CASE NO.:
Appeal (civil) 4552 of 2006

PETITIONER:
Union of India & Ors

RESPONDENT:
Jummasha Diwan

DATE OF JUDGMENT: 19/10/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
[Arising out of SLP (Civil) No. 7337 of 2006]

S.B. SINHA, J :

Leave granted.

Respondent was appointed as a daily wager in the Railway Electrification Project at Vadodara Ratlam section. He was granted a temporary status. He is said to have joined the Railway Electrification Project as a skilled worker under the Divisional Electrical Engineer, Western Railway (Overhead Equipment) Railway Electrification Railway Yard, Pratapnagar, Baroda, Appellant No. 3 herein. He was retrenched purportedly on the premise that railway electrification works at Vadodara Ratlam section came to an end. He was paid retrenchment compensation in terms of Section 25-F of the Industrial Disputes Act, 1947 (for short "the Act").

He filed an original application before the Central Administrative Tribunal (Tribunal) questioning the purported retrenchment on the ground that he having put in 1060 days of continuous service should have been placed much higher in the seniority list and, thus, could not have been retrenched having regard to the principle of "last come first go". It was also contended that while passing an order of retrenchment, the provisions of Section 25-N of the Act was not complied with.

The Tribunal dismissed the said original application. A writ petition came to be filed wherein the same pleas were raised by Respondent herein. Invoking Section 25-N of the Act, the impugned judgment has been passed setting aside the order of termination and directing reinstatement of Respondent.

Mr. R. Mohan, learned Additional Solicitor General appearing on behalf of Appellants inter alia submitted that the provisions of Section 25-N of the Act will have no application to the facts and circumstances of the case.

Mr. S.C. Patel, learned counsel appearing on behalf of Respondent, on the other hand, submitted that Respondent having put in 1060 days of continuous service, the order of retrenchment was vitiated in law. It had been pointed out that different benches of the Central Administrative Tribunal on almost identical issues had taken different views and in that view of the matter, the impugned judgment should not be interfered with.

Respondent indisputably had started working under Appellant No. 3 1986. His services had been terminated inter alia on the premise that the electrification project had come to a close. If the services of a project employee is terminated, it is trite that statutory requirements of Section 25-F

of the Act are required to be complied with, but, indisputably, Respondent was given one month's notice pay as also the retrenchment compensation in compliance thereof.

His name might not have appeared in the seniority list of the casual labourers which was being maintained but the question, as to whether he had been in continuous service in all the departments he had served, was a disputed one. There are several establishments of the Railway Administration. If a workman voluntarily gives up his job in one of the establishments and joins another, the same would not amount to his being in continuous service. When a casual employee is employed in different establishments, maybe under the same employer, e.g., the Railway Administration of India as a whole, having different administrative set up, different requirements and different projects, the concept of continuous service cannot be applied and it cannot be said that even in such a situation he would be entitled to a higher status being in continuous service. It is not in dispute that the establishment of Appellant No. 3 herein had started a project. His recruitment in the said establishment would, therefore, constitute a fresh employment. In a case of this nature, Respondent would not be entitled to his seniority. If the project came to a close, the requirements of Section 25-N of the Act were not required to be complied with.

Lal Mohammad and Others v. Indian Railway Construction Co. Ltd. and Another [(1999) 1 SCC 596], whereupon reliance has been placed by the High Court, cannot have any application in the instant case. The Tribunal in its order categorically opined that his employment was not in an 'industrial establishment' which would come inter alia within the purview of the definition of a factory as contained in clause (m) of section 2 of the Factories Act.

Our attention has been drawn to a decision of this Court in Oswal Agro Furane Ltd. and Another v. Oswal Agro Furane Workers Union and Others [(2005) 3 SCC 224]. In the said decision, this Court was concerned with closure of an industrial establishment engaging more than 1000 people. In the aforementioned fact situation obtaining therein, this Court held that the consent of State Government before effecting closure of such establishment was mandatory.

For the reasons aforementioned, we are of the opinion that the impugned judgment cannot be sustained which is set aside accordingly. This appeal is allowed. No costs.