



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Reserved on: 13.03.2023
Pronounced on: 06.07.2023

+ **W.P.(C) 7494/2008, CM APPL. 532/2014 & 2364/2014**

DIVISIONAL ENGINEER TELECOM & ORS. Petitioners

Through: Mr. Ankur Mittal and Mr. Raushal
Kumar, Advocates.

versus

MUNSHI PRASAD & ORS. Respondents

Through: Mr. Jasbir Singh Malik, Advocate.

+ **W.P.(C) 7596/2008, CM APPL. 255/2014 & 3213/2014**

DIVISIONAL ENGINEER TELECOM & ORS. Petitioners

Through: Mr. Ankur Mittal and Mr. Raushal
Kumar, Advocates.

versus

KESHAV DEV & ORS. Respondents

Through: Mr. Jasbir Singh Malik, Advocate.

CORAM:**HON'BLE MR. JUSTICE GAURANG KANTH****J U D G M E N T****GAURANG KANTH, J.**

1. The present Writ Petition emanates from the common judgment dated 22.07.2008 ("Impugned Award"), passed by the Government of India, Ministry of Labour & Employment, CGIT-cum-Labour Court-II, Rajendra Bhawan, Rajendra Place, New Delhi ("Labour Court"), in I.D.



Nos. 117/1991 & 86/1991 titled as *Shri Munshi Prasad & others v. The Divisional Engineer, Telecom, Railway Electrification Project*. Vide the Impugned Award, the learned Labour Court allowed the petition filed by the Respondents and held as follows:

“The action of management of DET (RE), New Delhi was not justified in terminating the services of S/Sh. Munshi Prasad, Mohan Lal, Ganesh Kumar, Ram Sagar, Badri Prasad, Mewa Lal, Shanshyam Sharma, Gajanand Dwarikalal, Suresh Prasad, Lalendra Kumar and Shatrughan and also not preparing correct seniority. The management should give temporary status to these workmen w.e.f. the date of termination of their services. The management should reinstate the workmen along with 25% backwages w.e.f the date of retrenchment within two months from the date of the publication of the award.

The action of the management of DET (RE), New Delhi in terminating the services of S/Shri Kesheo Deo, Sukhbir Singh, Baboolal, Jawahar Lal, Pooran Singh, Rameshwar Singh, Mahabir Singh, Prem Singh, Shiv Charan, Netrapal Singh, Raman Lal, Hardam Singh, Geetam Singh, Shashipal Singh, Jaipal Singh, Bani Singh, Sant Pal, Beer Singh, Bhagwat Prasad, Bhatwat Singh, Ashok Kumar, Suresh Chandra, Shiv Prakash, Ram Prakash, Roop Singh and Umed Singh is not justified. The management should give temporary status to these workmen w.e.f. the date of termination of their services. The management should reinstate the workmen along with 25% backwages w.e.f the date of retrenchment within two months from the date of the publication of the award.”

The Petitioners *vide* the present petitions are *inter alia* praying to set aside the Impugned Award.

A brief sojourn of the factual matrix is as follows:

2. It is the case of the Respondents/Workmen that they were engaged as casual labours in Railway Electrification Project (“REP”) where they



worked with the Petitioner No.1 for the first time at Bharatpur Bayana Hindon, Gangapur Swain Madopur, Bundi, Kota, Ram Ganj Mandi etc. for almost 10 years. They further also claimed that they worked last at IPT Agra for more than 240 days.

3. It is further the case of the Respondents that on 07.05.1985, a Circular was issued by the Government of India with a direction to not remove workmen who were working in the P&D department. Subsequently, a Scheme dated 11.05.1985 was also introduced for the inclusion of Class D employees.
4. Later, the Respondents/workmen claimed that another Circular dated 17.10.1988 was issued to all desks of Telecommunication Division, telephone district and other Units including Civil Wing. It was mentioned in the above-mentioned Circular that a combined seniority list of all casual labours in respect of the Recruitment Unit would be maintained. Further, the Respondents also claimed that the list would include all casual labours working within the territorial jurisdiction of the Recruitment Unit for various functional Units such as telecom projects/maintenance/electrification/quality assurance etc., to which the workmen are attached.
5. Meanwhile pursuant to the judgment of the Hon'ble Supreme Court in ***Jagrit Mazdoor Union (Regd.) v. Mahanagar Telephone Nigam Ltd.***, reported as ***1990 Supp SCC 113***, a Scheme namely Casual Labour (Grant of Temporary Status & Regularization) Scheme of the Department of Telecommunications, 1989 ("Scheme 1989") was formulated by the Petitioners. It was specifically stated in the Scheme that "Temporary status would be conferred on all casual labourers



currently employed and who have rendered a continuous service of atleast one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five days' week). Such casual labourers will be designated as Temporary Status.”

6. However, it is the claim of the Respondents that on 24.06.1990 the services of 82 workmen were terminated by the Petitioner No.1 after granting retrenchment compensation instead of granting temporary status.
7. Aggrieved by the said retrenchment, the Respondents herein raised an Industrial Dispute *vide* I.D No. 117/1991 by applying to the Central Government. The Ministry of Labour referred the dispute to the learned Tribunal *vide* Lr. No. L-41011/7/91-IR (DU) dated 26.09.1991, where the terms of reference were as follows:

“Whether the action of management of DET (RE), New Delhi was justified in terminating the services of S/Sh. Munshi Prasad, Mohan Lal, Ganesh Kumar, Ram Sagar, Badri Prasad, Mewa Lal, Shanshyam Sharma, Gajanand Dwarikalal, Suresh Prasad, Lalendra Kumar and Shatrughan and also preparing correct seniority? If not, what relief the workmen are entitled?”

Whether the action of the management of DET (RE), New Delhi in terminating the services of S/Shri Kesheo Deo, Sukhbir Singh, Baboolal, Jawahar Lal, Pooran Singh, Rameshwar Singh, Mahabir Singh, Prem Singh, Shiv Charan, Netrapal Singh, Raman Lal, Hardam Singh, Geetam Singh, Shashipal Singh, Jaipal Singh, Bani Singh, Sant Pal, Beeri Singh, Bhagwat Prasad, Bhatwat Singh, Ashok Kumar, Suresh Chandra, Shiv Prakash, Ram Prakash, Roop Singh and Umed Singh is justified. If not, what relief the workmen are entitled?”



8. Subsequently, the Hon'ble Supreme Court in the matter of ***Brij Kishore & Ors. v. Union of India & Ors., W.P. (Civil) No. 1041 of 1988*** directed that the Workmen/Respondents therein be given the benefit of the Scheme 1989.
9. Further, the Supreme Court in one of the matters titled as ***Union of India v. Munim Singh*** reported as ***1993 (Supp) 1 SCC 724*** while referring to the Scheme 1989 held that seniority list be prepared on Divisional basis and not on All India Basis. The relevant extract is reproduced hereunder:

"2.... We have considered the problem closely and we hold that the appellants are right. Accordingly we allow the appeal and set aside the direction of the Central Administrative Tribunal so far it directs preparation of list on all-India basis for the aforesaid persons and to allot work to the casual workmen accordingly. There will be no order as to costs."

10. Another Circular dated 03.10.1992 referring to the previous Circular dated 11.03.1992 and pursuant to the judgment of the Hon'ble Apex Court in ***Munim Singh (supra)***, was issued wherein it was specifically mentioned that temporary status be granted to all casual laboures in accordance with the Scheme 1989. It was further directed that after the completion of the work and Railway Electrification, the Respondents/Workmen would be transferred to the Zonal Division and the work performed by the workmen in the Division in which work has been completed is to be mentioned in the list against the name of the workmen and accordingly, seniority list be prepared.
11. Further, on 12.11.1997, reference I.D. No. 117/1991 was dismissed while relying on the judgment of the Hon'ble Supreme Court in ***Sub-***



Divisional Inspector of Posts v. Theyyam Joseph reported as **1996 LLR 483**, wherein the Apex Court held that Department of Posts & Telegraph is not an ‘Industry’ under Section 2(j) of the Industrial Disputes Act, 1947 (“I.D. Act”). Pertinently, the above-mentioned judgment was overruled subsequently.

12. In 1997, the Respondents preferred an Original Application No. 1064 of 1997 before the Learned Central Administrative Tribunal (PB), New Delhi (in short ‘CAT’). The learned CAT vide its order dated 03.09.1998 was pleased to dismiss the petition filed by the Respondents with liberty to pursue remedy before the learned Central Government Industrial Tribunal in view of the subsequent judgment of the Hon’ble Supreme Court in **GM Telecom v. S. Srinivasan Rao & Ors.** reported as **JT 1997 (9) SC 234**, wherein it was held that Telecom department is an ‘Industry’ under Section 2(j) of the I.D. Act.
13. Aggrieved by above order dated 03.09.1998 of CAT, the Respondents preferred a W.P.(C) No. 5708/1998 on 09.11.1998 before this Hon’ble Court which was dismissed with the liberty to revive proceedings before the Central Government Industrial Tribunal.
14. Subsequently, Respondents moved an application for revival of the ID No.117/1991 and 86/1991. The learned Tribunal vide the Impugned Award allowed the petition filed by the Respondents and granted relief to the Respondents/Workmen.
15. Aggrieved by the same, the Petitioners have preferred the present Writ Petition in W.P.(C) 7494/2008 challenging the Impugned Award. This Hon’ble Court vide its order dated 22.10.2008 issued notice to the Respondents/Workmen. At this juncture, it is also relevant to note that



a separate writ petition titled as ***Divisional Engineer (T), Railway Electrification Project & Anr. v. Keshav Dev & Ors.*** in W.P. (C) No. 7596 of 2008 has also been filed by the Petitioners before this Court against the Impugned Award passed by the learned Tribunal in I.D. No. 86 of 1991 which has jointly been heard before this court. Notice in W.P (C) No. 7596 of 2008 was issued vide order dated 24.10.2008 Further, it is pertinent to note that common grounds have been raised in the connected cases.

Submission of the Petitioners

16. Mr. Ankur Mittal, learned counsel for the Petitioners initiated his arguments by submitting that the Impugned Award passed by the learned Labour Court is bad, illegal, unjust and malafide.
17. Learned counsel for the Petitioners submitted that the case of the Petitioners is that the Respondents were engaged as casual laborers in REP to carry out temporary nature of work i.e., shifting/realignment of lines, at various places and in different Divisions. They lastly worked at Agra Division. In the meantime, pursuant to the judgment of the Hon'ble Apex Court in ***Jagrit Mazdoor Union (Regd.) (supra)***, Scheme 1989, was formulated by the Petitioners for regularization of casual labours. Subsequently, as the REP came to an end in 1990 and there was no work left to further engage the casual labourers, the Respondents were duly retrenched on 24.06.1990 based on the principle of first come last go and as per the seniority list of Agra Division. He further submitted that retrenchment compensation was duly paid after obtaining permission of the competent authority.



18. Learned counsel for the Petitioners submitted that the Respondents have not furnished any documents to prove the alleged period of work with the Petitioners before the learned Labour Court. It is further his submission that the Respondents themselves in their counter affidavit stated that they have worked for a period of 4-5 years. Furthermore, the Seniority list of Agra Division which has been filed by the Respondents themselves clearly shows that they have not worked for more than two years.
19. Learned counsel navigated this Court to the seniority list prepared by the Petitioners for Agra Division. While relying on the seniority list, he submitted that all the persons, who are alleged by the Respondents to be juniors, are placed higher in the seniority list. He further submitted that there are no discussions in the Impugned Award as to the juniors who have been retained by the Petitioners.
20. It is further contended by the learned counsel for the Petitioners that the reliance placed by the learned Labour Court on the Circular dated 03.10.1992, which was passed pursuant to the judgment of the Hon'ble Supreme Court in **Munim Singh (supra)**, is completely erroneous. It is his submission that, admittedly, the retrenchment was done in 1990 and therefore the Circular dated 03.10.1992 cannot have retrospective application. Further, it is his submission that the judgment of **Munim Singh (supra)** directs seniority list to be prepared on divisional basis and not on All India Basis. He furthered his submissions by submitting that the above-mentioned judgment and the Circular dated 03.10.1992 were an outcome of the Scheme 1989, formed pursuant to judgment of **Jagrit Mazdoor Union (supra)**. It was also contended by the learned



counsel for the Petitioners that the Scheme, 1989 is over and has been held to be unconstitutional in *Telecom District Manager v. Keshab Deb* reported as (2008) 8 SCC 402.

21. Mr. Ankur Mittal heavily relied on the judgment of Hon'ble Supreme Court in the case of Secretary, *State of Karnataka v. Uma Devi & Ors.*, reported as (2006) 4 SCC 1 while submitting that the question of regularization of the services of employees should be considered on merits in light of the principles settled by the Hon'ble Apex Court.
22. Learned counsel relied on the judgment in the case of *Madhya Pradesh Housing Board & Anr. v. Manoj Srivastava* reported as 2006 (2) LLN 84 and submitted that the appointment made in violation of the mandatory provisions of the Statute or Constitutional obligation shall also be void. If no appointment could be made in terms of the Statute, such appointment being not within the purview of the provisions of the Act would be void; such employee cannot be brought within the cadre of permanent employees.
23. Learned counsel further relied on the judgment of the Hon'ble Apex Court in the matter of *National Fertilizers Ltd. & Ors. v. Somvir Singh* reported as CDJ 2006 SC 443 and submitted that Regularization, furthermore, is not a mode of appointment. If appointment is made without following the Rules, the same being a nullity, the question of confirmation of an employee upon the expiry of the purported period of probation would not arise.
24. The Hon'ble Supreme Court in catena of judgments has held that reinstatement is not an automatic relief. Hence, the Courts in case of a casual labour, ought to draw distinction between a casual labour and an



employee holding permanent post. With regard to the above submissions, he relied on the judgments of the Hon'ble Supreme Court in the matter of *Assistant Engineer v. Gitam Singh* reported as (2013) 5 SCC 136, *BSNL v. Man Singh* reported as (2012) 1 SCC 558, *Incharge Officer v. Shankar Shetty* reported as (2010) 9 SCC 126.

25. With these submissions, learned Counsel for the Petitioners prays for the setting aside of the Impugned Judgment.

Submission of the Respondents/Workmen

26. Mr. Jasbir Singh Malik, learned counsel for the Respondents while relying on the Impugned Award submitted that the present case is not a fit case for interference under Article 226/227 of the Constitution of India.
27. It is the contention of the learned counsel for the Respondents that the Petitioners/Management failed to prepare a combined seniority list despite its Circular dated 17.10.1988, which has been issued to all Telecommunication Divisions, telephone district and other units including civil wing. He further submitted that it has specifically been mentioned in the above-mentioned Circular that a combined seniority list of all the casual laborers would be maintained including all casual laborers working within the territorial jurisdiction of the recruitment unit for various functional units such as telecom projects/maintenance/electrification/quality assurances etc., to which they are attached. However, the Petitioners have not placed any such combined seniority list on record by counting the working days of different divisions of DET, inspite of working for almost 10 years. Hence, the Petitioners have adopted unfair labour practice.



28. The next contention raised by the Respondents is that the Petitioners/Management has not retrenched the Respondents/workmen validly as they have not been afforded an opportunity to be included in Class D in view of the Scheme dated 11.05.1985. Ergo, the workmen could not have been removed from service in the face of the specific Circular dated 07.05.1985 which envisages that the workmen engaged in P&D Department will not be removed from service. Admittedly, the Respondents/Workmen were engaged in the P&D Department. Hence, in light of the above, he submitted that the Rules of the Petitioners/Management at the time of the so called retrenchment of the Respondents on 25.06.1990 have not been observed.
29. It is the contention of Mr. Malik that juniors and similarly situated persons have already been conferred the temporary status and now are regular employees of the Petitioners/Management. However, the Management has not conferred the benefits of the Scheme dated 11.05.1985 which has been prepared for the absorption of casual laborers, although the Respondents/Workmen were also deemed to have obtained temporary status as they have admittedly worked for 240 days. Hence, the Petitioners have failed to enforce the Scheme dated 11.05.1985 qua the Respondents/Workmen. He furthered his submissions by submitting that the Hon'ble Supreme Court affirmed the view of the CAT that all the Workmen who have performed 240 days of work should be given temporary status, which has also rightly been observed by the learned Labour Court in the Impugned Award.
30. He further bolstered his submissions by relying on the judgment of the Hon'ble Supreme Court in the matter of *Sudarshan Rajpoot v. Uttar*



Pradesh State Road Transport Corporation reported as (2015) 2 SCC 317, and submitted that non-compliance of Sections 25-F & 25-H of the I.D. Act would render the termination order void ab initio.

31. Further, with regard to the judgment in the case of **Telecom District Manager (supra)** referred by the learned counsel for the Petitioners, Mr. Malik submitted that, it has nothing to do with the issue involved in the present petition and the observations made in Para 23 of judgment as referred by the Petitioners is merely an obiter dictum.
32. Lastly, he submitted that Respondents/Workmen are very poor people and the Petitioners have taken away their entire life. Hence, in view of the above, the learned counsel for the Respondents prayed for the dismissal of the present petition.

Legal Analysis

33. This Court has heard the rival contentions of both parties and perused the documents placed on record and Judgments relied upon by the parties.
34. The main questions which need to be answered are (i) whether the Seniority list was prepared in accordance with law; and (ii) whether the services of the Respondents were terminated illegally?
35. Department of Telecommunication was implementing the Railway Electrification Project (REP). Hence, for the implementation of this project, the Office of the General Manager, Railway Electrification was established on 01.04.1984. The Railway Department also requested the Petitioners to shift/divert the track alignment. Hence, the Petitioners were shifting/diverting track alignment along with REP. This project in itself was a temporary project. Casual workers were engaged by the



Department of Telecommunications as per the firm demand placed by the Railway Authorities to meet the short-term requirements of the project spread all over India. Hence, there was no requirement of any permanent worker for the implementation of this work. The Respondents herein were working on the REP Project at various places as casual labourers. They last worked at REP, Agra Division. The said Project handled by REP, Agra came to an end in the year 1990. It is the case of the Petitioners that on completion of the project at the Agra Division, the services of the Respondents were terminated after following the due process of law. The Petitioners terminated the services of 82 workers on 24.06.1990 and retained 8 senior most workers for the winding up of the project. Whereas, it is the case of the Respondents that they were working with the Petitioners for almost 10 years in various Divisions and last worked in Agra Division. It is their allegation that the Petitioners illegally terminated their services without following due process of law and also without following the principle of 'First come last go'.

36. On perusal of the record it shows that the Petitioners placed on record the Seniority list of the Agra Division and the retrenchment has been effected based on this seniority list. The said Seniority list was prepared based on the date on which the Respondents joined the Agra Division (RE Project). It is the case of the Respondent that before joining the Agra Division (RE Project), they were working at various other Divisions and hence an All-India Seniority List ought to have been prepared for the RE Project. Hence, the first question to be addressed is



whether the Petitioners prepared the said Seniority list in accordance with law or not.

37. In order to answer this question, it is pertinent to examine the background of the present case. The services of the 82 casual workers were terminated vide order dated 23.06.1990. Initially, they challenged the said termination before the learned Central Administrative Tribunal in OA No. 1476/1990 titled as *Munim Singh & Ors v. UOI*. The learned Central Administrative Tribunal, vide order dated 02.08.1991 set aside the said termination orders holding, inter alia that (i) applicants therein would be entitled for the benefit of the Scheme prepared by the Respondents for the absorption of the casual labourers (ii) the system of maintaining divisional seniority is erroneous, hence if there is work available in other Divisions, the workmen should be offered work of casual labourer, wherever, the vacancies existed depending on the length of service rendered by them.
38. This order of the learned Central Administrative Tribunal was challenged before the Hon'ble Supreme Court in *Munim Singh (supra)*. The Hon'ble Supreme Court settled the said issue, holding, inter alia, as follows:

“2. By this appeal the appellants are challenging the judgment of the Central Administrative Tribunal, New Delhi, directing them to pay the respondents, who were engaged as casual workmen during the period May 1988 to June 1990 in the Telecommunication Department, the benefits under the scheme prepared for absorption of casual workers. The learned Solicitor General of India has contended that the appellants have no objection to the enforcement of the scheme as the authorities are themselves doing, but the difficulty arises on account of the observations and directions issued by the Tribunal in paragraphs 9 and 10 of the impugned judgment to



the effect that the work has to be given to the casual workmen according to their seniority in the list which should be prepared on an all-India basis. The appellants are maintaining seniority lists on divisional basis which has been disapproved by the Tribunal. In support of his stand, the learned counsel argued, that in view of the engagement of casual labour in the different parts of the country it is not practicable for the department to maintain a single seniority list for the entire country with respect to the casual workmen, nor will it be practical for these workmen to travel from one part of the country to another for obtaining a job of the kind which is available to casual workmen. The engagement of such workmen is made on local basis from time to time according to the pressure of work and it is impossible to collect the necessary data and circulate the same throughout the country for allotment of work on the basis of all-India seniority. The learned counsel for the respondents has strenuously contended that if this is not done the respondents are likely to suffer serious prejudice. We have considered the problem closely and we hold that the appellants are right. Accordingly we allow the appeal and set aside the direction of the Central Administrative Tribunal so far it directs preparation of list on all-India basis for the aforesaid persons and to allot work to the casual workmen accordingly. There will be no order as to costs."

39. The Hon'ble Supreme Court in **Munim Singh (supra)** negated the contention of the Respondent to the effect that All-India Seniority list is to be prepared based on the total service rendered by these workmen in various Zones and accepted the contention of the Petitioners and permitted them to retain the divisional seniority. In view of the same, the divisional seniority list prepared by the Petitioners is valid and legal. The Petitioners effected the termination, based on the seniority list of Agra Division.

40. It is an admitted position that work of the Agra Division came to end in the year 1990 and services of 82 casual workers were terminated. It is

W.P.(C) 7494/2008 & 7596/2008

Page 15 of 17



also an admitted position that they were given retrenchment compensation and termination was effected based on the seniority list maintained by the Agra Division. Hence, this Court is of the considered view that the termination of the Respondents was effected in accordance with law as per the regional seniority list prepared and maintained by the Agra Division. Hence, the said termination is valid and is in accordance with law.

41. Learned Labour Court vide the impugned Award held that the said seniority list was prepared contrary to the Circulars dated 17.10.1988 & 30.10.1992. Circular dated 30.10.1992 was issued 2 years after the termination of the Respondents. Hence, the said Circular cannot be made applicable to the Petitioners retrospectively. As per Circular dated 17.10.1988, a common seniority list was to be maintained in respect of a recruitment unit. However, the Hon'ble Supreme Court in ***Munim Singh (supra)***, permitted the Petitioners to maintain the divisional seniority list. Hence, this Court is of the considered view that the learned Labour Court, wrongly held that the Petitioners prepared the seniority list contrary to the Circulars dated 17.10.1988 & 30.10.1992. Learned Labour Court also held that the Respondents are entitled for the benefit of the 1989 Scheme of the Petitioners, i.e, Casual labourers (Grant of temporary status and Regularization) Scheme of the Department of Telecommunications, 1989. Even if the Respondents are entitled for the benefit of the said scheme, the same is not restraining the Petitioners from terminating the services of the Respondents in accordance with I.D. Act, 1947. It was specifically mentioned in Clause 8 of the said Scheme that 'Despite conferment of temporary status, the



services of a casual labourer may be dispensed with in accordance with the relevant provisions of the Industrial Disputes Act, 1947 on the ground of non-availability of work’.

42. It is also to be noted that in pursuance of the directions of this Court dated 18.07.2013, the Petitioners offered the Respondents temporary work in the Delhi-NCR region. Even though some of the Respondents joined the service of the Petitioners, they all stopped attending the office of the Petitioners after 4-5 days of work. The conduct of the Respondents itself shows that the Respondents are not interested in working with the Petitioners. Further, in compliance of the directions of this Court, the Petitioners already made a payment of approximately Rs. 2.5 lakh to each of the workman and spent an overall amount of approximately Rs. 67 Lakhs.
43. In view of the detailed discussions herein above, the Impugned Award dated 22.07.2008 passed in I.D. No. 117/1991 and I.D. No. 86/1991 is set aside. It is clarified that in view of the Judgment of the Hon’ble Supreme Court in the case of *Dilip Mani Dubey v. M/s SIEL Limited & Anr* reported as **2019(4) SCC 534** no recovery can be made with respect to the payment made under Section 17-B of the I.D. Act.
44. Both the Writ Petitions are hereby allowed. No orders as to cost.

GAURANG KANTH, J.

JULY 06, 2023

PS