

Union Of India & Ors vs K. G. Radhakrishana Panickar & Ors on 28 April, 1998

Equivalent citations: AIR 1998 SUPREME COURT 2073, 1998 AIR SCW 1940, 1998 LAB. I. C. 1902, (1998) 3 SERV LJ 271, (1998) 3 SCR 38 (SC), 1998 (2) UJ (SC) 221, (1998) 3 JT 680 (SC), 1998 (3) SCALE 358, 1998 (4) ADSC 304, 1998 (5) SCC 111, 1998 UJ(SC) 2 221, 1998 (3) JT 680, 1998 SCC (L&S) 1281, (1999) 95 FJR 134, (1998) 79 FACLR 649, (1998) 2 LAB LJ 656, (1998) 3 LAB LN 606, (1998) 2 SCT 604, (1998) 3 SCJ 327, (1998) 2 SERV LR 710, (1998) 4 SUPREME 457, (1998) 3 SCALE 358

Bench: S. Saghir Ahmad, M. Srinivasan

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
K. G. RADHAKRISHANA PANICKAR & ORS.

DATE OF JUDGMENT: 28/04/1998

BENCH:
S.C. AGARWAL, S. SAGHIR AHMAD, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

W I T H CIVIL APPEAL NOS. 3973/94, 5531/94, 9241/94, 4569/97, 570/97, 4571/97, 4572/97, 4573/97, 4574/97, CIVIL APPEAL NOS. OF 1998 {arising out of SPECIAL LEAVE PETITIONS (C) NOS. 2595/94, 13416/94, 4335/94, 8053/95, 17197/95, 17198/95, 22691/95, 2790/95, 27483/95, 3423/95, 12061/97 379/98} Civil Appeal Nos. 2 47 9/98, 2480/98, 2473/98, 2474/98, 475/98, 2478/98, 2476/98, 2472/98, 2477/98, 2481/98, 882/98, and 2483/98.

J U D G M E N T S. C. AGRAWAL, Special leave granted in the Special Leave Petitions. These appeals raise the question whether employees who were initially engaged as project Casual Labour by the hilway Administration and were subsequently absorbed on a regular temporary/permanent post are entitled to have the services rendered as Project Casual Labour prior to 1.1.1981 counted as part of qualifying service for the purpose of pension and other retiral benefits.

In sub-para (a) of Para 2501 of the Indian Railway Establishment Manual [hereinafter referred to as 'the Manual'], as it stood at the relevant time, the expression 'Casual Labour' was defined in these terms :-

" 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."

In sub-para (b) of Para 2501 of the Manual casual labour was divided into three categories, namely, (i) staff paid from contingencies except those retained for more than six months continuously, known as Open Casual Labour; (ii) labour on projects, irrespective of duration, known as Project Casual Labour; and (iii) seasonal labour who are sanctioned for specific works of less than six months duration. Persons falling in category (i) who continued to do the same work or other work of the same type for more than six months without a break were to be treated as temporary after the expiry of the period of six months of continuous employment. The said period of six months was subsequently reduced to 120 days. Since the period of service of such casual labour, after their attaining temporary status on completion of 120 days of continuous service, was not counted as qualifying service for pensionary benefits and there was a demand for counting of that period of service for that purpose, the Railway Board, by order dated October 14, 1980, took the following decision :-

As a result of representations from the recognised labour unions and certain other quarters, the Ministry of Railways had been considering the demand that the period of service in the case of casual labour (i.e. other than casual labour employed on projects) after their attainment of temporary status on completion of 120 days continuous service, should be counted as qualifying service for pensionary benefits if the same is followed by their absorption in service as regular railway employees. The matter has been considered in detail in consultation with the Ministry of Home Affairs (Deptt. of personnel and Administrative Reforms) and the Ministry of Finance. Keeping in view the fact that the aforesaid category of employees on their attainment of temporary status in practice enjoy more privileges as admissible to temporary employees such as they are paid in regular scales of pay and also earn emoluments, contribute to P.F. etc. the Ministry of Railways have decided, with the approval of the President, that the benefit of such service rendered by them as temporary employees; before they are regularly appointed should be conceded to them as provided in the Ministry of Finance O.M. No. F12 (1) - EV/768 dated 14th May, 1968.

(copy enclosed for ready reference).

The concession of counting half of the above service as qualifying for pensionary benefits, as per the O.M. of 14th May, 1968 would be made applicable to casual labour on the railways who have attained temporary status. The weightage for the past service would be limited from 1.1.1961 in terms of conditions of the O.M. ibid, past cases of retirements before the date of this letter will not be re-

opened.

2. Daily rated casual labour or labour employed on projects will not however, be brought under the purview of the aforesaid orders."

Project Casual Labour were left out from the ambit of this order because there was no provision for grant of temporary status to project Casual Labour. Project Casual labour had grievance that, though very large in number, they had no security of service and no protection whatsoever. The said grievance of the project Casual labour was raised before this Court in Writ Petitions No.s 147, 320-69, 459,4335 of 1985 etc. filed under Article 32 of the Constitution. During the pendency of the said writ petitions before this Court, the Railway Ministry framed a scheme making provision for grant of temporary status to project Casual Labour on completion of 360 days of continuous service. The said scheme provided as follows:-

" 1.1 As a result of such deliberations, the Ministry of Railways have now decided in principle that casual labour employed on projects (also know as 'project casual labour) may be treated as temporary on completion of 360 days of continuous employment. The Ministry have decided further as under:

a) These orders will cover :

) Casual labour on projects who are in service as on 1.1.87; and) Casual labour on projects who, though not in service on 1.1.84, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or will complete the said prescribed period of continuous employment on reengagement in future. (A detailed letter regarding this group follows).

b) The decision should be implemented in phases according to the schedule given below :-

Length of service Date from which Date by which ie. continuous may be treated decision should employment). as temporary be implemented

- i) Those who have completed 1.1.1984 31.12.1984 five years of service as on 1.1.84
- (ii) Those who have comple- 1.1.1985 31.12.1985 ted three years but less than years of service as on 1.1.1984
- (iii) Those who have compl- 1.1.1986 31.12.1986 ted 360 days but less than three years of service on 1.1.1984
- (iv) Those who have compl- 1.1.1987 or 31.12.1987 360 days after 1.1.1984 or the date on which 360 days are completed whichever is later.

By the judgment dated April 18, 1995 in Inder Pal Yadav & Ors. Etc. v. Union of India & Ors. Etc., 1985 (3) SCR 837, this Court approved the said scheme but modified the date 1.1.1984 in para 5.1 (a) (i) to 1.1.1981 and as a result there was consequent re-scheduling in absorption from that date onwards. The Court, while accepting the scheme with the modification gave direction that it must be implemented by re-casting the stages consistent with the change in the date is directed. As per the aforesaid scheme temporary status was conferred on Project Casual labour with effect from the dates specified therein and on the basis of such temporary status they were also extended the benefit of the order dated October 14, 1980 and the temporary service after attaining the temporary status was counted for pension and other retiral benefits.

In Civil Appeal No. 4643 of 1992, which has arisen out of O.A. No. 485 of 1989 filed before the Madras Bench the Central Administrative Tribunal [hereinafter referred to as 'the Tribunal'], the respondents joins as project Casual Labour in the Southern Railway, madras on different dates during the period 1954 to 1973. They were all employed in construction works and were project Casual labour. They were regularly absorbed in Class IV service on various dates from 1962 to 1982. They had put in 9 to 14 years of service as casual labour before they were so absorbed. Most of them were absorbed in 1981. Their plea was that after six months of continuous service as casual labour they were entitled to be treated as 'temporary railway employees' and the entire period of their service as casual labour should be counted for the purpose of retiral benefits. The said claim of the respondents was not accepted by the Railway Administration which held that service as casual labour prior to 1.1.1981 could not be counted for pensionary benefits. Feeling aggrieved by the said decision of the Railway Administration, they filed O.A. No. 485 of 1989 which was allowed by the Tribunal by judgment dated February 8, 1991. Before the Tribunal it was contended that the respondents having continuously worked as casual labour without any break followed by regularisation their entire service as casual labour should be counted for the purpose of retiral benefits and that in any event at least half of their service as casual labour after the initial period of six months should be taken into account as qualifying service for retiral benefits. It was also urged that while granting retiral benefits not only the open Line Casual Labour but also project Casual Labour who had joined later than the respondents and had acquired temporary status after 1.1.1981 have been given pensionary benefit but the denial of similar benefit to the respondents amounted to illegal discrimination and was violative of the provisions of Article 14 of the Constitution. By its

judgment dated February 8, 1991 the Tribunal has accepted the said contention of the respondents and has held that unfair treatment would be meted out to the respondents if the entire period of their continuous service as casual labour is ignored for the purpose of retiral benefits whereas such service is taken into account in respect of the later entrants. Reliance was placed on the decision of this Court in *D. S. Nakara v. Union of India*, 1983 (2) SCR 165. It was observed that even on the basis of the instructions issued in 1984 and 1986 persons who had acquired temporary status in the past in 1981 could be given such a status retrospectively and there was no reason why same conceptual benefits could not be given such a status retrospectively and there was no reason why same conceptual benefits could not be given to the respondents also provided they satisfied the same condition of continuous service. The said judgment of the Tribunal has been followed by other Benches of the Tribunal in subsequent Judgments. Civil Appeals Nos. 4643/92, 3974/94, 5531/94, 9241/94, 4569-74/97 and Civil appeals arising out of Special Leave Petitions (C) No.s 2595/94, 13416/94, 14335/94, 8053/94, 17197/95, 17198/95, 27483/95, 12001/97 and 379/97 have been filed by the Railway Administration against the said judgments of the Tribunal.

In its judgment dated November 30, 1994 in O.A. No. 456 of 1993 the Madras Bench of the Tribunal has taken a view different from that taken in the judgment dated February 8, 1991 in O.A. No. 485 of 1989. In that case the petitioners were employed as Casual Labourers in construction work in Southern Railway on different dates during the period from 1955 to 1974 and were absorbed on regular posts on different dates between 1962 and 1983 and their service as casual labour was not taken into account for the purpose of retiral benefits. The Tribunal, while dismissing the said application, held that in view of the scheme which was approved by this Court in *Inder Pal Yadav* temporary status could be granted to Project Casual labour only from 1.1.1981 or from the date on which 360 days of service as project Casual Labour was completed after 1.1.1981 whichever was later and project Casual labour who had already been regularised prior to 1.1.1981 could not be granted any deemed date for grant of temporary status. The earlier judgment of the Tribunal dated February 8, 1991 in O.A. No. 485 of 1989 was held as having been given per incurium. The same view was taken by the Madras Bench of the Tribunal in judgment dated August 22, 1996 in O.A. No. 885 of 1996. Civil Appeals arising out of Special Leave Petitions (c) Nos. 26790/95 and 3423/97 have been filed by the petitioners in O.A. Nos. 456/93 and 885/93 against the said judgments of the Tribunal dated November 30, 1994 and August 22, 1996.

At the out set, it may stated that in the railways a distinction has been made between 'temporary status' and 'temporary employment'. Open Line Casual Labours who were treated temporary after the expiry of six months of continuous employment under para 2501(b) (i) of the Manual were only entitled to the rights and privileges admissible to temporary railway servants as laid down in Chapter XXIII of the Manual. But such temporary status did not entitle the casual labour to the benefit of the period of of service rendered after attaining temporary status being treated as qualifying service for the purpose of retiral benefits. For the purpose of computing the qualifying service for retiral benefits the service after absorption on a regular temporary/permanent post after requisite selection only could be taken into consideration. Provision in this regard was contained in para 2511 of the Manual which provided as follows:-

2511. Rights and Privileges admissible to Casual Labour who are treated as temporary after completion of six months' continuous service :-

(a) Casual labour treated as temporary are entitled to all the rights and privileges admissible to temporary railways servants as laid down in Chapter XXIII of the Indian Railways Establishment manual. the rights and privileges admissible to such labour also include the benefits of the Discipline and Appeal Rules. Their service, prior to the date of completion of six months' continuous service will not, however, count for any purposes like reckoning of retirement benefits, seniority etc. such casual labourers will, also, be allowed to carry forward the leave at their credit to the new post on absorption in regular service.

(b) Such casual labour who acquire temporary status, will not, however, be brought on to the permanent establishment unless they are selected through regular Selection Boards for Class IV staff. They will have a prior claim over others to permanent recruitment and they will be considered for regular employment without having to go through employment exchanges. Such of them who join as Casual Labourers before attaining the age of 25 years may be allowed relaxation of the maximum age limit prescribed for Class IV posts to the extent of their total service which may be either continuous or in broken periods.

(c) It is not necessary to create temporary posts to accommodate casual labourers who acquire temporary status for the conferment of attendant benefits like regular scales of pay, increments etc. Service prior to absorption against a regular temporary/permanent post after requisite selection will, however, not constitute as qualifying service for pensionary benefits.

NOTE: - In case where casual labour had actually been brought over to the regular prescribed/authorised scales of pay prior to 22nd August, 1962 on fulfilling the requisite conditions, the periods during which they drew pay in the regular scales be taken into account of the purpose of granting increments, even if they cannot be shown against regular posts prior to 22nd August, 1962.: [emphasis supplied] The period of service rendered after attainment of temporary status but before absorption on regular temporary/permanent post was taken into account for the purpose of pensionary benefits for the first time by order dated October 14, 1980 whereby half of the period of service after attaining of temporary status was to be counted for the purpose of qualifying service for pensionary benefits. Under Para 2501 (b)(i) of the Manual the benefit of temporary status was available to Open Line Casual labour only and it was not available to Project Casual Labour till the decision of this Court in Inder Pal Yadav whereby the scheme for grant of temporary status to Project Casual Labour was approved under the scheme temporary status was given from 1.1.1981 to those who had completed five years service as Project Casual labour as on 1.1.1981, those who had completed three years service as Project Casual Labour as on 1.1.1981 were given the temporary status from 1.1.1982, those who had completed 360 days but less than three years of service as Project Casual Labour as on 1.1.1981 were given temporary status from 1.1.1983 and those who completed 360 days as Project Casual Labour after 1.1.1981 were given the temporary status from 1.1.1984 or on the date on which 360 days are completed whichever is later. Project Casual Labour could claim the benefit of the order dated October 14, 1980 only after they could be treated as temporary as per the scheme accepted by this Court in case Inder Pal Yadav. The respondents in the

appeals filed by the Railway Administration and the appellants in the other two appeals were employed as Project Casual Labour. They never obtained temporary status prior to their absorption on regular temporary/permanent post on the basis of the scheme that was approved in Inder Pal Yadav and, therefore, no part of their service as project Casual Labour has been counted as qualifying service for the purpose of pensionary benefits. Their service as Project Casual Labour Prior to 1.1.1981 could not be treated as qualifying service for the purpose of retiral benefits because under the scheme they could not be treated to have attained temporary status prior to 1.1.1981.

If Ram Kumar & Ors. v. Union of India & Ors. 1988 (2) SCR 138, the petitioners were engaged on terms of casual labour for periods varying between 10 to 16 years in the Construction Department of the Signal Unit in the Northern Railway. They had not been treated as temporary servants and they approached this Court by filing writ petitions under Article 32 of the Constitution wherein their grievance was that the Railway Administration had applied discriminatory rates of wages and they prayed for a direction to treat them at par with maintenance workers and also sought absorption in the regular cadre in the permanent category. This Court, while rejecting the submission urged on behalf of the petitioners that they should be treated at par with Open Line Casual Labours, observed:-

" Admittedly the petitioners have put in more than 360 days of service. Though counsel for the petitioners had pointed out that the Administration was requiring continuous service for purpose of eligibility, learned Additional Solicitor General on constructions obtained from the Railway Officers present in Court during arguments had clarified that continuity is not insisted upon and though there is break in such continuity the previous service is also taken into account. learned Additional Solicitor General has made a categorical statement before us that once temporary status is acquired, casual employees of both categories stand at par. Keeping the prevailing practice in the Railway in view, it is difficult for us to obliterate the function between the two categories of employees till temporary status is acquired." [p. 141] It was further stated:-

" It is stand of the learned Additional Solicitor General that no pensionary benefits are admissible even to temporary railway servants and, therefore, that retiral advantage is not available to casual labour acquiring temporary status. We have been shown the different orders and directions issued by the Administration. We agree with the learned Additional solicitor General that retiral benefit of pension is not admissible to either category of employees." [p. 144] Ms. Chandan Ramamurthi, the learned counsel for the appellants in Civil Appeal arising out of special Leave Petition (c) No. 2679 of 1995, has submitted that before the decision for this Court in Inder Pal Yadav project Casual Labour were treated as temporary after completion of 120 days but after the approval of the scheme in Inder Pal Yadav they became entitled to be treated as temporary on the completion of 360 days continuous employment and she has invited our attention to the following passage in Ram Kumar:-

earned Additional Solicitor General states that petitioners are project employees and do not belong to the open line. According to him employees in the open line acquire temporary status on completion of 120 days of service as against 180 days which was the previous requirement. That status is acquired on completion of 360 days by casual labour in project works as provided in the scheme formulated under orders of this Court, though such status were acquirable by project casual labourers & completion of 180 days of continuous employment previously." [p. 141] In our opinion , this submission of the learned counsel is not based on a correct reading of the judgment in Ram Kumar. In the aforequoted passage the Court has taken into account the distinction between open the Casual Labour and Project Casual labour in the matter of grant of temporary status and has pointed out that Open Line Casual Labours acquire temporary status on completion of 120 days continuous service and earlier the said requirement was 180 days, but such status is acquired on completion of 360 days by casual labour in project works. The submission that prior to the acceptance of the Scheme by this Court in Inder Pal Yadav project Casual Labour were entitled to grant of temporary status on completion of 180 days of continuous service is neither borne out by para 2501 of the Manual nor by the decision of this Court in Inder Pal Yadav. The acceptance of the contention of Ms. Ramamurthi that earlier Project Casual Labour could be treated as temporary after completion of 180 days of continuous service would mean that as a result of the scheme that was accepted by this Court in Inder Pal Yadav the position of project Casual Labour became worse than what it was prior to the acceptance of the scheme because under the Scheme they could be treated as temporary only on completion of 360 days of continuous service. the decision in Inder Pal Yadav does not support such a view. It must, therefore, be held that prior to the Scheme which was accepted by this Court in the case of Inder Pal Yadav project Casual Labour could not claim temporary status and such temporary status could only be acquired by them on the basis of the scheme as accepted in Inder Pal Yadav.

In its judgment dated February 8, 1991 the Tribunal had held that exclusion of period of service rendered as Project Casual labour before they were regularly absorbed prior to 1.1.1981 results in such employees being discriminated as compared to project casual labour who were employed subsequently and whose service as project Casual labour prior to absorption is counted for the purposes of qualifying service. The said finding of the Tribunal is based on the decision of this Court in D.S. Nakara. In this regard, it may be stated that the Tribunal was in error in invoking the principle laid down in D.S. Nakara in the present case. The decision in D.S. Nakara has been considered by this court in subsequent decisions and it has been laid down that the principle laid down in D.S. Nakara can have application only in those cases where there is discrimination in the matter of existing benefit between similar set of employees and the said principle has no application where a new benefit is being conferred with effect from a particular date. In such a case the conferment of the benefit with effect from a particular date cannot be held to be violative of Article 14 of the Constitution on the basis that such a benefit has been conferred of certain

categories of employees on the basis of particular date. [See: Krishena Kumar v. Union of India & Ors., 1990 (4) SCC 207; State of West Bengal v. Ratan Behari Dev, 1993 (4) SCC 62, and State of Rajasthan v. Sevanivatra Karamchari Hitkari Samiti, 1995(2) SCC 117]. In the present case, the benefit of counting of service prior to regular empowerment as qualifying service was not available to casual labour. The said benefit was granted to Open Line Casual Labour for the first time under order dated October 14, 1980 since open Line Casual Labour could be treated as temporary on completion of six months period of continuous service which period was subsequently reduced to 120 days under Para 2501

(b) (i) of the Manual. As regards Project Casual Labour this benefit of being treated as temporary became available only with effect from 1.1.1981 under the scheme which was accepted by this court in Inder Pal Yadav. Before the acceptance of that scheme the benefit of temporary status was not available to project Casual Labour. It was thus a new benefit which was conferred on project Casual Labour under the scheme as approved by this court in Inder Pal Yadav and on the basis of this new benefit project casual Labour became entitled to count half of the Service rendered as Project Casual Labour on the basis of the order dated October 14, 1980 after being treated as temporary on the basis of the scheme as accepted in Inder Pal Yadav. We are, therefore, unable to uphold the judgment of the Tribunal dated February 8, 1991 when it holds that service rendered as Project Casual Labour by employees who were absorbed on regular permanent/temporary posts prior to 1.1. 1981 should be counted for the purpose of retiral benefits and the said judgment as well as the judgment in which the said judgment has been followed have to be set aside. The judgements in which the Tribunal has taken a contrary view have to be affirmed.

In the result, the appeals filed by the Railway Administration are allowed and the judgments of the Tribunal impugned in these appeals are set aside. The Appeals arising out of Special Leave Petitions (c) Nos. 26790 of 1995 and 3423 of 1997 filed by the employees are dismissed. No order as to costs.