

INDER PAL YADAV AND ORS. ETC.

v.

UNION OF INDIA AND ORS ETC.

April 18, 1985

[D. A. DESAI AND RANGANATH MISRA, JJ.]

Constitution of India, Art. 41 and 42—Right to work—Casual labour employed on project for a number of years—Services of casual labour terminated on completion of Project—Scheme framed subsequently for casual labour—Validity of—Guidelines for implementation of Scheme—S.25 G, I.D. Act and Art. 14 of the Constitution.

The petitioners-workmen styled as 'Project Casual Labour' in these writ petitions and special leave petitions contended that even though they had put in continuous service for years, their services were terminated on the ground that the project on which they were employed has been wound up on its completion and their services were no more needed. After the conclusion of the hearing in some of the matters, the Railway Ministry framed a scheme to find a just and humane solution affecting the livelihood of the petitioners. It provided that casual labour employed on projects may be treated as temporary on completion of 360 days of continuous employment.

Disposing of the petitions,

HELD: 1. (i) By and large the scheme certainly is an improvement on the present situation though not wholly satisfactory. However the Railway being the biggest employer and having regard to the nature of its work, it would have to engage casual labour and therefore, as a preliminary step towards realisation of the ideal enshrined in Articles 41 and 42, this Court proposes to put its stamp of approval on the scheme with one major variation which is herein set out.

[841D]

1. (ii) The scheme envisages that it would be applicable to casual labour on projects who were in service as on January 1, 1984. The choice of this date does not commend, for it is likely to introduce an invidious distinction between similarly situated persons and expose some workmen to arbitrary discrimination flowing from fortuitous court's order, since, in some matters, the court granted interim stay before the workmen could be retrenched while some other were not so fortunate. Those in respect of whom the court granted interim relief by stay/suspension of the order of retrenchment, they would be treated in service on 1. 1. 1984 while others who fail to obtain interim relief though similarly situated

A would be pushed down in the implementation of the scheme. Therefore, those who could not come to the Court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment. Keeping in view all the aspects of the matter, the Court modifies part 5.1 (a) (i) of the scheme by modifying the date from 1.1.1984 to 1.1.1981. With this modification and consequent rescheduling in absorption from that date onward, the scheme framed by Railway Ministry is accepted and a direction is given that it must be implemented by re-casting the stages consistent with the change in the date as herein directed. [841E-G; 842B-C]

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C (2) To avoid violation of Art. 14, the scientific and equitable way of implementing the scheme is for the Railway administration to prepare, a list of project casual labour with reference to each division of each railway and then start absorbing those with the longest service. If in the process any adjustments are necessary, the same must be done. In giving this direction, the court is considerably influenced by the statutory recognition of the principle of last come first go or to reverse it first come last go as enunciated in s.25G of the Industrial Disputes Act, 1947. [842D-F]

D ORIGINAL JURISDICTION : Writ Petitions Nos. 147, 320-69, 459, 4335-4434/85 etc.
(Under Article 32 of the Constitution).

E For the Appearing Parties : *B. Datta, Rishi Kesh, M.K. Ramamurti MA. Krishnamurty, Anis Suhrawardy, M.S. Gujaral, S.C. Maheshwari, P.P. Singh, C.V. Subba Rao, R.N. Poddar, C.P. Pardey V.K. Verma, R.P. Singh, Indira Sawhney, S.C. Patel, Harbans Singh, G.N. Chowdhary, G.S. Narinder, R D. Upadhyay, P.K. Jain, K.R. Nagaraja, Shakil Ahmed Syed, NS. Das Bahl, K.R.P. Pillai, D.Goburdhan, C. Malhotra, SN. Chowdhary, V.K. Pandita, Manoj Saxena, Madan Sharma, G.S. Narayan, Ms. Halida Khatoon, K.K. Gupta, E.C. Agarwala, R. Satish, Ms. A. Subhashini, Sambandam and Pillai, P.N. Gupta, Mrs. Jayashree Wad and Raju Ramachandran.*

The Judgment of the Court was delivered by

G DESAI, J. Articles 41 and 42 of the Constitution notwithstanding, there are certain grey areas where the rule of hire and fire, a legacy of *laissez-faire*, even in Government employment still rules the roost. Casual labour employed on projects also known as 'projects casual labour' is one such segment of employment where one may serve for years and remain a daily rated worker without a weekly off, without any security of service, without the protection of equal pay for equal work. In short at the sweet will and mercy of the local

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satraps. Even the formidable railwaymen's unions least cared for these helpless and hapless workmen. Suddenly a torrent of writ petitions and petitions for special leave awakened this Court to the plight of these workmen. In quick succession, 48 writ petitions and 32 petitions for special leave flooded this Court. In each writ petition/S.L.P., the grievance was that even though the workmen styled as 'project casual labour' had put in continuous service for years on end with wit ranging from 1974 till 1983, yet their services were terminated with impunity under the specious plea that the project on which they were employed has been wound up on its completion and their services were no more needed. No one is unaware of the fact that Railway Ministry has a perspective plan spreading over years say decades and projects are waiting in queue for execution and yet these workmen were shunted out (to use a cliché from the railway vocabulary) without any chance of being re-employed. Some of them rushed to the court and obtained interim relief. Some were not so fortunate. At one stage some of these petitions were set down for final hearing and the judgment was reserved. When some other similar matters came up, Mr. K.G. Bhagat, the then learned Additional Solicitor General, requested the Court not to render the judgment because he would take up the matter with the Railway Ministry to find a just and humane solution affecting the livelihood of these unfortunate workmen. As the future of lakhs of workmen going under the label of casual project labour was likely to be affected, we repeatedly adjourned these matters to enable the Railway Ministry to work out a scientific scheme.

Railway Ministry framed a Scheme and circulated the same amongst others to all the General Managers of Indian Railways including production units as per its circular No. E(NG)II/84/CL/41 dated June 1, 1984. In the Scheme it was stated that all the General Managers were directed to implement the decision of the Railway Ministry by the target dates. It was further stated that a detailed letter regarding group 5.1(ii) would follow. Such a letter was issued on June 25, 1984. Thereafter, these matters were set out for examining the fairness and justness of the Scheme and whether the Court would be in a position to dispose of these petitions in view of the Scheme. That is how these matters came up before us.

The relevant portions of the Scheme read as under:

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A "5.1. As a result of such deliberations, 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 Ministry have decided further as under :

B (a) These orders will cover :

(i) Casual labour on projects who are in service as on 1.1.84 ; and

C (ii) Casual labour on projects who, though not in service on 1.1.84, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or will complete the said prescribed period of continuous employment on re-engagement in future. (A detailed letter regarding this group follows).

D (b) The decision should be implemented in phases according to the schedule given below:

E	Length of service (i.e. continuous employment).	Date from which may be treated as temporary	Date by which decision should be implemented
F	(i) Those who have completed five years of service as on 1.1.84	1.1.1984	31.12.1984
G	(ii) Those who have completed three years but less than five years of service as on 1.1.1984	1.1.1985	31.12.1985
H	(iii) Those who have completed 360 days but less than three years of service on 1.1.1984	1.1.1986	31.12.1986

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| (iv) Those who complete
360 days after
1.1.1984 | 1.1.1987 or
the date on which
360 days are
completed which-
ever is later. | 31.3.1987 | A |
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5.2. The Ministry would like to clarify here that casual labour on projects who have completed 180 days of continuous employment would continue to be entitled to the benefits now admissible to them (so long as they fulfil the conditions in this regard) till they become due for the benefits mentioned in the preceding sub-paragraph.”

By and large the scheme certainly is an improvement on the present situation though not wholly satisfactory. However, the Railway being the biggest employer and having regard to the nature of its work, it would have to engage casual labour and therefore, as a preliminary step towards realisation of the ideal enshrined in Articles 41 and 42, we propose to put our stamp of approval on the scheme with one major variation which we proceed to herein set out.

The Scheme envisages that it would be applicable to casual labour on projects who were in service as on January 1, 1984. The choice of this date does not commend to us, for it is likely to introduce an invidious distinction between similarly situated persons and expose some workmen to arbitrary discrimination flowing from fortuitous court's order. To illustrate, in some matters, the court granted interim stay before the workmen could be retrenched while some other were not so fortunate. Those in respect of whom the court granted interim relief by stay/suspension of the order of retrenchment, they would be treated in service on 1.1.1984 while others who fail to obtain interim relief though similarly situated would be pushed down in the implementation of the Scheme. There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock

A at the doors of the court of justice because these doors do not open
unless huge expenses are incurred. Choice in such a situation, even
without crystal gazing is between incurring expenses for a litigation
with uncertain outcome and hunger from day to day. It is a Hobson's
B choice. Therefore, those who could not come to the court need not
be at a comparative disadvantage to those who rushed in here. If they
are otherwise similarly situated, they are entitled to similar treatment
if not by anyone else at the hands of this Court. Burdened by all
these relevant considerations and keeping in view all the aspects of
C the matter, we would modify part 5.1 (a) (i) by modifying the date
from 1.1.1984 to 1.1.1981. With this modification and consequent
rescheduling in absorption from that date onward, the Scheme
framed by Railway Ministry is accepted and a direction is given that
it must be implemented by re-casting the stages consistent with the
change in the date as herein directed.

D To avoid violation of Art. 14, the scientific and equitable way
if implementing the scheme is for the Railway administration to
prepare, a list of project casual labour with reference to each division
of each railway and then start absorbing those with the longest
service. If in the process any adjustments are necessary, the same
must be done. In giving this direction, we are considerably influen-
E ced by the statutory recognition of a principle well known in industrial
jurisprudence that the men with longest service shall have priority
over those who have joined later on. In other words, the principle
of last come first go or to reverse it first come last go as
enunciated in Sec. 25G of the Industrial Disputes Act, 1947 has
been accepted. We direct accordingly.

F All these writ petitions and special leave petitions shall stand
disposed of consistent with the scheme as modified by this judgment
and the directions herein given.

G The scheme as would stand modified by the directions herein
given forms part of this judgment and a copy of it shall be annexed
to this judgment.

H Learned counsel Shri Anis Suhrawardy has put in the
maximum labour in making a very useful compilation. He must
have spent days and months, The compilation helped us the most

in dealing with the writ petitions and the special leave petitions and in ascertaining the proper principle. Such a compilation ought to have been prepared by the Railway administration. Therefore, we direct the Union of India to pay Rs. 5,000 as and by way of costs to Shri Anis Suhrawardy, advocate, Supreme Court.

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M.L.A.

Petitions dismissed.