision thereon. Of course, the Labour Court's jurisdiction could not be ousted by a mere plea denying the workers' claim to computation of benefits in terms of money, but the Labour Court had to go into the question and determine whether on the facts it had jurisdiction to make the computation.

7. Now that the question of jurisdiction of the Labour Court has again been raised before us, validity of the impugned order of the Labour Court, we may examine it in the light of the facts and the relevant case law.

8. It is now well settled, through a catena of judgements, that the Labour Court gets jurisdiction under section 33(c)(2) of the Industrial Disputes Act only to decide disputes regarding monetary claims based on "existing rights". The Labour Court has no jurisdiction to adjudicate a claim petition when the petitioner has got no "existing right". In C.I.W.T. Corporation Ltd., Vs. The Workmen and another, AIR 1974 SC 1604, it was he

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temporary status having continuously worked for more than 6 months. Each of them claimed a specific amount, being the differential between the entitlement under the regular scale of pay and the daily wages actually paid. All the CMPs were allowed by the impugned order of the Presiding Officer, Labour Court, Hyderabad. Aggrieved by the same, the Divisional Railway Manager, South Central Railway and others who were Respondents in the CMPs have filed the present applications.

4. The challenge to the impugned order rests mainly on two grounds. Firstly, it is the contention of the Applicants that the Labour Court had no jurisdiction to entertain a claim for grant of temporary status from a particular date and to grant the consequent relief of payment of difference in wages, in a petition under section 33(c)(2) of the Industrial Disputes Act, 1947. The second issue raised by the Applicants is that all the Petitioners were "Project Casual Labourers" at the relevant time and that the Labour Court did not take this aspect into consideration. Under the rules, as applicable at that time, Project Casual Labourer was not entitled to temporary status, irrespective of the length of service as such Casual Labourer. The Applicants thus contend that the Labour Court ought not [illegible] relied upon paras 2501 and 2511 of the Indian Establishment Railway Manual (I.R.E.M. for short) in deciding the claims of the Respondents.

5. Heard Shri N.R.Devaraj, learned Senior Standing Counsel for the Applicants and Shri G.Bikshapathy, learned Counsel for all the Respondents.

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(ii) Labour on projects, irrespective of duration, except those transferred from other temporary or permanent employment.

(iii) Seasonal labour who are sanctioned for specific works of less than six months duration. If such labour is shifted from one work to another of the same type, e.g., relaying and the total continuous period of such work at any one time is more than six months' duration, they should be treated as temporary after the expiry of six months of continuous employment. For the purpose of determining the eligibility of labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers.

NOTE.1. A project should be taken as construction of new lines, major Bridges, restoration of dismantled lines and other major important open line works like doubling, widening of tunnels etc., which are completed within a definite time-limit. The General Manager/Heads of the Departments concerned, in consultation with the F.A. & C.A.O. will decide whether a particular open line work is a 'Project' or not. In deciding whether a particular open line work should be treated as a 'Project' or not the test to be applied will be running of the railway, as distinct from day provision of large-scale additional facilities to improve the carrying capacity of the railway.

2. Once any individual acquires temporary status, after fulfilling the conditions indicated in (i) or (ii) above, he retains that status so long as he is in continuous employment on the railways. In other words, even if he is transferred by the administration to work of a different nature he does not lose his temporary status.

3. Labour employed against regular vacancies whether permanent or temporary shall not be employed on casual labour terms. Casual labour should not be employed for work on construction of wagons and similar other work of a regular nature.

4. Casual labour should not be deliberately discharged with a view to causing an artificial break in their service and thus prevent their attaining the temporary status.

5. The term "same type of work" should not be too rigidly interpretted so as to cause undue suffering to casual labour by way of break in service

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that in a suit where a claim is made by a plaintiff against a defendant, the questions for determination would be (i) plaintiff's right to relief, (ii) the corresponding liability of the defendant, including whether the defendant is at all liable or not, and (iii) the exte of the defendant's liability, if any. It was held that determination of (i) and (ii) is the function of the Industrial Court and not the Labour Court under section 33(c)(2) since a proceeding under that section is in the nature of an execution proceeding. The Supreme Court held that the dispute between the Corporation and the Workmen required further investigation which was beyond the scope of an application under section 33(c)(2).

9. A perusal of the impugned order would clearly show that the Labour Court proceeded on the premise that Para 2501 of the I.R.E.M. read with Para 2511 thereof created a right in favour of the casual worker to claim temporary status and attendant privileges after having [illegible] continuously for a period of 6 months. Paras 2501 and 2511 of the I.R.E.M. (Second Edition) read as under:-

2501. Definition:-

(a) Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour.

(b) The casual labour on railways should be employed only in the following types of cases, namely:-

(i) Staff paid from contingencies except those retained for more than six months continuously: Such of those persons who continue to do the same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of the six months of continuous employment.

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(c) It is not necessary to create temporary posts to accommodate casual labourers who acquire temporary status for the conferment of attendant benefits like regular scales of pay, increments etc. Service prior to absorption against a regular temporary/permanent post after requisite selection will, however, not constitute as qualifying service for peasionary benefits.

NOTE:-In cases where casual labour had actually been brought over to the regular prescribed/authorised scales of pay prior to 22nd August, 1962 on fulfilling the requisite conditions, the periods during which they drew pay in the regular scales be taken into account for the purpose of granting increments, even if they cannot be shown against regular posts prior to 22nd August, 1962.

10. The Labour Court read the above provisions to mean that all the petitioners before it would acquire temporary status after working continuously for 6 months and on acquiring the temporary status would be eligible for wages in the regular scale of pay. In other words, the Labour Court proceeded on the assumption that the petitioners before it were vested with the right to claim emoluments in the scale of pay of Rs.70-85 instead of daily wages @ Rs.1-75 per day, if they had continuously worked for 6 months. So, it examined essentially the question whether the petitioners did work for 6 months or not. This has to be kept in view while deciding the question of jurisdiction of the Labour Court.

11. In Union of India Vs. K.Bhavanarayana, 1994(1) SLJ CAT 352, it was observed as under:-

"It has to be noted that the scope of section33(c)(2) of the Industrial Disputes Act is limited. In an application under section 33(c)(2) the Court has to ascertain the amount payable in pursuance of any order of the Court/ Tribunal/authority or the amount due in accordance with any rule. <u>For ascertaining the amount due, it is open to the Labour Court to interpret the relevant order or the rule</u>" (emphasis added).

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because of a slight change in the type of work in the same unit. The various types of work to be considered as same type of work may be grouped as under:-

(1) Track renewals and linking - Ballasting, re-sleepering, relaying etc.

(2) Masonry and Concrete work - Work on buildings, bridges, quarters, platforms etc.

(3) Steel work - Erection of bridge girders, sheds, shelters etc.

(4) Earthwork - Foundations, banks, platforms etc.

(5) Fitting, smithy, carpentry and such other artisan work and helpers.

(6) All work performed by the unskilled casual labourers working under the same I.O.W., P.W.I. and Bridge Inspector etc. should be treated as the same type of work.

(7) Casual labourers should not be employed/retained in service beyond the age of 58 years.

(iv) On the open lines the trolleymen should not be casual labourers.

2511. Rights and Privileges admissible to Casual Labour who are treated as temporary after completion of six months' continuous service:-

(a) Casual labour treated as temporary are entitled to all the rights and privileges admissible to temporary railway servants as laid down in Chapter XXIII of the Indian Railway Establishment Manual. The rights and privileges admissible to such labour also include the benefits of the Discipline and Appeal Rules. Their service, prior to the date of completion of six months' continuous service will not, however, count for any purposes like reckoning of retirement benefits, seniority etc. Such casual labourers will, also, be allowed to carry forward the leave at their credit to the new post on absorption in regular service.

(b) Such casual labour who acquire temporary status, will not, however, be brought on to the permanent establishment unless they are selected through regular Selection Boards for Class IV staff. They will have a prior claim over others to permanent recruitment and they will be considered for regular employment without having to go through employment exchanges. Such of them who join as Casual Labourers before attaining the age of 25 years may be allowed relaxation of the maximum age limit prescribed for Class IV posts to the extent of their total service which may be either continuous or in broken periods.

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the petitioners in the CMPs were all casual labour working on projects. The very fact that they were engaged by the Permanent Way Inspector (Construction) and the Chief Signal Inspector (Construction) of the Signal & Telecommunication Department would show that they belonged to the 'Construction' organisation and were hence 'project' labourers. Para 2501(b)(ii) makes it clear that "labour on projects, irrespective of duration" would remain as casual labour only. The benefit of temporary status under Para 2501(b)(i) is limited to casual labour "paid from contingencies" only. No record has been shown in support of the assertion that all the workmen in these cases were engaged on projects. The explanation of the Railways is that the matter related to 1962-1972 and the relevant records, as per extant instructions, were not preserved.

15. As regards Project Casual Labour, Railway Board's letter No.PC.72/RLT/69-3 dt. 12.6.74 shows that the Government accepted the recommendation of the Railway Tribunal, 1969 and decided that w.e.f. 1.6.74, casual labour employed on Railway Projects will be paid on completion of 6 months continuous service 1/30th of the appropriate pay scale, i.e., the minimum of the appropria revised scale plus dearness allowance. It was, however, clarified that such project casual labour will not acquir the status of temporary servant. As regards granting the benefit of temporary status, Shri N.R.Devaraj urged that the issue was decided, for the first time, when the Railway Board introduced a scheme in 1984 which was

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12. From what has been stated above, it would be apparent that the Labour Court, based on its interpretation of Para 2501 of the I.R.E.M. proceeded on the assumption that a Casual Labourer acquired the right to temporary status on completion of 6 months continuous working and also the right to claim the privileges of a temporary servant, including salary on a regular scale of pay. The interpretation pertained to the incidental question whether the petitioners were Project Labourers and, if so, whether Project Labour too would be entitled to grant of temporary status as is the case with Casual Labour paid from contingencies, referred to in clause (b)(i) of Para 2501 of the I.R.E.M. Whether the interpretation of the relevant rule by the Labour Court is correct or not is a different question, but while determining the question of jurisdiction, so long it is clear that the Labour Court did not proceed to create any fresh right to the worker to claim the relief nor did it presume such a right de hors any rule or order, we must hold that it did not proceed without jurisdiction.

13. That brings us to the next question, viz: does Para 2501 of the I.R.E.M. provide for the grant of temporary status to a 'Project Labour'. Much has been said, quite appropriately, by both the sides on the question whether the petitioners were 'project labour' and, if so, whether they could still claim the benefit under Para 2501 of the I.R.E.M.

14. Shri N.R.Devaraj, learned counsel for the Applicants urged that the Railway administration had been asserting from the very beginning, as would be evident from the counters filed by them before the Labour Court, that

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19. The petitioners adduced in evidence before the Labour Court their Service Cards (Casual Labour Cards) but these do not reflect the nature of engagement, whether on project or on open line maintenance. None of the witnesses examined for the petitioners before the Labour Court were cross-examined this aspect. It was only in the version of the two witnesses examined for the management that we find the assertion that the petitioners were project casual labourers.

20. Adverting to Para 2501 of the I.R.E.M., Note 1 thereof clarifies that a 'project' should be taken as construction [illegible] open line works which are completed within a definite time-limit. The General Manager/Head of the Department is required to decide, in consultation with the F.A. & C.A.O., whether a particular open line work is a 'project'. Similarly, Establishment Serial Circular No.97/75 states, inter alia, as follows:-

2. Taking into account the instructions given in the note to para 2501 of the Establishment Manual and Rly. Board's instructions in the matter the following broad guidelines are given in regard to the definition of project and Non-project works.

2.1 All the works carried out by construction organisation and by the open line organisation which have an element of improving the carrying capacity like doubling, widening of Tunnels, additional yard facilities, strengthening of track, strengthening of Girders, providing sophisticated signalling arrangements etc., will be classified as 'Project works'. If through Track Renewals include replacement of light sections of Rails by a heavier section increasing sensity of sleepers or provision of additional depth of ballast etc., these should be treated as works leading to improvement in the carrying capacity of the Railway and rest of the works which are required purely for day to day running of the trains e.g., renewal of track other than those mentioned above, replacement of worn out signalling etc., should be classified as 'Non-project works'. In order to avoid confusion in this regard the estimates hereafter prepared by the construction and the open line organisation should examine this aspect in terms of para 2501 IREM and Rly. Board's instructions in the matter and necessary

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approved finally by the Supreme Court while deciding the illustrious case of Inder Pal Yadav & Ors. Vs. Union of India & Ors. 1985(2) SLJ 58 (SC). As modified by the Hon'ble Supreme Court, the scheme was to be effective from 1.1.1981. Prior to the introduction of the scheme by the Railway Board, a project casual labour was not entitled to gain temporary status irrespective of his length of service and this is as stated in Para 2501(b)(ii) of the I.R.E.M.

16. From what has been stated in the preceding paragraph, there cannot be any doubt as to the entitlements of casual labour engaged on projects. If all the petitioners were indeed ~~xxx~~ project casual labourers, then they would be entitled to 1/30th of the pay scale w.e.f. 1.6.74 and grant of temporary status w.e.f. 1.1.1981. The Railway administration asserts that the said benefits have been given to all the petitioners.

17. The last but ~~one~~ [illegible] is whether all the petitioners were/are project labourers as alleged by the Applicants. If so, it would be evident that they would not be entitled to be paid the various amounts as directed by the Labour Court in the impugned order.

18. As already observed, there is no official record made available to shew that the petitioners were all engaged on projects during the relevant time, as the records were not required to be preserved beyond 10 years. It was only on the ground that the petitioners were all engaged in the Construction organisation, it was contended that they could only be project casual labour. No order or instruction has been brought to our notice in support of such contention.

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construction unit as project. Relevant portion of the judgement is reporduced below:-

19. To start with, let us recall the Rule 2501(b)(i) and (iii) and note below Rule 2505. The underlying intendment of the provision is that a casual labourer who has rendered six months' continuous service would be placed in the categ[illegible] of temporary railway servant unless he is employed on wo[illegible] charged project.

20. Rule 2501(b)(i) clearly provides that even where staff is paid from contingencies, they would acquire the status of temporary railway servants after expiry of six months of continuous employment. But reliance was placed on Rule 2501(b)(ii) which provides that labour on projects, irrespective of duration, except those transferred from other temporary or permanent employment would be treated as casual labour. In order to bring the case within the ambit of this provision it must be shown that for 20 years appellant was employed on projects. Every construction work does not imply project. Project is correlated to planned projects in which the workman is treated as by the Executive Instructions dated September 5, 1966, is the staff as belonging to construction unit. It is to doing violence to language to treat the construction unit as project. Expression 'project' is very well known in a planned development.

23. The above decision of the Supreme Court would make it clear that it will be unsafe if we come to the conclusion that merely because the petitioners were working in the construction organisation they had to be treated as casual labour working on projects.

24. Shri G.Bikshapathy urged that a bald statement from the Railways that the petitioners were project casual labourers should not be accepted in the absence of clear proof to that effect. In support of his contention he has drawn our attention to a judgement of the Calcutta Bench of the Tribunal in Sukumar Ray & Ors. Vs. Union of India & Ors. 1991(18) ATC 284. In that case also the Applicants were casual labourers engaged in the construction wing (of the South Eastern Railway) between 1963-73.

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endorsement made signifying whether a work is 'Project' or 'Non-project' work in consultation with associate finance. To facilitate the above, it is desirable that each department makes out a list of various types of works which are to be classified as 'Projects' and notify the same in consultation with the finance branch.

3. It need not be over emphasised that in view of the above instructions and the financial implicati s involved, engagement of casual labour shouldre ive very careful attention at all levels.

21. The aforesaid circular makes it rather abundantly clear that in both construction organisation and the open line organisation, certain major works of construction only are to be classified as 'Projects'. The rest of the works are to be classified as 'Non-project works'. Each Department is thus required to mark its projects and notify the same. This circular leaves no room for doubt that each and every work in the construction organisation cannot automatically be labelled as project work. It cannot therefore be accepted as an undisputed fact that every casual labourer engaged in the construction organisation is ipso facto a project casual labourer.

22. The question whether every casual worker in the construction organisation is a project labourer came up for consideration before the Hon'ble Supreme Court in L.Robert D'Souza Vs. Executive Engineer, Southern Railway & Another, AIR 1982 SC 854. After examining rival contentions the Supreme Court categorically held that every construction work does not imply project and that it will be doing violence to language to treat the

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and conclusively establish that all the petitioners were indeed project labourers at the relevant time. In this view of the matter, the learned Presiding Officer of the Labour Court rightly applied the provisions of paras 2501 and 2511 of the I.R.E.M. in coming to the conclusion that the Applicants would be entiled to temporary status on completion of 180 days of continuous service. Consequently we must hold that the judgement of the learned Presiding Officer of the Labour Court suffered from no such defect or illegality as would call for our interference.

26. In the result, all the 141 O.As are dismissed as being without merit. No order as to costs.

(T.Chandrasekhar Reddy)
Member(J).

(A.B.Gorthi)
Member(A).

Dated: 23 May ~~April~~, 1994.

Deputy Registrar(Judl.)

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