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In the Calcutta High Court

Case No : Appeal from Original Order No. F.M.A.T. 150 of 1970

Biswanath Mukherjee and Others — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 20-05-1970

Acts Referred:
Constitution of India, 1950 — Article 12, 13, 14, 16, 226
Industrial Disputes Act, 1947 — Section 25F

Citation : 75 CWN 284

Hon'ble Judges : Sabyasachi Mukharji, J;Arun Kumar Mukherjea, J

Bench : Division Bench

Judgement

Sabyasachi Mukharji, J.—In this appeal arising out of an application under Article 226 of the Constitution, the petitioners who are appellants herein, have asked for an order and /or writ in the nature of Mandamus directing the respondents to treat each of the petitioners to be in temporary service from the respective dates of expiry of 6 months'' continuous service from their respective appointment as casual labourers and to grant them other benefits accordingly, for an order and / or writ in the nature of Mandamus commanding the respondents to forbear from retrenching any of the petitioners and to transfer them in certain way on the basis that the petitioners are temporary employees under the respondents, and also for an order and j or writ in the nature of Certiorari asking the respondents to send to this Court all records and proceedings relating to the proposed retrenchment of the casual labourers including the petitioners and quashing the same and for certain other incidental reliefs. This case involves the persons who are employed as casual labourers in carrying out the electrification works of the railways. It is stated that there are about 1600 such casual labourers who are likely to be retrenched by the Railways. In this Civil Rule we are concerned with 129 petitioners who are appellants before us. It has to be observed however that some of the petitioners withdrew from the application during the pendency of the proceeding before the learned trial Judge and some have withdrawn in the appellate stage. We had directed on an earlier occasion for the deletion of their

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names. There are 5 respondents to this application, namely, respondent No. 1; being the Union of India; respondent No. 2 is the Secretary Railway Board, the respondent No. 3 is the General Manager and the Chief Engineer, Railway Electrification; respondent No. 4 is the Engineer-in-Chief III, Railway Electrification and the respondent No. 5, is the Executive Engineer; Group 10 (O.H.E.), Sealdah Division, Railway Electrification. The petitioners claim to be citizens of India employed in the Railway Electrification as semi-skilled, unskilled, as well as skilled labourers as the case may be. It has been stated in the petition that the Railway Electrification is a separate and distinct organisation under the Railway Board and the same is under the administrative control of the General Manager and Chief Engineer, Railway Electrification who is the respondent No. 3 herein. The petitioners have stated that in 1953 it was decided that the Howrah-Burdwan Section of the main 1 ne of the Eastern Railway would be electrified and for the purpose of implementing the same an organisation called the "Calcutta Electrification Project" was set up under the Eastern Railway to carry out the various kinds of works for the electrification of railway traction. Thereafter, it was decided; the petitioners stated that the railway traction -in different parts of India would be electrified and for the said purpose a different organisation called the "Railway Electrification" was set up as an independent and distinct organisation under the Railway Board for carrying out various kinds of works necessary for such electrification. It was alleged that the "Calcutta Electrification Project" then merged with the new organisation called the "Railway Electrification." This organisation of the "Railway Electrification" has been carrying out the works of railway electrification of the railway traction in various places within the Union of India, i.e. in West Bengal, Bihar, Orissa, Uttar Pradesh and Madhya Pradesh, Madras, Maharashtra and Gujrat and the works of electrification of the railway traction carried out by this organisation, i.e; the Railway Electrification took a long time and was of indefinite duration, it has been asserted by the petitioners In some parts the works started as early as in 1959 and the same was still continuing and in other parts it has been continuing from time to time. Thus the work of this organisation, the petitioners claimed, is of indefinite and un-certain duration and this organisation has been carrying out the work of recruiting a large number of workers called as ''Casual labourers''. The petitioners further stated that as such casual labourers working under the Railways and the said organisation of the Railway Electrification by the petitioners have been working continuously in the Railways under the said Organisation for a period of a number of years but still then they have not been given the amenities and the benefits that are given to the other employees of the Railways who worked as ''Casual labourers''. The petitioners assert in the petition that by virtue of their working continuously in the Railway Electrification for over a number of years they have become entitled to be treated as temporary workers in the Railways, and as such they have become entitled to all the benefits admissible to the temporary workers of the Railways. They first relied on the letter of the Railway Board dated 22nd August, 1962. This is Annexure ''A'' to the petition. According to the petitioners,-by the said letter it has been provided

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that in cancellation and in modification of the previous orders of the Railways Board the ''casual labourers'' with six months'' continuous service are to be treated as ''temporary workers''. The said letter has been quoted and set out from the paragraph 2501 of Chapter XXV of the Railway Establishment Manual regarding the terms and conditions of service of ''casual labourers''. It would be necessary later on to advert in detail to the provisions of Chapter XXV of the Railway Establishment Manual in this case. The petitioners contend that they are ''casual labourers'' as mentioned in the Chapter XXV and they are not casual labourers employed in any project for the purpose of Chapter XXV of the Railway Establishment Manual. One of the contentions that would be necessary to be decided in this case is whether the Railway Electrification is a Project as contemplated in Chapter XXV of the Railway Establishment Manual. If Railway Electrification is not a Project, then in view of provisions regarding casual labourers mentioned in Chapter XXV, after 6 months'' continuous service as casual labourers, the petitioners are entitled to obtain temporary status. A contention of far more fundamental importance that has to be resolved in this case, is the argument that such differentiation between different categories of casual labourers, that is to say, between labourers engaged in the Project and the labourers engaged in non-project works is discriminatory and as such violative of Article 14 of the Constitution. In order to resolve this, it will also be necessary to decide what, is the effect of Chapter XXV of the Railway Establishment Manual. Has it any statutory force, or does it merely contain administrative or executive direction ? It has been stated in the petition that the petitioners have not been given the retrenchment benefits applicable to temporary workers and ft was urged that there has been failure to transfer these casual labourers to other parts of India. The petitioners further stated that they had claimed temporary status demanding justice and as their claims have not been recognised, they moved this court. A rule nisi was issued and after affidavits were filed the matter came up for hearing before S. C. Ghosh, J., who, by a judgment delivered on the 12th and 15th December, 1969 discharged the said rule nisi without any order as to costs. S. C. Ghosh, J., came to the conclusion that Chapter XXV contains certain administrative directions and they have no statutory force whatsoever. The learned Judge held, therefore, that no right can be denied to the petitioners in respect of the said executive or administrative orders or directions. His Lordship further came to the conclusion that Railway Electrification is a Project and as such the petitioners who were employed in a project work can not get the benefit which other casual labourers employed in non-project works are entitled under Chapter XXV of the Railway Establishment Manual. The learned Judge was of the view that though there was differentiation between casual labourers in Project and casual labourers in non-project works, there was a rational basis for such differentiation. The learned Judge further came to the conclusion that the petitioners have no legal rights nor are they employees of the Railways. The learned Judge held that no provision of the Industrial Disputes Act has been infringed.

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2. Being aggrieved by the said judgment and order of S. C. Ghose, J. the petitioners have preferred this appeal. Mr. Sadhan Gupta, learned counsel for the appellants, submitted that the appellants are entitled'' to be treated as temporary'' workers under Chapter XXV of the ''Railway Establishment Manual. He urged that Railway Electrification is not a Project under said Chapter XXV. He then submitted that if the Railway Electrification was a project, paragraph 2501-b (ii) must be struck down, as it amounts to discrimination between casual labourers in project and casual labourers in non-project works. Therefore it was violative of Article 14 of the Constitution. Mr. Gupta argued that Chapter XXV does not contain executive instructions-but its provisions have statutory force. Learned counsel submitted that even by executive instructions discrimination cannot be permitted. He submitted that the appellants have the rights to be transferred on the basis that they are temporary workers. He relied on Article 16 of the Constitution. It was then argued that the retrenchment of the appellants was unlawful because the provisions of Section 25F of the Industrial Disputes Act have been violated in this case. It was further argued that the appellants being Government servants enjoy their tenure of service during the pleasure of the President, and as the termination of the services of appellants has been done by an authority other than the President, it was bad. It was urged that the pleasure of the President cannot be delegated. Mr. Gupta finally argued that Rule 149 of the Railway Establishment Code was ultra vires and further that the said rule does not apply to the appellants.

3. The main question that requires to be considered in this case is whether the appellants are entitled to the status of temporary workers. In order however to decide this question we have to refer to Chapter XXV of the Indian Railway Establishment Manual. The Prefatory Notes states that this is a revised edition of the Indian Railway Establishment Manual published on 1st August, 1968 and it embodies all administrative orders on Code rules and allied Establishment matters, issued by the Railway Board after 31st March, 1959. Chapter XXV is headed Casual Labour. Paragraph 2501 is supposed to contain the definition, but it does lot more. It would be appropriate to set out below paragraph 2501 as hereunder :-

2501. Definition: -(a) Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour, (b) The casual labour- on railways should be employed only in the following types of cases, namely : - (i) Staff paid from contingencies except those retained for more than six months continuously : Such of those persons who continue to do the same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of the six months of continuous employment. (ii) Labour on projects, irrespective of duration except those transferred from other temporary or permanent employment, (iii) Seasonal labour who are sanctioned

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for specific works of less than six months'' duration. If such labour is shifted from one work to another of the same type e.g. relaying and the total continuous period of such work at any one time is more than six months'' duration, they should be treated as temporary after the expiry of six months of continuous employment. For the purpose of determining the eligibility of labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers.

Thereafter there is a note which is in the following terms : -

1. A project '' should be taken as construction of new lines, major Bridges, restoration of dismantled lines and other major important open line works like doubling, widening of tunnels etc. which are completed within a definite time limit. The General Manager / Heads of the Departments concerned, in consultation with the F.A. & C.A.O. will decide whether a particular open line work is a ''Project'' or not. In deciding whether a particular open line work is a ''Project'' or not the test to be applied will be whether the work is required for the day to day running of the railway, as distinct from the provision of large-scale additional facilities to improve the carrying capacity of the railway.

4. Our attention was also drawn to the provisions of Chapter XXV in the previous Edition of the Railway Establishment Manual. There Casual Labour was defined as follows :-"1. Casual labour refers to labour whose employment is seasonal, intermittent or sporadic or extends over short periods and includes the following categories of employees:-(i) Staff paid from contingencies except those retained without limit of tenure; (ii) Labour on projects irrespective of duration except those railway servants who are transferred from other temporary or permanent employment; (iii) Seasonal labour who are sanctioned for specific works of less than six months'' duration. If such labour is shifted from one work to another of the same type, e.g. relaying and are maintained in gangs and the total continuous period of such work, at any one time is more than six months they should be treated as temporary after the expiry of the first six months of the continuous period.

In Appendix 12 of the present Edition of the Railway Establishment Manual there is a concordance showing the authority for the propaganda occurring in the various Chapters of the Indian Railway Establishment Manual and against paragraph 2501 in Chapter XXV, the authority quoted is the letter of the Railway Board being letters No. E(NG) 60CL/13 dated 22-8-62, No. E (NG) 60CL/13 dated 22-8-62, and the letter No. E(NG) 63CL/9 dated 9th February, 1965 and No. 5(NG) 64CL/45 dated 26th October, 1964. Each of the appellants it was contended, has worked for more than six months on continuous service. It was further asserted, that this position was not seriously disputed. Mr. Gupta contended before us that the appellants were entitled to be treated as temporary workers by virtue of paragraph 2501, Clause (b) sub-clause (1) of Chapter XXV of the Railway Establishment Manual. It has been urged on the other hand that,

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as the appellants work in projects and Railway Electrification is a Project they were not entitled to be in. temporary service because of sub-clause (2) of clause (b) of paragraph 2051 of Chapter XXV of the Railway Establishment Manual. Mr. Gupta then submitted that it has been nowhere stated in the affidavit in opposition that Railway Electrification is a Project. He drew our attention to paragraphs 9, 11, 12 and 17 of the affidavit in opposition. However, it appears, in paragraph 31 it has been clearly stated that the appellants are employed in project. Further more in Annexure II to the affidavit in opposition which is an extract from the letter of Railway Board it has been stated that the entire work of construction under the Railway Electrification Project has been termed as a Project. Therefore it would not be proper for us not to allow the respondents to contend that the entire Railway Electrification is a Project, Therefore it is necessary to examine the next contention urged by Mr. Gupta that Railway Electrification is not and can not be a Project in view of Note (1) of the said Chapter XXV. Mr. Gupta contended that a Project should be taken as construction of new lines, major bridges, restoration of dismantled lines and other major important open line works like doubling; widening of tunnels etc. which are completed within a definite time limit. The first point that Mr. Gupta argued is that in view of expression "other major important open line works" in Note I of Chapter XXV the works mentioned preceding that expression must be construed ejusdem generis and they must form part of the same genus and in order to do so it would be necessary to construe that all the types of works contemplated in the opening sentence of note (1) would be open line works. Mr. Gupta then contended that Railway Electrification is not open line work. Mr. Gupta further urged that the General Manager as the Head of the Department can only declare an open line work to be a project and a non-open line work, according to Mr. Gupta, can not be declared to be a project by the General Manager. Mr. Gupta''s arguments on this aspect are attractive and are substantial. It is true that note (1) of Chapter XXV has not been carefully drafted. But the word "project" generally conveys the idea of a scheme or a. venture. As a matter of fact it has been stated in the note (1) that in deciding whether a particular open line work should be treated as Project or not the test to be applied is to see whether the work is required for the day to day running of the railway as distinct from the provision of large-scale facilities to improve the carrying capacity of the railways. Judged by this standard Railway Electrification would certainly be a project. Our attention has not been drawn to any definition of open line work. Proceeding therefore again on view of common knowledge it appears to us that it can only mean a line which is open for use as distinct from new line which is being laid down for the first time. From that point of view in large areas electrification has been introduced on the lines which are existing and are operating. Electrification has therefore brought in additional facilities to improve the carrying facilities of the railways on the existing lines. In construing expressions used in Note I of Chapter XXV it is important to remember that it is neither a statute, nor a legal document. Therefore reading Note I in its proper perspective liberally it is not possible to accept the argument the Railway Electrification can not be a project in

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terms of Note I of Chapter XXV. It is true that the General Manager as the head of the department concerned has not declared the Railway Electrification to be a project because this power was given subsequently, while the work of electrification had already been carried on before, but the Railway Board has, as would be apparent from the Annexure II to the affidavit in opposition. The Railway Board has made these rules which are contained in Chapter XXV. Railway Board has given authority to the General Manager. Unless it is con-" trolled by statute, which it is not in this case, the delegating authority can at any time resume its authority. (See the observation of Lord Coleridge, C.J., in the case of (1) Hulk v. Clarke, 25 Q.B.D., 391 at 395). The Railway Board, therefore has the authority to declare a work to be a project and it -has so declared. We are therefore, of the opinion that the Railway Electrification is a project.

5. The next question that requires consideration in this case is, whether the differentiation between casual labourers employed in projects and casual labourers employed in non-project works as mentioned in Chapter XXV of the Railway Establishment Manual is justified. A connected question that arises in this connection is whether Chapter XXV of the Railway Establishment Manual has any statutory force or it merely contains executive directions. But apart from the question as to the right of the petitioners to maintain this application, that question namely whether Chapter XXV has statutory force or merely contains executive directions, is not very relevant in considering the question whether the provisions of the said Chapter are violative of Article 14 of the Constitution. We accept Mr. Sadhan Gupta''s submission that even if the Chapter XXV contains executive directions they must, in order to survive stand the test of reasonableness as enjoined by Article 14 of the Constitution. For this we need only refer to two decisions of the Supreme Court. In the case of (2) Basheshar Nath v. Commissioner of income tax, AIR 1959 SC p. 149. S. R. Das C.J., observed at page 158 of the report as follows :-"In the third place it is to be observed that, by virtue of Article 12, "the State" which is by Article 14, forbidden to discriminate between persons includes the Government and Parliament of India and the Government and the legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. Article 14, therefore is an injunction to both the legislative as well as the executive organs of the State and the other subordinate authorities. As regards the legislative organ of the State, the fundamental right is further consolidated and protected by the provisions of Article 13". His lordship further observed in the same page as follows :-"Thus Article 14 protects us from both legislative and executive tyranny by way of discrimination." The next case to which we may refer is the decision of the Supreme Court in the case of (3) Satwant Singh Sawhney v. Assistant Passport Officer, New Delhi AIR 1967 SC page 1836, where Subba Rao C.J. observed at page 1845 of the report as follows : "This doctrine of equality before the law is necessary corollary to the high concept of the rule of law accepted by our Constitution. One of the aspects of rule of law is that every executive action, if it is to operate to the prejudice of

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any person must be supported by some legislative authority: See (4) State of Madhya Pradesh v. Thakur Bharat Singh, C.A. No. 1066 of 1965D/- 23-1-1967 (AIR 1967 SC 1170). Secondly, such a law would be void if it discriminates or enables an authority to discriminate between persons without just classification. What a Legislature could not do, the executive could not obviously do." Therefore we are of the opinion that if it can be established that provisions of Chapter XXV of the Railway Establishment Manual make a differentiation between casual labourers employed in project work and casual labourers employed in non-project works which can not be sustained on the ground of rationality, such differentiation must be struck down. A perusal of Chapter XXV makes it apparent that there is differentiation, i.e. different treatment has been meted out to casual labourers employed in project, other than casual labourers in non-project works. The question is, is the Railway Administration justified in doing so ? On this aspect of the matter, in his very able and interesting argument, Mr. Sadhan Gupta, reminded us the dictionary meaning of ''casual''. ''Casual'' is subject to chance, accidental and sporadic. Indeed in the very definition of Chapter XXV casual labour has been defined, as labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Therefore Mr. Gupta contended that casual labour in whatever sphere they are employed are necessarily employed to do sporadic, intermittent, or seasonal work to meet a particular situation. Keeping, therefore, the nature of the type of work done by the casual labour in the forefront, it was urged that we should consider, what justification there was for giving those who do sporadic, intermittent or seasonal work in open line administration of the Railway or in non-project works of the Railway, the right of being treated as a temporary servant after 6 months and denying the same right to casual labour who do sporadic, intermittent or seasonal work in Railway Electrification or in project works. Mr. Gupta contended that casual work would be casual in whatever organisation or type of work a labourer was employed. Mr. Gupta then submitted that in this case where some of the petitioners have worked as casual labourers in Railway Electrification for nearly 16 years, would be denied the right of being absorbed as temporary servants given to casual labourers in non-project works. Mr. Gupta further submitted that this would be clearly a denial of equality of opportunity in public employment and denial of the right of equality as enshrined in the Constitution. Mr. Gupta then submitted that there was nothing casual in the work, the length of the period of service of many of the petitioners with the Railway Electrification would clearly indicate that there was nothing casual about their employment.

6. On behalf of the respondents, Mr. Sankar Das Banerjee, and following him Mr. Prasanta. Ghose, urged that there was a rational basis for the differentiation, they submitted further that it was not correct to state that some of the petitioners have been in continuous employment for 16 years, what had happened, according to them, was that the workers who had served as casual labourers during a particular electrification work were employed as fresh labourers whenever possible as fresh recruits and thereby some of them have

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served for some length of time. It was pointed out that casual labourers are normally be recruited from the nearest available sources, they must accept the rates and the conditions applicable to the labourers of a particular area. It was then pointed out that Railway Electrification was a different organisation and as such in making a differentiation between casual labourers in two different organisations was rational. Our attention was drawn to paragraph 8 of the affidavit in opposition which is in the following term :- "8. With reference to paragraph 10 of the petition, I say that the allegations therein are based on misconception of facts. The Railway Electrification has no control over recruitment and manning of posts of Open Line Railways which are independent organisations under the Railway Board and have no connection whatsoever with the Railway Electrification organisation. It may be mentioned that casual labours are recruited on the Open Line Railways for maintenance work as well as project work whereas Railway Electrification has recruited casual labour for the purpose of construction of project works only and as such labourers are not paid from ''contingencies'' as provided in Chapter XXV, Rule 1(b) sub-rule (I) of Railway Establishment Manual. The purposes being -different it could not be said that they perform similar work. In the open line Railways also, casual staff working on Projects, are paid casual rates of pay only irrespective of the period over which labour is maintained for completion of the work". It was then submitted further that a project is a temporary work though the length of its duration may sometimes be long and sometimes may be short, but project works must at one point of time come to end. It was therefore submitted that the administration was justified in making a differential treatment between the casual labourers employed in the project and non-project works.

7. The principle of Article 14 has been explained and examined in the several decisions of the Supreme Court and several High Courts. A large number of decisions were cited before us from the Bar on this question. It is however not necessary for us to deal with all of them or many of them, we may only note some of them. In the case of (5) R. C. Cooper v. Union of India, AIR 1970, SC page 564, delivering the majority judgment Shah J., observed at page 602 of the report as follows:-"Protection of Article 14 78. By Article 14 of the Constitution the State is enjoined not to deny any person equality before the law or the equal protection of the laws within the territory of India. The Article forbids class legislation, but not reasonable classification in making laws. The test of permissible classification under an Act lies in two cumulative conditions: (i) classification under the Act must be founded on an intelligible differentia distinguishing persons, transactions or things grouped together from others left out of the group; and (ii) the differentia has a rational relation to the object sought to be achieved by the Act; there must be a nexus between the basis of classification and the object of the Act; Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, -(Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others,) The State of Bombay and Another Vs. F.N. Balsara, , The State of West Bengal Vs. Anwar Ali Sarkar, (The State of West Bengal Vs. Anwar Ali

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Sarkar,) Budhan Choudhry and Others Vs. The State of Bihar, (Budhan Choudhry and Others Vs. The State of Bihar,); Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others,) and State of Rajasthan Vs. Mukanchand and Others,).

The Courts recognized in the Legislature some degree of elasticity in the matter of making a classification between persons, objects and transactions. Provided the classification is based on some intelligible ground, the Courts will not strike down that classification, because in the view of the Court it should have proceeded on some other ground or should have included the class selected for special treatment some other persons, objects or transactions which are not included by the Legislature. The Legislature is free to recognize the degree-of harm and to restrict the operation of a law only to those cases where the need is the clearest. The Legislature need not extend the regulation of a law to all cases it may possibly reach, and may make a classification founded on practical grounds of convenience. Classification to be valid must, however, disclose a rational nexus with the object sought to be achieved by the law which makes the classification. Validity of a classification will be upheld only if that test is independently satisfied. The Court in examining the validity of a statute challenged as infringing the equality clause makes an assumption that there is a reasonable classification and that the classification has a rational relation to the object sought to be achieved by the statute." In the case of (6) Kishori v. Union of India, AIR 1962, p. 1139, the Supreme Court held that the abstract doctrine of equal pay for equal work has nothing to do with Article 14. Article 14, therefore, can not be said to be violated where the pay scales of Class I and Class II, income tax Officers, are different though they do the same kind of work. Incremental scales of pay can be validly fixed dependent on the duration of an officer''s service. In the case of (7) State of Punjab Vs. Joginder Singh, Ayyangar J. delivering the majority judgment of the Supreme Court at page 921 of the report after dealing with the case of (6) Kishori Mohanlal v. Union of India, (supra) observed as follows:-"If, for instance, an existing service is recruited on the basis of a certain qualification, the creation of another service for doing the same work, it might be in the same way but with better prospects of promotion can not be said to be unconstitutional, and the fact that the rules framed permit free transfers of personnel of the two groups to places held by the other would not make any difference. We are not basing this answer on any theory that if a government servant enters into any contract regulating the conditions of his service he can not call in aid the constitutional guarantees because he is bound by his contract. But this conclusion rests on different and wider public grounds!, viz., that the government which is carrying on the administration has necessarily to have a choice in the constitution of the services to man the administration and that the limitations imposed by the constitution are not such as to preclude the creation of such ser- -vices. Besides, there might for instance, be a temporary recruitment to meet an exigency or an emergency which is not expected to last for any appreciable period of time. To deny to the government the power to

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recruit temporary staff drawing the same pay and doing the same work as other permanent incumbents within the cadre strength but governed by different rules and conditions of service, it might be including promotions, would be to impose restraints on the manner of administration which we believe was not intended by the Constitution." In the case of (8) All India Station Masters'' and Assistant Station Masters'' Association v. General Manager, Central Railway and others, AIR 1960, 384 the Supreme Court pointed out that as the Road-side Station Masters and Guards are recruited separately and trained separately and have separate avenues of promotion, the conclusion is irresistible that they form two distinct and separate classes as between whom there is no scope for predicating equality or inequality of opportunity in matters of promotion. Mr. Gupta however placed strong reliance on the decision in the case of (9) Moti Ram Deka v. N. E. Frontier Railway AIR 1964 SC page 600. There the majority judgment of the Supreme Court pointed out that the nature of services rendered by employees in sectors of public service may differ and the terms and conditions governing employment in all public sectors may not necessarily be the same or uniform; but in regard to the question of terminating the services of a civil servant after serving him with a notice for a specified period, there is no basis on which the Railways can be regarded as constituting a separate and distinct class by reference to which the impugned Rule 148(3) and 149(3) can be justified in the light of Article 14. The Supreme Court observed that if there is any rational connection between the making of such a Rule and the object intended to be achieved by it, that connection would clearly be in existence in several other sectors of public service.

8. Mr. Gupta also drew our attention to the Bench decision of the Delhi High Court in the case of (10) Union of India and another v. Shanti Swarup (1969) Labour and Industrial Cases, Vol. 2, page 1265. In that case certain benefits of revised scale of pay in case of Number Takers given to those serving on other railways in the country were not extended to those employed in Delhi Division of East Punjab Railway. It was held by the Delhi High Court that Article 14 was violated since Number Takers in Delhi Division formed same class with their companions in other Indian Railways and there was no rationality in the differentiation.

9. The examination of the various decisions reveal that differentiation is possible even if it be between the members of the same class, if there is a rational nexus or connection between the differentiation made and the object that it is intended to be achieved by the differentiation. Though the principle, that like should be treated alike, is simple to understand often difficulty arises in applying that principle to particular cases. Differential treatment does not ''per se'' constitute violation of Article 14. Equal protection ii denied only where there is no reasonable basis for the differentiation. Article 14 does not forbid classification but the classification or the differentiation has to be justified on the basis of the nexus between the classification or the differentiation and the object to be achieved. The fact, however, that the classification or the differentiation by itself is reasonable is not enough to support it unless there is nexus between the

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classification or differentiation and the object to be achieved. It is true that, from one point of view, people who perform casual labour in project and those who perform casual labour in non-project works may be performing the same type of work. It is equally true, that both in project and in non-project works, casual labour is intermittent, sporadic or seasonal. Therefore judging from the nature of the work and tenure of employment, it is difficult to appreciate the reason for differentiation between casual labourers in projects and casual labourers in non-project works. The fact that these two groups are employed in two different organisations of the Government may not per se, provide a permissible basis for differentiation. But in this case the differentiation with which v/e are concerned, i.e., the right of the casual labourers to claim temporary status after 6 months, has to be judged not only from the point of view of the nature of the works done by employees, not only from the point of view of tenure of employment, but also from the point of view of the purpose of employment. A project is particular work which is bound to come to an end with completion of a particular object, for fulfilment of which that particular project is undertaken. Though the duration is uncertain project is bound to come to an end. Keeping this point of view in mind we have now to consider whether the differentiation made in this case has any rational basis. For completion of a specified job if the Railway Administration or the Government imposes certain conditions whereby it does not take upon itself the responsibility to absorb anybody afterwards, while in the permanent establishment the State or the Railway Administration takes upon itself that liability, it is not possible to say. in our opinion, that there is no rational nexus between this differentiation and the object to be achieved by such differentiation. We are not concerned with the propriety of the differentiation apart from the question of rational basis. We are also not concerned with the question whether the State or the Railway Administration could have achieved this purpose by other methods. Therefore, on a careful examination of the provisions of Chapter XXV of the Railway Establishment Code and the various decisions referred to hereinbefore, we are of the opinion that though there is differentiation between casual labour employed in project and casual labour employed in non-project work, such differentiation does not amount to a discrimination which is violative of Article 14 of the Constitution. Mr. Gupta''s argument on this ground must, therefore, fail.

10. In the view we have taken on the question whether Railway Electrification is a project or not and on the question of discrimination, it is not really necessary for us to decide the question whether Chapter XXV of the Railway Establishment Manual, contains administrative or executive directions or whether the provisions of the said Chapter XXV have any statutory force. The appellants claim that they have the right of temporary status as well as the right of transfer under the said Chapter XXV. We have held that the appellants are casual labourers employed in project and in terms of Chapter XXV of the Railway Establishment Manual which is applicable to them, they can neither claim the right to be treated as temporary workers nor can they claim the right to be transferred to other places where

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electrification works are going on. In view however of the arguments advanced, we would briefly note the contentions and express our opinion on them. Learned trial Judge has held that provisions of Chapter XXV of the Railway Establishment Manual do not have statutory force. Learned Judge has further held that the appellants have no legal right to enforce the provisions of Chapter XXV. Learned counsel for the respondents drew our attention to the Prefatory Notes dated 1st of August, 1960 and 1st of April, 1968 to the Indian Railway Establishment Manual. They show that amongst others provisions of Chapter XXV of the Indian Railway Establishment Manual contain only administrative directions and have no statutory force. Learned counsel for the respondents further contended that rules can only be framed u/s 47 of the Indian Railways Act and under Article 309 of the Constitution of India. Provisions of Chapter XXV were not framed under either of the aforesaid provisions. The appellants therefore, it was urged, can not claim, any right. for the enforcement o? the provisions of Chapter XXV. Reliance was placed on the decision of the Supreme Court in the case of (11) State of Assam and Another Vs. Ajit Kumar Sharma and Others, . In as much as the two letters dated 2nd of April, 1962 and 4th of September, 1965 alter or modify the meaning of the provisions of Chapter XXV of the Manual, they are also executive instructions and do not give in favour of the appellants any legally enforceable rights. On behalf of the appellants, learned counsel contended that Chapter XXV of the Manual, as it originally stood in 1960 Edition, contain same provisions, as in para 1(b) (hi) and note 1 of the Chapter XXV as substituted by the Railway Board''s letter dated 22nd August, 1962 which provide for the conferment of the temporary status after the expiry of six months and define a "Project". Therefore, it was argued that though there are some minor differences, they are not material for the present purpose. Learned counsel drew our attention to the relevant provisions, which have been set out hereinbefore in this judgment. It was further pointed out that Appendix 10 to the 1960 Edition of Manual which sets out concordance for the various provisions of the Manual shows that the authority for Chapter XXV rule 1 was derived from the letters of the Railway Board ranging from 12th January, 1949 to 14th May, 1957 all of which were long before the amendment excluding casual labourers from the definition of Railway servants made in 1959. It was therefore argued that these letters containing, as they did, the rules regarding the conditions of service of casual labourers who were then included in the definition of Railway servants could have been made under rule 106 of the Railway Establishment Code of 1959 which was then in force and it yas further argued, it must have been made under that provision as there was no other power under which they could have been made. Therefore, it was argued, they have statutory force. We are, however unable to accept the contentions urged on behalf of the appellants. Statutory rules, in order to be effective must be framed in accordance with statutory provisions. We have not been shown any statutory provision under which the provisions contained in Chapter XXV of the Railway Establishment Manual were framed. Statutory force can not be given to any provision by implication. We, however, need not examine the question in detail in view of our findings on the other questions as indicated

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above.

11. The next contentions that were urged by Mr. Gupta related to the retrenchment. He argued that the said retrenchments have been done in violation of Section 25F of the Industrial Disputes Act and further submitted that the termination cannot be by any authority other than the President. Mr. Gupta drew our attention to the decision of the Supreme Court in the case of (12) State of Bombay and others v. Hospital Mazdoor Sabha, 1960 SC 610 and to the decision of the Supreme Court in the case of (13) National Iron and Steel Co. v. State of West Bengal. AIR, 1967, SC 1206. He further argued that the rule 149 of the Railway Establishment Code to the extent it is contrary to the provisions of Article 310 of the Constitution or to provisions of the Industrial Disputes Act, is ultra vires, and to the extent it is contrary to the provision of the Industrial Disputes Act, it does not apply to the appellants. He further argued that the pleasure of the President under Article 310 of the Constitution can not be delegated. He drew our attention to the decision of the Supreme Court in the case of (14) The State of Uttar Pradesh and Others Vs. Babu Ram Upadhya, . He also drew our attention to the Bench decision of this Court in the case of (15) Makhan Lal Dey v. Union of India 70 CWN, p. 925.

12. It however appears to us that from paragraph 2503 of the Railway Establishment Manual casual labourers are not entitled to any right of privilege apart from those conferred upon them by different statutes or expressly by the Railway Board. Under paragraph 2505 of the said Manual, in the absence of any statutory provisions, no notice is required to terminate the service of a casual labourer. In this case 14 days'' notices have been given. They have also been offered pay admissible to the casual labourers in lieu of notice. Rule 102(13) of the Railway Establishment Code was amended on the 6th of April, 1959. After the amendment, the definition of railway servant does not include casual labourers. Under rule 157 of the Railway Establishment Code, the Railway Board has the authority only to make rule for non-gazetted Railway servants. The casual labourers according to the definition, as amended under rule 102 (13) of the Code, are not railway servants, so no rule can be framed under rule 157 for the casual labourers. Casual labourers therefore, do not hold any civil post. There is no question of their holding civil posts in the premises during the pleasure of the President as contemplated in Article 310 of the Constitution. In that view of the matter it is not necessary for us to examine in detail the question whether pleasure of the President can be delegated and whether, in fact any question of delegation arises in this case, because casual labourers do not hold civil posts. Reliance may be placed on the observations of the Supreme Court in the case of (16) State of Assam and Others Vs. Shri Kanak Chandra Dutta, . Mr. Gupta however contended that the observations of the Supreme Court in the aforesaid decision relating to the casual labourers were obiter, and must be read as confined to the facts of that case, There the Supreme Court, made that observation in respect of casual labourers who were engaged to fulfil a particular job which required a very short time and in which case the relationship of master

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and servant did not exist. according to Mr. Gupta. In view however of the amended definition of railway servant, and in view of the observations of the Supreme Court in the aforesaid decision it is not possible to accept the contention that casual labourers hold civil posts as contemplated in Article 310 of the Constitution. It is also not necessary for us to decide the question whether rule 149 of the Railway Establishment Code is good or bad because in any event the said rule applies to persons holding temporary posts and other railway servants. Casual labourers are not railway servants as defined in the Railway Establishment Code. It is an admitted position that compensations that were due to be paid to the casual labourers under the Industrial Disputes Act have been paid in this case. Therefore, we are of the opinion that there has been no infringement either of the provision of the Industrial Disputes Act or Article 310 of the Constitution of India in making the order of retrenchment of the appellants.

13. For the reasons mentioned hereinbefore all the contentions urged on behalf of the appellants fail, and this appeal is accordingly dismissed. The judgment and order of S. C. Ghose J., `is hereby confirmed. There will, however, be no order as to costs.

14. Before we part with this judgment we feel it necessary to make one observation. It is undoubtedly true that many of the petitioners have worked for considerable length of time with the electrification work of the railways, whether they have been in continuous service and whether they are legally entitled to the temporary status is another debate and we have expressed our opinion on that. We have necessarily decided this case on the legal rights of the parties, but there is a human side to it. It would indeed be a tragedy if such a large number of people are thrown out of employment after such a length of service. At the same time we realise that the administration has its problems, financial and otherwise, in absorbing these casual labourers as temporary workers. Yet we would hope that the earnestness and goodwill on both sides would be able to evolve some formula whereby some provisions of absorption of as many of these appellants as possible can be made in the Railway Administration in as much mutually convenient terms.

The operation of this order will remain stayed for four weeks from this date, as prayed for.

Arun K. Mukherjee, J.

I agree.

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