UNION OF INDIA AND ORS. A

v.

JUMMASHA DIWAN

OCTOBER 19, 2006

[S.B. SINHA AND DALVEER BHANDARI, JJ.] B

Labour Laws:

Industrial Disputes Act, 1947—Section 25-N—Applicability of—Employment under a project—On closure of project, retrenchment of workman—Application challenging retrenchment and seeking seniority on the ground of non-compliance of Section 25-N and his having given continuous service for 1060 days—Dismissal of application—In Writ Petition termination set aside on the ground of non-compliance of Section 25-N—On appeal, held: In the facts of the case, workman not entitled to seniority—On closure of the project, compliance of Section 25-N not required. C D

Continuous service—Meaning of—Held: In a case where a casual employee is working in different establishments, though under the same employer, the concept of continuous service cannot be applied. E

The respondent-workman was employed under a project. On the project coming to an end, he was retrenched and was given retrenchment compensation in terms of Section 25-F of Industrial Disputes Act, 1947. He filed application before Central Administrative Tribunal questioning the retrenchment on the ground that he having put in 1060 days of continuous service, should have been placed higher in seniority list, and that while passing the order of retrenchment, the provisions of Section 25-N were not complied with. Tribunal dismissed the application. In Writ Petition, High Court set aside the order of termination in view of non-compliance of Section 25-N and directed his reinstatement. Hence the present appeal. F

Allowing the appeal, the Court G

HELD: 1. If the services of a project employee is terminated, it is trite that statutory requirements of Section 25-F of Industrial Disputes Act, 1947 are required to be complied with. [543-F-G]

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A **2. If the project came to a close, the requirements of Section 25-N of the Act were not required to be complied with. There are several establishments of the Railway Administration. If a workman voluntarily gives up his job in one of the establishments and joins another, the same would not amount to his being in continuous service. When a casual employee is employed in different establishments, may be under the same employer, e.g.,**
B **the Railway Administration of India as a whole, having different administrative set up, different requirements and different projects, the concept of continuous service cannot be applied and it cannot be said that even in such a situation he would be entitled to a higher status being in continuous service. It is not in dispute that the establishment of Appellant No. 3 herein had started a**
C **project. Recruitment of the respondent in the said establishment would, therefore, constitute a fresh employment. In a case of this nature, he would not be entitled to his seniority. [543-G-H; 544-A-C]**

Lal Mohammad and Ors. **v.** *Indian Railway Construction Co. Ltd. and Anr.*, **[1999] 1 SCC 596 and** *Oswal Agro Furane Ltd. and Anr.* **v.** *Oswal Agro*
D *Furane Workers Union and Ors.*, **[2005] 3 SCC 224, distinguished.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4552 of 2006

From the final Judgment and final Order dated 8.4.2005 of the High Court of Gujarat at Ahmedabad in S.C.A. No. 1165/1998.

E

R. Mohan, A.S.G. S. Wasim A. Qadri, B. Krishna Prasad and D.S. Mahra for the Appellants.

S.C. Patel for the Respondent.

F The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

Respondent was appointed as a daily wager in the Railway Electrification Project at Vadodara Ratlam section. He was granted a temporary status. He
G is said to have joined the Railway Electrification Project as a skilled worker under the Divisional Electrical Engineer, Western Railway (Overhead Equipment) Railway Electrification Railway Yard, Pratapnagar, Baroda, Appellant No. 3 herein. He was retrenched purportedly on the premise that railway electrification works at Vadodara Ratlam section came to an end. He was paid retrenchment compensation in terms of Section 25-F of the Industrial Disputes
H

Act, 1947 (for short "the Act"). A

He filed an original application before the Central Administrative Tribunal (Tribunal) questioning the purported retrenchment on the ground that he having put in 1060 days of continuous service should have been placed much higher in the seniority list and, thus, could not have been retrenched having regard to the principle of "last come first go". It was also contended that while B passing an order of retrenchment, the provisions of Section 25-N of the Act was not complied with.

The Tribunal dismissed the said original application. A writ petition came to be filed wherein the same pleas were raised by Respondent herein. C Invoking Section 25-N of the Act, the impugned judgment has been passed setting aside the order of termination and directing reinstatement of Respondent.

Mr. R. Mohan, learned Additional Solicitor General appearing on behalf of Appellants *inter alia* submitted that the provisions of Section 25-N of the D Act will have no application to the facts and circumstances of the case.

Mr. S.C. Patel, learned counsel appearing on behalf of Respondent, on the other hand, submitted that Respondent having put in 1060 days of continuous service, the order of retrenchment was vitiated in law. It had been pointed out that different benches of the Central Administrative Tribunal on E almost identical issues had taken different views and in that view of the matter, the impugned judgment should not be interfered with.

Respondent indisputably had started working under Appellant No. 3 1986. His services had been terminated *inter alia* on the premise that the electrification project had come to a close. If the services of a project employee F is terminated, it is trite that statutory requirements of Section 25-F of the Act are required to be complied with, but, indisputably, Respondent was given one month's notice pay as also the retrenchment compensation in compliance thereof.

His name might not have appeared in the seniority list of the casual G labourers which was being maintained but the question, as to whether he had been in continuous service in all the departments he had served, was a disputed one. There are several establishments of the Railway Administration. If a workman voluntarily gives up his job in one of the establishments and joins another, the same would not amount to his being in continuous service. H

A When a casual employee is employed in different establishments, may be under the same employer, e.g., the Railway Administration of India as a whole, having different administrative set up, different requirements and different projects, the concept of continuous service cannot be applied and it cannot be said that even in such a situation he would be entitled to a higher status being in continuous service. It is not in dispute that the establishment of B Appellant No. 3 herein had started a project. His recruitment in the said establishment would, therefore, constitute a fresh employment. In a case of this nature, Respondent would not be entitled to his seniority. If the project came to a close, the requirements of Section 25-N of the Act were not required to be complied with.

C

Lal Mohammad and Ors. v. *Indian Railway Construction Co. Ltd. and Anr.*, [1999] 1 SCC 596, whereupon reliance has been placed by the High Court, cannot have any application in the instant case. The Tribunal in its order categorically opined that his employment was not in an 'industrial establishment' which would come *inter alia* within the purview of the definition D of a factory as contained in clause (m) of section 2 of the Factories Act.

Our attention has been drawn to a decision of this Court in *Oswal Agro Furane Ltd. and Anr.* v. *Oswal Agro Furane Workers Union and Ors.*, [2005] 3 SCC 224. In the said decision, this Court was concerned with closure of an industrial establishment engaging more than 1000 people. In the aforementioned E fact situation obtaining therein, this Court held that the consent of State Government before effecting closure of such establishment was mandatory.

For the reasons aforementioned, we are of the opinion that the impugned judgment cannot be sustained which is set aside accordingly. This appeal is F allowed. No costs.

K.K.T. Appeal allowed.