



2024:DHC:8338



\$~102 and 103

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

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Date of Decision: 18th September, 2024

102

+ W.P.(C) 1777/2008

K.P.SINGH

.....Petitioner

Through: Mr. Bhagabati Prasad Padhy and
Mr. Binod Kr. Behera, Advocates.

versus

U.O.I & ORS

.....Respondents

Through: Mr. A.P.Nagrath and Mr. Anish
Kumar, Advocates for Respondent No.2/IRCON.

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+ W.P.(C) 7404/2008

NABA KUMAR MANDAL

.....Petitioner

Through: Mr. Bhagabati Prasad Padhy and
Mr. Binod Kr. Behera, Advocates.

versus

IRCON INTERNATIONAL LTD.

.....Respondent

Through: Mr. A.P.Nagrath and Mr. Anish
Kumar, Advocates.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. These writ petitions have been filed by the Petitioners under Article 226 of the Constitution of India laying a challenge to impugned notices both dated 02.06.1998, whereby IRCON International Limited ('IRCON') has dispensed with the services of the Petitioners with payment of one month's



salary in lieu of notice and compensation as admissible under Section 25F and Section 25FFF (2) of Industrial Disputes Act, 1947 ('ID Act'), as also for payment of outstanding dues towards salary/gratuity etc. Since these writ petitions lay a challenge to a common notice and raise common questions of law, they are heard together and are being decided by this common judgment.

W.P.(C) 1777/2008

2. As averred in the petition, Petitioner was appointed as Works Supervisor on daily wages as casual/*ad hoc* employee in IRCON on 16.02.1985. On 24.03.1986, an Office Order was issued placing the Petitioner in the scale of Rs.425-700 w.e.f. 24.12.1985 with a change in designation to Junior Foreman. Petitioner was initially appointed at Anpara for three months and then transferred to Vindhya Nagar for where he was transferred to Delhi on 10.12.1990 and from Delhi to Secunderabad and finally from Bihar to Rihand Nagar and back to the Delhi-Mathura Project on 30.12.1994.

3. It is averred that Petitioner's services were suddenly terminated on 02.06.1998 along with some other employees on an erroneous ground that the Delhi-Mathura Highway Project was complete and being aggrieved therefrom, Petitioner filed W.P. (C) No. 4061/1998 along with several other employees, which was disposed of on 10.02.2000 with liberty to the Petitioner to raise an industrial dispute. Petitioner along with other employees approached the Supreme Court and Civil Appeal Nos.6277-6283/2000 was disposed of on 08.11.2000 observing that if the appellants approach the Central Government for making a reference to the Industrial Tribunal ('Tribunal') under Section 10 of the ID Act, Central Government



shall make a reference within two months and on reference being made, the Tribunal shall dispose of the same within six months.

4. Petitioner approached the Government and the dispute was referred with the terms of reference being whether the action of IRCON in terminating the services of the Petitioner and 11 other workmen was legal and whether the workmen were entitled to claim that they were permanent employees of IRCON. Petitioner avers that he made two applications seeking leave to file separate statement of claim on 23.04.2002 and 15.01.2003 on the ground that his case was that he was not a workman under Section 2(s) of ID Act. The applications were allowed on 28.07.2003 de-tagging the case of the Petitioner and registering it as ID No. 7A/2001, whereafter the Tribunal passed a 'No Dispute Award'. Aggrieved by this order, Petitioner sought a recall of the award on the ground that he had prayed for filing a separate claim. The application was rejected on 07.05.2004 and against the said order, Petitioner filed W.P. (C) No. 14546/2004 before this Court impugning the award dated 28.07.2003 and order dated 07.05.2004, whereby the last application was rejected.

5. On 23.09.2005, writ petition was dismissed by this Court holding that the Tribunal had not answered the reference on merits and Petitioner was at liberty to seek adjudication of his claims as per law. Petitioner filed a review petition seeking review of order dated 10.02.2000 passed in W.P. (C) 4061/1998 filed earlier, which was dismissed as withdrawn on 31.10.2007.

W.P.(C) 7404/2008

6. Petitioner was appointed on 13.12.1983 by IRCON as a casual/*ad hoc* I.M.E./Trainee on consolidated monthly emolument of Rs.450/- and joined



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at Anpara Project at U.P. on 06.01.1984. He was placed in a pay scale of Rs.425-700 w.e.f. 11.10.1984 vide letter dated 31.10.1984.

7. It is averred in the petition that in compliance with Instructions dated 14.01.1986, Regional Manager, Anpara issued appointment letter dated 19.05.1988 appointing the Petitioner in the regular pay scale from 11.10.1984 and terms of the appointment were the same as those of regular employees. Thus, Petitioner became a regular employee of IRCON and was no longer employed for any specific Project. Petitioner was transferred to various projects from time to time between 1987 to 1995 including a project abroad. IRCON informed the Petitioner on 07.06.1996 to appear for a selection test on 08.06.1996 for appointment to the post of Assistant Engineer (Mechanical) through Departmental Open Competitive Examination ('DOCE'). It is stated that Petitioner proceeded on leave for 22 days on 18.05.1998 and on return, he learnt of the impugned notice dated 02.06.1998 whereby his services were terminated along with a large number of other employees working on Delhi-Mathura Highway Project.

8. Aggrieved by the termination order, Petitioner filed a writ petition being CWP No. 3026/1998 in this Court seeking reinstatement, which was disposed of on 10.02.2000 without entering into the merits and granting liberty to the Petitioner to raise an industrial dispute. Since the Petitioner perceived that he was not a workman, he filed a review petition, being W.P.(C) 4360/2000, which was dismissed on 21.12.2000 observing that in case the Petitioner was of the view that he was not a workman under ID Act, he could take recourse to appropriate remedy. Appeal filed before the Division Bench being LPA No. 187/2001 and SLP (C) No. 3245/2002 filed before the Supreme Court were dismissed. Petitioner thereafter approached



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the Industrial Tribunal in January, 2003 and filed LCA No. 04/2003 seeking reinstatement with back wages.

9. At the stage of evidence before the Tribunal, IRCON approached this Court and filed W.P. (C) No. 3384/2007 challenging the proceedings before the Tribunal on the ground that Petitioner was not a workman. On 05.09.2008, writ petition was disposed of by this Court by a consent order quashing the proceedings before the Labour Court as not maintainable and granting liberty to the Petitioner to file a fresh writ petition assailing his termination. This led to filing of the present writ petition.

10. Learned counsel for Petitioner in W.P. (C) 1777/2008 submits that Petitioner's services cannot be treated as casual/*ad hoc* as he was regularised by IRCON and this is evident from the fact that the Petitioner was granted a regular pay scale of Rs.425-700 w.e.f. 24.12.1985 and his designation was changed from Works Supervisor to Junior Foreman. It is argued that several other factors cumulatively indicate that Petitioner was a regular employee such as deduction of his provident fund; repeated transfers to different places; statement of pay fixation between 1986 to 1990; change of post from Junior Foreman by Ministry of Railways in 1994 to that of Junior Engineer; letter dated 07.06.1996 issued by IRCON asking the Petitioner to appear in a selection test on 08.06.1996 for promotion to the post of Assistant Engineer (Mechanical) through DOCE, in which only regular employees can appear by virtue of Rule 6.3.3 (1) of IRCON Recruitment Rules, 1979 ; and grant of various allowances such as vehicle allowance, special increments as well as benefit of pay revision under 5th CPC.

11. In W.P.(C) 7404/2008, the submission is that Petitioner possesses the qualification of diploma in Engineering and was appointed as a Trainee by



IRCON on casual/*ad hoc* basis at a consolidated salary of Rs.450/- per month but on completion of training, Petitioner's services were regularised and he was placed in a regular pay scale of Rs.425-700 on 19.05.1986 w.e.f. 11.10.1984. It is argued that Petitioner was invited to volunteer for imparting training for placement in the next pay scale of Rs.550-750 and was also transferred to different places from time to time including on a project at Malaysia. Petitioner was called upon to appear in a selection test held on 08.06.1996 for promotion to the post of Assistant Engineer (Mechanical) through DOCE and all these factors cumulatively coupled with his pay fixation orders from 1986 to 1990 are evidence of the fact that Petitioner was a regular employee of IRCON. The argument in a nutshell on behalf of both the Petitioners is that being regular employees their services could not be terminated by a mere notice and without following the due process of law.

12. On behalf of IRCON, it is submitted that Petitioners were initially appointed in Anpara of IRCON on casual/*ad hoc* basis and at the time of their termination were working in the construction project on Delhi-Mathura Highway. On completion of the project work and closure of the project establishment, services of all employees, i.e., 169 at Mathura and 78 at Palwal were terminated w.e.f. 03.06.1998. While terminating the services, all employees including the Petitioners were paid compensation in terms of Section 25F read with Section 25FFF (2) of the ID Act. The appointment letters issued to the Petitioners clearly indicate that appointments were on casual/*ad hoc* basis and not regular and merely placement in a pay scale cannot make the appointments regular.



13. It is further urged that similar appointment letters issued to other employees working along with the Petitioners were a matter of judicial scrutiny by the Supreme Court in the case of ***Lal Mohammad and Others v. Indian Railway Construction Co. Ltd. and Others, (2007) 2 SCC 513*** and the Supreme Court noting the fact that Petitioners were employed by IRCON in a project at Rihand Nagar in UP on *ad hoc* basis and not on regular basis though placed in regular pay scale and subjected to transfers, could not be treated as employees of IRCON as their appointments were project specific. It was also observed that employment to IRCON is regulated by Service Rules and none of the posts against which the appellants were appointed were in the list annexed to the Schedule appended to the Rules. The Supreme Court also took note of the crucial fact that despite an opportunity being given to the appellants to appear for regular selection they failed to avail the opportunity and dismissed the appeals holding that the appellants were not entitled to be regularised as they were not employees of IRCON and in light of this, it is not open to the Petitioners herein to interpret the appointment letters to mean that Petitioners were granted regular appointments.

14. It is further argued that transfers of the Petitioners from one project to another were a part of the incidents of their employment as the management had the right to take work at any project and this cannot lead to a conclusion that the nature of appointments were regular and moreover, this very contention was negated by the Supreme Court in ***Lal Mohammad (supra)*** in respect of similarly placed employees of IRCON. Emphasis on the word 'regular' in the letters pertaining to pay fixation is misconceived as this is only an inadvertent error which cannot change the status of the employment



of the Petitioners once they were not recruited through the regular process of selection as per Recruitment Rules.

15. It is further argued that Petitioners have over emphasized on the aspect that vide letter dated 07.06.1996, Petitioners were called to appear in selection for filling up the post of Assistant Engineer (Mechanical) scheduled on 08.06.1996 through DOCE, however, this cannot aid the Petitioners to claim regularisation as no particular person was called by name to appear in the test and notice was sent to all projects of IRCON with stipulation of the eligibility norms therein. It was categorically stated in the notice that regular staff, who fulfilled the requisite eligibility criteria, may send the bio-data. Petitioners did send their bio-data knowing fully well that they were ineligible but *de hors* this fact, Petitioners in fact did not appear in the examination.

16. Last but not the least, it is argued that validity of the impugned termination order was tested in a writ petition being W.P.(C) 10941/2004 wherein IRCON had challenged the award passed in favour of similarly placed employees in ID No. 61/1999 and the legality of the termination order was upheld setting aside the award of the Tribunal vide judgment dated 13.07.2011. LPA No. 1040/2011 filed by workmen was dismissed by the Division Bench on 17.02.2012 and SLP (C) No. 24509/2012 also suffered the same fate on 31.08.2012.

17. Heard learned counsels for the parties and examined their rival contentions.

18. Broadly understood, contentions of the Petitioners are that they were regular employees of IRCON and their services could not have been terminated without due process of law. In support of their plea, reference is



made to pay fixation orders, where the word ‘regular’ has been used by IRCON as well as the transfer orders by which Petitioners were transferred from time to time on different projects and most importantly, on letter dated 07.06.1996 by which Petitioners were allegedly called to appear in a test for appointment to the post of Assistant Engineer (Mechanical) through DOCE.

19. Insofar as the appointment letters of the Petitioners are concerned, it was clearly stipulated that Petitioners were being appointed on casual/*ad hoc* basis on a consolidated monthly salary of Rs.450/- and were to report to the Project Manager at Anpara Project in Mirzapur, UP. Similar appointment letters issued to other employees, who were also terminated on completion of the projects, have undergone a judicial scrutiny in the case of ***Lal Mohammad (supra)***. Twenty-five Petitioners had filed writ petitions against IRCON challenging termination of their services on construction projects on the ground that they were regular employees of IRCON. Noting that the appellants therein were only appointed as casual/*ad hoc* employees and not as per the Service Rules as also taking into account other factors, the Supreme Court held that the appellants were not entitled to regularisation and that they were not employees of IRCON. Relevant paragraphs from the judgment are as follows:

“3. *Salient facts, which are necessary for disposal of these appeals are:*

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 2 is its Regional Manager who was monitoring a project of construction of a railway line of 54 km 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 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 the 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 the 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 and 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 had come to an end, therefore petitioners were liable to be retrenched. It was also alleged that the procedure for closure of the Project had 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 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 and 21 of the Constitution of India.

5. *The matter was heard by the learned Single Judge. The learned Single Judge held that the petitioners have put in long service of nearly 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 termination of workmen is amenable to writ jurisdiction under Article 226 of the Constitution of India as it is 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 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 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, 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 with Section 2(m) of the Factories Act and accordingly it was held that the petitioners are not 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 had come to an end, therefore, their services were validly terminated and they have no right to be absorbed 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 : (Lal Mohd. case [(1999) 1 SCC 596 : 1999 SCC (L&S) 335] , SCC 616, para 21)

“21. 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 that there was non-compliance with Section 25-N, this Court took the view that the retrenchment notices were null and void and the relationship between the employer and employee was not snapped. It was further held that at the time the 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 the subsequent development that the respondent Company served on the appellants fresh notices on 24-3-1998 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. 4-9-1993 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 Nagar 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. 24-3-1998. It was also pointed out before this Court that work of all railway lines was over and only small maintenance work pursuant to the agreement with the Railway Authorities was being undertaken. But in substance the whole work was 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 employees are of the Project or of the Company. This Court observed that whether the Company is 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 and 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 24-3-1998 which has given 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 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 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 Court of Allahabad and in the Division Bench there was difference of opinion between the two learned Judges. One of the Hon'ble Judges constituting the Division Bench allowed the writ petition and quashed the notices vide order dated 17-5-2002. The other Hon'ble Judge of the Division Bench dismissed the writ petition. Therefore, the matter was referred to a third Judge. Since both the learned Judges have passed the judgment constituting the 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 [Indian Railway Construction Co. Ltd. v. Lal Mohd., C.A. 8368 of 2003 decided on 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, 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 21-5-2004.*

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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 the appellants laid much stress on appointment orders of the 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 : 25-8-1984

Shri Lalmohammad
s/o Ajimuddin
Village : Dallumandaltola,
District : Malda.



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You are hereby offered appointment in Anpara Project on a casual ad hoc 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 : 22-10-1983

*Md. Intas Hussain
s/o Md. Yahim Ali,
Village Chandigachil, PO Singhia,
District Malda.*

You are hereby offered appointment in Anpara Project on a casual ad hoc 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*



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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 anywhere 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
PO Anpara,
District Mirzapur (U.P.)*

No. IRCON/ANP/ESTT/15/AL

Dated : 19-5-1988

To
Shri Meghu Seikh
Artisan,
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 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 ... p.m. 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 pro forma 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 with two copies thereof.

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

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

Matriculation or school leaving certificate or birth certificate giving your caste/community and place of 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 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.

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

*For and on behalf of
Indian Railway Construction Co. Ltd.
sd/-*

*Regional Manager
IRCON, Anpara*



Copy of information and necessary action to:

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

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 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 anywhere in India on any project, no employment could be taken up by the 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 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 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.

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 regularised in the Company. They were essentially employees of the Project and after completion of the Project, their services automatically came to an 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 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.....

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 ad hoc employees of the Project 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 regularised 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 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.

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 ad hoc and they were directed to join the Project. Therefore, these conditions, which have been stressed by the learned counsel do 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 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 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 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 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 hands 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 regularised 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 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. Therefore, there is no violation of Articles 14, 16 and 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 State within the meaning of Article 12 or not.

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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 regularised in 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."

20. In the aforesaid judgment, the Supreme Court examined all the contentions which are raised by the present Petitioners also including the contentions relating to their appointment letters, transfers from one place to another and concluded that the appellants could not be treated as regular employees of IRCON. Once the Supreme Court has tested similar appointment orders and negated the same contentions, it cannot be held by this Court that Petitioners be treated as regular employees of IRCON. It is



also pertinent to mention that the impugned orders of termination, assailed by the Petitioners were also subject matter of adjudication by this Court in a writ petition in the case of ***M/s. Ircon International Ltd. v. Union of India & Ors., 2011 SCC OnLine Del 2859***. The learned Single Judge vide judgment dated 13.07.2011 set aside the award of the Tribunal wherein the Tribunal had held that the workmen were employees of IRCON and not employed on project basis and upheld their claim for regularisation and reinstatement. Relevant paragraphs of the judgment are as follows:

“11. The senior counsel for the petitioner has contended that in view of the aforesaid material on record and in spite of the Industrial Adjudicator noticing the judgment of the Apex Court in Management of Hindustan Steel Ltd. v. The Workmen (1973) 3 SCC 564, the Industrial Adjudicator has held to the contrary, making the award perverse and liable to be set aside. It is further contended that the respondent workmen before this Court have for the first time made out a new case of being employees of the petitioner Company and not of the Project. It is yet further contended that the appointment of each of the respondent workmen being not as per Recruitment Rules of the petitioner, the direction of the Industrial Adjudicator to the petitioner to regularize the respondent workmen is contrary to the dicta of the Apex Court in Secretary, State of Karnataka v. Umadevi AIR 2006 SC 1806. It is yet further contended that since the Project in which the respondent workmen were employed had ceased to exist, the Industrial Adjudicator could not have directed reinstatement. Reliance in this regard is placed on F.R. Jesuratnam v. UOI AIR 1981 SC 1595. The senior counsel for the petitioner has further contended that the present was not a case of closure governed by Section 25-O(1) but a case governed by Section 25FFF(2).

12. The counsel for the respondent workmen has on the contrary contended that if the respondent workmen are found to be employees of the Project then they would be governed by Section 25FFF(2) but their contention is that they are employees not of the Project but of the petitioner Company and were working in one of the Projects of the petitioner Company. He has further argued that it has never been the case of the respondent workmen that they were recruited only for a particular Project. He has argued that each of the respondent workmen is a skilled workman and the Recruitment Rules relied upon by the petitioner relate to executive posts while the rules applicable are those for non executive posts and as per which they became entitled to absorption after completion of five years of employment and which they had. He has further contended



that the contracts of appointment placed by the petitioner before this Court and relied upon as aforesaid did not form part of the record of the Industrial Adjudicator and thus cannot be considered. He has further contended that none of the admissions attributed to the respondent workmen and as noticed in para 10 hereinabove are admissions of being Project employees but only amount to admissions of working in the Project. He claims that the respondent workmen are entitled to Section 25F protection and the question for determination was whether the respondent workmen were employees of the petitioner Company or of the Project and which has not been determined either by the Industrial Adjudicator at Delhi or by the Industrial Tribunal at Agra. He has further contended that in the judgment Lal Mohammad v. Indian Railway Construction Co. Ltd. AIR 2007 SC 230 relied upon by the petitioner, there was a finding of the employees therein being employees of the Project and which is not the case here. He has further contended that some of the respondent workmen had been transferred and which was one of the disputes referred to the Industrial Tribunal, Agra; there could be no question of Project employees being transferred and the same was also indicative of the respondent workmen being the employees of the petitioner Company and not of the Project. Reliance is placed on the judgment dated 4th August, 2005 of the High Court of Allahabad in Civil Misc. WP No. 9762/2003 titled Ircon International Ltd. v. Baikunth Nath Dubey. He has yet further contended that the factual findings of the Industrial Adjudicator are not to be interfered with. Reliance in this regard is placed on Harjinder Singh v. Punjab State Warehousing Corporation 2010 (1) SCALE 613 and it is contended that judgments of earlier date relied upon by the petitioner are to be ignored. Reference is also made to Krishan Singh v. Haryana State Agricultural Marketing Board (2010) 3 SCC 637 and Anoop Sharma v. Public Health Division, Haryana (2010) 5 SCC 497 as to the effect of non compliance of Section 25F. It is contended that there is a categorical finding by the Industrial Adjudicator of the respondent workmen being employees of the petitioner Company and sufficiency of evidence is no ground for interference.

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14. *In my opinion, the respondent workmen by making the claim for regularization before the Industrial Tribunal, Agra as well as in the reference, award whereon is impugned in this petition admitted that they were employees of the Mathura Project of the petitioner and were not the employees of the petitioner Company. Had the respondent workmen been the employees of the petitioner Company, as they have now urged in this Court, there would have been no occasion for their claiming the relief of regularization.*

15. *I am further of the opinion that the claim of the petitioners for regularization stands finally adjudicated vide the award of the Industrial*



Tribunal, Agra. The Industrial Tribunal, Agra unequivocally held that the respondent workmen have “no right for their regular appointment”. Though the respondent workmen challenged the said award before the High Court of Allahabad but subsequently withdrew the said writ petition. A perusal of the order dated 15th October, 2004 of the High Court of Allahabad shows that the writ petition impugning the award of the Industrial Tribunal, Agra was withdrawn and no liberty whatsoever was granted to the respondent workmen. With the withdrawal of the said writ petition, the award of the Industrial Tribunal, Agra attained finality and as per which the respondent workmen are/were employees of the Project and not of the petitioner Company and had no right to regularization.

16. In fact, in view of the award of the Industrial Tribunal, Agra, the reference on which the award impugned in the present petition has been made, insofar as again claiming the relief of regularization was not even maintainable and was bad. It appears that the said reference came to be made owing to the order dated 20th November, 1998 (supra) of the Supreme Court while dismissing the appeal preferred by the respondent workmen against the order of the High Court of Allahabad in the second round of writ petition impugning the order of termination. However, the said order cannot confer upon the respondent workmen a right to again claim what had already been denied to them vide the award of the Industrial Tribunal, Agra. Neither the Supreme Court nor the High Court of Allahabad had gone into the said aspect or dealt therewith.

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20. However, the respondent workmen challenged the action of 3rd June, 1998 not as being in violation of Section 25F but again on the premise of their being entitled to regularization and which question as aforesaid stood settled vide the award of the Industrial Tribunal, Agra. A perusal of the record including of the Industrial Adjudicator shows that the parties proceeded on the said basis only rather than establishing as to whether the ingredients of Section 25F had been complied with or not. Though in the pleadings and in the evidence, it was generally so stated but if the case of the respondent workmen was of their removal being in violation of Section 25F, they ought to have expressly pleaded and proved as to how compensation in accordance with Section 25F(b) had not been tendered/paid. There exists on record the termination letters dated 3rd June, 1998 issued by the petitioner to each of the 37 respondent workmen and which disclose the tender of compensation in terms of Section 25F(b). The respondent workmen though sought to argue before this Court that the computation of the said compensation has not been disclosed, ought to have themselves stated as to how the said tender was not in accordance with Section 25F(b). The same has not been done. On the contrary, it is the admitted position that the cheques tendered by the petitioner Company to the respondent workmen stand encashed.



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28. *I am unable to agree. As aforesaid, the claim of the respondent workmen of regularization stood adjudicated by the award of the Industrial Tribunal, Agra which had attained finality. The only dispute which could be raised was only as to termination; termination if found to be illegal would have entitled the respondent workmen to the relief of reinstatement. The Industrial Adjudicator, even though wrongly as held hereinabove, granted the relief of reinstatement. The order under Section 17B was thus appropriate and cannot be said to be superfluous and without jurisdiction so as to invite a direction for refund of the amounts paid under Section 17B.*

29. *The writ petition is accordingly allowed. The award dated 27th April, 2004 of the Industrial Adjudicator is set aside and quashed. The reference insofar as on the claim of the respondent workmen for regularization is held to be bad owing to the award of the Industrial Tribunal, Agra. The respondent workmen are found to have failed to prove any illegality in the order dated 3rd June, 1998 of their termination. The petitioner will accordingly be allowed refund of amount deposited in this Court together with interest if any accrued thereon. It is directed accordingly."*

21. This judgment was challenged by the Respondents/workmen therein before the Division Bench and appeal being LPA No. 1040/2011 was dismissed on 17.02.2012 followed by dismissal of SLP (C) 24509/2012 on 31.08.2012. It is thus evident that identical termination orders *albeit* challenged by a separate group of employees have also undergone judicial scrutiny and have been upheld up to the Supreme Court. Much emphasis was laid by the learned counsel for the Petitioners on the use of the expression 'regular' in the pay fixation orders, however, the same was only an inadvertent error as categorically pleaded by IRCON and this stand of the Respondents is fortified by plethora of other documents on record, which amply demonstrate that petitioners were only appointed on casual/*ad hoc* basis and not on regular basis by following a selection process under the Service Rules. The appointments were purely project based and on



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completion of the work the services of the Petitioners were rightly dispensed with. IRCON has also explained that letters dated 07.06.1996/19.03.1996 issued by IRCON, calling upon people to appear in a selection test were general letters and were not aimed for any particular employee. Moreover, in the letters itself it was indicated that only those employees who were eligible could apply and eligibility criteria were stipulated therein. Admittedly, Petitioners did not appear in the selection test and can claim no mileage from these letters.

22. In view of the above, this Court finds no merit in the writ petitions, as Petitioners cannot be held to be regular employees of IRCON and the writ petitions are accordingly dismissed.

JYOTI SINGH, J

SEPTEMBER 18, 2024/shivam