

Lal Mohammad Vs. Indian Railway Construction Co. Ltd. and ors.

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Court : Allahabad

Decided On : May-21-2004

Reported in : [2004(102)FLR124]; (2004)IIILLJ486All

Judge : S.P. Srivastava, ;A.K. Yog and ;R.K. Agrawal, JJ.

Acts : [Constitution of India](#) - Articles 14, 16 and 21; [Industrial Disputes Act, 1947](#) - Sections 25FFF

Appeal No. : C.M.W.P. Nos. 18561, 32500, 32651, 34786 and 44416/1993

Appellant : Lal Mohammad

Respondent : Indian Railway Construction Co. Ltd. and ors.

Advocate for Def. : V.R. Agarwal and ;Vivek Ratan, Adv.

Advocate for Pet/Ap. : Ashok Khare, ;V.K. Singh, ;R.N. Singh and ;A.P. Sahi, Adv.

Disposition : Petition dismissed

Judgement :

S.P. Srivastava, J.

1. These cases which had engaged the attention of Hon'ble Apex Court, represent the struggle between the petitioners-workmen and their employer - an

instrumentality of the State which is persisting in its effort to get rid of the burden of petitioner-workmen and the insistence of the concerned workmen to continue in service in their bid to prevent their economic death which will result with the termination of the relationship of employer and employee between the parties.

2. All these five cases, which have been connected, were analogously heard in view of the controversy raised therein being identical and are being disposed of by a common judgment and order.

3. In the Civil Misc. Writ Petition No. 18561 of 1993 the petitioners were engaged to discharge the duties of Clerk, Accounts Clerk and non-technical Supervisor whereas in Civil Misc. Writ Petition No. 32500 of 1993 the petitioners had been engaged to discharge the duties of Clerk, Store Clerk and Store Chaser. In Civil Misc. Writ Petition No. 32651 of 1993 the petitioners had been engaged to discharge the duties of non- technical Supervisor, Site Supervisor, Artisan and non-technical Supervisor. In Civil Misc. Writ Petition No. 34786 of 1993 and Civil Misc. Writ Petition No. 44416 of 1993 the petitioners had been engaged to discharge the duties of Accounts Clerk.

4. The petitioners in all the writ petitions had initially challenged the orders passed in the year 1993 holding them to be surplus and dispensing with their services allegedly giving them the benefits available on retrenchment as contemplated under the provisions of the Industrial Disputes Act.

5. The five writ petitions filed by the petitioners were disposed of by a common judgment and order dated December 7, 1993 quashing the orders referred to hereinabove with the direction requiring the respondents to continue the petitioners on their job and pay their salary. It was further directed that the petitioners be absorbed in phases in other Projects old or new instead of throwing them out of job on the plea that the Project in which they were employed was at the verge of completion.

6. The aforesaid order passed by the learned single Judge was challenged before a Division Bench in an intra-Court Special Appeal. The five Special Appeals which had been filed challenging the order of the learned single Judge were disposed of

by a common judgment and order dated February 24, 1998. The Division Bench had come to the conclusion that the establishment of the respondent-employer could not be taken to be a 'Factory' so as to attract the provisions of Chapter V-B of the Industrial Disputes Act. The Division Bench was further of the view that in the absence of any allegation in any of the writ petitions to the effect that the industrial establishment in question was a factory, the provisions contained in Section 25N of the Industrial Disputes Act could not come to the rescue of the petitioners. Since the petitioners had laid no factual basis to show that the industrial establishment in question was a factory, their plea based on Section 25N could not be entertained and no relief could be granted to them on the ground that no permission having been granted by the appropriate Government, their retrenchment was illegal. The Division Bench had further recorded a categorical finding that the provisions of Section 25F had been duly complied with and retrenchment compensation contemplated had been paid to every one.

7. The Division Bench in its aforesaid judgment had also indicated that different units of a construction company were independent units for the purpose of Section 25FFF and a single management or control like the one of the respondent-company was not of any importance. It was further observed that the workmen of one unit could not claim absorption in another unit on the completion of the work in which they had been employed. It was further indicated that the writ petitioners were employees of a Company which carried on the business of construction work. They did not hold any civil post and they were not Government employees. The provisions of the Industrial Disputes Act gave security of tenure to workmen employed in different types of industrial establishments. However, they also contain provisions for their retrenchment after giving notice and retrenchment compensation and in some cases with the permission of the appropriate Government and in some cases without permission. The finding was returned against the petitioner to the effect that the contention that a regular employee can never be retrenched is not correct and in fact such a concept is alien to industrial law.

8. It was further indicated that the question of absorption generally arose in Government service and in view of the fact that the Project in which the petitioners

were employed was completed, their retrenchment in accordance with the provisions of the Industrial Disputes Act was perfectly valid and no direction could be given to the employer-company to give them employment in some other project.

9. It was also observed that since the retrenchment of the petitioners had been held to be perfectly valid the question of regularising their services did not arise. On the above findings, the Division Bench allowing the appeal had set aside the order passed by the learned single Judge and dismissed all the writ petitions.

10. Aggrieved by the aforesaid judgment and order 5 civil appeals had been filed before Hon'ble the Supreme Court by the petitioners which were disposed of vide the judgment and order dated December 4, 1998.

11. Before the Apex Court the dispute stood confined to only 25 of the petitioners which fact is specifically noticed in the judgment and order dated December 4, 1998. The learned counsel for the petitioners has stated that out of the aforesaid twenty five petitioners one Sri Maula Bux has since died. Similarly the fact that all the 25 appellants-petitioners fell within the category of 'workmen' governed by the Industrial Disputes Act had also been specifically noticed in the said judgment. Before the Apex Court it had also not been disputed that the workmen-writ petitioners, at the relevant time, when the impugned termination orders had been passed against them, were working in 'Rihand Nagar Project', which employed more than hundred workmen. It is in the light of the aforesaid admitted facts that the Apex Court had proceeded to decide the controversy.

12. The Hon'ble Apex Court had found that the project in question could be treated to be a 'Factory' and further a 'manufacturing process' was in fact being carried on in that project. The petitioners fell within the ambit of the definition of the term 'workmen' and the requisite condition as stipulated in Section 2(1) of the Factories Act were satisfied. It was also found that Section 25N of the Industrial Disputes Act stood squarely attracted to the Project in question. The Apex Court further pointed out that closing down of most of the work of a Project is not equivalent to closing of the Project as a whole. However, it had been clarified that the notice of termination had to be read in the light of the then existing fact situation and that in order to

constitute closure of a unit, it was not necessary that the entire industry or business of other units should be closed.

13. The Apex Court further found that the notices issued in the year 1993 were in fact retrenchment notices and not closure notices contemplated under Section 25FFF of the Industrial Disputes Act. The provisions of Section 25N of the said Act stood squarely attracted and the impugned retrenchment notices, which had been issued without following the condition precedent to retrenchment of such workmen as required by Section 25N, had to be treated to be void and of no legal effect.

14. The employer - employee relationship between the parties, therefore, did not get snapped and all the 25 petitioners had to be treated to be continuing in service. The finding of the learned single Judge of this Court about the applicability of Section 25N of the Industrial Disputes Act was upheld by the Apex Court.

15. The Hon'ble Supreme Court took notice of the subsequent developments which had taken place during the pendency of the Civil Appeals with the service of the fresh notices dated March 24, 1998 terminating the services of the petitioners indicating that Anpara Rihand Project had finally been closed down w.e.f. February 6, 1998 and accordingly, the services of the workmen concerned stood dispensed with from the date of issue of the notice dated March 24, 1998.

16. The Apex Court was of the view that the question as to whether the Project had been finally closed down or the Project was still continuing or only some maintenance work pursuant to the agreement was being undertaken, required to be thrashed out in the light of the appropriate pleadings and evidence to be led in this connection.

17. It was, however, made clear that Rihand Project where the 25 petitioners worked though covered by Chapter V-B of the Act yet even for closing down such an undertaking to which Chapter V- B applies, the procedure of Section 25O would get attracted subject to the proviso to Section 25O(1). Hence, even assuming that the notice in question dated March 24, 1998 could be said to have been issued under Section 25O of the Act, a further question would squarely arise whether the 25 petitioners were workmen attached to the Project or were employees of the

Company which admittedly is not closed and is a going concern.

18. It was further pointed out that if the 25 petitioners are found to be the employees of the Company, then the notice of 1998 would go out of the sweep of Section 25O of the Act and would not also fall within the scope of Section 25FFF of the Industrial Disputes Act.

19. In such an eventuality, the question of applicability of proviso to Section 25O(1) also would be of no consequence and the notices will still remain retrenchment notices which will get vitiated in case of non-compliance of Section 25N.

20. It was also found that in case the 1998 notices are closure notices, the question still will have to be decided as to whether 25 employees-petitioners were the employees of Anpara Rihand Project or were employees of the Company as in case 25 petitioners are employees of the company itself then the notice of March 24, 1998 would have no legal effect qua petitioners, as the company cannot be said to have closed down. However, if on the other hand, it is found that the 25 petitioners were employees of Rihand Project and were not employees of the Company then the notices of March 24, 1998 would effectively bring their services to an end under Section 25O of the Act if it is found that the entire Project had in fact closed down.

21. The Hon'ble Supreme Court setting aside the order passed by Division Bench in Special Appeals as well as the final order of the learned single Judge disposing of the writ petitions restored the writ petitions for being disposed of afresh for a limited purpose which was indicated to be that all the 25 writ petitioners were to be given an opportunity to amend their writ petitions by inserting relevant submissions for challenging the notice dated March 24, 1998. The contesting respondents were to be entitled to file their reply by way of counters. The parties were to be permitted to produce all relevant submissions in connection with their respective case centering round the legality of the notices dated March 24, 1998. The remanded writ petitions were required to (sic) be decided thereafter in accordance with law on the basis of the evidence on record as well as further evidence that may be led by the parties only on the aforesaid limited question regarding the

legality and efficacy of the notices dated March 24, 1998.

22. The Hon'ble Supreme Court framed following questions which according to the Apex Court squarely arose for consideration:

'(i) Whether Anpara Rihand Nagar project is subjected to a factual closure as mentioned in the impugned notices of March, 1998 or whether the project is not still completed;

(ii) In the light of the answer to the aforesaid question a further question would arise whether impugned notices of March, 1998 were in fact and in law closure notices as per Section 25O read with Section 25FFF of the Act or whether they still remain retrenchment notices and hence would be violative of Section 25N of the Act;

(iii) Even if it is held that the Anpara Rihand Nagar project is in fact closed down whether the 25 appellants were employed in the project or they were employees of the respondent- company entitling them to be absorbed in any other project of the company and consequently whether the impugned notices have not effected any snapping of employer-employee relationship between the appellants on the one hand and the Respondent-company on the other;

(iv) Even apart from the aforesaid questions whether the impugned notices are violative of the guarantee of Articles 14, 16 and 21 of the [Constitution of India](#) on the ground that the termination of services of the 25 appellants was arbitrary and discriminatory, respondent company being a 'State' within the meaning of Article 12 of the [Constitution of India](#).'

23. It was, however, made clear that whatever other questions of fact and law arise in the light of the amended pleadings of the parties may also have to be decided in the remanded proceedings.

24. After remand the 5 cases were listed before a Division Bench. The learned Judges constituting the Division Bench, however, could not arrive at an unanimous conclusion. One of the Hon'ble Judges constituting the Division Bench allow the writ petition and quashed the impugned notices vide the judgment and order dated

May 17, 2002. The other Hon'ble Judge of the Division Bench on the conclusions arrived at by him vide his judgment and order of the same dated dismissed the writ petition.

25. Thereafter, both the Hon'ble Judges passed an order seeking a reference to a learned single Judge. Since both the Judges constituting the Division Bench had passed final orders one allowing the writ petition and the other dismissing the same, the question arose before the nominated single Judge in regard to the competency of the reference. The order of the single Judge passed in this connection was challenged by the employer before the Apex Court. The Apex Court, however, vide its order dated October 17, 2003 disposing of Civil Appeal Nos. 8368 of 2003 finding it appropriate that the matter be heard and disposed of on merits in accordance with law by the Full Bench of the High Court remitted the matter to this Court for being decided afresh in accordance with law. Thereafter, Hon'ble the Chief Justice vide the order dated November 10, 2003 constituted the present Full Bench.

26. It is, how, this matter has come up before this Full Bench.

27. Pleadings have been amended and the parties have exchanged their affidavits and all the copies of the documents, on which the parties seek to place reliance in support of their respective cases, have been brought on record.

28. Before proceeding further it may be noticed that the name of the respondent-company employer to begin with was 'Indian Railway Construction Company Limited.' Later on in the year 1995 the name of the company was changed to 'IRCON INTERNATIONAL Limited.' The objects, for which the company had been established, were also modified and expanded from railway construction to other construction activities. The main object, however, for which the company had been established continued to carry on business relating to railway and other constructions, construction of new railway line, laying of new railway track, construction of new railway bridges, railway construction, sub-station, transmission line, industrial power supply system and other electrical and railway work etc.

29. It may also be noticed that the respondent-company the employer, which is a Government of India undertaking and an instrumentality of the State, had framed rules called 'IRCON Recruitment Rules, 1979' regulating the recruitment, appointment and other service conditions in regard to the employees of the company.

30. The aforesaid rules apart from other things regulated the recruitment and appointment as against the vacancies in the posts sanctioned on regular basis in the company except those specifically excluded in Rule 4 of the Rules which excluded the applicability of the Rules to the daily rated staff. Rule 6.2.1 of the Rules stipulated that direct recruitment should ordinarily be resorted to in cases where it was not possible to obtain the staff from the Government Departments Bodies and Public Sector on usual deputation terms. A list of categories of posts the vacancies (substantive) occurring Wherein could be filled up by taking recourse to the method of direct recruitment was provided in the Annexure-A to the Rules. It was, however, provided further that for the purpose the staff, employed against short term vacancies or specified projects on daily rated basis, may also be considered. Rule 12.2.1 of the Rules provided that the staff directly recruited or working on daily rate basis at the time of the commencement of the Rules could also be considered for confirmation/absorption against permanent posts/subject to their being screened by the Selection Committee set up for this purpose, keeping in view such instructions of the Government as may have been or be issued from time to time.

31. It may be usefully noticed at this stage that in the Annexure-A referred to above the non executive posts mentioned therein did not include the posts of supervisor of any kind or any of the post claimed to have been held by the 25 petitioners. It may, however, be observed that at Item No. 9 of the aforesaid Annexure the post of Clerk/Typist has been mentioned but none of the 25 petitioners claimed to have been appointed on the post of Clerk-cum-Typist.

32. Considering the facts and circumstances as brought on record, it will be appropriate that issue Nos. 3 and 4 framed by the Apex Court be taken up first. The aforesaid issues are being reproduced below for ready reference:

'(iii) Even if it is held that the Anpara Rihand Nagar project is in fact closed down whether the 25 appellants were employed in the project or they were employees of the Respondent-company entitling them to be absorbed in any other project of the company and consequently whether the impugned notices have not effected any snapping of employer-employee relationship between the appellants on the one hand and the respondent-company on the other hand;

(iv) Whether the impugned notices are violative of the guarantee of Articles 14, 16 and 21 of the [Constitution of India](#) on the ground that the termination of services of the 25 appellants was arbitrary and discriminatory, respondent company being a 'State' within the meaning of Article 12 of the [Constitution of India](#).'

33. We have heard the counsel for the parties on the aforesaid issues and have carefully perused the record.

34. A perusal of the writ petitions indicates that all the petitioners on their own showing claimed to have been appointed on casual/ad hoc basis on a consolidated monthly emolument in Anpara Project. It is also admitted to the petitioners that each of them had been posted within the Rihand region. They also claimed that they had undergone (sic) the requisite training at the site of the project and had also been placed in a time scale of pay. It is claimed by them that in Rihand region, the employer-company had on going 6 projects known as Anpara Super Thermal Project, Vindhyachal Super Thermal Project, Rihand Super Thermal Power Project, Northern Coal Field Ltd. Dudhi Chua, Northern Coal Field Ltd. Jayant and Indian Oil Corporation Jayant, which projects had not been completed by 1993 and were claimed to be at the stage of implementation.

35. In the appointment orders issued in favour of the petitioners, it is admitted that it had been specifically mentioned that they were being appointed in Anpara Project on a casual ad hoc basis. After satisfactory completion of the training period of 12 months, they were required to pass a written and oral examination and thereafter in case of their having passed the required test, they were to be placed in the time scale of pay of Rs. 216 - 400. All of the petitioners had been put in the aforesaid time scale of pay after satisfying the requisite conditions.

36. The respondent-company has taken a consistent stand that the petitioners fell in the category of short term employee appointed as against a short term requirement taking recourse to the method of direct recruitment and that too on a local basis. It has been urged that the viability of the Project had been taken into account while granting them ad hoc appointment keeping in mind the cost involved and the duration of work available at the projects in the Rihand Nagar area. The petitioners according to the employer-company had been appointed directly on local basis initially on daily wages and subsequently retained on monthly payment in a time scale of pay to meet the short term requirement of the works in Rihand Nagar projects and the petitioners had at no point of time were considered as regular appointees recruited and appointed in accordance with the statutory rules of 1979 referred to hereinabove.

37. It has also been asserted that opportunity had been afforded to the petitioners as contemplated under the statutory rules for their absorption on the posts sanctioned on permanent basis but none of the 25 petitioners had availed of that opportunity although some of the ad hoc employees of the Projects did apply for such absorption and were granted the absorption sought for on their own merit.

38. It has also been urged that requirements in Projects other than Rihand Nagar projects had been met out of the surplus employees of other projects but there was no requirement at all even in other project where the petitioners, who had been rendered surplus could be accommodated.

39. In these cases there can be no manner of doubt that an appointment on regular basis as against the post contemplated under Rule 2.1 of the IRCON Recruitment Rules, 1979 could be made only in accordance with the aforesaid Rules, which had the statutory force.

40. The aforesaid Rules, however, did not apply to daily rate staff. On their own showing and as is also apparent from the copies of the appointment letters relied upon by the petitioners, they had been granted an appointment to begin with on daily wage basis. The aforesaid appointment, therefore, could not be taken to be an appointment regulated by the statutory rules for filling up the vacancies contemplated under the Rules in the regular establishment of the company.

However, so far as the posts referred to in Annexure-A referred to in Rule 6.2.1 were concerned, the staff employed against short term vacancies or specific project on daily rate basis could also be considered for appointment as against those posts. Rule 6.4.1 of the Rules contemplated short term appointments such as requirements not covered by the regular posts, if those could not be managed by the regular staff employed by the company, or by staff on deputation from Government departments/bodies and public sectors, daily rated staff could be engaged at the rates and conditions to be decided by the Managing Director keeping in view the directives issued by the Government from time to time, unless the powers were delegated.

41. As has already been noticed herein above, none of the posts against which the petitioners had been granted the appointment on ad hoc basis finds a mention in the list of posts given in Annexure-A referred to in Rules 6.2.1 of the 1979 Rules. It is, therefore, obvious that the appointments given to the petitioners were short term appointments as envisaged under Rules 6.4 and 6.4.1 of the Rules of 1979.

42. It may be observed that in its decision in the case of Hindustan Steel Works Construction Ltd. v. Hindustan Steel Works Construction Ltd. Employees' Union, Hyderabad and Anr. AIR 1995 SC 1163 : 1995 (3) SCC 474 : 1997-III-LLJ (Suppl)-1224 a three Judges Bench of the Hon'ble Supreme Court reiterating its earlier decision in the case of Isha Steel Treatment, Bombay v. Association of Engineering Workers, Bombay, and Anr. AIR 1987 SC 1478 : 1987 (2) SCC 203 : 1987-I-LLJ-427 had indicated that the nature of the construction work may differ from work to work or place to place. In such a case, the question of functional integrality assumes significance. In the absence of any functional integrality between the several units or several construction works undertaken by a construction company the closure of one cannot be held to lead to the closure of the others in case there is no proximity. In the absence of functional integrality a unit/project has to be taken to be a distinct establishment and cannot be taken to constitute a unit of a single establishment. It was also indicated that the mere fact that the workers are transferred from one unit to another unit and permitted to carry their seniority with them or that orders of appointment stipulate that the employees are liable to be transferred from one place to the other is of no

consequence as the fact that the management reserved to itself the liberty of transferring the employees from one place to another did not mean that all the units of the construction company constituted one single establishment. It was further clarified that a construction company which undertakes construction works wherever awarded did that work and winds up its establishment there and particularly where a number of local persons have to be and are appointed for the purpose of a particular work, the mere unity of ownership, management and control are not of much significance.

43. In its another decision in the case of IRCON International Ltd. v. Day a Shanker and Anr. AIR 2002 SC 2404 : 2002 SCC (L&S;) 1125 : 2002-I- LLJ-548 a three Judges Bench of Hon'ble Supreme Court had indicated that as a matter of principle, when employee is appointed on a project and for the duration of that project, the question of his services continuing automatically thereafter does not arise.

44. We have perused the memorandum and articles of association of the respondent-company specially the main objects for which the company had been established as well as the various provisions contained in the statutory Rules of 1979 and the policy underlying the various provisions contained therein. Taking into account the nature of the posts against which the appointments had been granted and the terms and conditions subject to which the appointment orders in question had been issued in favour of the petitioners, we are clearly of the opinion that these appointments cannot be taken to be an appointment other than short term appointment for a specified period during which the project continued and the petitioners cannot under the law be taken to have been either appointed or absorbed or entitled to absorption on regular basis as against the vacancies in the permanent posts covered by the statutory Rules of 1979.

45. It may also be noticed that the petitioners had voluntarily accepted the appointment granted to them subject to the conditions clearly mentioned therein. These appointments subject to the conditions having been accepted with their eyes wide open, the petitioners cannot now turn around claiming higher rights ignoring the conditions subject to which the appointment had been accepted.

46. It cannot be lost sight of that even if a person has served for long years that fact by itself cannot furnish a valid reason for regularisation of his service without anything more as in that event it will not meet the requirement of the action being in public interest. It cannot also be lost sight of that grant of regularisation in effect results in relaxation of the conditions regulating the recruitment etc. prescribed under the Rules which cannot be set at naught for a regularisation as if they never existed. The regularisation, therefore, if at all has to be in accordance with the Rules and not de-hors the Rules. We find ample support in coming to this conclusion from the observations made by the Apex Court in its decision in the case of State of Orissa and Ors. v. Sukanti Mohapatra and Ors. AIR 1993 SC 1650 : 1993 (2) SCC 486 : 1993-II-LLJ-297.

47. Further it may be noticed that it has been pointed out by the Apex Court in its decision in the case of State of Himachal Pradesh v. Ashwani Kumar and Ors. AIR 1997 SC 352 : 1996 (1) SCC 773 : 1996-I-LLJ-869 that when the project is completed and closed due to non-availability of funds, consequently, the employees have to go along with closed project. No direction to regularise them or to continue them in other places can be justified. It was indicated further that no vested right is created in temporary employment and neither a direction can be given to regularize the services of such employees in the absence of any existing vacancies nor the direction can be given to create posts in a non-existent establishment. No such direction which amounts to creating of posts or continuing such employees inspite of non-availability of the work can be justified. It may also be noticed that in its decision in the case of Director, Institute of Management Development, U.P. v. Smt. Pushpa Srivastava AIR 1992 SC 2070 : 1992 (4) SCC 33 : 1993-I-LLJ-190 the Apex Court had pointed out that when the appointment is purely on an ad hoc basis and on a contractual basis for a limited period, in that case after expiry of the period, the right to remain in the post comes to an end.

48. We are of the considered opinion that Issue No. 3 on the facts and circumstances as brought on record in view of what has been indicated herein above and considering the implications arising under the nature of appointment and its duration as well as the implications arising under the statutory Rules of 1979 deserves to be decided against the petitioners holding that they had been

employed in the project, their appointments, being short term appointment, they were not entitled to be absorbed in any other project of the company. Since these petitioners were not the employees of the company holding duly sanctioned permanent posts, the impugned notices did result in the snapping of the employer-employee relationship between the petitioners-workmen and the respondent-company on the expiry of the period of short term appointment concluding with the closure of the projects. The issue is decided, accordingly, in favour of the respondent-company and against the petitioners.

49. So far as the question as to whether the impugned notices are violative of the guarantee of Articles 14, 16 and 21 of the [Constitution of India](#) on the ground that the termination of services of 25 appellants was arbitrary and discriminatory, respondent-company being a 'State' within the meaning of Article 12 of the [Constitution of India](#). It has been urged on behalf of the petitioners that since they having remained in employment for a considerably long period initially for about 9 years and thereafter on the strength of the interim orders of this Court or the Apex Court, the impugned termination of their services on the ground of completion of the work of the project was arbitrary and discriminatory and violative of Articles 14, 16 and 21 of the [Constitution of India](#) and it was not open to the respondent-company to dispense with their services without taking steps for posting/absorbing them at other projects/places of work of the respondent-company.

50. It has, however, been urged on behalf of the respondent-company - the employer that the petitioners had been directly appointed on local basis to meet the short term requirement and their appointment was for a short duration and further the services of only those short term employees employed in a project have been dispensed with who could not be accommodated in other projects and further the services of only those persons have been dispensed with who in spite of opportunity having been provided could not succeed in getting their services regularized as provided for under the statutory rules on account of their failure to satisfy the minimum requirement for such regularisation.

51. In the aforesaid connection it may be observed that it was for the petitioners to establish on cogent material that the respondent-company - an instrumentality of

the State had treated equals unequally to their prejudice. In the writ petition there is no such pleading which may demonstrate that the respondent-company has treated equals unequally resulting in any prejudice to the petitioners. The petitioners have miserably failed to establish the basic facts in support of the plea to the effect that the impugned action is vitiated on account of the vice of discrimination.

52. As has already been noticed herein above, the petitioners could not be deemed to have any right to hold the post against which they had been appointed beyond the expiry of the short term of the project in the absence of any evidence that they could be accommodated in any other project on the basis of any existing requirement there. In view of the pleading contained in the counter-affidavit filed by the respondent-company, it cannot be assumed that the requirement for the engagement of the petitioners in other projects did subsist or that any person junior to the petitioners had been granted engagement in any other project or the respondent-company had adopted pick and choose method for granting an engagement though on short duration to any person employed in the project in Anpara Rihand region which according to the respondent-company stands closed. Further there is no reason to disbelieve the case of the respondent-company to the effect that in spite of the opportunity afforded, the petitioners did not take any step to get their services regularized as against the available vacant posts sanctioned on a permanent basis. It has come on the record that some of the workmen granted appointments in the Anpara Rihand Project did apply for their absorption on regular basis and for the regularisation of the services as against the substantive vacancies which were available and in fact they had been so absorbed. There is nothing, however, to indicate that the petitioners took any step whatsoever in this regard.

53. From what has been indicated herein above, we are clearly of the opinion that the impugned action cannot be taken to be vitiated on account of the vice of discrimination or violative of Articles 14, 16 and 21 of the [Constitution of India](#).

54. This issue is, therefore decided against the petitioners and in favour of the respondent-company.

55. Now we take up the Issue Nos. 1 and 2 which are reproduced below for ready reference:

'(i) Whether Anpara Rihand Nagar Project is subjected to a factual closure as mentioned in the impugned notices of March, 1998 or whether the project is not still completed;

(ii) In the light of the answer to the aforesaid question a further question would arise whether impugned notices of March, 1998 were in fact and in law closure notices as per Section 25O read with Section 25FFF of the Act or whether they still remain retrenchment notices and hence would be violative of Section 25N of the Act.'

56. The petitioners have asserted in the writ petition after amendment that in the Anpara Region the work and construction of railway track merry-go-round at Anpara, Vindhyachal, Shaktinagar, Riband and Satna were undertaken and all the 25 writ petitioners were engaged in discharging duty either at Anpara or at the sites indicated herein above or at one point of time at (sic) one site and at another point of time at different site. It is further claimed that the assertion of the respondent is that the works under the 'Anpara Project' had come to an end was false and incorrect. It was further asserted that the work under the 5 projects with regard to construction of railway tracks in Anpara was still under way and the project/work had factually not come to an end.

57. In the aforesaid connection the petitioners placed reliance upon an order dated September 16, 1998 of Joint General Manager, Anpara requiring Sandeep Stones Product, Sonbhadra for procuring 65 MM matching crushed track Ballast at Khadiya in Anpara works for which a total amount of Rs. 34.35 Lacs had been sanctioned for the work to be undertaken by the company. Reliance has also been placed on similar orders requiring supply of 75000 Cu. Mtrs. of track ballast and concrete sleeper, Elastic Rail Clip etc. One order was for the supply of Elastic Rail Clip amounting to Rs. 131.17 Lacs. A reference was also made to the similar other orders inviting tenders for several specified works. The orders relied upon were dated March 24, 1998, September 16, 1998, September 19, 1998, February 18, 1998, March 6, 1998, April 1, 1998 and November 30, 1998. The petitioners claim

that they continued to function under the respondent-company in the month of March, April and May 1998. In support to this plea extract from the attendance register for March, April, and May 1998 was relied upon. Similarly pay-sheet showing disbursement of the salary of the office staff as also the site staff for the months of May, 1998 and September, 1998 as well as the salary bills for the month of May, 1998 and September, 1998 was also relied upon.

58. It may be noticed that the Apex Court in its decision in the case of Hariprasad Shivshankar Shukla and Anr. v. A.D. Divikar and Ors. AIR 1957 SC 121 had indicated that the expression 'retrenchment' as defined under the provisions of the Industrial Disputes Act has no wider meaning than the ordinary accepted connotation of the word, that is, discharge of surplus labour or staff by the employer for any reason whatsoever otherwise than by way of punishment inflicted in disciplinary action. Retrenchment was held to have no application where the services of all workmen were terminated by the employer on a real and bona fide closure of business or on the business or undertaking being taken over by another employer. Thereafter, the Industrial Disputes Act was amended introducing Section 25FF and Section 25FFF. Section 25FFF deals with closing down of undertakings.

59. Taking into consideration the amendments incorporated in the Industrial Disputes Act it is obvious that closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of Section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of Section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned. Compliance of Section 25F shall be subject to such relaxations as are provided by Section 25FFF.

60. In the present case according to the employer-company, the respondent on the completion and consequent closure of the Anpara Project, the services of the petitioner stood terminated in accordance with the provisions contained in Section 25O(1) read with Section 25FFF(2) of the [Industrial Disputes Act, 1947](#).

61. It is also the case of the respondent-company that notwithstanding that the petitioners were afforded equal opportunity along with others for appearing for the test in accordance with the provisions for regularisation of the short- term work-charged project based employees for consideration for regularisation in accordance with the provision under Rule 12.2.1 of the IRCON Recruitment Rules, they having declined to appear/failed no claim could be considered now for the absorption or for regularisation.

62. The respondent-company had taken a definite stand that all Projects in Anpara Rihand Nagar region which had been undertaken by this company were completed in accordance with the contractual obligation as set out in the respective contracts with NTPC, NCL, PCL and UPSEB. It has further been asserted that all works duly completed were handed over to the concerned parties who issued completion certificate of the works. In this connection reference has been made to the completion certificate issued by the National Thermal Power Corporation dated March 29, 2000 certifying that the projects referred to therein had been completed prior to 1997 and handed over to NTPC in operational state. Another certificate issued by the National Thermal Power Corporation Ltd. dated March 30, 2000 also certified that the work referred to therein was completed by March 31, 1991 and the balance work completed by March 31, 1994. The said Corporation had similarly issued completion certificate dated January 13, 1999 and March 30, 2000 certifying that their projects had been completed much before the date of issue of the notice in question. Similarly certificate issued by the Superintending Engineer, U.P.S.E.B. dated March 29, 2000 and September 2, 1999 had also been relied upon showing completion of the projects much before the relevant date. The completion certificate issued by the Northern Coal Field Limited Jayant Project dated March 29, 2000 was also relied upon for the same purpose. Thereafter, the project conglomeration as a whole was closed down w.e.f. February 6, 1998 after issuance of (sic) the notification through news-paper and notice board. The concerned Labour Commissioner and Regional Labour Commissioner were duly informed about the closure. The concerned Regional Labour Commissioner (Central), Kanpur, The Labour Commissioner, Government of U.P., Lucknow, Assistant Labour Commissioner (Central), Kanpur/Varanasi were informed vide the letter dated February 4, 1998 about the completion of the

construction works of merry-go-round project at Anpara, Vindhyachal, Shaktinagar, Rihand and Satna indicating that these projects have been closed down w.e.f. February 6, 1998 and the services of the employees whose names were shown in the list annexed with the said letter will be no longer required with effect from the closing hours of February 6, 1998 and they will stand relieved from the services of the aforesaid projects on and from February 6, 1998. The notice about the closure of the project was also published in the daily news-papers Dainik Jagran and Rashtriya Sahara.

63. It has, however, been asserted that a small fraction of work which had been abandoned due to non-availability of site on account of encroachments by members of public and as certified by the U.P.S.E.B. it was beyond the control of both the U.P.S.E.B. and IRCON to undertake and complete this small fraction of work after the entire conglomeration was completed and handed over to the respective parties, the U.P.S.E.B., had requested to undertake the abandoned work on the conditions indicated in its letter dated March 8, 1999 which provided for employment of approximately 20 Head of Telecom Engineering and Supervisory Staff and had agreed to reimburse the cost towards supervisory staff of Telecom and Engineering discipline that work was taken up after 14 months of the date of closure of Anpara Rihand Nagar Conglomeration Projects as a separate work under a separate contract for supply of petty items. This work was also completed on September 2, 1999 and a certificate of completion dated September 2, 1999 was issued, a copy of which has been filed on record.

64. The petitioners have laid much stress in support of their claim on the post closure activity of the respondent-company referred to hereinabove for which activity a very limited staff of supervisory category belonging to Telecom and Engineering discipline had been engaged. None of the petitioners fall in this category of staff. So far as they were concerned, the Projects stood closed as indicted herein above.

65. From the evidence brought on record, it is apparent that the entire construction works for which the projects had been set up were handed over to the concerned parties who issued the certificates certifying the closure of the Project to their

satisfaction. This closure was effected much before the issue of the impugned notices of 1998.

66. Taking into consideration the completion certificates brought on record, the genuineness whereof could not be demonstrated to be doubtful in any manner so as to discard the same, it is clear that the closure claimed cannot be taken to be fictitious or sham. There was, therefore, a valid closure entailing the consequences contemplated under Section 25FFF of the Industrial Disputes Act.

67. We are of the considered opinion that the post completion activity heavily relied upon by the petitioner the requirement for which was confined to the personnel of supervisory category belonging to Telecom and Engineering discipline, there can be no manner of doubt that it had no effect on the Projects, in which the petitioners had been engaged, which stood duly completed and had in fact been closed down as claimed by the respondent- employer company. It is not disputed that the impugned notices complied with the requisite conditions envisaged under Section 25FFF of the Industrial Disputes Act. The projects, as has already been found hereinabove, had been factually closed and the petitioners could no longer claim any subsisting relationship of master and servant between the company and them specially when in the post completion activities they could not be engaged for any purpose whatsoever as they did not possess the requisite qualification of Telecom and Engineering discipline. It has already been found hereinabove that even in the other Projects of the company there was no such vacancy against which the petitioners could be accommodated.

68. Issue Nos. 1 and 2 are, therefore, decided against the petitioners and in favour of the respondent-Company.

69. It has been urged that the petitioners had put in a large number of years of service and their services could not be dispensed with. So far as this aspect of the matter is concerned, taking into consideration their status and the nature of the job as well as the job requirement and their failure to make any effort to be absorbed under the relevant rules, they are not entitled to any relief. In these matters, sentiments must yield to the cold logic of law. It must be emphasised that yielding to instincts will tend to ignore the cold logic of law. It should be remembered that

the law is the embodiment of all wisdom and disregardful of law, however hard the case may be, it should never be done.

70. The writ petitions, in the circumstances, deserve to be and are hereby dismissed.

71. However, it may be observed that as and when a vacancy is available, the respondent-employer company shall consider the petitioners for appointment on priority basis.

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