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SLP(C)No. 17900 OF 2000

ITEM No.34

Court No. 3

SECTION XIV  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.17900/2000  
(From the judgement and order dated 16/05/2000 in LPA 102/98  
of The HIGH COURT OF DELHI AT N. DELHI)

IRCON INTERNATIONAL LTD.

Petitioner (s)

VERSUS

DAYA SHANKAR & ANR.

Respondent (s)

(With prayer for interim relief)

Date : 10/09/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. KIRPAL  
HON'BLE MR. JUSTICE N. SANTOSH HEGDE  
HON'BLE MR. JUSTICE S.N. VARIAVA

For Petitioner (s) Mr. Jaideep Gupta, Adv.  
Mr. Sanjay Sen, Mr. Rana S Biswas and  
Ms. Indra Sawhney, Advs.

For Respondent (s) Mr. M.C. Dhingra, Adv.

UPON hearing counsel the Court made the following  
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....T.....J.R

Special leave granted.

For the reasons stated in the signed order, this  
appeal is allowed and the impugned orders of the High  
Court are set aside.

(D.P. WALIA)  
Court Master

(S.L. GOYAL)  
Court Master

(Signed Order is placed on the file)

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.....L.....I.....T.....T.....T.....T.....T.....T.....T.....T.....J.R  
.PL60

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2001@@  
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[arising out of S.L.P.(C) No.17900 of 2000]

IRCON International Ltd. ..Appellant(s)

vs.

Daya Shankar & Anr. ..Respondent(s)

O R D E R@@  
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.SP2

Special leave granted.

The respondent, as is evident from the facts which emanate from the record, was appointed in a project of the appellant, namely, the Ballast Project of the Northern Railways. He was appointed as a Khalasi and no formal letter of appointment was issued. In 1988 he was transferred to the Head Office and by Memo dated 29th June, 1992 he was informed that his services were no longer required but he was paid compensation as per the provisions of the Industrial Disputes Act, 1947.

The respondent filed a writ petition before the High Court. Before the High Court, an order of this Court dated 2nd May, 1997 in the case of Sufal Jha & Ors. vs. U.O.I. & Ors. was referred to. That was a case where certain persons working at the projects were sought to be retrenched and on concession it was directed that there will be an offer of appointment to those of the petitioners whose names figure on the panel to be prepared and they would be offered ....2/-

:2:

appointments in any of the project in Madhya Pradesh as and when the vacancies arise.

It will be seen that in the said order of 2nd May, 1997, this Court did not regard the petitioners therein as having been appointed regularly or on permanent basis. There was only an undertaking given by the appellant herein to give employment to those petitioners as and when the vacancies arise.

In the instant case, however, the Single Judge issued the following directions:

.....L.....I.....T.....T.....T.....T.....J....T.R  
.SP1

"Consistent with the direction issued by the Supreme Court, the second respondent shall also prepare a list along with the list prepared or to be prepared including the name of the petitioner, according to the records, which would show the first appointment of the petitioner in the second respondent and as per the seniority, the petitioner shall be accommodated in any one of the projects of the respondent company. The second respondent shall consider the petitioner as a permanent employee in the second respondent company and his services shall not be disposed

with unless he is found to be a junior most in the list and if there are no vacancy in any one of the projects of the second respondent."

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J.R

.SP2

This decision has been upheld by the Division Bench.

We do not find any basis for the Single Judge to have given the directions mentioned hereinabove. The earlier order of this Court dated 2nd May, 1997 in Sufal Jha's case was on a concession. That apart, to consider the respondent as a permanent employee was clearly going beyond the aforesaid ...3/-

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order of 2nd May, 1997. Even in Sufal Jha's case, there was no direction to pay arrears by deeming the employee to be in service continuously. The directions given by the Single Judge in this case and affirmed by the Division Bench do not flow from the order in Sufal Jha's case.

As a matter of principle, when employee is appointed on a project and for the duration of that project, the question of his services continuing automatically thereafter do not arise. Mr. Jaideep Gupta, learned counsel for the appellant states that despite retrenchment compensation having been paid the appellant will as far as possible apply the directions contained in this Court's order in Sufal Jha's case and as an when a vacancy arises the respondent will be considered for appointment. Apart from this, no other relief can be granted to the respondent.

For the aforesaid reasons, this appeal is allowed and the impugned orders of the High Court are set aside. As and when a vacancy arises, the respondent will be considered in accordance with seniority.

.SP1

.....J.  
(B.N. KIRPAL)

.....J.  
(N. SANTOSH HEGDE)

.....J.  
(S.N. VARIAVA)

New Delhi;  
September 10, 2001.