

RATAN CHANDRA SAMMANTA AND ORS.

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v.

UNION OF INDIA AND ORS.

[A.M. AHMADI AND R.M. SAHAI, JJ.]

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MAY 13, 1993

Retrenchment—Re-employment under a scheme framed under directions of the Court—Representations vague, and delayed.

The petitioners claimed to be casual labourers of the South Eastern Railway appointed between 1964-69 and retrenched between 1975-78.

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They prayed

(1) for inclusion of their names in the live casual register and re-employment according to their seniority, and

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(2) for restraining the filling of vacancies from the open market.

They relied on two circulars issued by the Railway Board laying down guidelines for the recruitment, retrenchment and employment of casual labourers. They also relied on two judgments of this court in 1985 and 1987 which directed the preparation of a scheme and absorption of casual labourers in accordance with their scheme.

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A scheme was framed in 1987 for employing casual labourers retrenched before 1981 subject to demonstrating suitability before 31st March, 1987.

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In 1990 the petitioners made their representation to be considered.

The questions before this court were-

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(a) whether the petitioners were entitled as a matter of law to re-employment and

(b) if they had lost their right, if any, due to delay.

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A Dismissing the petitions, this court,

B HELD-1. Right of casual labourers employed in projects to be re-employed in railways has been recognised both by the Railways and this Court. But the petitioners only sent in a vague representation, and there was absence of positive material that they were in fact appointed and working as claimed. (754-G)

2. A writ is issued by this court in favour of a person who has some right and not for the sake of a roving enquiry leaving scope for manoeuvre.

C 3. Delay itself deprives a person of his remedy available in law. In the absence of any fresh cause of action of any legislation, a person who has lost his remedy by lapse of time loses his right as well. (755-A)

D 4. In any event, more than 15 years have expired, and a host of others who have in the meantime become eligible and entitled to claim to be employed would be deprived if the petitioners' claim were accepted. (755-B)

ORIGINAL JURISDICTION : Writ Petition (Civil) No. 71 of 1992.

WITH

E Writ Petition (Civil) No. 323 of 1993.

Under Article 32 of the Constitution of India.

F J.P. Bhattacharjee, N.R. Choudhry and Somnath Mukherjee for the Petitioners in W.P.No. 71/93.

S.N. Mukherjee for the Petitioners in W.P. No. 323/93.

Ms. B. Sunita Rao for V.K. Verma for the Respondents.

G The Judgment of the Court was delivered by

H R.M.SAHAI, J. Casual labourers of South Eastern Railway, alleged to have been appointed between 1964-69 and retrenched between 1975-78 have approached this Court for a direction to opposite parties to include their names in the

live casual labourer register after due screening and give them re-employment according to their seniority. Further prayer is to restrain the opposite parties from filling vacancies from open market. A

Basis of their claim is two fold, one-circulars issued by the Railway Board on 8th June and 18th June, 1981 laying guidelines regarding recruitment, retrenchment and employment of the casual labourers; second-Judgments delivered by this Court in 1985 and 1987 directing the opposite parties to prepare a scheme and absorb the casual labourers in accordance with their seniority. B

Issuing of circulars by the Railway Board or decisions by this Court could not and has not been disputed. Nor it is disputed that in pursuance of the orders passed by this Court the opposite parties framed a scheme in 1987 for employing retrenched casual labourers. On 2.3. 1987 a letter was issued from the Railway Establishment addressed to the General Managers for employing casual labourer retrenched before 1981 if they satisfied the requirements mentioned therein which is extracted below : C

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 "Pursuant to directions given by the Hon'ble Supreme Court in their order dated 23.2.1987, in W.P. No. 332 of 1986, the Ministry desire that the cases of project casual labour who had worked as such before 1.1.81 and who were discharged due to completion of work or for want of further work, may also be considered for the purpose of implementation of the scheme contained in the Ministry's letter of even No. dated 1.6.84 and 25.6.84 as modified in the letter dated 11.9.1986. E

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 Representation along with documentary proof reaching the office mentioned above after 31.3.1987 of those which are incomplete and also those not made with reference to these instructions, will not be considered".

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 The petitioners who claim to have been retrenched due to completion of Halda project appear to have made a representation in 1990 to the authorities. The representation runs as under :

"Respected sir,

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 1, on behalf of the Retrenched Labour Congress Union I.O.

A Tamluk Rly. Station. Dist. Midnapore, beg to humbly submit that the above quoted Circulars are not obeyed by DEN (Con). TMZ-DIZHA. S.E. Rly. KGP and they do not follow the orders of they Supreme Court, High Court of Calcutta and Central Administrative Tribunal, Calcutta Bench.

B As a result of their indifference, the project casual labour who are retrenched from service on or before 1.1.1981 are in great difficulties and they are not getting scope of absorption.

C All the applications deposited in the office of the DEN (CON) KGI in terms of Memo No. PD/E/A/579/A/837 in reference to CE/C/GRC dated 25.5.1987 are to be approved.

In such circumstances, I beg to request you to intervene in the matter as expeditiously as humble.

D Needless to say, if your grievances are not sympathetically admitted and the retrenched labour be not absorbed. We shall have no alternative way except launching vigorous movement in the next stage.

Your faithfully,
(BHUDEV JALUA)"

E The representation does not give any detail. It is not mentioned if the scheme was given due publicity or not. No explanation is given as to why the petitioners did not approach till 1990. Nor it is stated if any of the casual labourer Not it is stated if any of the casual labourer of the project were re-employed or not. It is vague and was lacking in material particulars.

F Two questions arise, one, if the petitioners are entitled as a matter of law for re-employment and other if they have lost their right, if any, due to delay. Right of casual labourer employed in projects, to be re-employed in railways has been recognized both by the Railways and this Court. But unfortunately the petitioners did not take any step to enforce their claim before the Railways except sending a vague representation nor did they even care to produce any material to satisfy this Court that they were covered in the scheme framed by the Railways. It was urged by the learned counsel for petitioners that they may be permitted to produce their identify cards etc., before opposite parties who may accept or reject the same after

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verification. We are afraid it would be too dangerous to permit this exercise. A writ is issued by this Court in favour of a person who has some right. And not for sake of roving enquiry leaving scope for manoeuvring. Delay itself deprives a person of his remedy available is law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well. From the date of retrenchment if it is assumed to be correct a period of more than 15 years has expired and in case we accept the prayer of petitioner we would be depriving a host of others who in the meantime have become eligible and are entitled to claim to be employed. We would have been persuaded to take a sympathetic view but in absence of any positive material to establish that these Petitioners were in fact appointed and working as alleged by them it would not be proper exercise of discretion to direct opposite parties to verify the correctness of the statement made by the petitioners that they were employed between 1964 to 1969 and retrenched between 1975 to 1979.

The writ petitions accordingly fail and are dismissed. But there shall be no orders as to costs.

U.R.

Petitions dismissed.