A LAL MOHAMMAD AND ORS.

v.

INDIAN RAILWAY CONSTRUCTION CO. LTD. & ORS.

JANUARY 11, 2007

B [A.K. MATHUR AND ALTAMAS KABIR, JJ.]

Labour Laws:

Industrial Disputes Act, 1947—Sections 25-F, 25-FFF and 25-O—
C *Regularization of service—Claim of—Project of Government Company closed on its completion—Termination of workmen thereafter—Correctness of—Held: Workmen were appointed for completion of the project—They are not employees of company but of the project—On completion of the project they have no vested right to claim regularization of their services*
D *with regular pay scales in the company—When the project comes to an end, services of the employees also comes to an end and have to be terminated—Also it is not necessary for the company to necessarily employ these persons at other project—However, they are entitled to notice and compensation—Appointment of the workmen was* **adhoc**, *only for a particular project and not in terms of the Rules of the Company—Thus retrenchment*
E *on completion of the project not illegal—Constitution of India, 1950—Articles 12, 14, 16 and 21—IRCON Recruitment Rules, 1979.*

The question which arose for consideration in these appeals was whether retrenchment of the workers was illegal in view of the fact that
F **they were employees of the company-respondent no. 1 and not merely project employees whose services would come to an end upon termination of the project.**

Respondent Company, wholly owned by the Government of India is engaged in various construction projects throughout the country and
G **abroad. Respondent Company took up the project of construction of railway line. Workmen were employed in the project and assigned different nature of jobs. Initially these workmen were required to undertake training and thereafter were treated as appointed on ad hoc basis. They were to be given pay scale after successful completion of the training. Workmen could be**
H **transferred to any other project of the Company in India but on undertaking**

any other job or business they had to seek permission of the competent authority. The project was completed and the workmen were served with the notices of retrenchment. The retrenchment benefits were given under section 25-F(b) of the Industrial Disputes Act, 1947. Writ petitioners challenged the retrenchment. Workmen filed writ petitions against respondent no. 1-company. The Full Bench of High Court dismissed the petitions holding that the petitioners were not entitled to the benefit of regularization as the project stood closed; that project stood completed in all respect; and that the petitioners did not apply for recruitment in service of the Company as per the Service Rules and those who appeared and were found suitable were selected and appointed under the service rules of the Company but others who could not appear, their services were terminated in accordance with law. Hence the present appeals.

Dismissing the matters, the Court

HELD: 1.1. Once the project is completed then it is not incumbent on the company to necessarily employ these persons at other projects in any other part of the country. Employees working under a scheme/project have no vested right so as to claim regularisation of their services with regular pay scales. When the scheme/project comes to an end, the services of the employees working in the project also come to an end. The workmen are not entitled to regularise their services in the Company and they are not employees of Company. [Paras 24, 25 and 28] [814-E-G, 815-B]

1.2. With regard to the question whether factually the closure was effected in February/March 1998 or not, the Full Bench of High Court answered with reference to various communications that the closure was effected in 1998 and an intimation was sent to all the respective contracting parties and concluded that the closure was effected much before the issuance of the notices of 1998. The finding given by the Full Bench that the work stood completed in 1998 is satisfactory and a perusal of all these certificates leaves no manner of doubt that work was completed much before the notices were issued in March, 1998.

[Para 11] [795-C, 796-A-B]

1.3. It cannot be said that the appellants were the employees of the Company and not of Project. In the appointment orders it was mentioned that appointment was *adhoc* and they were directed to join the Project. Therefore, from these conditions, it cannot be inferred that incumbents

were employees of the company. Employment to the company is regulated by the service rules and none of the posts which has been mentioned against these persons is in the list annexed to the Schedule appended to the Rules. That apart an opportunity was given to the petitioners to appear for regular selection in the company and they failed to avail that opportunity. Therefore, from these facts, it is more than apparent that the petitioners were not employees of the company but they were employees of the Project. It is a public sector company and it is governed by its own rules and those rules clearly contemplate a method for recruitment into service and that opportunity was given to the incumbents for being regularly recruited in the company but they failed to avail the same. Simply because the company had said that these persons will not be permitted to take any other employment or business without prior permission, their group insurance was made and were placed in the pay scale of the company that does not mean that they will be deemed to be employees of the Company. Simply because they adopted the basis for giving them the benefit of the Company as was being given to other employees who have been duly recruited in accordance with the rules, by such conferment of benefit will not be deemed to be employees of the Company. The regular recruitment Rules have been framed with the approval of the Government, as the company is a public sector undertaking. These rules may not be given a status of statutory rules but those rules are binding on the company and company cannot make departure from acting under the rules, for all purposes, they are almost analogous to the statutory rules. These rules have a legal sanctity as they have been framed in terms of memorandum and articles of association with the approval of the Government. Therefore, they have a binding force for the company and company cannot make a departure for recruitment except than following these rules. As per the provisions there is methodology provided under the rules and that was not followed in the instant case. [Para 15] [806-B-H, 807-A]

1.4. The petitioners were appointed being the local hand as workmen were required for completion of the project and therefore they were appointed for the project and as soon as the project was over they cannot claim as a matter of right to be permanent employees or to be regularized in the company. A distinction has to be borne in mind who is employee of the company and who is employee of the Project. The services of project employees come to an end as soon as the project is over and they cannot be given permanent status. Since they were employees of the project their

services have to be terminated after completion of the project. The Full Bench rightly came to the conclusion that they are employees of the project and they are not the employees of the company. There is no violation of Articles 14, 16 and 21 of the Constitution of India in the matter as they were employees of the project and at the end of the project they have taken their benefits as are admissible in accordance with the Industrial Disputes Act. [Para 15] [807-B-D]

1.5. Section 25-O lays down procedure for closing down an undertaking and proviso to sub-section (1) of Section 25-O clearly lays down that nothing in this sub-section shall apply to an undertaking set up for construction of buildings, bridges, roads, canals, dams, or for other construction work. [Para 16] [807-F-G]

1.6. Since the project was for construction of some railway lines, therefore, the rigour of sub-section (1) for seeking a permission of Government is not required in the instant case. Once the project is completed the service of the incumbent comes to an end. But the legislature in its wisdom has provided relief for such class of workmen on completion of project under section 25-FFF. Sub-section (2) of Section 25-FFF provides compensation for such class of workmen. According to sub-section (2) when such construction work is closed down and on completion of work within two years from the date on which the undertaking had been set up, the workman employed therein shall not be entitled to compensation under clause (b) of Section 25F, but if the construction work is not completed within two years he shall be entitled to notice and compensation under that section for every completed year of continuous service or any part thereof in excess of six months. [Paras 17 and 18] [809-G-H, 810-D]

1.7 The legislature in its wisdom has especially provided on closure of such projects because of completion of the project or on account of transfer. A special benefit to such workers under sub-section (2) of Section 25-FFF is provided in the event the company has completed construction after more than two years. This is the legislative mandate and the intention of the legislature is more than apparent. Since this is legislative mandate and it cannot be decided that whether the position of the company, which closed down the undertaking with the permission and company which is closed down because of the completion of the project should not be worse. Since it is a legislative mandate the company has to comply with those

A **provisions. Therefore, these incumbents have already been given notice and if the compensation has not been determined in terms of Section 25-F then that should be calculated and paid to the workers if not paid so far. They have been directed to collect their dues from the office. If that amount has not been collected by them then it will be open to them to collect the same or any shortfall that will be made good by the company. So far as the termination of the incumbents is concerned after completion of the project they have no right to continue. They are only entitled to notice and compensation has to be determined under Section 25-F. Shortfall of period of notice or compensation will not render termination bad on that count. [Para 19] [810-G-H, 811-A-D]**

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Mahendra L.Jain and Ors. **v.** *Indore Development Authority and Ors.* **[2005] 1 SCC 639, distinguished.**

Hindustan Steel Works Construction Ltd. and Ors. **v.** *Hindustan Steel Works Construction Ltd. Employees' Union, Hyderabad and Anr.,* **[1995] 3 SCC 474;** *Umarani* **v.** *Registrar, Cooperative Societies and Ors.,* **[2004] 7 SCC 112 and** *MD. U.P. Land Development Corporation and Anr.* **v.** *Amar Singh & Ors.,* **[2003] 5 SCC 388, relied on.**

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Punjab Land Development and Reclamation Corporation Ltd., Chandigarh **v.** *Presiding Officer, Labour Court, Chandigarh and Ors.,* **[1990] 3 SCC 682;** *S. M. Nilajkar and Ors.* **v.** *Telcom District Manager, Karnataka,* **[2003] 4 SCC 27 and** *Mohammad* **v.** *Indian Railway Construction Co. Ltd.,* **[1999] 1 SCC 599, referred to.**

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F CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6195-6198 of 2004

From the final Judgment and Order dated 21.5.2004 of the High Court of Judicature at Allahabad in Civil Misc. writ Petition Nos. 32651, 32500, 18561 and 44416/1993.

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Sudhir Chandra, P.P. Rao, Sr. Advs., Bharat Sangal, R.R. Kumar, S. Chatterji, Ms. Suchitra Sharma, Bhagabati Prasad, Ms. Manjula Gupta, Anil Kumar Jha, Ms. Mukti Singh, Sunil Singh, Sumani Bhardwaj, S. Shekhar, N.A. Siddiqui, S. Dutta, Ms. Mridula Ray Bhardwaj, Mahesh Pandey, H S. Mishra, Purushottam S.T., D.S. Chadha, Abhishek Kumar, Anshuman

Ashok and D.N. Mishra, for the appearing parties. A

The Judgment of the Court was delivered by

A.K. MATHUR, J. : These appeals are directed against the order passed by the Allahabad High Court dated May 21, 2004 whereby the Full Bench of the High Court has disposed of all the writ petitions filed by the workmen against Indian Railway Construction Co. Ltd.(hereinafter referred to as Company) and the Regional Manager, IRCON, Rihand Nagar, Sonbhadra. The Full Bench held that the petitioners are not entitled to benefit of continuation of service or regularization as the project stood closed on 6.2.1998. It was held that project stood completed in all respect except necessary electric or other odd works left over. It was also held that petitioners did not apply for recruitment in service of the Company as per the Service Rules and those who appeared and were found suitable were selected and appointed under the service rules of the Company but others who could not appear, their services were terminated in accordance with law. Hence, in total analysis, it was held that sentiments must yield to the cold logic of law, however, hard the case may be. Hence all writ petitions were dismissed. B C D

2. It would be necessary to recapitulate the facts giving rise to these appeals because this is second and third innings of the matter, which has come up before this Court. Earlier the matter came up before this Court wherein the question arose was whether Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) was complied with or not, this Court held that Section 25-N was not complied with. Hence, this Court disposed of the petitions holding that Section 25-N was not complied, therefore, termination of all workmen was bad and remitted the matter [*Mohammad* v. *Indian Railway Construction Co. Ltd.* reported in [1999] 1 SCC 599] back to the High Court with following directions:- E F

> "28. In view of the aforesaid discussion and in the light of our finding that Chapter V-B applies to the respondents' Anpara-Rihand Project, in the remanded proceedings in the restored writ petitions of the present 25 appellants, the following questions would squarely arise for consideration of the High Court:- G
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> (i) Whether the Anpara-Rihand Nagar Project is subjected to H

A a factual closure as mentioned in the impugned notices of March 1998 or whether the Project is not still completed;

(ii) in the light of the answer to the aforesaid question, a further question would arise whether the impugned notices of March 1998 were in fact and in law closure notices as per B Section 25-O read with Section 25-FFF of the Act or whether they still remain retrenchment notices and hence would be violative of Section 25-N of the Act;

(iii) even if it is held that Anpara-Rihand Nagar Project is in C fact closed down, whether the 25 appellants were employed in the Project or they were employees of the respondent-Company entitling them to be absorbed in any other project of the Company and consequently whether the impugned notices have not effected any snapping of the employer-D employee relationship between the appellants on the one hand and the respondent-Company on the other;

(iv) even apart from the aforesaid questions, whether the impugned notices were violative of the guarantee of Articles 14, 16 and 21 of the Constitution of India on the ground that E the termination of services of the 25 appellants was arbitrary and discriminatory, the respondent-Company being a "State" within the meaning of Article 12 of the Constitution of India."

Salient facts, which are necessary for disposal of these appeals are :-

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3. Twenty five petitioners filed writ petition against the respondent Company, which is a construction company wholly owned by the Government of India. It carries out various construction projects throughout the country and abroad. These writ petitioner workmen were employed by respondent Company and respondent No. 2 is its Regional Manager who was monitoring G project of construction of a railway line of 54 Kms known as Rihand Nagar Project in State of Uttar Pradesh (hereinafter referred to as the Project). These 25 petitioners were employed in this project on different dates during the period spread over from 26.12.1983 up to 24.12.1985. They were assigned different jobs of work at the Rihand Nagar Project. Some were appointed as H clerks, account-clerks, store clerks, store cashiers, non-technical supervisors,

site supervisors, etc. Initially these workmen were required to undertake training and were, therefore, treated as appointed on *ad hoc* basis. They were not appointed on regular basis. They were supposed to be given pay scale after successful completion of the training. They were placed in regular timescale. They were subject to be transferred to any other project of the Company in India. They were not required to undertake any other job or business without permission of competent authority. After completion of project they were served with the notices of retrenchment in August/ September, 1993. They were rendered surplus and hence retrenchment benefit under Section 25-F(b) of the Act was offered and they were advised to collect their other dues, namely; provident fund, gratuity, leave salary etc. in accordance with the rules of the Company in force at the time of the Project. These retrenchment notices were challenged by the writ petitioners by filing number of writ petitions under Article 226 of the Constitution of India, against respondent Company. In those writ petitions among other arguments, which were sought to be raised like retrenchment is bad as they are recruiting fresh people and their retrenchments were illegal and also violative of Articles 14, 16 & 21 of the Constitution of India, an additional ground was taken that the respondents had illegally invoked the provisions of Chapter V-A of the Industrial Disputes Act, 1947 but in fact Chapter V-B of the said Act applies as more than hundred workmen were being employed by the respondent Company and therefore, retrenchment of the petitioners was required to be complied with the provisions of Section 25-N of the Act, which were not followed and termination is illegal and void on that ground.

4. The petition was opposed by the respondent Company. It was submitted that the writ petitioners were only *ad hoc* employees. They were not regularly appointed after following due procedure of recruitment rules and were employed only at the Rihand Nagar Project. It was submitted that no regular recruitment can be made without following procedure of the recruitment rules and it was also contended that the project has come to an end, therefore petitioners were liable to be retrenched. It was also alleged that the procedure for closure of the project has been complied with as envisaged under Section 25-F of the Act. It was contended that Section 25-N does not apply to the facts of the present case. It was also contended that the Project is not an industrial establishment as defined by Section 25-L of the Act read with Section 2(m) of the Factories Act, 1948 as it is not a factory. It was submitted that they were not employees of the Company

A but they were recruited solely for the purpose of Rihand Nagar Project and their services were terminated after the said Project was closed and they have no right to be absorbed in any other project. It was submitted that the retrenchment orders were not arbitrary or illegal or violative of Articles 14, 16 & 21 of the Constitution of India.

B 5. The matter was heard by the learned Single Judge. The learned Single Judge held that the petitioners have put in long service nearly of 9 years and in some cases even more than that and they are permanent employees and they should have been engaged in any other project as their services were transferable throughout the country. It was also held that C termination of workmen is amenable to writ jurisdiction under Article 226 of the Constitution of India as it is a State within the meaning of Article 12 of the Constitution of India. Learned Single Judge further held that Section 25-N of the Act was not complied with as it was a Factory within the meaning of Section 2(m) of the Factories Act read with Section 25-L of the Act. Hence D the retrenchment notices are illegal and void being in violation of Section 25-N of the Act and accordingly the learned Single Judge allowed the writ petitions, quashed retrenchment notices and directed to allow workmen to continue in service and pay them their dues.

6. Against this order passed by the learned Single Judge dated E 7.12.1993 special appeals were filed before the Division Bench of the Allahabad High Court. The Division Bench, however, allowed the appeals of the Company holding that Section 25-N of the Act does not apply on two grounds (i) that for a construction company like the respondent Company, the procedure of Section 25-O of the Act is not required to be followed, F service of incumbent comes to end *ipso facto* after completion of project, there is also no question of following the procedure of Section 25-N even on the basis that the workmen at the Project were more than hundred in number. (ii) It was also held that in any case, Section 25-N of the Act would not apply as respondent Company was not a Factory as it was not an industrial establishment as contemplated by Section 25-L of the Act read G with Section 2(m) of the Factories Act and accordingly it was held that the petitioners are not the workmen and therefore, they are not entitled to any protection under the Industrial Disputes Act. It was also held that since they were employees of the Project and the project has come to an end, therefore, their services were validly terminated and they have no right to be absorbed H after completion of the Project. The writ petitions were dismissed and order

of learned Single Judge was set aside. All the 25 petitioners approached this Court by filing the Special Leave Petitions. The leave was granted and appeals were heard. This Court after reviewing all case laws on the subject held that Section 25-N of the Act is attracted in the present case.

It was observed,

> "However, as we have seen above, the establishment of the respondent-Company squarely falls within the definition of the term "factory" for the purpose of applicability of Section 25-N of the Act. The first point for consideration, therefore, has to be decided in the affirmative in favour of the appellants and against the respondent."

7. As a result of aforesaid finding there was non-compliance of Section 25-N, this Court took the view that the retrenchment notices were *null* and *void* and the relationship between employer and employee was not snapped. It was further held that at the time notices were issued the Project had not been completed. However, the question with regard to whether the petitioners were employees of the Project or of the Company was left open. It was also brought to the notice of this Court subsequent development that the respondent Company served on the appellants with fresh notices on 24 March, 1998 of termination by way of Office Order No.3/1/98 and in those notices it was mentioned that on completion of the project, the services of the employees were dispensed with w.e.f. 4 September, 1993 on tendering of salary in lieu of notice and retrenchment compensation as admissible under the provisions of the Industrial Disputes Act. These notices were served during pendency of the special leave petitions. Therefore, they were not challenged by the appellants before the High Court. However, it was clearly mentioned in the notices that Rihand Project was finally closed down w.e.f. 6.2.1998 and accordingly the services of the workmen stood dispensed with from the date of issue of notice *i.e.* 24 March, 1998. It was also pointed out before this Court that work of all railway lines is over and only small maintenance work pursuant to the agreement with the Railway Authorities is being undertaken. But in substance the whole work is complete. This Court observed that since provisions of Chapter V-B of the Act are applicable and the procedure of Section 25-O would get attracted subject to the proviso to Section 25-O(1), therefore, the Court left all these factual questions open *i.e.* whether the project is completed or not, whether the

A employees are of the Project or of the company. This Court observed that whether the Company is a State within the meaning of Article 12 of the Constitution of India, whether termination of these employees is arbitrary and discriminatory and violative of Articles 14, 16 & 21 of the Constitution of India are all questions of fact, they cannot be answered in the present proceedings and the fact that fresh notices were issued on 24 March, 1998 B which has a fresh cause of action to the employees and were not subject matter of the writ petition and the appellants had no opportunity to put forward their contentions for challenging these notices. Similarly, the respondents also did not get an opportunity to put forward their contentions in defence. Therefore, this Court left all the questions open and gave an C opportunity to the petitioners as well as the respondents to amend their pleadings and to file fresh reply and produce relevant supporting material before the High Court and accordingly the four questions were framed by this Court and the matter was remitted back to the High Court for consideration. In the result this Court allowed the appeals of the appellants and set aside order of the Division Bench and affirmed the order of the D learned Single Judge and remitted the matter back to the High Court for being disposed of by a Division Bench in the light of the observations made by this Court.

8. Hence the matter came up before the Division Bench of the High E Court of Allahabad and in the Division Bench there was difference of opinion between two learned Judges. One of Hon'ble Judges constituting the Division Bench allowed the writ petition and quashed the notices *vide* order dated 17 May, 2002. The other Hon'ble Judge of the Division Bench dismissed the writ petition. Therefore, the matter was referred to a third F Judge. Since both the learned Judges have passed the judgment constituting Division Bench, therefore, the reference to third Judge was not found to be proper and this was challenged by the employer before this Court and this Court *vide* its order dated 17.10.2003 directed that the matter be heard and disposed of on merits in accordance with law by the Full Bench of the High Court and remitted this matter to the Full Bench. Accordingly, G the Hon'ble Chief Justice of the High Court constituted the Full Bench by order dated 12.11.2003 and referred the matter to the Full Bench. The Full Bench after considering the matter came to the conclusion that the petitioners are not entitled to any benefit as aforesaid. Hence the present Special Leave Petitions against the order passed by the Full Bench dated H May 21, 2004.

9. The pleadings were amended by the parties and they exchanged affidavits. So far as the first legal question as to whether Section 25-N of the Act is applicable to dispute of such nature is concerned that no more remains to be *res integra* as it has been conclusively held by this Court in aforesaid judgment that Section 25-N is applicable that means Chapter V-B of the Act is applicable to this dispute.

10. Now, the question before us at present is whether the findings given by the Full Bench on the questions framed by this Court were correctly answered or not? The first question as framed by this Court was whether factually the closure was effected in February/March 1998 or not? So far this question is concerned the Full Bench answered with reference to various communications that the closure was effected in 1998 and an intimation was sent to all the respective contracting parties *i.e.* NTPC, NCL, PCL and UPSEB. In this connection reference has been made to the completion certificate issued by the National Thermal Power Corporation Ltd. on 29 March, 2000 certifying that the projects referred to had been completed prior to March 1998 and handed over to NTPC. Another certificate was issued by the National thermal Power Corporation Ltd. dated 30.3.2000 certifying that the work stands completed. The said Corporation issued certificate on 13 January, 1999 that the projects stood completed much before the date of issue of the notice in question. Another certificate was issued by the Superintending Engineer, U.P. State Electricity Board on 29 March, 2000 and 2.9.1999 about the completion of the work. Similar certificate was issued by the Northern Coal Field Ltd. Jayant Project on 29 March, 2000 certifying the same thing. The entire project conglomeration as a whole was closed down w.e.f. 6.2.1998 after issuance of the notification through newspaper and notice board. The concerned Labour Commissioner and Regional Labour Commissioner were duly informed about the closure. They were informed *vide* communication dated 4.2.1998. A notice of the closure was also published in the daily newspapers Dainik Jagran and Rashtriya Sahara. It is also pointed out that a small fraction of work remained to be completed, as it was abandoned due to non-availability of site on account of encroachments by members of public which was certified by the UPSEB that it was beyond their control and for that work some 20 Head of Telecom Engineering and Supervisory Staff was retained and they were agreed to reimburse the cost towards supervisory staff of Telecom and Engineering discipline, that the work was undertaken after 14 months of the date of closure of Rihand Nagar Project as separate work and this work was

completed on September 2, 1999 and a certificate to this effect was also produced. It is also made clear that for completion of this left over work only people from the Telecom and Engineering discipline were engaged and the petitioners do not fall in any of that category. Therefore, on this question the Full Bench concluded that the closure was effected much before the issuance of the notices of 1998. We are satisfied on the basis of finding given by the Full Bench that the work stood completed in 1998 and a perusal of all these certificates leaves no manner of doubt that work was completed much before the notices were issued in March, 1998.

11. So far as the second and third questions are concerned, the crucial question to be decided is whether they were employees of the Project or of the Company. In this connection the finding was given by the Full Bench that they were employees of the Project and not of the Company. Learned counsel for appellants laid much stress on appointment orders of appellants that they are employees of the Company and not of the Project. He has taken us through various appointment orders issued from time to time and some of the samples, are reproduced as under:-

"INDIAN RAILWAY CONSTRUCTION COMPANY LIMITED
(A Government of India Undertaking)

GRAM : RAILCONST

RATTAN JYOTI
18, RAJENDRA PLACE
NEW DELHI-110008(INDIA)

No. IRCON/ESTT./35

DATED: 25/8/84

Shri Lalmohammad
S/o Ajimuddin
Vill:Dallumandaltola,
Dt.Malda.

You are hereby offered appointment in Anpara Project, Project on a Casual *adhoc* basis on a consolidated monthly emoluments of Rs.400/- (Rupees four hundred). You are directed to report to Project Manager IRCON at Anpara.

In this connection, the following instructions are issued.

1. Your training period will be for a period of 12 months after you report for duty.

2. On satisfactory completion of the training you will be required to pass a written and oral examination.

3. On passing your above examination, you will be brought in grade Rs. 260-400.

4. During your training period you will be entitled to an additional monthly emolument of Rs. 50 if you are posted in Delhi, Bombay or Calcutta.

5. The above appointment is subject to verification of your age, qualifications for which you should produce original documents while reporting.

Sd/-
(N.SWAMINATHAN)
COMPANY SECRETARY, IRCON"

"INDIAN RAILWAY CONSTRUCTION COMPANY LIMITED
(A Government of India Undertaking)

GRAM : RAILCONST

RATTAN JYOTI
18, RAJENDRA PLACE
NEW DELHI-110008 (INDIA)

No.IRCON/PP/35A

DATED: 22-10-83

Md.Intas Hussain
S/o Md.Yahim Ali,
Village , Chandigachil,
P.O.Singhia,
Dt.Malda.

You are hereby offered appointment in Anpara Project. Project on a Casual *adhoc* basis on a consolidated monthly emoluments of Rs.400/- (Rupees four hundred). You are directed to report to Project Manager V.S.T.V.P. IRCON at Anpara.

In this connection, the following instructions are issued.

1. Your training period will be for a period of 12 months after you report for duty.

2. On satisfactory completion of the training you will be required to pass a written and oral examination.

3. On passing your above examination, you will be brought in grade Rs.260-400/-. You will also be eligible for payment of all allowances as per the rules of the company;

4. Your regular appointment in the Company will be governed by the Recruitment Rules of the Company.

5. You are liable to be posted any where in India.

6. During your training period you will be entitled to an additional monthly emolument of Rs.50/- if you are posted in Delhi, Bombay or Calcutta.

Sd/-
(N.SWAMINATHAN)
COMPANY SECRETARY, IRCON"

"INDIAN RAILWAY CONSTRUCTION COMPANY LIMITED
(A GOVERNMENT OF INDIA UNDERTAKING)

Office of the Regional Manager
P.O.Anpara,
District Mirzapur (UP)
Dated: 19.5.1988

No.IRCON/ANP/ESTT/15/AL

To

Shri Meghu Seikh
Artisun,
IRCON, Baijpur.

Dear Sir,

1. On completion of your training you are hereby brought on scale of pay in the grade of Rs.260-600 (Rs.) in the initial pay of Rs. 260 p.m. with effect from 11.10.1984.

You have been brought on the scale of pay in the grade of Rs. In the initial pay of Rs. Pm with effect from.

2. You will be eligible for all the allowances and benefits as per Rules/Orders issued by the Company from time to time.

3. You should produce the following documents at your own expense.

   (a) A medical certificate of health and physical fitness of prescribed proforma from a qualified Registered Medical Practitioner.

   (b) Original certificates in support of your educational and other professional qualification, documentary proof, in respect of date of birth etc. together two copies thereof.

   (c) Attestation form in triplicate (enclosed) after filling.

   (d) In case you belong to Schedule Caste/Schedule Tribe, one of the following certificates in original should be produced.

   Matriculation or School Leaving Certificates or birth certificate giving your caste/community and place or residence.

   Or

   A certificate in the prescribed form issued by the Competent Authority.

4. You should take an Oath of allegiance to the Constitution of India in the appropriate form.

5. You will be liable for transfer to any of the Office Project site under the control of the company in India.

6. You will not save with the prior permission of the Competent Authority, apply for any appointment outside the company. You will have to withdraw your application for appointment elsewhere made prior to the date of issue of these orders and will not appear for interview or accept any employment it offered.

7. You will not save with the express permission from the company, engage in any trade or business or undertake any

A other work or any employment elsewhere full time or part time while in the service of the company.

8. In regard to any matters not specifically covered in the foregoing paragraphs, you will be governed by the rules and orders applicable to the employees of the company.

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9. If any declaration given or information furnished by you proves to be false, or it is found that you have willfully suppressed any material information you will be liable to removal from services forthwith without any notice and without assigning any reason therefore, notwithstanding any action C taken against you as the Company may deem necessary.

For & on behalf of
Indian Railway Construction Co.Ltd.

-sd/-

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Regional Manager
IRCON-ANPARA

Copy of information & necessary action to:

1. Group General Manager(T), IRCON, New Delhi."

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12. Other appointment letters are on the same pattern. Therefore, no useful purpose will be served by reproducing all of them. On the basis of these letters learned counsel submitted that a perusal of these appointment orders clearly shows that appointments were made by the Company and they were directed to report to the Project Officer of the Company. It was F submitted that after the necessary training and passing required examination the incumbents were entitled to regular pay scale of Rs.260-400/- along with all allowances as per the rules of the company, that incumbent can be posted at any where in India on any project, no employment could be taken up by incumbent without prior permission of the company, that incumbent is not required to engage in a trade or business, that they will be governed by the G rules of the company, that group insurance was also taken out by the company, that they were required to take oath of allegiance to the constitution. On the basis of these salient features the learned counsel submitted that it leads to only and only inference that the petitioners were employees of the Company and not of the Project. It was submitted that since each incumbent H has to work on the Project and that they were directed to report to the

project officer, that does not mean that they were employees of the project and not of the Company. A

13. As against this, learned counsel Mr.Rao submitted that the petitioners were never employed by the Company and they were employees of the Project and they were only serving in the project and after completion of the project they could not be regularized in the company. They were B essentially employees of the Project and after completion of the Project, their services automatically came to end and they were accordingly given notice and compensation as per the Act. It was also submitted that Company's regular appointment is governed by the rules known as IRCON Recruitment Rules, 1979 (hereinafter referred to as the Rules of 1979). Learned counsel C submitted that as per the provisions of the Rules of 1979 regular recruitment in the company takes place as per these rules and in this connection learned counsel especially invited our attention to Rules 4.1, 6.4, 6.4.1, 6.2.1, 7.1, 8.1, 8.5, 8.7 12.1 and 12.2. which read as under:

> "Rule 4.1 – These Rules shall apply to appointments by Direct recruitment or deputation from Government or Public Sector D Companies or by departmental promotion to all posts in the Company except those which are to be filled in by the Central Government. These rules do not apply to daily rates staff.
>
> Rule 6.2.1– Direct recruitment should ordinarily be resorted to in E cases where it is not possible to obtain the staff from Government Department/Bodies and Public Sector on usual deputation terms. A list of categories in which direct recruitment can be made is placed at Annexure 'A'. For this purpose, the staff employed against short term vacancies or specific projects on daily rated basis may also be considered. F
>
> Rule 6.4 – Short term appointment.
>
> Rule 6.4.1 –For short term requirements, *viz.* requirements not covered by regular posts, if these cannot be managed by the regular staff employed by the Company, or by staff on deputation G from Government Departmental/Bodies and public sectors, daily rated staff may be engaged at the rates and conditions to be decided by the Managing Director, keeping in view the directives issued by the Government from time to time, unless the powers are delegated. H

A Rule 7.1 – Pay scale qualifications, experience, age limit for each category of post shall be as indicated in Annexure 'B', forming part of these Rules.

Rule 8.1 – Appointment on direct basis shall be made though the Employment Exchange or in the manner as permitted by provisions B of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959.

Rule 8.5 – All applications received against a specific notification/ advertisement will be subjected to a careful scrutiny by the C Department concerned in the Corporate Office for the specific purpose of checking the eligibility of each candidate. In the case of Scheduled Castes/Tribes, ex-servicemen, etc. applications must be accompanied by a certificate to that effect from the competent authority.

D Rule 8.7 – Selection will be subject to written test and interview or written test or interview only depending upon the demands of the post. Decision on this aspect shall be taken by the competent authority conforming to the general practice in vogue with suitable modification wherever called for, before the notification is issued E for the recruitment to the posts.

Rule 12.1– Absorption of Deputationists:

Rule 12.1.1– Deputationists working in the Company shall have the F option to seek permanent absorption in the services of the company in accordance with the instructions issued by the BPE from time to time. For absorption of such personnel, suitable selection Committee will be constituted on each occasion and their recommendations are to be considered by the Managing Director or Board of Directors, as the case may be.

G

Rule 12.2– Confirmation/Absorption of others.

Rule 12.2.1– Staff directly recruited or working at present on daily rates basis may also be considered for confirmation/absorption H against regular posts subject to their being screened by the

Selection Committee set up for this purpose, keeping in view such instructions of the Company as may have been issued from time to time, and subject to vacancies being available." A

12.2.1.(i)- Regularisation of persons appointed on short term basis. B

The Selection shall comprise of written examination and/or interview. In case the selection is held on the basis of written examination and interview, the following norms shall be followed:

	Written Exam.	Interview (PASR)	Aggregate	C
Professional Ability				
Service Record		15	10	
Max. Marks	57	25	100	D
Qualifying Marks	Gen.40% 30 marks	40 % 10 marks	50%	
	SC/ST30% 22.5 Marks	30 % 7.5 Marks	40%	

(ii)-Generally the regularization of persons appointed in any grade on short term or contract basis may be considered after the incumbent has put in a minimum period of satisfactory service specified from time to time for each category depending on vacancies subject to minimum eligibility criteria, indicated in the table below: E

F

Eligibility Criteria for Regularization

Category	Grade	Qualification
1.JE/JFO	1400-2300/CDA	Diploma (3 years Course)
1400-2300/IDA of relevant discipline or equivalent		G
2.Site Engineer	1600-2660/CDA	Degree in Engineering of relevant discipline
1900-3040/IDA	Equivalent,	

Diploma (3 years course) of relevant discipline with 9 years experience. H

A	3.Section Officer	1640-2900/CDA	B.Com. & Intermediate /CA/ICWA
	1900-3050/IDA or equivalent or Appendix-II Examination		
	4.Asstt. Manager/A/C or equivalent IDA scale	2000-3500/CDA or equivalent	B.Com. and CA/ICWA(Final)
B			
	5.Asstt. Manager/ Pers. & Admn., or equivalent IDA scale	2000-3500/ CDA	i) Graduate.
C			ii) PG Diploma in Personnel/ Business Management equivalent from a recognized institution or Post Graduate degree in Social Sciences from recognized universities institutions .
D			
			iii) In other cases, if any, the Managing Director may decide the grade to which contract, short term employee may be considered for regularization, subject to vacancies being available. Such regulations, if any, may be considered after two years of contract short term service if requirement continues.
E			
F			
			iv) 50% of the service put in on short term basis/ contract basis before the date actual regularization will be reckoned for weightage for the purpose of seniority. However, the
G			
H			

Committee may recommend less than 50% service, for reasons to be recorded. Under no circumstances, the weightage for the seniority will be more than 50% or maximum of 3 years. This will be reckoned on the basis of half year for each completed year of service, fraction of an year being ignored.

In the case of persons who are not found fit for regularization in the grade of initial appointment but are found fit for regularization in the lower grade, the seniority may be assigned in the lower grade by giving 50% credit for the service in the initial grade of appointment subject to maximum of 3 years. This would be subject to his acceptance of regularization in lower grade in writing.

12.2.2-If the posts, against which deputationists and other staff are working are still being operated on temporary basis but are evidently justified to be retained on permanent basis, their conversion in permanent posts may first be decided before the question of absorption of staff working is considered against them."

14. Learned counsel further submitted that in fact the company has made short term advertisement and asked these project employees to apply for their regular recruitment under these rules and in pursuance of that large number of people applied. Some of the *adhoc* employees of the Projects were absorbed on their successful selection. In this connection learned counsel made a reference of Shri Prabir Basak who was one of the persons like the appellants and who after going through the process of selection as per the rules was selected and appointed but the appellants did not appear in any of the recruitment test. Therefore, they could not be appointed or regularized on that basis. Learned counsel also submitted that in the writ petition one of the prayers was to treat these petitioners as permanent employees. In this connection learned counsel has read out clause 7 in the

A writ petition. Learned counsel submitted that since the recruitment under the Company is governed by the Rules of 1979 and these persons were given an opportunity to appear in the test and on their selection they could have been appointed as some of them were appointed. This factual aspect has not been disputed by the learned counsel for the appellants.

B

15. We have bestowed our best of consideration to the rival contentions of the parties. We regret to say that we have failed to be persuaded by the submissions of the learned counsel for the appellants to infer that the appellants were the employees of the Company and not of Project. In the appointment orders it was mentioned that appointment was adhoc and they C were directed to join the Project. Therefore, these conditions, which have been stressed by the learned counsel does not lead us to the inference that incumbents were employees of the company. Employment to the company is regulated by the service rules and none of the posts which has been mentioned against these persons is in the list annexed to the Schedule D appended to the Rules. That apart an opportunity was given to the petitioners to appear for regular selection in the company and they failed to avail that opportunity. Therefore, from these facts, it is more than apparent that the petitioners were not employees of the company but they were employees of the Project. Since it is a public sector company and it is governed by its own rules and those rules clearly contemplate a method for E recruitment into service and that opportunity was given to the incumbents for being regularly recruited in the company but they failed to avail the same. Simply because the company had said that these persons will not be permitted to take any other employment or business without prior permission, their group insurance was made and were placed in the pay scale of the F company that does not mean that they will be deemed to be employees of the Company. Simply because they adopted the basis for giving them the benefit of the Company as was being given to other employees who have been duly recruited in accordance with the rules, by such conferment of benefit will not be deemed to be employees of the Company. The regular recruitment Rules have been framed with the approval of the Government, G as the company is a public sector undertaking. These rules may not be given a status of statutory rules but those rules are binding on the company and company cannot take departure from acting under the rules, for all purposes, they are almost analogous to the statutory rules. These rules have a legal sanctity as they have been framed in terms of memorandum and H articles of association with the approval of the Government. Therefore, they

have a binding force for the company and company cannot make a departure for recruitment except than following these rules. As per the provisions pointed out above, there is methodology provided under the rules and that was not followed in the present case. They were appointed being the local hand as workmen were required for completion of the project and therefore they were appointed for the project and as soon as the project was over they cannot claim as a matter of right to be permanent employees or to be regularized in the company. A distinction has to be borne in mind who is employee of the company and who is employee of the Project. The services of project employees come to an end as soon as the project is over and they cannot be given permanent status. Since they were employees of the project their services have to be terminated after completion of the project. In this connection the Full Bench has considered the necessary provisions of the rules and after a detailed discussion on the matter has rightly come to the conclusion that they are employees of the project and they are not the employees of the company. There is no question of violation of Articles 14,16 & 21 of the Constitution of India in the matter as they were employees of the project and at the end of the project they have taken their benefits as are admissible in accordance with the Industrial Disputes Act. Therefore, there is no violation of Articles 14, 16 & 21 of the Constitution of India. So far as question with regard to Article 12 is concerned, the same is not relevant in this matter because the whole service conditions of the employees are governed by the Industrial Disputes Act. Therefore, it is purely an academic question whether company is a State within the meaning of Article 12 or not.

16. Now question arises what benefit could be given to the petitioners, in this connection reference may be made to Section 25-O read with Section 25-FFF of the Act as it has been held by this Court that Chapter V-B is applicable to these proceedings. Section 25-O lays down procedure for closing down an undertaking and proviso to sub-section (1) of Section 25-O clearly lays down that nothing in this sub-section shall apply to an undertaking set up for construction of buildings, bridges, roads, canals, dams, or for other construction work. Section 25-O is reproduced as under:-

"25-O. Procedure for closing down an undertaking:—

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies

shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate government, stating clearly the reasons for the intended closure of the undertaking and copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner;

PROVIDED that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams, or for other construction work.

(2) Where an application for permission has been made under sub-section (1), the appropriate government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regards to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refused to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate government may, either on its own motion or on the application made by the employer or any workman,

review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication:

PROVIDED that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3) every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months."

17. Since this was a project for construction of some railway lines, therefore, the rigour of sub-section (1) for seeking a permission of Government is not required in the present case. Once the project is completed the service of the incumbent comes to an end. But the legislature in its wisdom has provided relief for such class of workmen on completion of project under section 25-FFF. Sub-section (2) of Section 25-FFF provides compensation

for such class of workmen. Sub-section (2) of Section 25-FFF reads as under:-

> "(2) Where any undertaking set up for the construction of buildings, bridges, roads, canals, dams, or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set up, no workman employed therein shall be entitled to any compensation under clause (b) of Section 25F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every completed year of continuous service or any part thereof in excess of six months."

18. According to sub-section (2) when such construction work is closed down and on completion of work within two years from the date on which the undertaking had been set up, the workman employed therein shall not be entitled to compensation under clause (b) of Section 25F, but if the construction work is not completed within two years he shall be entitled to notice and compensation under that section for every completed year of continuous service or any part thereof in excess of six months.

19. Mr. Rao learned counsel for the Company submitted that the position of the company *vis-à-vis* these workmen should not be worse when their undertaking is closed with the permission. He submitted that in fact sub-section (8) of Section 25-O clearly lays down that if the permission had been granted for closure then every workman employed therein shall be entitled to receive compensation, which will be equivalent to 15 days' average pay for every completed year of continuous service or any part thereof in excess of six months. Learned counsel submitted that position of the company where the project is completed cannot be said to be worse than the undertaking, which is closed with the permission where the compensation is only awarded as mentioned in sub-section (8) of Section 25-O. We regret to say that we cannot agree with the submission of the learned counsel for the respondent company. The legislature in its wisdom has especially provided on closure of such projects, a special benefit to such workers under sub-section (2) of Section 25-FFF in the event the company has completed construction after more than two years, the workman will be entitled to notice and compensation under that section 25-F for every completed year of continuous service or any part thereof in excess of six

months. This is the legislative mandate and the intention of the legislature is more than apparent. Since this is legislative mandate and we cannot sit over the matter to decide that whether the position of the company, which closed down the undertaking with the permission and company which is closed down because of the completion of the project should not be worse. Since it is a legislative mandate the company has to comply with those provisions. Therefore, these incumbents have already been given notice and if the compensation has not been determined in terms of Section 25-F then that should be calculated and paid to the workers if not paid so far. They have been directed to collect their dues from the office. If that amount has not been collected by them then it will be open to them to collect same or any shortfall that will be made good by the company. So far as the termination of the incumbents is concerned after completion of the project they have no right to continue. They are only entitled to notice and compensation to be determined under Section 25-F. Shortfall of period of notice or compensation will not render termination bad on that count.

20. In this connection learned counsel has also invited our attention to a decision of this Court in *Punjab Land Development & Reclamation Corporation Ltd., Chandigarh* v. *Presiding Officer, Labour Court, Chandigarh & Ors.* reported in [1990] 3 SCC 682 where the similar question was considered by the Constitution Bench of this Court and it was observed,

> "Thus, by this Amendment Act the Parliament clearly provided that though such termination may not have been retrenchment technically so-called, as decided by this Court, nevertheless the employees in question whose services were terminated by the transfer or closure of the undertaking would be entitled to compensation, as if the said termination was retrenchment. As it has been observed, the words "as if" brought out the legal distinction between retrenchment defined by Section 2(OO) as it was interpreted by this Court and termination of services consequent upon transfer of the undertaking. In other words, the provision was that though termination of services on transfer or closure of the undertaking may not be retrenchment, the workmen concerned were entitled to compensation as if the said termination was retrenchment."

21. This view has been further reaffirmed by this Court in *S.M.Nilajkar & Ors.* v. *Telcom District Manager, Karnataka* reported in [2003] 4 SCC 27. It was observed,

> "It is pertinent to note that in *Hariprasad Shivshanker Shukla* v. *A.D. Divelkar,* AIR 1957 SC 121 the Supreme Court held that "retrenchment" as defined in Section 2(oo) and as used in Section 25-F has no wider meaning than the ordinary accepted connotation of the word, that is, discharge of surplus labour or staff by the employer for any reason whatsoever otherwise than by way of punishment inflicted in disciplinary action. Retrenchment was held to have no application where the services of all workmen were terminated by the employer on a real and bona fide closure of business or on the business or undertaking being taken over by another employer. The abovesaid view of the law taken by the Supreme Court resulted in promulgation of the Industrial Disputes (Amendment) Ordinance, 1957 with effect from 27-4-1957, later on replaced by an Act of Parliament (Act 18 of 1957) with effect from 6-6-1957 whereby Section 25-FF and Section 25-FFF were introduced in the body of the Industrial Disputes Act, 1957. Section 25-FF deals with the case of transfer of undertakings. The term "undertaking" is not defined in the Act. The relevant provisions use the term "industry". Undertaking is a concept narrower than industry. An undertaking may be a part of the whole, that is, the industry. It carries a restricted meaning. (See *Bangalore Water Supply & Sewerage Board* v. *A. Rajappa,* [1978] 2 SCC 213 and *Hindustan Steel Ltd.* v. *Workmen,* [1973] 3 SCC 564) With this amendment it is clear that closure of a project or scheme by the State Government would be covered by closing down of an undertaking within the meaning of Section 25-FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of Section 25-F though the right of the employer to close the undertaking for any reason whatsoever cannot be question. Compliance with Section 25-F shall be subject to such relaxations as are provided by Section 25-FFF. The undertaking having been closed on account of unavoidable circumstances beyond the control of the employer i.e. by its own force as it was designed and destined to have a limited life only, the compensation payable to the workman under clause (b) of Section 25-F shall not

exceed his average pay for three months. This is so because of failure on the part of the respondent employer to allege and prove that the termination of employment fell within sub-clause (bb) of clause (oo) of Section 2 of the Act." A

22. Therefore, in view of the legislative history as mentioned above, it clearly stipulates that Section 25-FFF was in fact incorporated in order to give benefit to the workers, where an undertaking is closed because of completion of the project or on account of transfer. Therefore, the contention of Mr.Rao learned counsel cannot be accepted. In this connection our attention was also invited to a decision of this Court in *A. Umarani* v. *Registrar, Cooperative Societies & Ors.* reported in [2004] 7 SCC 112 wherein it was held that illegal appointment cannot be regularized. B C

23. Learned counsel has invited our attention to a decision of this Court in *Hindustan Steel Works Construction Ltd. & Ors.* v. *Hindustan Steel Works Construction Ltd. Employees' Union, Hyderabad & Anr.* reported in [1995] 3 SCC 474 wherein when one of the unit of the Hindustan Steel Works Construction Ltd. was closed down and similar relief was sought by the employees of the Hindustan undertaking and in that context this Court observed that on closure of unit at Hyderabad the workmen were not entitled as a matter of right to be absorbed, and it was held: D E

"The question whether the units at Hyderabad are independent establishments or parts of a larger establishment is not a pure question of fact. The tests laid down in this behalf in the decisions of the Supreme Court need not all be satisfied in every case. One has also to look to the nature and character of the undertaking while deciding the question. The tests evolved are merely to serve as guidelines. The appellant is a government company wholly owned and controlled by the Government of India. Its job is to undertake construction works both in India and abroad. The construction works are not permanent works in the sense that as soon as the construction work is over, the establishment comes to an end at that place. In such a case, functional integrality assumes significance. The nature of the construction work may also differ from work to work or place to place, as the case may be. It is not even suggested by the respondent-Union that there is any functional integrality between the several units or several construction works F G H

A undertaken by the appellant. It is not suggested that closure of one leads to the closure of others. There is no proximity between the several units/works undertaken by the appellant; they are spread all over India, indeed all over the world. It would thus appear that each of the works or construction projects undertaken by the
B appellant represent distinct establishments and did not constitute units of a single establishment. The mere fact that Management reserved to itself the liberty of transferring the employees from one place to another did not mean that all the units of the appellant constituted one single establishment. In the case of a construction company like the appellant which undertakes construction works
C wherever awarded, does that work and winds up its establishment there and particularly where a number of local persons have to be and are appointed for the purpose of a particular work, mere unity of ownership, management and control are not of much significance. Having regard to the facts and circumstances of this case and the
D material on record, the conclusion is inevitable that the units at Hyderabad were distinct establishments. Once this is so, workmen of the said units had no right to demand absorption in other units on the Hyderabad units completing their job."

24. Therefore, this case is nearer to our case in hand that once this
E project is completed then it is not incumbent on the company to necessarily employ these persons at other projects in any other part of the country.

25. Our attention was also invited to a decision of this Court in *MD. U.P. Land Development Corporation & Anr.* v. *Amar Singh & Ors.* reported
F in [2003] 5 SCC 388 wherein it has been held that employees working under a scheme/project have no vested right so as to claim regularisation of their services with regular pay scales. It was observed that when the scheme/project comes to an end, the services of the employees working the project also come to an end.

G 26. Learned counsel has invited our attention to a decision of this Court in *Mahendra L. Jain and Ors.* v. *Indore Development Authority & Ors.* reported in [2005] 1 SCC 639. This was a case of regularization of illegal appointments. This has no relevance so far as our case in hand is concerned

H 27. Before parting with the case, we may clarify that if any compensation

amount has not been paid to the workers then that should be determined and be paid to them forthwith, if not paid so far. A

28. Therefore, in the light of discussion made above, we are of the opinion that the view taken by the Full Bench is correct. The petitioners are not entitled to be regularise their services in the Company and they are not employees of Company. They are only entitled to compensation as indicated above. The above appeals and writ petitions filed by workers are dismissed. No order as to cost. B

N.J. Appeals dismissed.