

Shiv Shanker And Anr. vs Union Of India (Uoi) And Ors. on 23 January, 1985

Equivalent citations: AIR1985SC514, 1985(33)BLJR139, [1985(50)FLR200], 1985LABLC731, (1985)ILLJ437SC, 1985(1)SCALE106, (1985)2SCC30, 1985(1)SLJ403(SC), 1985(17)UJ304(SC), AIR 1985 SUPREME COURT 514, 1985 LAB. I. C. 731, (1985) 1 CURLJ(CCR) 309, (1985) IJR 128 (SC), 1985 IJR 202 (REPTN), (1985) PAT LJR 31, 1985 BLJR 139, 1985 UJ (SC) 304, 1985 SCC (L&S) 387, (1985) 50 FACLR 200, (1985) 66 FJR 271, (1985) JAB LJ 561, (1985) 1 LABLJ 437, (1985) 1 LAB LN 588, 1985 (2) SCC 30, (1985) 1 SERVLJ 403, (1985) 1 CURLR 216

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Bench: O. Chinnappa Reddy, R.B. Misra

JUDGMENT

O. Chinnappa Reddy, J.

1. The question raised in these writ petitions is, for all practical purposes, already answered in an earlier case decided by this court in Dayal Saran v. Union of India. On February 19, 1981, the Divisional Railway Manager, Western Railway, Ratlam Division, passed an order to the effect that there was a break in the service of the petitioners from the dates shown against each of them as they were participating in the illegal strike of the running staff of the Mechanical Department and were absenting themselves from duty without authority. The order further added :

This break-in-service involves forfeiture of all leave earned upto the strike, postponement of date of increment and commencement of service afresh on resumption of duty after the strike for the purpose of eligibility for leave, passes and sanction of SC to PF and Pensionary benefits on retirement in terms of Railway Board's letter No. ELI (II) 79 ST-36 dated 31.3.79 published in "eastern Railway monthly Gazette No. 3/1979-80 dated 1.6.1979.

Further they are also liable to be taken up under D.A.R.

2. Admittedly this order was made without any notice to the petitioners and without giving them any opportunity to show cause against the action. The contention of the petitioners before us is that there was a violation of the principles of natural justice and for that reason alone, the order was

liable to be quashed. In *Dayal Saran v. Union of India* (supra), this Court had pointed out that an order of forfeiture of past service cannot be made without observing the principles of natural justice. The principle of the case was applied by the High Court of Rajasthan to cases of break in service on account of participation in illegal strike also. In one of the cases, namely, *Koran Singh v. Union of India*, etc. (Civil Writ Petition No. 1889 of 1981), S.C. Agarwal, J., after referring to the decision of this court in *Dayal Saran v. Union of India* (supra), observed :

In view of the decisions aforesaid, it must be held that an order with regard to the break in service which results in forfeiture of the past service of a railway employee, cannot be made without observing the principles of natural justice.

3. The learned counsel for the respondents urged that para 1301 of the Railway Establishment Manual read with para 1304 enabled the Railway authorities to forfeit the service of a Railway servant for participation in an illegal strike unless condoned by the competent authority. We are not now on the question of competence of the Railway authority to make an order of forfeiture of service. The question before us is whether the principles of natural justice should be observed when an order of forfeiture of service on the ground of participation in an illegal strike is to be made. Neither para 1301 nor para 1304 of the Railway Establishment Manual excludes the observance of the principles of natural justice either expressly or by necessary implication. We, therefore, allow the writ petitions and quash the orders dated February 19, 1981, February 21, 1981 and February 18, 1981 which have been filed as annexures I, II and III of the writ petition. The writ petitions are allowed as indicated.