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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 10th August, 2026.

\# **CNR No. DLHC011930242018**

\+ W.P.(C) 8118/2018

JAGBALI PANDEY .....Petitioner

Through: Mr. Anupam Dwivedi, Mr. Sandeep Dwivedi and Mr. Ashutosh Kumar, Advocates.

versus

UNION OF INDIA THROUGH THE SECRETARY, MINISTRY OF RAILWAYS AND ORS. .....Respondents

Through: Mr. Vedansh Anand, SPC with Mr. Shivam Kumar, Advocate for UOI.
Mr. Suman K. Doval and Mr. Lakshay Choudhary, Advocates for IRCON.

\# **CNR No. DLHC010004182018**

\+ W.P.(C) 152/2019

HANS RAJ AND ORS. .....Petitioners

Through: Mr. Anupam Dwivedi, Mr. Sandeep Dwivedi and Mr. Ashutosh Kumar, Advocates.

versus

UNION OF INDIA AND ORS. .....Respondents

Through: Mr. Vedansh Anand, SPC with

Mr. Shivam Kumar, Advocate for UOI.
Mr. Suman K. Doval and Mr. Lakshay Choudhary, Advocates for IRCON.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. These two petitions arise from the same event: the closure of the Panipat Refinery Project of IRCON International Limited on 23rd April, 1999. The Petitioners entered IRCON's project establishment at different points of time and in different capacities. Their case, however, is substantially common. They assert that the duration of their service, the pay scales extended to them, their movement between projects and the application of company rules show that they were employees of IRCON itself, rather than employees engaged for particular projects. On that premise, they challenge the cessation of their services in 1999 and the subsequent refusal to regularise them.

2. W.P.(C) 8118/2018 has been filed by Jagbali Pandey. W.P.(C) 152/2019 is by Hans Raj, Ajay Kumar, Dharmender Kumar and Rajan Lal. They assail the speaking orders dated 30th October, 2017 passed by IRCON rejecting their request for regularisation and continuation in service. They also seek withdrawal of the termination effected on 23rd April, 1999, reinstatement with full back wages and regularisation with attendant service benefits.

3. Much has transpired since the dispute first arose. The Petitioners have, in the meantime, crossed the age of superannuation, rendering

reinstatement impracticable. That, however, does not conclude the matter. If the cessation of their service was unlawful, the passage of time would bear only on the nature of relief, not on the legality of the action itself. The challenge must, therefore, be examined on merits.

FACTS

4. A short account of the employment history of the Petitioners is necessary. Jagbali Pandey was initially engaged in the Anpara region as a daily rated Helper. After completing four years, he was placed in the scale of INR 260-400 as Clerk by letter dated 19th May, 1988. He thereafter worked at different projects of IRCON. The record is significant in one respect. An order of 1996, while posting him from Nandyal to the Panipat Refinery Project, describes him as working "on *adhoc* basis". It further provides that he would retain his position with reference to other similarly recruited staff of the project where he was initially appointed.

5. Hans Raj was appointed as a Driver at the NTPC Dadri Project. His appointment letter describes the engagement in unambiguous terms as "purely on contract basis" for six months on consolidated remuneration, with automatic cessation at the end of that period, though extendable according to requirement. His engagement was extended from time to time. He was later placed in the INR 260-400 scale and, on completion of work at Dadri, moved to the Panipat project.

6. Ajay Kumar was similarly engaged as a Driver on a six month contract from 20th November, 1993. His appointment letter expressly stated that the engagement was contractual, that it would automatically terminate at the end of the contractual period and that extension would depend upon the requirement of the management. His engagement was extended from time to

time. He was subsequently placed in a pay scale and posted at the Panipat Project.

7. Dharmender Kumar has a longer service history. He was engaged as Khalasi for six months with effect from 24th March, 1986 at the Kapurthala Project. His services came to an end when that project closed on 30th March, 1996. He was re-engaged at the Panipat Refinery Project with effect from 1st April, 1996, in the same pay scale, on a need basis.

8. Rajan Lal was engaged as Khalasi on a casual basis at the Panipat Refinery Project with effect from 26th November, 1993.

9. The common event concerning all five Petitioners occurred on 22nd April, 1999, when IRCON issued a closure notice stating that the IOC railway siding at Baholi had been completed and handed over, and that the Panipat undertaking would stand closed with effect from the afternoon of 23rd April, 1999. Consequently, the services of the workmen named in the accompanying list were to cease upon such closure. The notice further records that each workman had been individually informed, and that bank drafts had been tendered towards one month's salary in lieu of notice and compensation under Section 25-FFF(2) of the Industrial Disputes Act, 1947, along with other service dues.

10. The notice also contained a further stipulation. The workmen whose services stood discontinued were to be placed on a panel for preferential consideration for re-employment in Haryana, should IRCON thereafter secure work in that State and require personnel in the relevant categories.

11. In 1999, the Petitioners approached the Punjab and Haryana High Court seeking protection against the termination of their services upon completion of the Panipat project and, principally, a direction for

regularisation. In the alternative, they prayed that, if the project had come to an end, IRCON be directed to accommodate them in its other ongoing projects.

12. The writ petitions remained pending for several years. By order dated 5th September, 2017, the Punjab and Haryana High Court directed IRCON to consider the Petitioners' claim for regularisation and pass a reasoned decision thereon. Pursuant thereto, IRCON afforded the Petitioners an opportunity of hearing and thereafter passed separate impugned speaking orders dated 30th October, 2017.

13. By the said orders, IRCON rejected the claim for regularisation, holding that the Petitioners' services were terminated due to the completion of the Panipat project and that it was not possible to consider their case for regularization or continuation as there was no requirement for manpower in the skills possessed by them. These orders are the subject matter of challenge in the present writ petitions.

14. By the impugned orders, IRCON rejected the Petitioners' claim for regularisation or continuation, holding that their engagement was co-terminus with the Panipat Project and had come to an end upon its closure in April 1999. Reliance was placed on ***Lal Mohammad v. Indian Railway Construction Co. Ltd***.[1] The orders further record that the regularisation exercise undertaken in 2003 was confined to ad hoc and contractual employees who were then in service in ongoing projects or at the Corporate Office. Since the Petitioners had ceased to be on the rolls by then, they were held ineligible for consideration under the said exercise.

15. Following the issuance of the aforesaid speaking orders dated 30th

October, 2017, the Punjab and Haryana High Court, by order dated 8th November, 2017, disposed of the pending writ petitions while expressly reserving liberty to the Petitioners to challenge those orders in accordance with law. The Petitioners thereafter approached the Supreme Court by way of special leave petitions. However, on 9th March, 2018, counsel, on instructions, sought leave to withdraw the petitions, stating that the Petitioners intended to assail the speaking orders in appropriate proceedings. Recording the said statement, the Supreme Court dismissed the special leave petitions as withdrawn. The present writ petitions, thereafter, have been instituted to challenge the orders dated 30th October, 2017.

SUBMISSIONS

16. Counsel for the Petitioners places considerable emphasis on the manner in which the Petitioners were treated during their engagement. They were placed in pay scales, granted increments and other benefits, and some were transferred between IRCON projects. In Jagbali Pandey's case, reliance is also placed on the terms of appointment which subjected him to the Company's rules and made his services transferable to any office or project under its control. These incidents of service belie IRCON's characterization of the Petitioners as employees engaged exclusively for a particular project.

17. The Petitioners also assail the termination of their services upon closure of the Panipat Project on 23rd April, 1999, contending that their employment was not co-terminus with that project. They further rely upon the regularisation exercise undertaken by IRCON in 2003, alleging that

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[1] (2007) 2 SCC 51.

employees junior to them were retained and regularised, and contend that denial of similar consideration to them is discriminatory.

18. Considerable reliance is placed on ***Ircon International Ltd. v. Baikunth Nath Dubey***,[2] where the Allahabad High Court declined to interfere with an award of the Central Government Industrial Tribunal holding the termination void *ab initio* and directing reinstatement with full back wages. The Petitioners submit that the incidents of employment noticed therein, particularly placement in a pay scale and movement between IRCON projects, are equally present in their cases.

19. IRCON, on the other hand, maintains that the Petitioners were engaged for construction projects and that neither placement in pay scales nor inter-project transfers conferred upon them the status of employees of its regular establishment. Their services lawfully came to an end upon completion and closure of the Panipat Project. Principal reliance is placed on ***Lal Mohammad*** where the Supreme Court considered substantially similar conditions of engagement and rejected the claim of project employees to regularisation or continued employment in other projects.

20. As regards the 2003 regularisation exercise, IRCON submits that it was confined to ad hoc and contractual employees who were then on its rolls in ongoing projects or at the Corporate Office. The Petitioners, whose services had ceased in 1999, were therefore outside its scope. IRCON also relies upon ***Rameshwar Dayal v. IRCON International Ltd.***[3] and ***Anil***

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[2] 2005 SCC OnLine All 2686.
[3] 2011:DHC:1432.

Lamba v. Govt. of NCT of Delhi[4] on the limits of a claim to regularisation arising from temporary or contractual employment.

Issues

21. The dispute gives rise to three issues:

(i) whether the Petitioners acquired the status of employees of IRCON's regular establishment;

(ii) whether the termination of their engagement upon the closure of the Panipat Project was unlawful; and

(iii) whether the regularisation exercise undertaken by IRCON in 2003 vested in them any independent right to regularisation or continued employment.

Analysis

22. At the outset, it is noted that IRCON has raised a preliminary objection founded on the finality of the earlier proceedings. This Court, however, does not consider it necessary to rest its decision on that ground. The Punjab and Haryana High Court, while disposing of the earlier writ petitions, expressly reserved liberty to the Petitioners to challenge the speaking orders dated 30th October, 2017. Likewise, the Supreme Court, while permitting withdrawal of the special leave petitions, recorded that the Petitioners intended to assail those orders in appropriate proceedings. In these circumstances, it is appropriate to examine the challenge on its merits and the preliminary objection does not require consideration.

23. The first question, in the Court's view, stands substantially concluded by the decision of the Supreme Court in ***Lal Mohammad***. That case concerned employees engaged by IRCON for its Anpara and Rihand

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[4] 2017:DHC:1310.

Projects, who relied upon circumstances closely analogous to those pressed into service by the Petitioners in the present proceedings. They were placed in company pay scales, extended certain benefits available to regular employees, subjected to restrictions on taking up outside employment, and their terms of engagement envisaged transferability. Notwithstanding these features, the Supreme Court held that the determinative consideration was whether they had entered IRCON's regular establishment through the mode of recruitment prescribed under its Recruitment Rules. Since those Rules were binding upon the Company, appointment to the regular establishment could not be effected by circumventing the prescribed recruitment process.

24. This distinction is critical. A pay scale determines the manner of remuneration; transferability merely reflects the sphere within which an employee's services may be deployed. Neither factor, whether considered individually or collectively, establishes admission to IRCON's regular establishment. The source of such status must be traced to the mode of recruitment through which the employee entered service. It is precisely this inference that the Petitioners invite the Court to draw, and which ***Lal Mohammad*** unequivocally rejects.

25. The case of Jagbali Pandey represents the Petitioners' argument at its highest. By letter dated 19th May, 1988, he was placed in the pay scale of INR 260-400, made eligible for company allowances and other service benefits, rendered liable to transfer between offices and projects, prohibited from engaging in outside employment, and subjected, in residual matters, to the rules governing company employees. Viewed in isolation, these features do bear indicia of regular company employment.

26. The difficulty for the Petitioners, however, is that materially identical

terms were considered and rejected as determinative by the Supreme Court in ***Lal Mohammad***. The judgment reproduces the appointment letter issued to one Meghu Seikh on the very same date, namely 19th May 1988, containing the same essential stipulations relating to pay scale, service benefits, transferability, restrictions on outside employment, and application of company rules. The Supreme Court further noted that the appointment letters issued to the remaining employees followed the same pattern. Despite these features, it was held that such conditions did not establish induction into IRCON's regular establishment. The decisive consideration remained the absence of recruitment through the mechanism prescribed under the applicable Recruitment Rules.

27. There is, moreover, contemporaneous material relating specifically to Jagbali Pandey which substantially dispels the ambiguity sought to be attributed to the appointment letter of 1988. The posting order dated 06th August, 1996, transferring him to the Panipat Project, expressly records that he had been serving at Nandyal "on adhoc basis". The longevity of his engagement and his deployment across successive projects may well explain his perception of being part of IRCON's workforce. However, neither circumstance establishes induction into the Company's regular establishment in accordance with the Recruitment Rules.

28. The cases of Hans Raj and Ajay Kumar encounter an even more fundamental obstacle. Their appointment letters unequivocally describe the engagement as contractual, initially for a period of six months and extendable depending upon the requirements of IRCON. The subsequent extension of those engagements, or their placement in regular pay scales, cannot alter the source, character or legal basis of their appointments.

29. Dharmender Kumar's case warrants separate consideration because of the length of his association with the organisation. This circumstance, however, does not alter the position. His initial engagement at Kapurthala was temporary and project-specific, coming to an end upon closure of the project. His later employment at Panipat was not a continuation of regular service but a fresh engagement driven by project requirements. Likewise, a recommendation that his case be considered for regularisation could, at best, trigger a process of consideration; it could not, by itself, confer regular status or effectuate appointment to the permanent establishment.

30. Rajan Lal stands on even weaker footing. The material on record shows only a casual engagement at the Panipat Project. No document has been produced evidencing his recruitment to IRCON's regular establishment through the procedure prescribed under the applicable Recruitment Rules.

31. The factual histories of the Petitioners are not identical. However, the legal infirmity underlying each claim remains the same. In none of the cases is there any material demonstrating entry into IRCON's regular establishment through the recruitment process mandated by the applicable Recruitment Rules. Length of service, placement in pay scales, extension of tenure, or deployment across different projects may explain the continuity of their association with IRCON; they cannot supply the foundational requirement of lawful recruitment to the regular cadre.

32. The reasoning in ***Baikunth Nath Dubey*** does, to some extent, sit uneasily with the position subsequently articulated in ***Lal Mohammad***. This is particularly so because the Allahabad High Court treated placement in a pay scale and inter-project transfers as relevant to determining the nature of employment. There are, however, certain factual distinctions worth noting.

Dubey's contractual engagement for one year from 15th October, 1988 had expired long before his services were terminated. He also continued in service for five months beyond the asserted closure of the project and was ultimately retrenched on 31st August, 1991 on account of decrease in workload, rather than upon expiry of the contract or closure of the project. It was in this factual setting that the High Court rejected IRCON's reliance on the fixed-term nature of his engagement. In the present cases, the Petitioners' services were terminated upon the stated completion and closure of the Panipat Project.

33. In any event, ***Baikunth Nath Dubey*** cannot carry the Petitioners' case much further as a matter of precedent. IRCON challenged the judgment before the Supreme Court in Civil Appeal No. 5781/2007. While declining to interfere in the facts of that case, the Supreme Court expressly kept the question of law open and directed that the judgment of the Allahabad High Court would not operate as a precedent. Its reasoning must, therefore, remain confined to the facts of that case and cannot constitute a competing statement of law against the subsequent binding pronouncement of the Supreme Court in ***Lal Mohammad***.

34. A similar approach is reflected in ***Rameshwar Dayal***. In that case, this Court noted that, in the earlier round of litigation, the Division Bench had set aside the direction for Dayal's regularisation, and that decision was subsequently upheld by the Supreme Court. The Supreme Court had held that Dayal remained a temporary employee governed by the terms of his engagement, and that discontinuance of his services upon cessation of the project requirement was neither illegal nor arbitrary. A subsequent challenge to the termination was also rejected.

35. The same principle was applied in ***Anil Lamba*** where this Court, relying upon ***Kumar Mayank v. Delhi Technological University & Anr.***[5] and the other Supreme Court precedents, reiterated that contractual employees cannot claim regularisation merely on account of continuance in service. Public employment presupposes the existence of a sanctioned post, an available vacancy, fulfilment of the prescribed eligibility conditions, and recruitment through a process open to eligible candidates.

36. This brings the Court to the regularisation exercise undertaken in 2003. Office Order No. 483/2003 was not an exercise in blanket absorption. It applied only to identified Non-Technical Group 'C' ad hoc and contractual employees who had completed ten years of service in a pay scale as on 30th June 2003, were clear from vigilance and disciplinary angles, and had undergone scrutiny of their service records together with an interview for placement in a designated cadre. Those found eligible were regularised with effect from 1st July, 2003 and placed on probation.

37. Two difficulties arise with the Petitioners' reliance on Office Order No. 483/2003. First, their engagement at the Panipat Project had come to an end in 1999. Once that cessation is held to be lawful, the Petitioners cannot claim eligibility for the 2003 exercise on the assumption that they continued to remain in service thereafter. A right asserted under the 2003 regularisation policy cannot be founded on ignoring the legal consequences of the closure effected in 1999.

38. Secondly, the plea of discrimination is unsupported by a valid comparator. The Petitioners rely, in particular, upon Dhruva Raj Singh, stated to have been junior to them at the Panipat Project, who was retained

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[5] In W.P.(C) 10368/2016, decided on 10th November, 2016.

and subsequently regularised under Office Order No. 483/2003. The said Office Order, however, identifies him as Assistant (HRM). There is nothing on record to establish that he belonged to the same cadre as the Petitioners, occupied a comparable position, or was similarly placed in terms of eligibility and conditions of engagement. Mere comparative seniority, without establishing these essential similarities, cannot sustain a claim of discrimination under Article 14.

39. The third issue concerns the legality of the closure and its consequences. Here again, the matter is substantially governed by ***Lal Mohammad***. The Supreme Court held that, in the case of a construction undertaking, completion of the project brings the engagement of project employees to an end. While Section 25-FFF(2) preserves their entitlement to notice and compensation in accordance with Section 25-F, it does not confer a right to continue in service after the project itself has ceased to exist.

40. The Supreme Court further clarified that any deficiency in notice pay or compensation does not invalidate the cessation of employment consequent upon project closure. The consequence is monetary, not restorative: the deficiency must be made good, but the closure does not thereby become unlawful.

41. Equally untenable is the contention that, because IRCON executes projects at multiple locations, an employee engaged for one project acquires a right to absorption elsewhere. Relying on ***Hindustan Steel Works Construction Ltd. V. Employees' Union,***[6] the Supreme Court recognised the distinct character of construction establishments and held that neither common ownership nor the existence of transferability creates a right to

appointment in another project upon closure of the project for which the employee was engaged.

42. The provision in the closure notice for preferential consideration for future re-employment does not alter this position. It merely contemplated a preference if IRCON subsequently secured work in Haryana and required personnel in the relevant category; it did not confer a right to continued employment or absorption in another project.

43. The closure notice issued for the Panipat Project conforms to this statutory framework. It records completion and handing over of the railway siding, closure of the undertaking with effect from 23rd April 1999, and payment of notice pay and compensation under Section 25-FFF(2). There is no material to suggest that the closure was a sham or that the undertaking continued thereafter.

44. For the foregoing reasons, the cessation of the Petitioners' engagement consequent upon the closure of the Panipat Project on 23rd April, 1999 cannot be held unlawful. Equally, no legal basis exists for their claim to absorption in any other IRCON project. The claim for regularisation fails for the additional reason that none of the Petitioners was recruited to the regular establishment through the process prescribed under the applicable Recruitment Rules.

45. The only surviving issue concerns the monetary consequences of the closure. The closure notice dated 22nd April, 1999 records that one month's notice pay and compensation under Section 25-FFF(2), apart from salary, gratuity, leave encashment and other dues, were tendered to the workmen. However, the material presently available does not enable the Court to

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[6] (1995) 3 SCC 474.

conclusively determine, on a Petitioner-wise basis, whether the entire statutory entitlement was correctly computed and duly paid or tendered.

46. Accordingly, IRCON shall, within eight weeks, undertake a Petitioner-wise verification of the notice pay and compensation payable as on 23rd April, 1999 under Section 25-FFF(2) read with Section 25-F. Due credit shall be accorded for all amounts already paid or validly tendered, and a computation sheet shall be furnished to each Petitioner.

47. Where the record establishes that the full statutory amount was duly tendered in 1999 but remained uncollected, IRCON shall take appropriate steps for revalidation or release of the amount, as may be required. In such cases, no interest shall be payable for the intervening period.

48. However, if any part of the statutory notice pay or compensation due on 23rd April, 1999 was neither paid nor tendered, or was deficiently computed, the shortfall shall be released to the concerned Petitioner together with simple interest at 6% per annum from the date it became due until actual payment. This direction is confined to the statutory consequences of closure and shall not be construed as recognising any right to continuity of service, reinstatement, back wages or regularisation.

49. It is undisputed that all the Petitioners have since crossed the age of superannuation. Consequently, no question of reinstatement survives. More fundamentally, there is no legal basis to treat the Petitioners as having remained in service after 23rd April, 1999 or to grant any consequential service, monetary or retiral benefits on that footing.

50. The speaking orders dated 30th October, 2017, therefore, warrant no interference. The prayers for reinstatement, continuity of service, back wages and regularisation are rejected.

51. W.P.(C) 8118/2018 and W.P.(C) 152/2019 are accordingly dismissed, subject to the directions contained herein regarding verification and payment of any outstanding statutory dues under Section 25-FFF(2) read with Section 25-F of the Industrial Disputes Act, 1947.

SANJEEV NARULA, J

AUGUST 10, 2026
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