



W.P.No.37647 of 2004

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>14.02.2023</i>
<i>Pronounced on</i>	<i>13.04.2023</i>

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

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The Divisional Railway Manager,
Southern Railway,
Madurai.

... Petitioner

Vs.

1. The Presiding Officer,
Central Government Industrial Tribunal,
Cum labour Court,
Shastri Bhavan,
Chennai.

2. The General Secretary,
Dakshin Railway Employees Union,
Madurai 625 010.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, to issue Writ of Certiorari calling for the entire records of the 1st respondent in I.D.No.8 of 2002 including the Award dated 16.07.2004 and quash the same.



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For Petitioner : Mr.V.Radhakrishnan
Senior Counsel for
Mr.P.T.Ramkumar
Standing Counsel

For Respondents : Mr.Jegadeesan for R2

ORDER

This writ petition has been filed to call for the entire records of the 1st respondent in I.D.No.8 of 2002 including the Award dated 16.07.2004 and quash the same.

2. The facts of the case in a nutshell:-

The dispute relates to regularisation of the service of 86 workers being the members of the second respondent Union, who were initially engaged as Casual Labour in the Railways. The members of the second respondent were working as Open Line Casual Labour and had subsequently attained temporary status on completion of 120 days of continuous service, whereas it is the case of the Railway administration that they were only Project Casual Labourers who became eligible for 1/30th of scale of pay on completion of 180 days of continuous service. It is the case of the Railway administration that the members of the Union are eligible for the benefits as available to the Project Casual Labourers prior to their absorption as regular Railway employees. The



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casual labours working in the Railways were classified as “Project Casual Labour” and “Open Line Casual Labour”. A scheme was evolved for regularisation of the services of casual labourers in the railways. The contention of the second respondent Union is that the members were engaged only as Open Line casual labours and were entitled to the benefits as applicable to such casual labours prior to their regular absorption in the Railways.

3. It is the case of the Railway administration that the said employees were originally engaged only as project casual labourers and thereafter regularly absorbed in the services of Railways and consequently were entitled to only the benefits as applicable to the project casual labours till their absorption. The services of the members of the second respondent Union were terminated challenging which they filed W.P.No.10709/83 on the file of the Supreme Court of India and pending the said writ petition they were absorbed as regular Railway servants and consequently by order dated 20.10.1984 the Apex Court disposed of the writ petition recording the fact that the said employees had been absorbed in the services of Railways. The dispute was thereafter raised with regard to the period prior to absorption and the benefits as available to them on attainment of temporary status. Consequent to the Ministry



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of Labour declining reference of the said dispute to adjudication, the second respondent Union filed W.P.No.3117 of 1995 before this Court and by order dated 10.07.2001 the said writ petition was allowed and the Ministry of Labour was directed to reconsider the request for reference. In pursuance to the same, reference was made by the Ministry of Labour to the first respondent herein which was numbered as I.D.No.8 of 2002 and the first respondent by award dated 16.07.2004 held that the members of the second respondent Union are entitled to the relief as claimed by them and directed the petitioner to regularise their services by granting them temporary status on completion of 120 days of service on par with their juniors and also directed the petitioner/Railway to pay the consequential benefits. Aggrieved by the above award passed in I.D.No.8 of 2002 dated 16.07.2004 the petitioner/Railway has come forward with the present writ petition.

4. The learned Senior Counsel appearing for the petitioner/Railway Management submitted that the evidence adduced would categorically show that the members of the second respondent Union were engaged only as Project Casual Labours and not as Open Line Casual Labours. The Tribunal failed to see that the documents placed before it more particularly Ex.M3&Ex.M5 would



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clearly indicate that the members of the second respondent Union were engaged only as Project Casual Labours. It is very pertinent to point out that the rules regarding grant of temporary status to casual labours are contained in Chapter XX of Indian Railway Establishment Manual (IREM), Volume II. The rule during the relevant period was that Open Line Casual Labour were granted temporary status on completion of 120 days of continuous service, whereas the Project Casual Labours became eligible only for 1/30th of the minimum appropriate scale of pay on completion of 180 days of continuous service. In Ex.M3 and Ex.M5 the period of continuous service has been clearly shown and it can be seen that in each case the period is shown as 180 days or six months which would categorically prove that the case of the Railway administration that the members of the second respondent Union were engaged only as Project Casual Labour and not Open Line Casual Labours. The said employees were thereafter absorbed as Railway servants and their services regularised on completion of five years service.

5. The learned Senior Counsel further submitted that the evidence adduced on the side of the Railway administration would clearly show that the members of the second respondent Union were engaged as Project Casual



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Labours and not as revenue casual labours or open line casual labours from the year 1975 to 1976 onwards for completion of track renewal work which is classified as project as evidenced under Ex.M.2.

6. The learned Senior Counsel further submitted that it is for the second respondent Union to prove the nature of engagement and the onus is on the respondent/Union to prove the claim as made by them which they have failed to do so by any acceptable evidence. The reasoning of the Tribunal that Ex.M1 to Ex.M.4 could not be considered because the said documents were subsequent to 1982 is not sustainable more so when the sanctity of the said documents was never challenged by the second respondent/Union. None of the documents on the side of the second respondent would substantiate their contention that the members were engaged only as open line casual labour. On the other hand MW1 who was examined on the side of the administration and the various documents produced on the side of the Railway administration would categorically show that the members of the second respondent/Union (86 in number) were engaged only as project casual labours and were consequently entitled to benefits as available to project casual labours for the period prior to their absorption as regular employees of Railways.



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7. He further submitted that there were 39 persons who were not regularised out of which 30 of them have died and the points for consideration before the Tribunal was that

(i) “Whether the demand of the Petitioner Union to grant temporary status to 86 workers as claimed by them is justified?”.

2. To what relief, the Petitioner Union is entitled?”.

8. The learned Senior Counsel further drew the attention of this Court to the service particulars of one C.Perumal who was working as Project Casual Labour and was already granted temporary status with effect from 01.01.1981 in terms of Railway Board letter dated 11.09.1986 is also a member of the second respondent Union. The witness of Ex.W1 G.Balasubramaniam has also stated that they have not informed that they were taken only as Project work labours and the same was informed to them only in the year 1978 and in the cross examination he has stated that he knew the Railway department has taken him only as Project Casual Labour but no appointment order was issued to him.

9. The learned senior counsel further submitted that according to the



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members mentioned in Ex.W2 pertain to open line Casual Labourers working under Permanent Way Inspector, Sivaganga and not under Permanent Way Inspector, Sivaganga Special Works and therefore the terms and conditions for open line Casual Labour and project Casual Labour are entirely different and cannot be equated and therefore the petitioner Union cannot claim any benefits based on Ex.W2.

10. The learned counsel for the second respondent drew the attention of this Court to the order issued by the Government of India, Ministry of Labour vide Order No.L41011/24/1993-IR(B-1) dated 07.01.2002 referring the industrial dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Chennai and the schedule is extracted as below:-

“Whether the demand of the Union grant temporary status to 86 workers (as per list attached) by the Southern Railway is justified? If so, what relief the union concerned is entitled?”.

11. The learned counsel for the second respondent further drew the attention of this Court to rule 2001 of Indian Railway Establishment Manual (IREM), Volume II, wherein the definition of Casual labour (Open Line) Casual Labour (Project) are given and the same is extracted as hereunder:-



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2001.(i) Definition of Casual Labour – Casual Labour refers to labour whose employment is intermittent, sporadic or extends over short periods or continued from one work to another. Labour of this kind is normally recruited from the nearest available source. They are not ordinarily liable to transfer. The conditions applicable to permanent and temporary staff do not apply to casual labour.

Casual Labour on Railway should ordinarily be employed only in the following types of cases:

(a) Casual Labour (Open Line) – Casual Labour are primarily engaged to supplement the regular staff in work of seasonal or sporadic nature, which arises in the day-to-day working of the Railway System. This includes labour required for unloading and loading of materials, special repair and maintenance of tracks and other structures, supplying drinking water to passengers during summer months, (recoupment of man-days lost on account of absenteeism) patrolling of tracks, etc. Casual Labour so engaged in the operation and maintenance of railway system is referred to as open line Casual Labour, as distinct from Project Casual Labour, described in para (b) infra.

(b) Casual Labour (Project) – Casual Labour are also engaged on Railways for execution of railway projects, such as new lines, doubling, conversion, construction of buildings, track renewals, Route Relay Interlocking Railway Electrification, setting up of new units etc. Casual Labour so engaged are referred to as 'Project Casual Labour'

Such of those casual labour engaged on open line (revenue) works, who continue to do the same work for which they were engaged or other work of the same type for more than 120 days without a break will be treated as temporary (i.e., given “temporary status”) on completion of 120 days of continuous employment.

Casual Labour on projects who have put in 180 days of



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continuous employment on works of the same type are entitled for 1/30th of the minimum of the appropriate scale of pay plus Dearness Allowance.

Before giving regular scale of pay or 1/30th of the minimum of the scale plus Dearness Allowance on completion of 120 days or 180 days continuous employment as the case may be a preliminary verification in regard to age and completion of requisite number of days of continuous service should be done by the Assistant Officer and the person should also be got medically examined and only if found fit he should be granted regular scales of pay.

(ii) Grant of temporary Status to project casual labour is regulated by instructions separately issued by the Railway Board. As far as possible, casual labourers required for new projects must be taken from amongst those casual labourers, who have worked on the open line/projects in the past in preference to outsiders.

(iii) Seasonal labour sanctioned for specific works of less than 120 days duration: If such labour is shifted from one work to another of the same type and the total continuous period of such work at any time is more than 120 days duration, they should be treated as temporary (i.e., granted “temporary status”) after the expiry of 120 days continuous employment.

Note (2) Project for this purpose should be taken as construction of new lines, major bridges, restoration of dismantled lines and other major important open line works like doubling, widening of tunnels, Route Relay Interlocking, Railway Electrification etc., which are completed within a definite time limit. The General Manager/Heads of Departments concerned in consultation with the FA & CAO will decide whether a particular open line work is a 'Project' or not”.



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12. He further drew the attention of this Court to the rejoinder filed by the petitioner in which it is stated that it is not correct to state that their members have been given temporary status and absorbed in service in terms of Inderpal Yadav's case because the disposal of petitioner's case by the Hon'ble Supreme Court was on 08.10.1984 while Inderpal Yadav's case was decided subsequently in June 1985, by which time the petitioner members had already been accorded temporary status. As per the Deputy Director Establishment, Railway Board, New Delhi letter dated 23.07.1976 circulated under GM/P's letter No.P(RT) 564/P Vol.IV Pilot dated 13.08.1976 (Annexure I), the seniority has to be determined and the same is extracted as below:-

“The instructions in Board's letter No.E(LL)71-AT/ID/1-7 dated 22.01.1974 apply only to preparation and display of seniority lists of casual labour working under each senior subordinate for the purpose of retrenchment and not to screening of such casual labour for regular absorption in Class IV vacancies. The unit for screening casual labour would be the unit for which recruitment is made, which it is presumed, is normally the Division. After working out vacancies for recruitment in this unit, all casual labour who have put in a minimum of four months continuous service (Board's letter No.E(NG) II-76 CL/77 dated 12.11.76) whether on the open line in the division or on adjacent construction projects should be listed for screening the seniority being based on the total days worked on the Railway as per Board's letter No.E(NG)II-74



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CL/99 dated 25.08.75”

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13. The learned counsel drew the attention of this Court to the findings of the Tribunal and the same are extracted as hereunder:-

18. Again, the learned counsel for the respondent contended that in Ex.M3 and M1 which are office orders issued to the petitioners, wherein, it is clearly stated that 1/30th scale of pay has been granted to petitioners on completion of 180 days of continuous service, which prove that the members of petitioner Union were engaged as Project Casual Labourers and therefore the contention of petitioner Union that they are entitled to benefits of open line Casual Labourers cannot be accepted.

19. But, again the learned counsel for the petitioner argued that Ex.M1 is dated 23.10.86 and Ex.M4 is dated 11.09.1996 which are subsequent to raising of litigation in 1982 by the workmen before Supreme Court and hence they are after the fact and so not relevant and cannot be relied. Further, Ex.M4 was an internal document not in the notice of workmen. Even assuming that the workmen were put on notice of Ex.M1 and M4 they do not amount to acceptance of contract of employment as project employees. Further, by none of the exhibits, it is established the work in which the petitioner/workmen were engaged was a project as per definition of Ex.M2. Though the respondent relies on Ex.M6 and M7 to establish that the petitioners being project labourers by showing that these exhibits were signed by Permanent Way Inspector, Special Works, but in the first place both exhibits were prepared in 1985 which is subsequent to raising of litigation in this case by the workmen before Supreme Court. Therefore, it is after the fact. Therefore, they are not relevant. Secondly, both the exhibits were signed in Permanent Way Inspector, Special Works



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but in subsequent places it is signed by Permanent Way Inspector. Further, these documents are internal registers of respondent/Management and not under possession of petitioner/workman and not shown to workmen and therefore, no reliance can be placed that they prove the petitioner/workmen are project Casual Labourers. Further, the thumb impression or signature found in the beginning of exhibits, but much later than the date Permanent Way Inspector had signed, therefore, it cannot be said that the workmen were aware of the contents of identity or designation of the signatory. Therefore the respondent has not established by any documentary evidence that the members of petitioner Union were appointed for project work or the members of petitioner Union were appointed as project Casual Labourers. In this case, it is admitted by MW1 that Ex.W3 is the combined seniority list for so called open line Casual Labour and project Casual Labour. But for absorption of workmen of petitioner Union, they have not followed or observed this list. This is deliberate denial of legal and legitimate entitlement of petitioner/Workmen. Only to overcome this misdeed, the respondent contended that members of Petitioner Union are project Casual Labour and they are not entitled to the benefits of revenue Casual Labour or open line Casual Labour. Though the respondent relied on nature of wages paid to members of petitioner Union during the relevant time to establish that the members of petitioner Union were project labourers, but Ex.M3 is also an internal office note of which the members of petitioner Union have no knowledge and in any case, this cannot constitute a conscious contract for employment in project by the members of petitioner Union. Therefore the payment of 1/30th of wages itself does not prove anything”.

14. The learned counsel further submitted that even in

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Court of Madras over ruled the objection and ordered for reference of the dispute. The respondent did not prefer any appeal against the order of Writ Petition. Hence this plea of laches, delay and other things cannot be raised now because it is a settled law that in the absence of appeal against the rejection of grounds, the same cannot be raised in consequent proceedings, therefore there was no delay and otherwise the same cannot be pleaded now by the respondent/Management.

15. The learned counsel for the respondent relied upon the judgments of the Hon'ble Apex Court in the case of *Management of Madurantakam Cooperative Sugar Mills Ltd., Vs S.Viswanathan* reported in (2005) 3 SCC 193 and the relevant paragraph is extracted as below:-

C. Constitution of India Arts. 226 and 227 Labour matters - Findings of fact – Scope of interference – Held, normally Labour Court or Industrial Tribunal is final court of facts in industrial disputes – Only if finding of fact is perverse or not based on legal evidence, High Court under Arts. 226/227 can interfere therewith – However, writ court must record reasons why it intends reconsidering a finding of fact – Approach of Single Judge and Division Bench in present case, as if they were sitting in appeal on facts, and reconsidering each item of evidence, without recording any finding as to lack of evidence or perversity of conclusions of the respective forums/courts below, was improper Said approach only amounts to substitution of their subjective satisfaction in place of satisfaction of Labour Court Moreover, Supreme Court on reconsideration of findings of Labour Court, finding that though another view was possible, none of the findings were perverse or not based on evidence, hence order of reinstatement by Labour Court restored (which now due to



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superannuation means, back wages and retiral benefits) Labour Law
-Judicial review

12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere has he come to the conclusion that the finding of the Labour Court was either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.

16. We note that the Labour Court has taken into consideration the fact that the complainant had Stated that on the day when he went to meet the workman he was greeted with an abuse, but this piece of evidence was not accepted by the Labour Court rightly because it is rather difficult to accept any normal person who meets another person for the first time in his life would straightaway abuse him without any rhyme or reason. In this background, we cannot conclude that the finding of the Labour Court on this question is perverse. The other argument of the learned counsel for the appellant is that there was evidence to show that the demand of Rs 10 was made as illegal gratification in the guise of donation and that case ought to have been accepted. We must state that even this question was considered by the Labour Court and was rejected on the ground that the mere statement of the complainant in this regard without there being any corroborative material was insufficient to hold the workman guilty. Even this finding in our opinion cannot be held to be perverse taking into consideration the overall facts of the case. In regard to the third charge of not allowing the complainant to enter the godown also, it cannot be said that the finding of the Labour Court is perverse. In such a background it is not possible for this Court to accept the contention of the management that the Labour Court's findings are unsustainable in law. It may be possible for another person to take a



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different view, but certainly it is not possible to give a finding that the conclusion of the Labour Court was either perverse or not based on evidence.

and also in another judgment in the case of *Management of Salal Power Station & another Vs General Manager and others* reported in CDJ 2022 JKHC 288 and the relevant portion is extracted as below:-

7. Before this Court considers the issues raised by the petitioners, it is apt to observe Court cannot act as an appellate authority and re-appreciate the evidence but at the same time, if there is perversity, the same cannot be ignored. This Court cannot interfere with the award passed by the respondent No.2 merely because on the basis of same set of evidence, other view is also possible. In Krushna Narayan Wanjari v. Jai Bharti Shikshan Sanstha, (2018) 12 SCC 620. Apex Court has held asunder:

“13. Considering the entire facts of the case and the findings recorded by the Labour Court, prima facie we are of the view that the High Court has exceeded in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India in interfering with the finding of facts recorded by the Labour Court. It is well settled that the High Court in the guise of exercising its jurisdiction normally should not interfere under Article 227 of the Constitution and convert itself into a court of Appeal.

“17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the in the opinion of the writ court to warrant those findings, at any rate, as long as they mere reason of having been based on materials or evidence not sufficient or credible are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken The Division Bench was not only justified but well merited in its criticism of the order of the learned Single Judge and in ordering restoration of the award of the Tribunal. On being taken through the



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findings of the Industrial Tribunal as well as the order of the learned Single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken, the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below;"

and also in another judgment in the case of *M/s.Shyam Cottage Industries Vs Laghu Udyog Mazdoor Union* reported in CDJ 1979 Raj HC 130 and the relevant portion is extracted as below:-

"12. It is significant to note in this case that the Management who is in possession of the entire record about the workman, failed to produce any document, what-so-ever. Not only that, the Management failed to produce even its Personal Officer or Supervisor or Foreman who used to deal with the work as per statement of Babulal and that being so the Labour Court could have raised adverse inference against the Management for non-production of documents and witnesses".

"13. It should not be forgotten that a workman fighting with the Management before the Labour Court or the Tribunal is always handicapped so far as the question of production of documentary evidence in respect of his service tenure and conditions of service is concerned. It is expected of the Management that they should assist the Labour Court and the Industrial Tribunal by production of material which is relevant and which is in their custody and knowledge. The Management cannot be allowed to take advantage of the abstract doctrine of proof by reason of the handicapped position of the workman. The Industrial disputes and the Labour Laws are socio-economic legislation creating special forums and summary reliefs and for doing speedy social justice to less privileged and handicapped workman who on account of lack of resources cannot fight the ordinary cases in civil courts. The very object of this legislation would be defeated if the Management is allowed to make technical submission of abstract doctrine of burden of proof. The present one is a case where the



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Management failed to produce any material evidence before the Labour Court and all the submissions have been made more or less on the abstract desire of burden of proof or the technical requirement of law forgetting all the land, the Labour Court is not a civil court.”

16. The learned counsel further submitted that all the 39 members of the Union were engaged in the track renewal work under the control of the permanent way Inspector, Sivaganga from 1975 and 1976 onwards. The issue involved herein is to grant temporary status on completion of 120 days in the year 1975 and 1976 along with their juniors. But all the documents placed before the Hon'ble Tribunal are related to the year 1983, 1985 and 1986. Further no documents were placed before the Hon'ble Tribunal to prove that the track renewal work in which the members of the second respondent Union were working is a project as approved by the General Manager in Consultation with FA and CAO as per the Note 2 of Rule 2001 of IREM. No documents were placed before the Hon'ble Tribunal to prove that they were appointed for the specific project. No separate seniority list was maintained for project casual labour and only combined seniority list is being maintained and this will amply prove that they are only open line casual labours. Further no project allowance has been paid to the members of the second respondent Union herein. The document relied on by the petitioner Management is payment of 1/30th of the



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salary of regular workman cannot be an acceptable evidence since the daily wage employees can have no say in their payment when they are struggling for their survival. The members of the second respondent Union herein were agitating for their right of absorption and therefore they were retrenched keeping their far juniors in service and therefore they have approached the Hon'ble Supreme Court for their right by filing W.P.No.5640 of 1982 in the year 1982 itself. During the pendency of the above Writ Petition, the learned Additional Solicitor General informed before the Hon'ble Supreme Court that all are continuing in service and all of them were absorbed and therefore recording the statement of the Additional Solicitor General the above writ petition was closed without going into the merits of the case. The learned counsel further submitted that relating to the question of delay was answered by the Hon'ble Tribunal in para 13,14,15,16 and 17 of the award. **They were initially granted temporary status only in the year 1984 and subsequently it was modified as with effect from 01.01.1981.** The Union is agitating for their right from 1982 onwards and the delay is only due to procrastinating attitude of the Management. The Tribunal had considered each and every grounds raised by the petitioner herein by framing issues and held that 39 members of the second respondent Union herein are Open Line Casual Labour



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which was proved through documentary and oral evidence adduced herein.

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17. Heard both sides and perused the materials available on record.

18. In this case, the members of the second respondent Union were appointed as Project Casual Labourers according to the petitioner/Railway administration. But according to the second respondent Union they were appointed only as Open Line Casual Labourers and they were involved in track renewal work at Sivaganga. **The members of the second respondent Union were engaged in the years 1975 and 1976 and in the cross examination of the petitioner it was informed that only in the year 1978, the members of the Union were informed that they were engaged as Project Casual Labourers. In this case the Railway Management has failed to prove that the concerned workmen were engaged only as Project Casual Labourers and further MW1 who was examined on behalf of the Railway Management in the cross examination has admitted that at the time of initial engagement, the workmen were never communicated that they were engaged for a particular project and also at no time thereafter the workmen were expressly communicated that they were engaged for any**



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particular project. Though there is an admission in the cross examination of MW1 on behalf of the Railway Management to that effect it was informed only in the year 1978 that the members of the Union were engaged as project Casual Labourers, it will not amount to clear admission that they were engaged only as project Casual Labourers as mentioned in the rules of Indian Railway Establishment Manual (IREM). Further, the Railway Management has not produced any document to show that these persons were engaged for a particular project. Though the Railway Management has relied on documents, Ex.M1, M2 & M3 which says definition of Casual Labour (Open Line) and Casual Labour (Project), wherein in the note, it is mentioned that the Project for this purpose should be taken as construction of new lines, major bridges, restoration of dismantled lines and other major important open line works like doubling, widening of tunnels, Route Relay Interlocking, Railway Electrification etc., which are completed within a definite time limit. The General Manager/Heads of Departments concerned in consultation with the FA & CAO will decide whether a particular open line work is a 'Project' or not” and therefore it is the duty cast upon the petitioner/Railway administration to show that the members of the second respondent Union were appointed



only as Project Casual Labourers in a particular Project and they were communicated with the same to the said persons. The findings of the labour Court in this regard are extracted as below:-

12. But, on consideration of the entire evidence on record, I find though the respondent/Management alleged that the members of petitioner Union were appointed only as project Casual Labourers, as it was held by the Supreme Court in 2003 4 SCC 27, the burden of proving that the petitioners were employed as project Casual Labourers is upon the employer namely the respondent/Management and further, it is their duty to prove that the members of petitioner union engaged as workmen either as daily wager or project Casual Labour and it was brought to the notice of them even at the time of their appointment and since they have not satisfied this condition. I cannot come to a conclusion that the members of petitioner Union were appointed as project Casual Labourers.

19. In regard to the contention of the petitioner/Railway administration that the claim of the second respondent Union is stale, belated and time barred, the findings of the Tribunal are extracted as hereunder.

“15. Though the argument of the learned counsel for the respondent is vehement, I find there is no point in the contention of the respondent because this dispute was raised even in the year 1982 before the Supreme Court and the respondent has admitted before the Supreme Court that petitioner/Workmen were absorbed and they are continuing of work in the respondent/Management. Under such circumstances, as the respondent has not regularised the workmen concerned, on the same issue they have



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raised another dispute in the year 1985 and referred to this Tribunal. Under such circumstances, I find there is no point in the contention that the claim is stale and belated one. As such, I find this contention is to be rejected”.

20. In regard to the contention of the petitioner/Railway administration that as per Ex.M4 based on the Inderpal Yadav's case the temporary status has to be accorded with effect from 01.01.1981 and the grant of temporary status with effect from 01.01.1981 is justified, but in the present case, the second respondent/Union is claiming temporary status pertaining to open line Casual Labour on completion of 120 days of continuous service. The findings of the Tribunal are extracted as below:-

17. Here again, I find there is no point in the contention of the respondent because all along it is the contention of the petitioner Union that they have to be regularised on completion of 120 days of continuous service and as per the judgment of Supreme Court, it is the duty of the respondent/Management to prove that they have been employed only as project Casual Labourers and not as open line Casual Labourers. But, in this case, the documents relied on by the respondent have not proved that the members of petitioner Union were engaged only as project Casual Labourers and not as open line Casual Labourers. Under such circumstances, I find, this dispute is maintainable before this Tribunal.

18. Again, the learned counsel for the respondent contended that in Ex.M3 and M1 which are office orders issued to the petitioners, wherein, it is clearly stated that 1/30th scale of pay has been granted to petitioners on



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completion of 180 days of continuous service, which prove that the members of petitioner Union were engaged as Project Casual Labourers and therefore the contention of petitioner Union that they are entitled to benefits of open line Casual Labourers cannot be accepted.

19. But, again the learned counsel for the petitioner argued that Ex.M1 is dated 23.10.86 and Ex.M4 is dated 11.09.1996 which are subsequent to raising of litigation in 1982 by the workmen before Supreme Court and hence they are after the fact and so not relevant and cannot be relied. Further, Ex.M4 was an internal document not in the notice of workmen. Even assuming that the workmen were put on notice of Ex.M1 and M4 they do not amount to acceptance of contract of employment as project employees. Further, by none of the exhibits, it is established the work in which the petitioner/workmen were engaged was a project as per definition of Ex.M2. Though the respondent relies on Ex.M6 and M7 to establish that the petitioners being project labourers by showing that these exhibits were signed by Permanent Way Inspector, Special Works, but in the first place both exhibits were prepared in 1985 which is subsequent to raising of litigation in this case by the workmen before Supreme Court. Therefore, it is after the fact. Therefore, they are not relevant. Secondly, both the exhibits were signed in Permanent Way Inspector, Special Works but in subsequent places it is signed by Permanent Way Inspector. Further, these documents are internal registers of respondent/Management and not under possession of petitioner/workman and not shown to workmen and therefore, no reliance can be placed that they prove the petitioner/workmen are project Casual Labourers. Further, the thumb impression or signature found in the beginning of exhibits, but much later than the date Permanent Way Inspector had signed, therefore, it cannot be said that the workmen were aware of the contents of identity



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or designation of the signatory. Therefore the respondent has not established by any documentary evidence that the members of petitioner Union were appointed for project work or the members of petitioner Union were appointed as project Casual Labourers. In this case, it is admitted by MW1 that Ex.W3 is the combined seniority list for so called open line Casual Labour and project Casual Labour. But for absorption of workmen of petitioner Union, they have not followed or observed this list. This is deliberate denial of legal and legitimate entitlement of petitioner/Workmen. Only to overcome this misdeed, the respondent contended that members of Petitioner Union are project Casual Labour and they are not entitled to the benefits of revenue Casual Labour or open line Casual Labour. Though the respondent relied on nature of wages paid to members of petitioner Union during the relevant time to establish that the members of petitioner Union were project labourers, but Ex.M3 is also an internal office note of which the members of petitioner Union have no knowledge and in any case, this cannot constitute a conscious contract for employment in project by the members of petitioner Union. Therefore the payment of 1/30th of wages itself does not prove anything”.

21. The learned counsel for the second respondent drew the attention of this Court to the rejoinder filed by the petitioner in which it is stated that it is not correct to state that their members have been given temporary status and absorbed in service in terms of Inderpal Yadav's case because the disposal of petitioner's case by the Hon'ble Supreme Court was on 08.10.1984 while Inderpal Yadav's case was decided subsequently in June 1985, by which time the petitioner members had already been accorded temporary status. As per the



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Deputy Director Establishment, Railway Board, New Delhi letter dated 23.07.1976 circulated under GM/P's letter No.P(RT) 564/P Vol.IV Pilot dated 13.08.1976 (Annexure I), the seniority has to be determined.

22. The learned counsel further submitted that even in W.P.No.3117/85 the petitioner has raised the same plea, but the High Court of Madras over ruled the objection and ordered for reference of the dispute. The respondent did not prefer any appeal against the order of Writ Petition. Hence this plea of laches, delay and other things cannot be raised now because it is a settled law that in the absence of appeal against the rejection of grounds, the same cannot be raised in consequent proceedings, therefore there was no delay and otherwise the same cannot be pleaded now by the respondent/Management.

23. It is well settled law that this Court under Article 226 of the Constitution of India cannot interfere with the findings/award of the labour Court/Tribunal unless it is perverse, arbitrary or error apparent on the face of the record and in this case the findings of the labour Court/Tribunal are based on oral and documentary evidence adduced by the respective parties.



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24. In view of the above findings, the ratio laid down by the Hon'ble Apex Court and the findings of the various High Courts, this Court do not find any infirmity in the award passed by the first respondent/Central Government Industrial Tribunal Cum Labour Court, Chennai in I.D.No.8/2002 dated 16.07.2004 and the same is hereby confirmed.

25. In the result, the writ petition stands dismissed. No costs.

13.04.2023

dpq
Index : Yes /No
Speaking/Non speaking order



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J. SATHYA NARAYANA PRASAD, J.

dpq

To

1. The Presiding Officer,
Central Government Industrial Tribunal,
Cum labour Court,
Shastri Bhavan,
Chennai.
2. The General Secretary,
Dakshin Railway Employees Union,
Madurai 625 010.

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13.04.2023