

(1996) 01 MAD CK 0093

In the Madras High Court

Case No : Writ Petition No's. 12863, 12992 to 12995 etc. of 1994

P.R. Ramachandran and Others

APPELLANT

Vs

Tamil Nadu Water Supply and Drainage Board and Another

RESPONDENT

Date of Decision : 19-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 25F

Citation : (1996) 73 FLR 1548 : (1996) 1 LLJ 823 : (1996) 1 MLJ 415

Hon'ble Judges : AR. Lakshmanan, J

Bench : Single Bench

Advocate : K. Chandru, for the Appellant; R.M. Kannappa Rajendran, for the Respondent

Final Decision : Allowed

Judgement

AR. Lakshmanan, J.—The challenge in all the above writ petitions are the orders of termination of services of all the nominal muster roll workers (NMR) by the second respondent of the Tamil Nadu Water Supply and Drainage Board on January 6, 1994/January 7, 1994. The termination orders were passed by the second respondent on January 7, 1994 on the basis of a telex message, dated January 5, 1994 by the Managing Director of the TWAD Board sent to all the subordinate Officers to terminate the services of all the NMR workers, who have not completed 480 days of service during a continuous period of two years. The telex message, dated January 5, 1994 reads thus:

T.W.A.D. BOARD

Madras-5

State/Urgent

To

All Chief Engineers/Superintendent Engineers/Executive Engineers of TWARD

Board

"You are directed not to engage any NM Rs., who have not completed 480 days in a continuous period of two years as on December 31, 1993 under your control. Instruct all your subordinates suitably. Make suitable internal arrangements with regular staff wherever necessary. Violation of these instruction will be viewed seriously.

Acknowledge receipt by wire.

Managing Director,

TWAD Board, Madras-5

Head Office, TWAD Bd.,

Madras - 5

Endt. No. D4/1390/94/HO, dated January 5, 1994

Copy by post in confirmation

(Sd) R. Karpoorasundarapandian

Managing Director, TWAD Bd.,

Madras - 5.

To

All Chief Engineers,

All Superintending Engineers,

All Executive Engineers of TWAD Board /forwarded/by order/

Sd/-

Joint Chief Engineer(GI)

TWAD Board, Madras - 5.

The first respondent-Board is a statutory authority constituted under Tamil Nadu Water Supply and Drainage Board Act, 1971 The service conditions of the Workmen engaged by the first respondent are governed by the provisions of Industrial Employment (Standing Orders) Act, 1946 and the Model Standing Orders framed thereunder.

This Court in its decision reported in T.N.W.S. & D.B. Employees Union v. T.N.W.S. & D. Board 1993 I LLN 449 held that not only the first respondent was governed by the provisions of the Industrial Disputes Act, 1947 (in short "the Act"), but it has also to comply with the provisions of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 (Tamil Nadu Act 46 of 1981). It was also held that the Factories Act, 1948 will apply to the TWAD

Board. As soon as the said Judgment was delivered, the Central Organisation of Tamil Nadu Water Supply and Drainage Board Employees, the petitioners' union took up the matter with the first respondent, for confirmation of the workmen who were engaged for several years. Since the Board was not willing to comply with the same, the petitioners' union has raised a dispute with the level of Joint Commissioner of Labour and proceedings are still pending. In the meanwhile, in order to defeat the claim of the petitioners union, the first respondent issued an order sent by telex to all the subordinate officers including the second respondent therein, which was referred to above. According to the petitioners, they are working as NMR workers under the control of the second respondent and they have completed 240 days of qualifying service in a period of twelve calendar months and at the time of issue of the above telex message, they were about to complete 480 days so as to claim protection under Tamil Nadu Act 46 of 1981. As soon as the order was sent by the first respondent to all the subordinate officers, the second respondent without complying with the provisions of the Act had abruptly terminated the services of the petitioners without assigning any reason. Therefore, the petitioners have challenged the impugned orders of the second respondent, in terminating their services, as wholly unjust, arbitrary and violative of Articles 14 and 16 of the Constitution of India, According to them, the impugned orders are contrary to the provisions of Section 25-F of the Act, in as much as the mandatory conditions prescribed under the said Section, viz., giving one month's notice and payment of the compensation were not followed and the impugned orders are void ab initio. In as much as the "Industrial establishment" within the meaning of Chapter VB of the Act and in so far as the approval of the State Government had not been obtained for retrenching the services of the petitioners, the same is contrary to Section 25N of the Act and therefore the petitioners are deemed to continue in service with all attendant benefits. Even with reference to the services of the temporary workmen it can be terminated only after giving one month's notice as contemplated under the Model Standing Orders and in the case of the petitioners, the same had not been followed. Under the Model Standing Orders, an employee, who is appointed to a permanent post should be deemed to have completed his probation within three months, in the case of unskilled category and six months in the case of skilled category.

In all respects the petitioners had already completed their respective stipulated term of office and therefore, they cannot be terminated without a reasonable cause. Even if the first respondent is entitled to advise his subordinate officers to terminate the services of the employees, so as to avoid giving the statutory benefits, it does not enable the subordinate officers, including the second respondent not to comply with the other provisions of the Labour Legislations referred to above.

2. On behalf of the respondents, the first respondent filed a counter affidavit, wherein it is stated that the TWAD Board has to execute the Water Supply and Drainage Schemes in the rural habitations throughout the State of Tamil Nadu on

behalf of the local bodies. The works are being entrusted to the Board to carry out the execution of the above schemes either by the Government or by the local bodies depending upon, the nature of the volume of schemes. The TwAD Board has to investigate the Water Sources and after that, the Board has to lay the pipe lines pertaining to the concerned schemes and construct the over head tanks, sumps and also to install the electric motors thereto. After completion of the above said works, the schemes will have to be handed over to local bodies for maintenance by local bodies. As soon as the completion of the scheme, the work of TWAD Board comes to an end. The TWAD Board is acting only as an executing agent for the purpose of carrying out the execution of water supply schemes in rural areas by engaging field workers on daily wages as NM Rs. They are paid daily wages in accordance with the wages stipulated by the respective Collector's Office and as soon as the work is completed, most of them have to leave the work. Under Clause 9 of sub-clause (iii) of TWAD Board Service Regulations, 1972, it has been categorically stated that the selection for appointment shall be by direct recruitment. Clause 4 shall be exercised by the appointing authority by inviting applications through employment exchange and clause 9(iii) states that the selection of candidates for appointment on work charged establishment as Nominal Muster Roll establishment shall be made by the appointing authorities by inviting applications through employment exchanges. But in view of the emergencies and exigencies of the nature of work in acute shortage of water in rural areas, the subordinate officers shall recruit this Nominal Muster roll workers to complete the work within the stipulated time and they recruit the NMRs on daily wages, mostly the local villagers. There are about 750 NMR workers, who have completed 480 days of service in a continuous service of two years and as per the orders of the Labour Court, they have to be made permanent with attendant benefits from the date of completion of 480 days. In order to regulate the process of making permanency of the above said NMR workers in a phased manner, the Board felt it essential to have only those NMR Personnel, who are covered u/s 3(1) of the Act, for the reasons that the TWAD Board is acting only as an agency and after completing the execution of water supply schemes, they have to be handed over to all the concerned local bodies for maintenance along with NMRs working in the respective schemes. In the conciliation talks held with the Joint Commissioner of Labour (conciliation) Madras between the TWAD Board and CITU, it had been decided to execute the process of making permanency of NMR workers in a phased manner and about 130 NMR personnel who are covered by the Court cases and taken from the seniority list of NMRs have been appointed in the regular scale of pay to the post and they are holding and posted to the maintenance schemes for which creation of 130 posts under various schemes/categories. Section 3 of the Tamil Nadu Industrial Establishment (conferment of permanent status to workmen) Act, 1981 is not applicable to TWAD Board, in view of Section 25A(b) of the Act, as it is seasonal and Chapter V of the Act is not applicable to TWAD Board, as their work is of only seasonal and Section 25(F), Section 25N are not at all applicable. Even according to the petitioners that their union has raised a dispute with the level of Joint

Commissioner of Labour and its proceedings are still pending, the petitioners could not have invoked the Special Original Jurisdiction of this Court under Article 226 of the Constitution of India, without exhausting all the other remedies available under the Act. When there is an effective alternative remedy available to the petitioners and when the proceedings are still pending, the petitioners have rushed to this Court, without allowing that Authority to come to his logical conclusions. Therefore, the respondents state that these writ petitions are liable to be dismissed.

3.I have heard the arguments of Mr. K. Chandru, learned counsel for the writ petitioners and the arguments of Mr. R.M. Kannappa Rajendran, learned counsel appearing for the respondents in detail and I have also perused the contents of the affidavits filed in support of all the above writ petitions and the counter affidavit in support of the contentions of the respective parties. This Court has held that the Industrial Employment (Standing Orders) Act, 1946 will apply to Workmen and they will override the TWAD Board Regulations framed by the Board (in Writ Appeal Nos. 917 and 918 of 1987). The said Judgment is reported in *The Tamil Nadu Water Supply and Drainage Board and Another Vs. M.D. Vijayakumar and others*, . The above, said Division Bench Judgment of this Court was also upheld by the Supreme Court in SLP (C) No. 7571 of 1992, dated July 23, 1992. But so far, no certified Standing Orders have been framed. A Division Bench of this Court, consisting of Mr. Nainar Sundaram J (as he then was) and Mr. Somasundaram. J in *T. W.S & D. Board's case* (supra) has held as under: in pages 263-264.

"The contention that the Tamil Nadu Water Supply and Drainage Board does not supply water, but only executes Water Supply and sewerage works on behalf of local bodies and hands them over to the local bodies after such completion and therefore the said Board cannot be called an industrial establishment within the meaning of Section 2(ii)(g) of the Payment of Wages Act, 1936 runs counter to the plain meaning of Section 2(ii)(g) according to which any establishment in which any work relating to operations connected with... the supply of water... is being carried on will be an industrial establishment. The preamble to the Tamil Nadu Water Supply and Drainage Board Act, 1970, under which the Board is created, states that it is an Act to provide for the establishment of Water Supply and Drainage Board and the regulation and development of drinking water and drainage in the State of Tamil Nadu. A careful examination of the preamble to the Tamil Nadu Water Supply and Drainage Board Act, the statement of objects and reasons and Section 16 of the Industrial Employment (Standing Orders) Act, 1946 will clearly show that the Board is an establishment in which work relating to operations connected with supply of water is being carried on and consequently the Board is an industrial establishment within the meaning of Section 2(ii)(g) of the Payment of Wages Act and therefore the Industrial Employment (Standing Orders) Act, 1946 would apply to Board...."

We have already seen that this Court in *T.N.W.S. & D.B. Employees Union v.*

T.N.W.S. & D Board (supra) held that the following three enactments will apply to TWAD Board:

(a) Industrial Disputes Act, 1947;

(b) Factories Act, 1948; and

(c) Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 (T.N. Act 46 of 1981)

This Court by Judgment, dated September 28, 1992 also upheld in Writ Appeal No. 1191 of 1992 that as per Tamil Nadu Act 46 of 1981, a worker who completes 480 days of service in 24 calendar months will be automatically made permanent. In this background, we have to proceed to consider the case on hand:

4. A number of industrial disputes referred to various Labour Courts for adjudication they passed awards favourable to workmen directing the TWAD Board to regularise the services of workmen with effect from two years from the date of their joining. Many writ petitions were also filed by individual workmen (NMRS) seeking for directions to the TWAD Board to confer permanent status in view of Tamil Nadu Act 46 of 1981. This Court gave directions to the Board to consider their claims in accordance with law. On July 20, 1993, the Central Organisations of TWAD Board Employees (affiliated to CITU) raised an industrial dispute before the Commissioner of Labour, Madras on a charter of Demands which included regularisation of NMR workers who have put in qualifying services. A Conciliation Notice was sent to the TWAD Board, directing them to offer their remarks and a date for further negotiations was fixed. However, the Board have decided to dispense with the services of several NMR workers. As already seen, a telex message was sent by the Managing Director on January 5, 1994 to all the Subordinate officers to terminate the services of all the NMR workers, who have not completed 480 days of service during a continuous period of two years. On January 6, 1994 & January 7, 1994 all the subordinate Officers terminated the services of all the NMR workers without complying with the legal provisions. Writ petitioners, about thirty in number who have put in more than 240 days of work at the time of their termination have filed W.P. No. 12863 of 1994 etc., They contended that the termination of their services will amount to retrenchment within the meaning of Section 2(oo) of the Act. It is not in dispute that the respondents have not complied with the provisions of Section 25F before dispensing with the services of these workmen. As rightly contended by Mr. K. Chandru, learned Counsel for the petitioners, the provisions of Section 25F(a) & (b) of the Act have not been complied with by the respondents. Section 25-F(a) of the Act provides that no workman employed in an industrial establishment shall be retrenched by the employer until the workman has been given one month notice in writing, in view of the retrenchment. Section 25-F(b) of the Act also provides that no workman employed in any industry shall be retrenched by the employer, unless a compensation which shall be equivalent to fifteen days"

average pay for every completed year of continuous service is given. Non-compliance with the mandatory conditions and its precedents prescribed u/s 25-F of the Act in my view would make the order of termination void ab initio. Such workmen are entitled to reinstatement with continuity of service and back wages. In support of his contentions, Mr. K. Chandru learned counsel for the petitioners drew my attention to the decision reported in *The State Bank of India Vs. Shri N. Sundara Money*, wherein the Supreme Court in paragraph 11 has held as hereunder : p.483

... What follows? Had the State Bank know the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay for no service rendered. Even so hard cases cannot make bad law. Reinstatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw where he to be appointed in the same post to-day de novo. As for benefits, if any, flowing from service he will be ranked below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any..:"

In *H.D. Singh Vs. Reserve Bank of India and Others*, in paragraphs 15 and 16, the Supreme Court has held as hereunder:

We thought it necessary to refer to the factual details in the case only to show our concern at the manner in which the employer in this case, the Reserve Bank of India, who should set a model for other employers being a prestigious institution, behaved towards the employees. It must have been his helpless condition and abject poverty that forced the appellant to accept a job on Rs. 3/- per day. Still see how he has been treated. We will not be far from truth if we say that the Bank has deliberately indulged in unhealthy labour practice by rotating employees like the appellant to deny them benefits under the industrial law. It has disturbed us to find that the appellant was denied job because he had become better qualified. Perhaps the Reserve Bank of India and its officers are not aware of the grave unemployment problem facing the youth of this country and also not aware of the fact that graduates, both boys and girls, sweep our roads and post graduates in hundreds, if not in thousands, apply for the posts of peons. It has been our sad experience to find employer trying to stifle the efforts of employees in their legitimate claims seeking benefits under the Industrial Law by tiring them out in adjudication proceedings raising technical and hyper-technical pleas, industrial adjudication in bona fide claims have been dragged on by employers for years together on such pleas. It would always be desirable for

employers to meet the case of the employees squarely on merits and get them adjudicated quickly. This would help industrial peace. It is too late in the day for this Court to alert the employers that their attempt should be to evolve a contended labour. We do not forget at the same time the fact that it is necessary for the labour also to reciprocate to prevent industrial unrest. In this case, for example, the Bank should have treated the appellant as a regular hand in List II. Instead, the Bank has, by adopting dubious methods, invited from us, remarks which we would have normally avoided."

16. We hold that the appellant is entitled to succeed. We set aside the order of the industrial Tribunal and hold that the striking off the name of the appellant from List II amounted to retrenchment u/s 2(oo) of the Act and was in violation of Section 25F. We direct the first respondent bank to enlist the appellant as a regular employee, as Tikka Mazdoor, to reinstate him and pay him his back wages upto date. The appeal is allowed with costs quantified at Rs. 3000/-

In the decision reported in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, in paragraphs 82 and 83, the Supreme Court has held as follows:

".....Applying the various tests, principles and precedents to the definition in Section 2(oo) of the Act, the expression "retrenchment" means termination by the employer of the service of a workman for any reasons whatsoever except those expressly excluded in the Section..."

The result is that CA Nos. 3241-48 of 1981, 686 (NL) of 1982, 1817 of 1982, 1898 of 1982, 3261 of 1982, 1866 of 1982 1868 of 1982, 8456 of 1983, 10828 of 1983 and the appeal arising out of SLP (C) No. 3149 of 1983 are dismissed with costs quantified at Rs. 3000/- in each appeal. It is stated that in C.A. No. 686 of 1982, the respondent has already been reinstated pursuant to the order, dated October 24, 1983 passed by this Court, having regard to the fact that he has served since 1983, he shall be considered for confirmation with effect from his due date according to Rules, if he is not already confirmed by the Corporation....."

It is contended by Mr. K. Chandru, learned Counsel for the petitioners that by virtue of Section 12A of the Industrial Employment (Standing orders) Act, 1946, the Model Standing orders framed by the Government of Tamil Nadu will apply to the workmen employed by the TWAD Board. The Model Standing Order 14(1) reads thus:

"Subject to the provisions contained in Standing Order 17, no employer shall dispense with the service of any workman with not less than one year of continuous service except for a reasonable cause and without giving such workman atleast one month"s notice or wages in lieu of such notice.."

It is pointed out that the respondents have not complied with these formalities. Mr. K. Chandru learned counsel for the petitioners, is right in his submission. The

respondents in fact, have also not disputed the facts of these cases. They have raised a plea in paragraph 11 of their counter affidavit that the workmen must have availed of the remedies provided under the Act and that they could not invoke the remedy under Article 226 of the Constitution of India. I am unable to: accept this submission of the respondents, in view of the decision reported in Chief Administrative Officer (D.A.) Visvesvaraya Iron and Steel Ltd v. Krishnamurthy 1991 W.L.R. 558, wherein Dr. A.S. Anand, C.J., and Raju, J. while dealing with a similar plea have held as hereunder.

Para 13

"Coming to the plea of the availability of an alternative remedy raised on behalf of the appellants, it requires to be noticed only to be rejected. We have come to the conclusion that no proper enquiry has been conducted and that there has been violation of the principles of natural justice in the instant case before passing the order of dismissal against the respondent. That being the position, the availability of an alternative remedy cannot be held to be a bar for entertaining the writ petition under Article 226 of the Constitution of India. It has always been held to be a rule of convenience and discretion and not a rule of law. The decision reported in Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others, relied upon by the learned counsel for the appellant is of no avail to the appellants in the light of what we have stated above. Thus, for what we have said above, all the pleas raised by the learned counsel for the appellants fail. The writ appeal merits dismissal and it is accordingly dismissed. There will be no order as to costs in this appeal..."

In the decision reported in Thirumalai Chemicals Ltd, SIPCOT Industrial Complex Ranipet v. Asst. Collector of Central Exceise and Anr. 1994 W.L.R. 665 Shivaraj Patil., J a learned single Judge of this Court in paragraph 10 has held as hereunder:

"10. As regards the second question as to whether the petitioner should be driven to other forum to avail alternative remedy of filing appeal, I must state that it is not necessary, in this case having regard to the undisputed facts and position of law. It is firmly settled law that mere existence of an alternative remedy is no bar to entertain a writ petition and give relief will be slow in entertaining, writ petitions, where parties have alternative remedy and unless they exhaust such remedy. But the rule that the party should exhaust statutory remedy before the writ will be granted is a rule of policy, convenience and discretion rather than rule of law. In cases, where the principles of natural Justice are denied or violated the Superior Court will readily issue a writ of certiorari. Para 11 in the case of UP State v. Mohd. Noch AIR 1958 SC 86 reads thus:

"On the authorities referred to above it appears to us that there may conceivable by cases - and the instant case is in point where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior Court or Tribunal of first instance is so patent and loudly obstructive that it leaves on its

decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior Court or Tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior Courts' sense of fair play the superior Court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or Tribunal of first instance, even if an appeal to another inferior Court or tribunal was available and recourse was not had to it or if recourse was had to it, it confined what ex facie was a nullity for reasons aforementioned. This would be, so all the more if the Tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior Court will ordinarily decline to interfere by issuing certiorari and all we say is that in the proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that."

In the light of what is stated above, when the impugned order is one passed clearly in violation of principles of natural justice this Court should not only entertain the writ petition and give relief to the petitioner but it has a duty to do so. Accordingly, I am of the opinion that the petitioners need not be asked to avail the alternative remedy."

5. In the instant case, the respondents have acted quite contrary to the principles of natural justice and all accepted rules of procedure and when admittedly, the impugned orders were passed in utter violation of the principles of natural justice, this Court should not only come to the aid of the aggrieved party, but it has a duty to do so.

6. In an identical situation Raju, J. rejected the plea of driving the workman to forums under the Act and held that for non compliance of Section 25F of the Act, writ remedy is very much available and directed the workman's reinstatement with back wages (R, Sadasivan v. ONGC), Madras W.P. No. 10702 of 1985, dated January 12, 1993). In paragraph 11 of his judgment, Raju, J has held as follows:

"The next submission of learned counsel for the respondent requires to be considered is that, whether this Court should itself have undertaken the exercise of adjudicating upon the grievance of the petitioner or that the petitioner should be relegated to his remedies under the Industrial Disputes Act. As noticed supra, in the light of the facts beyond controversy, the legal inference which inevitably followed is that it is a case of retrenchment in violation of the provisions contained in Section 25F of the Act and it would be futile to plead to non suit the petitioner in these proceedings on the ground of the availability of an alternative remedy, particularly when the writ petition has been all along kept pending all these years in this Court after admission. Even that apart, I am of the view that the existence of the alternative remedy is no bar for entertaining a writ petition,

when the merits of the case warrant interference in the exercise of jurisdiction of this Court under Article 226 of the Constitution of India."

The said decision of Raju J. was also confirmed by a Division Bench of this Court in W.A. No. 116) of 1993, dated January 31, 1994 and the SLP filed against the Division Bench Judgment (W.A. No. 1161 of 1993) was also dismissed by the apex Court. As seen already, the respondents have unceremoniously terminated the services of the petitioners, who have put in more than 240 days of work, at the time of their termination. Termination of an employment is deprivation of livelihood and deprivation of livelihood would amount to deprivation of liberty. Hence, any termination without following the procedure established by rule of law would violate Article 21 of the Constitution of India. In this context, the Judgment of the apex Court in D.K. Yadav Vs. J.M.A. Industries Ltd., can conveniently be looked into and it is useful to extract the following passage in the said decision:

"Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee workman fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice..."

It is also worthwhile to cite the following decision reported in Delhi Transport Corporation v. D.T.C. Mazdoor Congress 1995 LLJ 395 wherein the Supreme Court has held as hereunder: page 459.

The employment under the public undertakings is a public employment and a public property, It is not only the undertakings but also the society which has a stake in their proper and efficient working. Both discipline and devotion are necessary for efficiency. To ensure both, the service conditions of those who work for them must be encouraging, certain and secured, and not vague and whimsical. With capricious service conditions, both discipline and devotion are endangered, and efficiency is impaired.

"The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill afford to be consigned to the limbo of undefined premises and uncertain

applications. That will be a mockery of them."

7. For all the foregoing reasons, I am of the view that the orders impugned in these writ petitions are ex facie illegal and they are liable to be set aside and accordingly, they are set aside and all the writ petitions are liable to be allowed. Consequently.

(a) the impugned orders are set aside

(b) all the writ petitions are allowed and

(c) the respondents are directed to reinstate the petitioners with all attendant benefits, including the regularisation of service with effect from the date of their initial appointment

(d) no costs.