

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

OP(LC).No. 930 of 2011 (O)

**ID 40/2008 OF CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR
COURT, ERNAKULAM.**
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PETITIONER:

**SENIOR DIVISIONAL PERSONNEL OFFICER,
SOUTHERN RAILWAY, TRIVANDRUM DIVISION,
TRIVANDRUM-695 014.**

**BY SMT.SUMATHY DANDAPANI (SENIOR ADVOCATE)
ADV. SRI.N.B.SUNIL NATH**

RESPONDENT:

**GENERAL SECRETARY,
SOUTHERN RAILWAY MEN'S UNION,
PRAKASH BHAVAN, PALLIKKAVUPARAMBU,
RAILWAY STATION ROAD, TRIPUNITHURA.**

**BY ADVS. SRI.C.S.AJITH PRAKASH
SRI.T.D.SALIM
SRI.PAUL C THOMAS**

**THIS OP (LABOUR COURT) HAVING BEEN FINALLY HEARD
ON 12-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 SERIES:** TRUE PHOTOCOPIES OF THE CASUAL LABOUR CARDS OF SHRI T.T.IYPE.
- EXHIBIT P2 :** TRUE COPY OF THE COUNTER STATEMENT IN I.D.NO.12/1991.
- EXHIBIT P3 :** TRUE COPY OF THE AWARD DATED 31.5.1994 OF THE CENTRAL GOVERNMENT LABOUR COURT, ERNAKULAM ID.12/91.
- EXHIBIT P4 :** TRUE COPY OF THE ORDER DATED 12.3.1996.
- EXHIBIT P5 :** TRUE COPY OF THE JUDGMENT DATED 25.1.2008 IN WP(C)NO.16299/2003.
- EXHIBIT P6 :** TRUE COPY OF THE GOVT. ORDER DATED 11.4.2008.
- EXHIBIT P7 :** TRUE COPY OF THE CLAIM STATEMENT DATED 20.3.09 FILED BY THE WORKMAN IN I.D.NO.40/2008.
- EXHIBIT P8 :** TRUE COPY OF THE WRITTEN OBJECTION DATED 29.7.2009 FILED BY THE PETITIONER.
- EXHIBIT P9 :** TRUE COPY OF THE REJOINDER DATED 11.11.2009 FILED BY THE WORKMAN IN I.D.NO.40/2008.
- EXHIBIT P10 :** TRUE COPY OF THE AWARD IN I.D.40/08 DATED 23.7.2010.
- EXHIBIT P11 :** TRUE OCPY OF THE COVERING LETTER FORWARDING THE /.AWARD.
- EXHIBIT P12 :** TRUE COPY RAILWAY BOARD'S LETTER NO.E(NG)II/84/CL/41 DATED 11.9.1986 (RBE NO.167/86).

RESPONDENT'S EXHIBITS:

- NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

K. VINOD CHANDRAN, J

O.P(LC) No. 930 of 2011

Dated this the 12th day of March, 2015

J U D G M E N T

The petitioner-Railway is aggrieved with the decision of the Labour court at Ext.P10, which granted temporary status to a workman from 1975 onwards. The learned Senior Counsel appearing for the petitioner would contend that going by the decision of the Hon'ble Supreme Court reported in **Inder Pal Yadav and others v. Union of India and others 1985(2) SCC 648**, the temporary status can be granted only from 1984 and not from 1976. The same is a measure devised by the Railways which had the approval of the Hon'ble Supreme Court to mitigate the hardship of the casual labourers engaged by the railways. In such circumstances, no regularisation can be granted prior to the date as prescribed by the Hon'ble Supreme Court; is the compelling argument.

2. The learned counsel for the respondent however, would draw a distinction, insofar as open line casual workers and project casual workers. According to him **Inder Pal Yadav** (supra) deals with only project casual workers. He relies on **Ram Kumar and others v. Union of India and others (1988 (1) SCC 306)** and **Union of India and others v. Basant Lal and others (1992(2) SCC 679)** to contend that casual labourers working under the Railways continuously would be entitled to temporary status on completion of 120 days, if they are engaged in open line and not in a project. The employment of the workman herein was as a casual labour in the open line, which has been proved by the Union by production of documents as indicated in the labour court award. Hence on the basis of the decision reported in **Essen Deinki v. Rajiv Kumar (2002(8) SCC 400)**, there is no warrant for this Court to interfere with the award under Article 227, is the plea.

3. A reading of the award would show that the

workman had been previously contesting the matter before the appropriate authority under the Industrial Disputes Act, in which an award was passed, produced as Ext.W3. Therein the petitioner was directed to be granted reinstatement with temporary status. The award has attained finality. Subsequently, being reinstated on 13.12.1995, the petitioner was granted temporary status, which status however was confined from 15.02.1989; as is evidenced by Ext.W2 order. The dispute raised was with respect to the restriction of the temporary status from 15.02.1989. The workman sought temporary status prior to that date, specifically from 1975 onwards.

4. The Central Government Industrial Tribunal Cum Labour Court raised two issues as to whether the claim was stale and its justification. The workman admittedly was reinstated only in the year 1995 and the order granting temporary status from 1989 was issued in 1996. Immediately, the workman was before the authority seeking redressal of his grievance and pre-

dating the temporary status. The matter was raised as a dispute under the Industrial Disputes Act, 1947 too and considerable delay was occasioned in the reference being made. The ground raised by the Railways as to the claim being stale was hence negated. It is trite that limitation does not apply to industrial adjudication. (**Nithyanand. M Joshi v. Life Insurance Corporation [AIR 1970 SC 209]**). Further the facts too does not command an interference in that finding of the Central Government Industrial Tribunal Cum Labour Court.

5. The workman examined himself and produced Exts.W1 to W3. The casual labour card produced at W1 shows that the petitioner was engaged in open line. Though a photo copy was produced, the marking of the same was not opposed by the Railways nor did the Railways adduce any evidence in support of the contention that the petitioner was a casual worker in a project. Ext.W2 order of the Railway itself was one granting temporary status on completion of 120 days.

The order of the railways having conferred temporary status on completion of the 120 days, it was the finding of the Tribunal that it indicates unequivocally that the petitioner was continued as a casual labourer in open line since casual labourers in projects are granted temporary status only on completion of 180 days (sic.); actually 360 days.

6. **Inder Pal Yadav** (supra) dealt with the casual labourers employed in the project of the Railways. The Railways framed a scheme under which temporary status was conferred on casual labour in the project subject to completion of a minimum of 360 days as on 01.01.1984. The date on which the individual employer would be treated as temporary depended on their service. The Hon'ble Supreme Court while affirming the Scheme only modified the effective date, to 01.01.1981. **Ram Kumar** (supra) and **Basant Lal** (supra) was with respect to disputes arising from the implementation of the Scheme. Both the decisions recognised the distinction

between casual labour in the open line and project work and noticed that the minimum requirement of days of employment were different.

7. The petitioner's labour card indicated that he had continued from 28.06.1975 to 14.03.1976 when he had worked continuously without break for 257 days; with only leave of 4½ days. It was in such circumstances that the Tribunal granted temporary status from 25.10.1975, the date of completion of 120 days service. The Railways having not substantiated their contentions in any manner either by a witness examined before the Tribunal or by production of any documents, this Court cannot interfere with the award passed by the Tribunal. The compelling evidence of the workman/Union stood totally uncontroverted. The Hon'ble Supreme Court has in **Essen Deinki** (supra) cautioned that the jurisdiction exercised under Article 227, in examining an award, in an industrial adjudication, is not an appellate one and a re-appreciation of evidence is not warranted. There is

nothing perverse in the findings of the Central Government Industrial Tribunal cum Labour Court and on the contrary it is based on material evidence proffered by the workman/Union, which stood unchallenged by any contra evidence. The Railways rested contend with merely asserting the petitioners employment, in a project, when its own order of reinstatement was contrary to its assertion as per the extant regulations.

The Original Petition would stand dismissed.
Parties left to suffer their costs.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

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P.A to Judge