

Jaswant Singh & Ors. Etc vs Union Of India And Ors. Etc on 29 August, 1979

Equivalent citations: 1980 AIR 115, 1980 SCR (1) 420, AIR 1980 SUPREME COURT 115, 1979 LAB. I. C. 1362, (1980) 1 SCR 420 (SC), (1979) SERVLJ 575, (1980) 1 LAB LN 44, 1980 SCC (L&S) 36, (1979) 2 LABLJ 371, 1979 (4) SCC 440, (1979) 2 SERVLR 375

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Bench: Y.V. Chandrachud, Syed Murtaza Fazalali, E.S. Venkataramiah

PETITIONER:

JASWANT SINGH & ORS. ETC.

Vs.

RESPONDENT:

UNION OF INDIA AND ORS. ETC.

DATE OF JUDGMENT 29/08/1979

BENCH:

CHANDRACHUD, Y.V.

BENCH:

CHANDRACHUD, Y.V.

FAZALALI, SYED MURTAZA

VENKATARAMIAH, E.S. (J)

CITATION:

1980 AIR 115 1980 SCR (1) 420

1979 SCC (4) 440

CITATOR INFO :

RF 1992 SC2130 (18)

ACT:

Punjab Reorganisation Act 1966-Ss. 79 & 80-Scope of-
Officers and staff employed by Beas Control Board and later
transferred to Bhakra Management Board-If Central Government
Employees.

Constitution of India-Arts. 14 & 16-Temporary employees
recruited for specified work-Services terminated while
retaining the services of deputationists-If violative of
Arts. 14 & 16.

Central Civil Services (Temporary Service) Rules, 1965-
R. 3-Government servant-When would become a quasi permanent
servant.

Labour law-Work-charged employees-If Government

servants.

HEADNOTE:

The Beas Project, which was commenced in 1960, was a joint venture of the composite State of Punjab and the State of Rajasthan. All decisions on policy and administrative matters relating to the project were entrusted to a Board known as the Beas Control Board, which was constituted by the Central Government in consultation with the State Governments concerned. For the purpose of construction and completion of the Project Engineers and a large number of other categories of employees were taken on deputation from the States of Punjab and Rajasthan and some others were directly recruited by the Beas Control Board.

In the meantime in the year 1966, the State of Punjab was reorganized and the new States of Haryana and the Union Territory of Chandigarh came into being and a part of the Punjab Territory was transferred to the then Union Territory of Himachal Pradesh. The Punjab Reorganization Act, 1966 contains a chapter on Bhakra Nangal and Beas Projects. After 1966, the Project became the concern of the State of Rajasthan and the successor States of Punjab, Haryana and the then Union Territory Himachal Pradesh.

The Bhakra Management Board constituted by the Central Government under s. 79(1) of the Act for the administration, maintenance and operation of works specified in clauses (a) to (g) of that sub-section was empowered to employ the necessary staff for the efficient discharge of its functions. The proviso to s.79(4) of the Act states that every person who immediately before the constitution of the said Board was engaged in the construction, maintenance or operation of the works shall continue to be so employed under the Board in connection with the said works on the same terms and conditions of service as were applicable to him before such constitution until the Central Government by order directs otherwise. The Bhakra Management Board was placed under the control of the Central Government. By virtue of s.80(1), construction of the Beas Project was to be undertaken by the Central Government on behalf

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of the successor States and the State of Rajasthan. Section 80(2) of the Act empowers the Central Government to constitute the Beas Construction Board and the Board was empowered to appoint such staff as may be necessary for the efficient discharge of its functions. The first proviso to s. 80(3) is in similar terms to the proviso to s. 79(4). By sub-s. (5) any component of the Beas Project in relation to which the construction has been completed after November 1, 1966, may be transferred by the Central Government to the Bhakra Management Board constituted under s. 79 and thereupon the provisions of s. 79 become applicable as if

works transferred to the Bhakra Management Board were included in s.79(1). Sub-section (6) of Section 80 provides that the Bhakhra Management Board shall be re-named as the Bhakra Beas Management Board, when any of the components of the Beas Project has been transferred and that the Beas Construction Board shall cease to exist when all the components of the Beas Project have been so transferred.

The Petitioners who were officers and staff of various categories and whose services were sought to be terminated by way of retrenchment on the completion of the Project work contended (1) that they were employees of the Central Government, (2) that their conditions of service were governed by rules which apply to its temporary employees and (3) that the orders of retrenchment passed against them while retaining the deputationists in service were violative of Arts. 14 and 16 of the Constitution.

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HELD : 1. (a) Though the petitioners were appointed under the orders issued by or on behalf of the Beas Control Board of the Beas Construction Board, they were employees of the Central Government. Such of them as were appointed by the Beas Control Board became the employees of the Beas Construction Board by virtue of the first proviso to s. 80(3). It was by and on behalf of the Beas Control Board that some of the petitioners were appointed prior to the re-organization of the composite State of Punjab on November, 1966. The Beas Control Board ceased to exist and its place was taken by the Beas Construction Board constituted on October 1, 1967. Therefore by reason of the first proviso to s.80(3) the petitioners became the employees or were employed by the Beas Construction Board. [431-E-F,G, 432A]

(b) By virtue of s. 80(1) the Beas Project was to be undertaken by the Central Government on behalf of the successor States and the State of Rajasthan. But the direct and immediate responsibility to construct and complete the works of the Beas Project was imposed by the statute on the Central Government and not on the successor States and the State of Rajasthan. The concerned States were only under an obligation to provide necessary funds to the Central Government and that Government is empowered to constitute the Beas Construction Board and assign to that Board such functions as it may consider necessary. Though the appointments of the petitioners might have been made in the name of or on behalf of the Beas Construction Board they were truly and in substance made for the benefit and at the behest of the Central Government. The staff appointed for discharging the functions of the Board was appointed in order to enable the Central Government to discharge its responsibility under s. 80(1) The petitioners are, therefore, employees of the Central Government. [432B, D, E, H, 433A]

2. The contention of the petitioners that they were quasi-permanent employees in terms of the Central Civil

Services (Temporary Service) Rules, 1965 has no force. Under r. 3 a Government servant is deemed to be in quasi-permanent service if (i) he has been in continuous service for more than three

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years and (ii) the appointing authority being satisfied, having regard to the quality of his work, conduct and character as to his suitability for employment in quasi-permanent capacity under the Government of India has made a declaration to that effect. Although the petitioners have been in continues temporary service for more than three years, it is for the appointing authority to decide whether they fulfil the second condition or not. No Government servant can claim entitlement to a declaration that he was in quasi-permanent service because the question of declaring him to be quasi-permanent does not depend merely on the fact of his being in service for a particular number of years. [433C-E]

3. The plea of the petitioners that they should be retained in service for the purposes of the Beas Project even after the transfer of the completed works of that Project to the Bhakra Management Board is without force. The petitioners were holding their employment either under the Beas Control Board or, after November 1, 1966 under the Beas Construction Board. The first proviso to s.79(4) is designed to protect the services of persons, who, prior to the establishment of the Bhakra Management Board, were engaged in the construction work connected with the Bhakra and Nangal Dams and the power houses linked therewith. The petitioners were working on the Beas Project and were not therefore entitled to the benefit of that proviso. [434A, F-G]

4. Though Section 80(5) requires a completed work of the Beas Project to be transferred to the Bhakra Management Board, it does not provide that persons who were employed in connection with such a work should also be transferred as employees of the Bhakra Management Board. In the very nature of things there could be no such provision because if any persons were employed for the Beas Project only their employment would normally cease on the completion of that Project. In fact, the petitioners were taken in employment on temporary posts for the purpose of completing the Beas Project. On the completion of that Project or any other works for which they were employed, their employment would normally come to an end, especially since the statute from which their rights are said to flow does not protect that employment. [435A-C]

5. The first proviso to s.79(4) speaks of persons who immediately before the constitution of the Bhakra Management Board were engaged in the works mentioned in s.79(1). The scheme of s. 80 shows that the Bhakra Beas Management Board was never constituted as such. The only effect which the statute brings about by s. 80(6) is the renaming of the

Bhakra Management Board as the Bhakra Beas Management Board. The words "constitution of the said Board" cannot be substituted by the words "the re-naming of the said Board". The contemplation of s. 79(4) is that only a certain class of employees should receive protection in the matter of continued employment. The petitioners do not fall within that class since they were not employees of the Bhakra Management Board immediately before October. 1, 1967 when that Board was constituted. [435E-G]

6. There is no substance in the grievance of the petitioners that the proposed orders of retrenchment involved violation of the guarantee of equality in the matter of employment. The petitioners and the deputationists were not equals the petitioners were appointed on a purely temporary basis and their appointments were governed by the rules applicable to temporary establishment. While accepting the offers of appointment they subscribed to a declaration that they had understood and accepted the conditions of their employment. They

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are being retrenched in accordance with the conditions of appointment and on completion of the Project for which they were appointed. The deputationists on the other hand belonged to the services of the respective States. The concerned State Governments were responsible to provide the necessary funds to meet all the expenses of the Bhakra Management Board. Since the very basis of their claim to be treated equally with the deputationists is fallacious their claim must fail. [436C-E, 437A, B, 438C]

7. (a) From the very beginning of their employment the work-charged employees were engaged for execution of specified work. They are industrial workers entitled to the benefits of the provision of the Industrial Disputes Act, 1947. Their services automatically came to an end on the completion of the works. [439D, E]

(b) Out of 36,000 work-charged employees, 26,000 had accepted retrenchment compensation in the conciliation proceedings. By reason of s. 18(3) (d) of the Industrial Disputes Act a settlement arrived at in the course of conciliation proceedings is binding on all persons who were employed in the establishment to which the dispute relates, whether they were employed on the date of the dispute or subsequently. The settlement arrived at would bind the work charged employees. [440B, C-D, E]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petitions Nos. 3598, 4369, 4423, 4536, 4391, 4505, 4376, 4658 of 1978 and 565 of 1979.

Under Article 32 of the Constitution.

L. N. Sinha (W.P. 3598), A. K. Sen (W.P. 4369), Dr. Y. S. Chitale (W. P. 4391 and 4536), M. K. Ramamurthy (W. Ps. 4505 and 1246), B. P. Singh, S. S. Javali and Ashok Kaul for the Petitioners.

Sushil Kumar for Respondent No. 10 in all Writ Petitions S. N. Kackar, Sol. Genl. (W. Ps. 3598, 4369 and 4505), E. C. Agrawala (W. Ps. 4369, 4505 and 3598), R. N. Sachthey (in all matters and for the State of Haryana in W.P. 565) and Miss A. Subhashini for the other appearing Respondents.

Anand Prakash, P. H. Parekh, B. Datta and K. K. Manchanda for RR 11-17 (WP 4536) R. 14 (in WPs 4505 and 4658) S. M. Jain for R. 4 in 3598, 4369, 4376 and 4391 B. D. Sharma for R. 4 in rest of the W. Ps.

The Judgment of the Court was delivered by CHANDRACHUD, C.J. this is a group of nine Writ Petitions under Article 32 of the Constitution raising the questions as to whether the petitioners are employees of the Central Government; if so, whether their conditions of service are governed by rules which apply to temporary employees of the Central Government; and lastly, whether the orders of retrenchment proposed or passed against them are violative of Articles 14 and 16 of the Constitution.

There are in all 542 petitioners in Writ Petitions Nos. 3598, 4369, 4423, 4376 and 4391 of 1978. This group consists of Engineers, Overseers, Teachers, Sub-divisional Clerks, Clerks, Accounts Clerks, Time-keepers, Research Assistants, Store-keepers, Meter Readers, Daughtsmen, Tracers and Stenotypists. In these five Writ Petitions orders of retrenchment were proposed to be passed against the petitioners but those orders have been stayed by this Court during the pendency of the Writ Petitions. In Writ Petition No. 565 of 1979, there are 158 petitioners amongst whom are Shift Engineers, Line Superintendents and Sectional Officers. The 375 petitioners in the remaining three Writ Petitions Nos. 4505, 4536 and 4658 of 1978 are work-charged employees. The petitioners in these three Writ Petitions have already been retrenched. They are industrial employees and there is an Award of 1974 by which their rights have been adjudicated upon.

We will deal with the petitions of work-charged employees separately. Their cases stand on an altogether different footing from those of other employees. Our reference to the petitioners' immediately hereinafter will mean petitioners other than work charged employees.

Before examining the petitioners' contentions, it is necessary to have a broad acquaintance with the initiation and implementation of the Bhakra-Nangal and Beas Construction Projects, the provisions of the Punjab Reorganisation Act, 31 of 1966, and the circumstances in which a conflict has arisen between the competing right of petitioners on one hand, who were recruited directly and the 'Deputationists' on the other, who belong to service cadres of certain State Governments and whose services have been lent for the purposes of the aforesaid Projects.

The construction of the Beas Project was commenced in the year 1960 as a joint venture of the erstwhile State of Punjab and the State of Rajasthan, by mutual agreement between the two States.

All decisions on policy and administrative matters were taken by a Board known as the Beas Control Board, which was constituted by the Central Government in consultation with the two States on February 10, 1961. The Beas Control Board was presided over by the Governor of the then Punjab and its members included Ministers of the States of Punjab and Rajasthan, and senior officers of the Central Govern-

ment and of the two States. The decisions of the Beas Control Board used to be implemented by the Punjab Government which was administering and executing the works on the project. Expenditure for the project was shared by the Punjab and Rajasthan Governments.

With the passing of the Punjab Reorganisation Act which came into force on November 1, 1966, the new State of Haryana and the Union Territory of Chandigarh came into being, having been formed out of the territory of the erstwhile State of Punjab. A part of the Punjab territory was also transferred to what was then the Union Territory of Himachal Pradesh. What remained with Punjab became the new State of Punjab.

The Punjab Reorganisation Act contains a separate chapter, Part VIII, on "Bhakra-Nangal and Beas Projects". With effect from November 1, 1966, the Bhakra-Nangal Project and the Beas Project became the concern of the State of Rajasthan and of the successor States of the erstwhile State of Punjab, namely, the new States of Punjab and Haryana and the then Union Territory of Himachal Pradesh.

By section 79(1) of the Punjab Reorganisation Act, the 'Bhakra Management Board' was constituted by the Central Government for administration, management and operation of the Bhakra Nangal Project which included the Bhakra Dam, the Nangal Dam, certain irrigation headworks, power houses and sub-stations. By section 79(2), the B. M. Board consists of

(a) a whole-time Chairman and two whole-time members to be appointed by the Central Government; (b) a representative each of the Governments of the States of Punjab, Haryana and Rajasthan and the Union Territory of Himachal Pradesh to be nominated by the respective Governments or Administrator, as the case may be; and (c) two representatives of the Central Government to be nominated by that Government. By Section 79(3), the functions of the B. M. Board include (a) the regulation of the supply of water from the Bhakra-Nangal Project to the States of Haryana, Punjab and Rajasthan; (b) the regulation of the supply of power to any Electricity Board or other authority in charge of the distribution of power; (c) the construction of such of the remaining works connected with the Right Bank Power House as the Central Government may, specify, and (d) such other functions as the Central Government may, after consultation with the Governments of the States of Haryana, Punjab and Rajasthan, entrust to it. Sub-section (4) of section 79 gives to the B.M. Board the power to employ such staff as it may consider necessary for the efficient discharge of its functions, subject to an important proviso to which we will refer in due course. Sub-section (5) of section 79 provides that the Governments of the successor States and of Rajasthan shall at all times provide the necessary funds to the B. M. Board to meet all expenses (including the salaries and allowances of the staff) required for the discharge of its functions and that such amounts shall be apportioned among the successor States, the State of Rajasthan and

Electricity Boards of the said States in such proportion as the Central Government may, having regard to the benefits to each of the said States or Boards, specify. By sub-section (6), the B.M. Board is under the control of the Central Government and has to comply with such directions, as may from time to time be given to it by that Government. Sub-section (9) gives to the B.M. Board the power, with the previous approval of the Central Government, to make regulations for certain matters, including appointments and the regulation of the conditions of service, of the officers and other staff of the Board.

Section 80(1) of the Punjab Reorganisation Act provides that the construction, including the completion of any work already commenced, of the Beas Project shall on and from the 1st November, 1966 be undertaken by the Central Government on behalf of the successor States and the State of Rajasthan : Provided that the Governments of the successor States and the State of Rajasthan, shall provide the necessary funds to the Central Government for the expenditure on the project including the expenses of the Beas Construction Board. For the discharge of its functions under sub-section (1), sub- section (2) of section 80 empowers the Central Government, in consultation with the Governments of the successor States and the State of Rajasthan, to constitute a Board to be called the Beas Construction Board. Sub-section (3) of section 80 provides that the notification constituting the B. C. Board may empower the Board to appoint such staff as may be necessary for the efficient discharge of its functions. There is an important proviso to this sub-section to which we will turn later. Sub-section (5) of section 80 provides that any component of the Beas Project in relation to which the construction has been completed after the appointed day may be transferred by the Central Government to the Bhakra Management Board constituted under section 79, whereupon the provisions of that section shall apply as if it were a work included in sub-section (1) of that section. By sub-section (6), the Bhakra Management Board constituted under section 79 is to be renamed as the Bhakra Beas Management Board when any of the components of the Beas Project is transferred under sub-section (5). The Beas Construction Board is to cease to exist when all the components of the Beas Project have been so transferred.

Thus, Part VIII of the Punjab Reorganisation Act provides for the constitution and prescribes the functions and powers of three different Boards : (1) The Bhakra Management Board, (2) The Beas Construction Board and (3) The Bhakra Beas Management Board. For brevity, these Boards, are mostly referred to in this judgment as the B.M. Board, the B.C. Board and the B.B.M. Board respectively. The B.M. Board and the B.C. Board were constituted on October 1, 1967. The B.M. Board was renamed as B.B.M. Board on May 15, 1976 when two components of the Beas Project, the Bhatinda- Sangrur Transmission Line and the Panipat Sub-Station, were transferred to the B.M. Board. Prior to reorganisation, there was only one Board in existence, called the Beas Control Board, which was constituted on February 10, 1961.

We have noticed that the Beas Project which, prior to the reorganisation of Punjab, was a joint venture of the erstwhile State of Punjab and the State of Rajasthan, became a venture of the successor States and the State of Rajasthan with effect from November 1, 1966. Prior to the reorganisation, the management and construction works of Bhakra-Nangal Project as well as of the Beas Project were under the control of the erstwhile State of Punjab, though the entire expenditure for the two Projects was shared by Punjab and Rajasthan. By the Reorganisation Act, the entire

expenditure for the construction and completion of the Beas Project was to be shared by the successor States and the State of Rajasthan but the responsibility of construction and completion of the Beas Project was entrusted to the Central Government.

The petitioners were appointed for the purpose of construction and completion of the Beas Project. Most of them have been working as Engineers, Sectional Officers, Accounts Clerks, Teachers, etc. for over 11 years. The construction works of the Beas Project were nearing completion as a result of which, they were under an imminent threat of retrenchment from service. The petitioners came to know that the Central Government had taken a policy decision to retain in service for the purposes of the Bhakra-Nangal Scheme, only such employees who belonged to the services of the Punjab, Haryana and Rajasthan Governments and who were serving on deputation in connection with the works of the Bhakra-Nangal Scheme. The petitioners have filed these writ petitions to restrain the Government from enforcing that decision.

The case of the petitioners is that they are holding posts under the Central Government and are governed by Rules applicable to the Central Government employees. Consequently, their services were not liable to be terminated and they were not liable to be retrenched except in accordance with the said Rules. In any event, according to the petitioners, they are entitled to be retained in service and to continue in service as employees of the Bhakra Beas Management Board, after the components of the Beas Project are transferred to that Board.

The Petitioners further contend that they and the employees of the various State Governments who had come on deputation in connection with the Beas-Sutlej Project were discharging similar duties and were clothed with similar responsibilities. The petitioners, no less than the deputationists, had rendered service to the satisfaction of their employers and therefore they could not be discriminated against in the matter of continuing in their present employment. The policy initiated by the Government of India under which it was decided to retain the deputationists in service and retrench direct recruits like the petitioners is, according to the petitioners, violative of the guarantee of equality contained in Article 14 of the Constitution. In any event, so the petitioners contend, they cannot be removed from service while officers junior to them and less qualified than them who had come on deputation from other States are retained in service.

On these grounds the petitioners pray by their Writ Petitions that (a) the decision of the Central Government to retrench the petitioners from service be quashed; (b) respondents be directed to retain the petitioners in service in the Beas Project and continue to employ them in the posts held by them after their transfer to the Bhakra Beas Management Board; and (c) respondents be asked to issue certificates to the petitioners that they are quasi- permanent employees within the meaning of the Central Civil Services (Temporary Service) Rules, 1965.

The Union of India, the States of Punjab, Haryana, Rajasthan and Himachal Pradesh, the State Electricity Boards of these four States, the Bhakra Beas Management Board, the Beas Construction Board, the General Manager of the Beas Project, three Chief Engineers and two Superintending Engineers of the Beas-Sutlej Link Project and the Beas Dam Project have been impleaded as respondents to the Writ Petitions.

The contention of the respondents, as set out in the affidavits filed on their behalf, is briefly this: Persons like petitioners who were appointed by the Beas Construction Board are not employees of the Central Government and therefore they cannot claim any declaration or relief on the basis that they are employees of the Central Government. The petitioners were all employed by the Beas Construction Board on a purely temporary basis and at the time of their appointment they had given written undertakings confirming the terms of their appointment. They could not be permitted to resile from their undertakings and ask for being absorbed in permanent employment. The bulk of the regular employees working on the Beas Project belonged to the partner-States of Punjab, Haryana and Rajasthan where they held liens on their posts in their parent departments. The partner-States having been unable to meet the employment requirements of the Beas Project, the Beas Construction Board appointed the petitioners on an ad hoc, temporary basis with a clear understanding that they will have no right to be retained in service after the completion of the Beas Project. By the very nature of its requirement, the Beas Construction Board had no authority to employ any person permanently and indeed it was for that reason that the Board had to resort to periodical termination and re-employment of certain directly recruited employees. As the Beas Project did not have any permanent or independent cadre of its own, the services of the petitioners were governed by the express terms mentioned in the letters of their appointment.

The first question which arises for consideration is whether the petitioners are employees of the Central Government. Whereas the petitioners contend that they are, learned Solicitor General contends on behalf of the Union Government that the petitioners were appointed either by the Beas Control Board or by the Beas Construction Board, depending on whether the appointments were made prior to or after November 1, 1966, that the Central Government had no power or authority to make appointments to these two Boards, that the appointments of the petitioners were made by one or the other Board expressly for a temporary period and for the specific purpose of completing the works of the Beas Project and that on completion of those works the petitioners cannot become the employees of the Central Government.

These rival submissions require an examination of the provisions of the Punjab Reorganisation Act on which both sides rely in support of their contentions, but before that, it is necessary to state that the offers of appointment were made to the petitioners mostly by the Executive Engineer or the S.D.O., Administration, on behalf of the Superintending Engineer, Department of Construction, Beas Dam, Talwara Township. These offers were accepted by the petitioners.

The provisions of the Punjab Reorganisation Act afford in our opinion a clear answer to the question whether the petitioners are employees of the Central Government.

By virtue of section 78(1) of that Act, all rights and liabilities of the erstwhile State of Punjab in relation to the Bhakra-Nangal Project and the Beas Project became the rights and liabilities of the successor States with effect from November 1, 1966. Under section 78(4), "Beas Project"

means the works which were either under construction or were to be constructed as components of the Beas-Sutlej Link Project (Unit I) and Pong Dam Project on the Beas river (Unit II).

Section 79(1) confers upon the Central Government the power to constitute the Bhakra Management Board for the administration, maintenance and operation of the works specified in clauses (a) to (g) of that sub-section. Section 79(4) empowers the Bhakra Management Board to employ such staff as it may consider necessary for the efficient discharge of its functions. The first proviso to this sub-section is important and may be extracted fully:

"Provided that every person who immediately before the constitution of the said Board was engaged in the construction, maintenance or operation of the works in sub-section (1) shall continue to be so employed under the Board in connection with the said works on the same terms and conditions of service as were applicable to him before such constitution until the Central Government by order directs otherwise".

Sub-section (6) provides that the Bhakra Management Board shall be under the control of the Central Government and shall comply with such directions as may from time to time be given to it by that Government.

Section 80(1) provides that notwithstanding anything contained in the Reorganisation Act or in any other law, the construction (including the completion of any work already commenced) of the Beas Project shall, on and from November 1, 1966, be undertaken by the Central Government on behalf of the successor States and the State of Rajasthan. Under the proviso to sub-section (1), the successor States and the State of Rajasthan are under an obligation to provide the necessary funds to the Central Government for meeting the expenditure on the Beas Project for the discharge of its functions under sub-section (1). The Central Government is empowered by sub-section (2) of section 80 to constitute the Beas Construction Board. The notification constituting that Board may empower the Board, as provided in sub-section (3) of section 80, to appoint such staff as may be necessary for the efficient discharge of its functions.

The first proviso to sub-section (3) is also important and may be extracted fully:

"Provided that every person who immediately before the constitution of the Board was engaged in the construction or any work relating to the Beas Project shall continue to be so employed by the Board in connection with the said works on the same terms and conditions of service as were applicable to him before such constitution until the Central Government by order directs otherwise".

By sub-section (5) any component of the Beas Project in relation to which the construction has been completed after November 1, 1966 may be transferred by the Central Government to the Bhakra Management Board constituted under section 79 and thereupon the provisions of section 79 become applicable as if a work transferred to the Bhakra Management Board were included in subsection (1) of section 79. Sub-section (6) of section 80 provides that the Bhakra Management Board constituted under section 79 shall be "re-named" as the Bhakra Beas Management Board when any of the components of the Beas Project has been transferred under subsection (5) and that the Beas Construction Board shall cease to exist when all the components of the Beas Project have been so

transferred.

These provisions leave no doubt that the petitioners, though appointed under orders issued by or on behalf of the Beas Control Board or the Beas Construction Board are employees of the Central Government. Such of the petitioners as were appointed by the Beas Control Board became the employees of the Beas Construction Board by virtue of the first proviso to section 80(3) which we have extracted above. The construction of the Beas Project was commenced in the year 1960 as a joint venture of the composite State of Punjab and the State of Rajasthan. The Beas Control Board was established on February 10, 1961 and it is by and on behalf of that Board that some of the petitioners were appointed prior to November 1, 1966 when the Punjab Reorganisation Act came into force. The Beas Control Board ceased to exist and its place was taken by the Beas Construction Board which was constituted on October 1, 1967. The remaining petitioners were appointed by or under the authority of the Beas Construction Board. The position which therefore emerges is that either by reason of the first proviso to section 80(3) under which every person who immediately before the constitution of the Beas Construction Board was engaged in the construction of any work relating to the Beas Project became entitled to continue to be so employed by the Beas Construction Board, or because the appointments were made for the first time by the Beas Construction Board itself, the petitioners became the employees or were employed by the Beas Construction Board.

That leads to the question whether the Beas Construction Board was a body incorporate with an independent statutory existence or B, whether it was merely a limb of the Central Government. Section 80(1), which clinches the matter, provides that notwithstanding anything complained in the Reorganisation Act or in any other law, the construction and completion of any work of the Beas Project shall be undertaken by the Central Government on and from November 1, 1966. It is undoubtedly true that under the said provision, the Beas Project was to be undertaken by the Central Government on behalf of the successor States and the State of Rajasthan. But the direct and immediate responsibility to construct and complete works of the Beas Project was imposed by the statute on the Central Government and not on the successor States and the State of Rajasthan. Under the proviso to section 80(1), the Governments of these States are only under an obligation to provide the necessary funds to the Central Government for meeting the expenditure on the Beas Project, including the expenses of the Beas Construction Board in behalf of the discharge of its functions under sub-section (1) . The Central Government is empowered by section 80(2) (a) to constitute the Beas Construction Board "with such members as it may deem fit"

and to assign to that Board "such functions as it may consider necessary".

In the light of these provisions, we find no substance in the contention of the Union Government that the petitioners are employees of the Beas Construction Board and not of the Central Government. The constitution of the Beas Construction Board is a matter of administrative expediency provided for by section 80(2), in order to enable the Central Government to act through a statutory agency for the purpose of discharging its functions and obligations under section 80(1). Section 80(3) shows that it is by virtue of the authorisation contained in the notification issued by the Central Government constituting the Beas Construction Board that the Board acquires the power and authority to appoint the staff which is necessary for the efficient discharge of its

functions. The Beas Construction Board, in appointing its staff, acts in pursuance of an authority delegated to it by the Central Government or conferred upon it by that Government. In one word therefore, though the appointments of the petitioners may have been made in the name of or on behalf of the Beas Construction Board, they were truly and in substance made for the benefit and at the behest of the Central Government. The staff appointed for discharging the functions of the Board was appointed in order to enable the Central Government to discharge its responsibility under section 80(1) of undertaking the construction and completion of the works of the Beas project. There is therefore no doubt that petitioners are employees of the Central Government.

Having found that the petitioners are employees of the Central Government, the next question which we must proceed to examine is whether their conditions of service are governed by rules which apply to temporary employees of the Central Government.

One of the principal reliefs claimed by the petitioners is that the Government of India be directed to issue certificates to them to the effect that they are quasi- permanent employees in terms of the Central Civil Services (Temporary Service) Rules, 1965. It is impossible to entertain the plea that the petitioners are entitled to any such certificate. Rule 3 of the aforesaid rules provides that a Government servant shall be deemed to be in quasi- permanent service if, (i) he has been in continuous service for more than three years and (ii), the appointing authority being satisfied, having regard to the quality of his work, conduct and character as to his suitability for employment in quasi-permanent capacity under the Government of India, has made a declaration to that effect. It does appear that the petitioners have been in continuous temporary service for more than three years but whether they fulfil the second condition or not is a matter to be decided by the appointing authority having regard to the various circumstances mentioned therein. No Government servant can claim entitlement to a declaration that he is in quasi-permanent service, because the question as to whether he is entitled to such a declaration does not depend upon the mere fact of his being in service for a particular number of years. We cannot therefore grant to the petitioners this particular relief.

We would however like to make it clear that if by reason of being in the temporary service of the Government of India, any benefit like terminal gratuity or death- gratuity provided for in the rules of 1965 accrues in favour of the petitioners, it will be open to them to make a representation in that behalf to the appropriate authorities. We have no doubt that if the petitioners are entitled to any benefit under the rules of 1965 by reason of the fact that they are in the temporary service of the Government of India, the concerned authorities will not deny that benefit to them. It is however not possible for us to consider the question sought to be raised by the petitioners in regard to the benefits to which they are said to be entitled, because the determination of that question depends on the satisfaction of the authorities and on the fulfillment of conditions into which it is not possible or appropriate for this Court to enter.

The petitioners also pray that the respondents be directed to retain them in service for the purposes of the Beas Project itself and to continue to employ them in the posts held by them, after the transfer of the completed works of that Project to the Bhakra Management Board. This prayer is founded on the provisions of the first proviso to section 79(4) and those of sub-sections (S) and (6) of section 80

of the Punjab Reorganisation Act. We do not think that any of the aforesaid provisions can help the petitioners. Section 79(4) provides that the Bhakra Management Board may employ such staff as it may consider necessary for the efficient discharge of its functions under the Act. By the first proviso to this sub-section, every person who "immediately before the constitution of the said Board" was engaged in the construction, maintenance or operation of the works mentioned in subsection (1) shall continue to be so employed under the Board in connection with the said works, on the same terms and conditions of service as were applicable to him before such constitution, until the Central Government by order directs otherwise. The proviso refers to persons who were engaged in any of the works mentioned in clauses (a) to (g) of section 79(1) immediately before the constitution of the Bhakra Management Board. That Board was constituted on October 1, 1967 and therefore the narrow question to ask oneself is whether the petitioners were engaged in connection with any of the matters mentioned in clauses (a) to (g) of section 79(1), immediately before that date. The Beas Construction Board was also constituted on the same date as the Bhakra Management Board, that is to say, on October 1, 1967. The petitioners were holding their employment either under the Beas Control Board or, after November 1, 1966 under the Beas Construction Board. The first proviso to section 79(4) is designed to protect the services of persons who, prior to the establishments of the Bhakra Management Board, were engaged in the construction work connected with the Bhakra and Nangal Dams and the power houses linked therewith. The petitioners were working on the Beas project and are not therefore entitled to the benefit of that proviso.

A branch of the same argument is that under section 80(S), components of the Beas Project the construction of which has been completed after November 1, 1966 have to be transferred to the Bhakra Management Board and thereupon the provisions of section 79 come into operation as if the transferred works were included in clauses (a) to (g) of section 79(1). It is urged that if any completed component of the Beas Project is transferred to the Bhakra Management Board as required by section 80(S), as has been done in the present case on May 15, 1976, the petitioners would become the employees of the Bhakra Management Board, since the work in connection with which they were employed is transferred to that Board. There is no warrant for this submission because, though section 80(5) requires a completed work of the Beas Project to be transferred to the Bhakra Management Board, it does not provide that persons who were employed in connection with such a work should also be transferred as employees of the Bhakra Management Board. In the very nature of things there could be no such provision because if any persons were employed for the Beas Project only, their employment would normally cease on completion of that Project. In fact, the petitioners were taken in employment on temporary posts for the purpose of completing the Beas project. On the completion of that Project or any other works for which they were employed their employment would normally come to an end, especially since the statute from which their rights are said to flow does not protect that employment.

Yet another limb of the same argument flowing from the provisions of section 80(6) is that since a completed component of the Beas Project was transferred to the Bhakra Management Board on May 15, 1976, that Board had to be renamed under sub-section (6) as the Bhakra Beas Management Board. It is urged that the words "Bhakra Beas Management Board" should be substituted for the words "Bhakra Management Board" occurring in section 79(4) of the Reorganisation Act, and if they are so substituted, the expression "said Board" in the first proviso to section 79(4) would necessarily

have reference to the Bhakra Beas Management Board. This argument contains a fallacy. The first proviso to section 79(4) speaks of persons who immediately before "the constitution" of the Bhakra Management Board were engaged in the works mentioned in sub-section (1) of section 79. The scheme of section 80 shows that the Bhakra Beas Management Board was never constituted as such. The only effect which the statute brings about by sub-section (6) of section 80 is the renaming of Bhakra Management Board as the Bhakra Beas Management Board. The words "constitution of the said Board" cannot therefore be substituted by the words "the renaming of the said Board". The contemplation of section 79(4) is that only a certain class of employees should receive protection in the matter of continued employment. Unfortunately, the petitioners do not fall within that class since they were not employees of the Bhakra Management Board immediately before October 1, 1967 when that Board was constituted.

The only point which now remains to be examined is whether any violation of articles 14 and 16 of the Constitution is involved in the proposed retrenchment of the petitioners. The case of the petitioners is this: They and the 'Deputationists' from State Government services possess similar qualifications, carry the same responsibilities and discharge similar duties and functions. Therefore, no discrimination can be made against them in the matter of continuation in employment. They cannot be retrenched from service and the Deputationists allowed to take their place. If at all there has to be retrenchment consequent upon the completion of works of the Beas Project, the Deputationists must be retrenched along with the petitioners, so that the senior employees in the two categories will be retained in service. Wholesale retrenchment of one category of employees, the direct recruits here, to the exclusion of the other category, the Deputationists, brings about Elegant inequality between the two and is hostile discrimination against the former.

We see no substance in the grievance of the petitioners that the proposed orders of retrenchment involve violation of the guarantee of equality in the matter of their employment. It is of the essence of the right of equality that equals must be treated alike. In other words, some amongst equals cannot be subjected to hostile discrimination by giving favoured treatment to others who are similarly situated. The difficulty in accepting the petitioners' contention in regard to discrimination is that they and the Deputationists are not equals, not being similarly situated in the matter of the right to continue in employment. The petitioners were appointed on a purely temporary basis for the consumption and completion of the works of the Beas Project. The offers of appointment made to them are on the record and they show that each of them was offered a "Temporary post" and the appointment was to be "governed by the rules applicable to Temporary Establishments". Two of the six conditions on which they were appointed are these:

"(1) Persons engaged temporarily will be on the footing of monthly servants and their employment carries with it absolutely no claim to pensions or any other absentee allowance beyond those conditionally given to temporary employees.. ; and (2) The services of such employees may be dispensed with at any time without notice in cases of misconduct of any description on their part or of unsatisfactory work and otherwise by one month's notice, or payment of one month's salary in lieu of notice. Also with or without notice, their engagement will cease absolutely on completion of work in connection with which their appointments may have been sanctioned."

The petitioners accepted the offers of appointments by subscribing to A a declaration that they had understood and accepted the conditions of their employment. The petitioners are being retrenched in accordance with the conditions subject to which they were appointed. It is not denied that the works of the Beas Project are in the final stage of completion and the petitioners will be rendered surplus, in so far as that Project is concerned.

The Deputationists belong to a different class altogether and are situated differently as compared with the petitioners, in so far as the continuation in employment is concerned. The Deputationists belong to the service of the successor States and the State of Rajasthan. It is these States which, under section 79(5) of the Reorganisation Act, are under an obligation at all times to provide the necessary funds to the Bhakra Management Board to meet all expenses, including the salaries and allowances of the staff, required for the discharge of its functions. By section 79(3), the functions of the B.M. Board include the regulation of the supply of water from Bhakra-Nangal Project to the States of Haryana, Punjab and Rajasthan. Under section 79(2), the Bhakra Management Board consists of, inter alia, a representative each of the Governments of the States of Punjab, Haryana, Rajasthan and the then Union Territory of Himachal Pradesh. The State of Punjab, the successor States and the State of Rajasthan are thus directly interested in the successful working of the Bhakra- Nangal Scheme, being its immediate beneficiaries. Since they are also under an obligation to provide the necessary funds to meet all expenses of the B.M. Board, including the salaries and allowances of its staff, the Governments of these States want their own employees to be posted on deputation for service under that Board.

Thus, the petitioners are employees of the Central Government while the Deputationists are employees of the respective State Governments. The terms and conditions of the petitioners' appointments provide for the termination of their employment by one month's notice or pay in lieu of notice. Their services are also liable to be terminated on completion of the Beas Project for which they were employed. The rights and liabilities of the Deputationists flow from the terms of their service under the State Governments. On completion of the works of the Beas Project, the Deputationists working on that Project are required by their employers, the respective State Government, to work under the B.M. Board. There is no question of the entitlement or right of the Deputationists to work under that Board.

The genesis of the appointments of the petitioners and the Deputationists thus shows that they belong to two distinct and separate classes and cannot be considered as equals in the matter of continuation in their respective employments. The infirmity in the argument of the petitioners on the question of violation of the right to equality is that though they were employed by the Beas Construction Board for the purposes of the Beas Project, they claim in the first instance the right to be transferred to the services of the Bhakra Management Board which, as we have shown earlier, they cannot do. The reason why they claim the right to be transferred to the services of the B.M. Board is clear. If they are entitled to be so transferred, the claim that they are equals of the Deputationists will acquire some plausibility because they will at least be serving, for the time being at any rate, under the same Board. They would then be able to claim equal treatment with the Deputationists. Since the very basis of their claim is fallacious! as they have no right to be transferred to the employment of the B. M. Board, their claim to equal treatment with the

Deputationists has to fall with it.

In this view of the matter, it is unnecessary to consider the decisions in *Mervyn Coutindo v. Collector of Customs, Bombay*; *Roshan Lal Tandon v. Union of India*; *S. M. Pandit v. State of Gujarat*; and *General Manager, South Central Railway Secunderabad v. A.V.R. Siddhanti*, which Shri A. K. Sen has cited in his written submissions.

To sum up, we are of the opinion that the petitioners are employees of the Central Government. Their conditions of service will be primarily governed by the terms of their appointment but, if they are entitled to the benefit of any of the rules of the Central Civil Services (Temporary Service) Rules 1965, they may make representations in that behalf to the appropriate authorities. It is, however, not possible for this Court to grant to the petitioners any of the reliefs claimed by them as arising out of the provisions of the aforesaid rules, including the relief by way of a declaration that they shall be deemed to be in quasi- permanent service under rule 3. We are further of the opinion that the petitioners have no right to be transferred to the services of the Bhakra Management Board, now re-named as the Bhakra Beas Management Board. Lastly, the proposed retrenchment of the petitioners does not offend against the guarantee of equality contained in articles 14 and 16 of the Constitution, since the petitioners and the Deputationists belong to two different and distinct classes.

Before parting with the cases of these petitioners, we would like to record the assurance given by the learned Solicitor General on behalf of the Government of India that while retrenching the petitioners, the 'last come, first go' rule will be applied inter se amongst the petitioners and further, that if and when any direct recruitments are made to the posts under the Bhakra Beas Management Board, preference in those appointments will be given to the petitioners, if they are retrenched.

We will now proceed to deal with Writ Petitions Nos. 4505, 4536 and 4658 of 1978 in which the petitioners are all work-charged employees.

A work-charged establishment broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the work.

The entire strength of labour employed for the purposes of the Beas Project was work-charged. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. They do not get any relief under the Payment of Gratuity Act nor do they receive any retrenchment benefits or any benefits under the Employees State Insurance Schemes.

But though the work-charged employees are denied these benefits, they are industrial workers and are entitled to the benefits of the provisions contained in the Industrial Disputes Act. Their rights flow from that special enactment under which even contracts of employment are open to adjustment

and modification. The work-charged employees, therefore, are in a better position than temporary servant like the other petitioners who are liable to be thrown out of employment without any kind of compensatory benefits.

The record of Writ Petition No. 4505 of 1978 shows that offers of alternative employment were made to the work- charged employees and many of them have accepted those offers. The rule of 'last come, first go' has also been consistently adopted while retrenching the work-charged employees. In fact the work-charged employees possess a unique right as industrial employees since, by reason of section 25J(1) of the Industrial Disputes Act, the provisions of Chapter VA, "Lay-off and Retrenchment", have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing orders) Act, 1946.

There were in all about 36000 work-charged employees working on the Beas Project. Out of them, about 26000 have already accepted retrenchment compensation under the settlement arrived between the workmen and the management in the conciliation proceedings held by the Regional Labour Commissioner (Central), New Delhi, under section 12 of the Industrial Disputes Act, 1947. All the 12 unions of which the work-charged employees are members were parties to the said conciliation proceedings. By reason of section 18(3)(d) of the Industrial Disputes Act, a settlement arrived at in the course of a conciliation proceeding is binding on all persons who were employed in the establishment to which the dispute relates, whether they were employed on the date of the dispute or subsequently. In *Ramnagar Cane and Sugar Co. Ltd. v. Jatin Chakravorty and ors.*, it was held by this Court that it is not even necessary, in order to bind the work men to the settlement arrived at before the conciliator, to show that they belonged to the union which took part in the conciliation proceedings, since the policy underlying section 18 of the Act is to give an extended operation to such settlements. In the instant case, all the 12 unions which represented the workmen on the work-charged establishment were parties to the conciliation proceedings. The settlement will therefore bind all the work-charged employees.

Apart from the settlement in the conciliation proceedings, an award was made by the Industrial Tribunal, Central, Chandigarh, in Reference No. 2-C of 1971, in an industrial dispute between the work-charged employees of the Beas-Sutlej Link Project, Sundernagar, with which we are concerned, and the management. Under that award, as stated in the award itself, a consent formula was evolved to which the workmen "virtually agreed". The benefits which flow- to the work- charged employees under the aforesaid award dated May 15, 1974, have been accepted by almost all the work- charged employees, involving a burden of about Rs. 3 crores on the employers.

Since the work-charged employees are bound by the settlement dated June 28, 1977 effected between them and the management in the conciliation proceedings and since they are also bound by and have accepted benefits under the consent award dated May 15, 1974, they are not entitled to any rights apart from those flowing from the A aforesaid settlement and the Award. Special Leave Petition No. 1246 of 1979 which is filed to challenge the Award and C.M.P. No. 2077 of 1979 which is filed for condonation of the delay of over four and half years caused in filing the S.L.P. shall have to be dismissed We would like to say that in regard to the work-charged employees, it is high time that the Government framed specific rules to govern their employment so as to dispel all doubts and

confusion.

The result of the aforesaid discussion is that all the Writ Petitions, the Special Leave Petition and the C.M.P. for condonation of delay are dismissed. There will be no order as to costs.

N.K.A.

Petitions dismissed.