

PETITIONER:
RAM KUMAR & ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 02/12/1987

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
OZA, G.L. (J)

CITATION:
1987 SCALE (2) 1192

ACT:

Indian Railway Establishment Manual-Para 2511-Casual labour employed by Railway Administration-Engaged on construction and open line-Whether entitled to same pay-Regularisation and grant of temporary status to casual labour-Necessity for-Effective implementation of provisions for protection of casual labour-Emphasised-Retiral benefits-Admissibility of.

HEADNOTE:
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The petitioners, who were engaged on terms of casual labour for periods varying between 10 and 16 years in the Construction Department of the Signal Unit in the Northern Railway, filed writ petitions in this Court alleging that though they had put in continuous service for quite a long period, the Railway Administration-the respondent, had not treated them as temporary servants and had applied discriminatory rates of wages, and prayed for a direction to treat them at par with maintenance workers, and to declare that they were entitled to equal pay for equal work and absorption in the regular cadre in The permanent category as per the circulars issued by the respondents.

The respondents in their counter affidavits contested the claim of the petitioners contending that out of the forty four petitioners, sixteen had been empanelled, five of whom had been given temporary appointments, eleven had refused to join and seventeen had been given temporary status, and that by the Railway Board's directions on January 1, 1984, project casual labourers were now entitled to all privileges that were applicable to open line temporary railway servants, that temporary status will first be given in the cadre of Khallasis and then promotion to skilled category, after conducting trade test, and that the employees in the open line acquired temporary status on completion of 120 days of service whereas such status was acquired by the casual labour in project work on completion of 360 days as formulated under orders of this Court.

Disposing of the writ petitions,

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HELD: Casual labour seems to be the requirement of the Railway
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administration and cannot be avoided. The Railway Establishment A Manual has made provisions for their protection, but implementation is not effected. Several instructions were issued by the Railway Board and the Northern Railway Headquarters to remove the difficulties faced by the casual labour but there is slackness in enforcing them. This Court hopes and trusts that such an unfortunate situation will not arise again and in the event of any such allegation coming to the Court, the Administration will have to be blamed. [144F-G]

No doubt, the petitioners have put in more than 360 days of service. But keeping the prevailing practice, distinction between the casual labour employed in the open line, and in the project line cannot be obliterated. [141D-F]

The Railway Administration should take prompt steps to screen such of the petitioners who have not yet been tested for the purpose of regularising their services. [144C]

The respondents are directed to consider the claims of the petitioners promptly and make appropriate orders for their regularisation. [144D-E]

The petitioners are entitled to the same pay as is admissible to others, either in the project or in the open line. Retiral benefit of pension is not admissible. [144D,B]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition Nos. 15863-15906 of 1984.

(Under Article 32 of the Constitution of India)

D.N. Goburdhan, D. Goburdhan, Ms. Gita Luthra and Ms. Pinky Anand for the Petitioners.

G. Ramaswamy, Additional Solicitor General, Kuldeep Singh, Additional Solicitor General, C. Ramesh and Mrs. Sushma Suri for the Respondents. G

The Judgment of the Court was delivered by

RANGANATH MISRA, J. The petitioner in each of these applications under Article 32 of the Constitution is a workman engaged on terms of casual labour for periods varying between 10

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and 16 years in the Construction Department of the Signal Unit in the Northern Railway. All the writ petitions having disposed of by a common judgment as questions of law and fact involved therein are similar.

The petitioners alleged that notwithstanding the fact that each of them has put in continuous service for quite a long period, the Railway Administration, respondent herein, has not treated them as temporary servants and has applied discriminatory rates of wages. They have asked for a direction to treat the petitioners at par with maintenance workers and to declare that they are entitled to equal pay for equal work and have asked for their absorption in the regular cadre in the permanent category as per the circulars issued by the respondents. A number of documents and circulars issued by the Administration have been produced in support of their claim.

The Senior Signal & Telecom Engineer (Power Signalling) has filed a counter-affidavit on behalf of the respondents challenging the claim of the petitioners. According to the respondents five out of the forty-four petitioners in this group of writ petitions had undergone medical examination and were granted temporary status as Khallasis. One of them has been directed to be absorbed against a permanent vacancy

in the open line; five others have refused to go to the open line for permanent absorption. He further averred that though prior to the issue of the Railway Board's directions on January 1, 1984, project casual labourers were not entitled to all the privileges like House Rent Allowance, City Compensatory Allowance, Casual Leave, increment etc., they are now entitled to all the privileges as applicable to open line temporary railway servants after attaining temporary status. In Paragraph 23 of the counter-affidavit, it has been specifically pleaded that as per the extant rules, temporary status will first be given in the cadre of Khallasi and then promotion to skilled category after conducting the trade-test is admissible. A further detailed counter-affidavit has again been filed by another Senior Signal & Telecom Engineer, wherein along with the affidavit particulars of service of each of the petitioners has been provided. Petitioners have filed a Rejoinder.

At the hearing of the applications, counsel for the petitioners as also the learned Additional Solicitor General were given full opportunity of placing their arguments and documents. In addition, they have also furnished written submissions.

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It is stated on behalf of the Administration that out of fortyfour petitioners sixteen have now been empanelled and of them five have been given temporary appointments; eleven are said to have refused to join and seventeen are still continuing with temporary status. Learned Additional Solicitor General states that petitioners are project employees and do not belong to the open line. According to him- employees in the open line acquire temporary status on completion of 120 days of service as against 180 days which was the previous requirement. That status is acquired on completion of 360 days by casual labour in Project Works as provided in the scheme formulated under orders of this Court, though such status were acquirable by project casual labourers on completion of 180 days of continuous employment previously. Learned counsel for the respondents has placed reliance on the definition of 'Project' which means: "a project should be taken as construction of new lines, major projects, restoration of dismantled lines and major important open line works, line doubling, widening of tunnels etc. which are completed within a definite time limit".

Admittedly the petitioners have put in more than 360 days of service. Though counsel for the petitioners had pointed out that the Administration was requiring continuous service for purpose of eligibility, learned Additional Solicitor General on instructions obtained from the Railway officers present in Court during arguments has clarified that continuity is not insisted upon and though there is break in such continuity the previous service is also taken into account. Learned Additional Solicitor General has made a categorical statement before us that once temporary status is acquired, casual employees of both categories stand at par. Keeping the prevailing practice in the Railways in view, it is difficult for us to obliterate the distinction between the two categories of employees till temporary status is acquired.

With the acquisition of temporary status the casual labourers are entitled to:

- (1) Termination of service and period of notice (subject to the provisions of the Industrial Disputes Act, 1947).
- (2) Scales of pay.

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- (3) Compensatory and local allowances.
 - (4) Medical attendance
 - (5) Leave rules.
 - (6) Provident Fund and terminal gratuity.
 - (7) Allotment of railway accommodation and recovery of rent.
 - (8) Railway passes.
 - (9) Advances.
 - (10) Any other benefit specifically authorised by the Ministry of Railways.

It is not disputed that the benefit of Discipline and Appeal Rules is also applicable to casual labour with temporary status. It is also conceded that on eventual absorption in regular employment half the service rendered with temporary status is counted as qualifying service for pensionary benefits.

In the Signal and Telecom Construction organisation under which the petitioners are working, according to the Railway Administration further privileges of being regularised in permanent service is afforded by giving them access to their regularisation against permanent vacancies which mostly occur in open line. For such purpose, casual labour in open line as well as willing project casual labour are combined for the purpose of screening and forming of panel on the basis of seniority depending upon the days of work put in. In view of the submission, learned counsel for the respondents has pleaded that the allegation of discrimination does not exist.

Disputes arising out of termination of employment and inter se seniority came before this Court in the Writ Petition No. 147 of 1983 (Inderpal Yadav & Ors v. Union of India). This Court changed the existing prevalent practice for reckoning seniority and directed that seniority of project casual labourers should be combined and prepared departmentwise and categorywise and in terms of the directions of this Court, steps have been taken. It has been further contended that by the time these writ petitions were filed, the Railway Board's order of 1st of June, 1984, had not been given but with those directions now holding the field, the ambit of grievances has been very much reduced. Learned Additional Solicitor General has gone

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to the extent of even saying that nothing survives in the writ petitions.

What exactly are the benefits admissible to temporary railway servants have, however, been seriously debated.

Paragraph 2511 of the Indian Railway Establishment Manual provides:-

- (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.

- (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 the absorption against a regular temporary/permanent post after requisite selection will, however not constitute as qualifying service for pensionary benefits."

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It is the stand of the learned Additional Solicitor General that no pensionary benefits are admissible even to temporary railway servants and, therefore, that retiral advantage is not available to casual labour acquiring temporary status. We have been shown the different provisions in the Railway Establishment Manual as also the different orders and directions issued by the Administration. We agree with the learned Additional Solicitor General that retiral benefit of pension is not admissible to either category of employees.

As already stated, sixteen out of the forty-four petitioners have already been empanelled and eleven seem to have joined, while seventeen are continuing on temporary status. We expect the Railway Administration to take prompt steps to screen such of the petitioners who have not yet been tested for the purpose of regularising their service.

Learned Additional Solicitor General specifically accepted the position that the petitioners should be entitled to the same pay as is 1) admissible to others either in the project or in the open line. That would take away inequality which is main grievance of the petitioners. The respondents shall have a direction to consider the claims of each of the petitioners promptly and make appropriate orders for their regularisation.

For over ten years, litigations of this type have been coming to the Court. About three years back, this Court directed a scheme for absorption in Yadav's case which has been framed and is operative. Casual labour seems to be the requirement of the Railway Administration and cannot be avoided. The Railway Establishment Manual has made provisions for their protection but implementation is not P effective. Several instructions issued by the Railway Board and the Northern Railway Headquarters were placed before us to show that the Administration is anxious to take appropriate steps to remove the difficulties faced by the casual labour but there is perhaps slackness in enforcing them. We hope and trust that such an unfortunate situation will not arise again and in the event any such allegation coming to the Court, obviously the Administration will have to be blamed.

The writ petitions are disposed of with the directions

indicated above without any order for costs.

N.P.V.

Petitions disposed of.

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JUDIS