
(1985) 09 RAJ CK 0037

In the Rajasthan High Court

Case No : Civil 2nd App. No's. 334 to 336 of 1979

Ram Khiladi and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-09-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25G

Citation : (1986) RLW 623 : (1986) 2 WLN 242

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Guman Mal Lodha, J.—These three appeals are of exceptional and extraordinary nature. All the three appellants are Class-IV servants of the Railway, and they are working since 1962. All the three were sought to be removed from services by notices served upon them in December, 1972 making it effective from January, 1973.

2. The facts are given in the judgments of the trial Court and the first appellate court, and both the learned Counsel jointly submitted that they are not in dispute.

3. The crux of the matter is that from 1962 till now they are continuing in service as Class IV employees under the Inspector of Works, Western Railway, Gangapur City, without any break in service and were drawing pay and dearness allowance; and after 1973, when they were sought to be removed, it is common ground that the stay order was granted by the trial court and then by the appellate court and thereafter, by this court, with the result that all the three appellants have now completed about 23 years of service.

4. It is also common ground that the removal is sought to be made not on account of any misconduct. The first appellate court took the view that they were casual labour but in view of the judgment of the Supreme Court in L. Robert D'Souza v. Executive Engineer 1982 (UJ) SC 334, it is now established law that

even the casual labour who works for more than 6 months would get right of the temporary railway servant by virtue of the statutory rules. Para 12 reads as under:

12. In order to satisfactorily establish that the applicant belonging to the category of casual labour whose service by deeming fiction enacted in Rule 2505 will stand terminated by the mere absence, it must be shown that the appellant was employed in any of the categories set out in Clause (b) of Rule 2501. What has been urged on behalf of the respondent is that the appellant was employed in construction work and, therefore, labour on projects irrespective of duration would belong to the category of casual labour. That, however, does not mean that every construction work by itself become a work-charged project. On the contrary Sub-clause (1) of Clause (b) of Rule 2501 would clearly show that such of these persons belonging to the category of casual labour who continued 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 six months of continuous employment. Similarly, seasonal labour sanctioned for specific works for less than 6 months" duration would belong to the category of casual labour. However, Sub-clause (iii) to Clause (b) of Rule 2501 provides that if such seasonal labour is shifted from one work to another of the same type, as for example, "relaying" and the total continue our period of such work at any one time is more than 6 months" duration, they should be treated as temporary after the expiry of 6 months of continuous employment...

...It is thus, abundantly clear that if a person belonging to the category of casual labour employed in construction work other than work-charged projects renders 6 months" continuous service without a break, by the operation of statutory rule the person would be treated as temporary railway servant after the expiry of 6 months of continuous employment....

5. In view of the above, Shri Mehta could not point out how the services of the plaintiff could have been terminated as casual labour. In view of the above, once it is held that all these three appellants are temporary railway servants, Regulation 2501 and 2511 of the Railway Establishment Manual apply and by virtue of that they would get protection of the Industrial Disputes Act. That being so, Section 25G and 25F of the Industrial Dispute Act would apply and it is common ground that they have not been complied with. In pursuance of the above, it is not necessary to go into the details of evidence and decide the various questions canvassed before this Court, separately.

6. The result of the above discussion, is that, all the three appeals are allowed, the judgment and decrees passed by both the courts-below are set aside. The suits of the plaintiffs in their respective cases are decreed. The order of termination in their respective cases are quashed and they would be deemed to be in continuous service of the Railway establishment-defendant, and would get all benefits to which they are entitled under the railway rules.

7. The appellants are low paid class IV employees. Hence they would get costs throughout.