

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4806 of 2000

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The Divisional Secretary, North Eastern Railway Mazdoor Union, Sonapur
..... Petitioner/s

Versus

1. The Divisional Manager, North Eastern Railway Sonapur.
2. The Assistant Engineer, North Eastern Railway Sonapur.
3. The Presiding Officer, Industrial Tribunal, Patna
4. Union of India through General Manager, North Eastern Railway, Gorakhpur

..... Respondent/s

with

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Civil Writ Jurisdiction Case No. 3500 of 2002

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Basudev son of Dubar Keot (Nisad), resident of village –Raiganj Bazar, Tola Khakra, PO-Raiganj Bazar, PS-Khorabazar, District-Gorakhpur (UP).

..... Petitioner/s

Versus

1. The Divisional Manager, North Eastern Railway Sonapur.
2. The Assistant Engineer, North Eastern Railway Sonapur.
3. The General Manager, North Eastern Railway, Gorakhpur

..... Respondent/s

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Appearance :

(In CWJC No. 4806 of 2000)

For the Petitioner/s : Mr. Umesh Pathak
Mr. Shailendra Kumar
Mr. Sanjay Kumar Mishra
For the Respondent/s : Mr. Pravin Kumar Sinha

(In CWJC No. 3500 of 2002)

For the Petitioner/s : Mr. Umesh Pathak
Mr. Shailendra Kumar
Mr. Sanjay Kumar Mishra
For the Respondent/s : Mr. Pravin Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 26-03-2015

Heard learned counsel for the petitioners and learned
counsel for the Indian Railways.

In both the cases, by and large, similar question has been

raised and, as such, both are being disposed of by a common order.

In the present case, the petitioner is challenging the Award dated 27th May 1999 passed in Reference No. 14 (C) of 1997 whereby and whereunder the Tribunal arrived to a conclusion that the workmen, whose case have been referred, have not completed even 240 days and they are outside the purview of protection of Section 25F of the Industrial Disputes Act.

An industrial dispute was raised with regard to Sindhoo and 33 workmen claiming that they were engaged as casual workmen, working as unskilled labour in Group-IV under the Assistant Engineer, North Eastern Railway Sonapur and they have acquired temporary status after having completed 120 days continuous service without any break. Further claim has been made that though they acquired the temporary status but their services were terminated by the Assistant Engineer, North Eastern Railway, Sonapur without complying the requirements of Indian Railways Establishment Manual Volume-I and Volume-II and Sections 25F, 25FF and 25G of the Industrial Disputes Act, as they were not given any notice, nor retrenchment compensation as required under Section 25F of the Industrial Disputes Act. It has further been claimed that they did not follow the provision of Section 25G of the Industrial Disputes Act as they have violated last come first go. The Labour Department,

Government of India referred the dispute, is as follows:

“By adjudication order No. L-41011/16/96-I.R. (P) dated 1.10.1997 the Central Government (Government of India) in the Ministry of Labour, New Delhi referred u/s 10 (1) (d) of the Industrial Disputes Act, 1947 (herein after to be referred as ‘the Act’) the following dispute between the Management of N.E. Railway, Sonapur and its workmen for adjudication to this Tribunal:

“Whether the action of the Management of N.E. Railway Sonapur for removing from service of S/Sh. Sindhoo and 33 others after giving them temporary status is justified and legal? If not to what relief the workmen are entitled to?”

Parties have filed their written statements and rejoinder.

The Management has taken a plea that the workmen listed in the present reference were ex-casual labourers who had worked in different brief spells long ago and most of them have not been engaged after 1987-89. The entire dispute raised by the Union is wholly misconceived and without any basis and also asserted the claim is barred by laches and delay. Further plea has been taken that

none of the workmen have worked continuously for one year or 240 days in a year prior to disengagement and the Railway has refuted the allegation of violating the seniority rule.

The Tribunal after examining the matter, arrived to a conclusion that the workmen involved failed to proof their period of work for one year continuously or 240 days preceding 12 months and held that they are not entitled to get protection of Section 25F of the Industrial Disputes Act so much so, because they have attained the temporary status will not *ipso facto* give the right of regularisation.

The Hon'ble Supreme Court in Secretary, State of Karnataka v. Umadevi (2006) 4 SCC 1 has held that merely persons have continued for certain period will not give him/them the right of regularisation. Petitioners have claimed that three persons namely, Prabhu Rai, Laloo Rai and Chandra Kant Singh died and two persons, namely, Sindhoo and Kamleshwari have already regularised in service.

This Court is exercising the power of superintendence examining the validity of the order passed by the Tribunal, does not find any error in law as well as on fact committed by the Presiding Officer, Industrial Tribunal, Patna.

It has been submitted that four persons, namely, Subodh Singh, Rajeshwar Rai, Laldev Rai and Niranjana Prasad Singh have

been regularised in service. This Court cannot give any opinion about their regularisation.

It goes without saying, if petitioners are still in service, they if so advised may file an appropriate representation before the appropriate authority who will examine their case and take appropriate steps but this Court is not giving any legal right to the petitioners for consideration of their case for absorption.

The Office is directed to return back the original records of Reference Case No. 14 (C) of 1997 to the Presiding Officer, Industrial Tribunal, Patna forthwith.

With the above observations/directions, this petition is disposed of.

(Shivaji Pandey, J)

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