

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

NO. E(LL)2006/AT/NRE/1

New Delhi dated: 23-6-2006

The General Managers,
All Indian Railways/Production Units, Metro Railway, Kolkata, RE, Allahabad.
The General Manager (Construction) N. F. Railway, Guwahati.
The Director General and Ex-Officio General Manager, RDSO/Lucknow.
The Chairman, Railway Recruitment Board, Ahmedabad, Ajmer, Allahabad,,
Bangalore, Bhubaneswar, Bhopal, Chandigarh, Chennai, Ferozepur, Gorakhpur,
Guwahati, Kolkata, Malda, Mumbai, Muzaffarpur, Patna, Ranchi, Trivandrum.
The CAO(Const.), Central, Eastern, North Eastern, South Central, South Eastern
Railway, Bhubaneswar, South East Central Railway, Bilaspur, Northern Railway,
Kashmere Gate, New Delhi.
The CAO, COFMOW, Tilak Bridge, New Delhi.
The Director General, Railway Staff College, Vadodara, The Director, IRISSET,
Secunderabad, IRICEN, Pune, IREIM & EE, Jamalpur, IRIEEN, Nasik.
The Director, Rail Movement, Kolkata.
The Secretary, Railway Rates Tribunal, Chennai.
The Railway Liaison Officer, New Delhi.
The Joint Director, Iron & Steel, 3 Koilaghat Street, Kolkata.
The General Secretary, IRCA, Building, New Delhi.
The Chief Mining Adviser, Ministry of Railways, Dhanbad.
The Managing Director, Centre for Railway Information System, Safdarjung,
Chanakya Puri, New Delhi.
The CAO/MTP, Mumbai, Kolkata and Chennai.
The Chief Project Manager, Railway Electrification, Bhubaneswar,
Vishakhapatnam, Ranchi and Danapur.
The Managing Director, DMRC, NBCC Place, Bhisma Pitamah Marg, Pragati Vihar,
New Delhi.

**Sub: Honourable Supreme Court's Judgment dated 10.4.2006 in
Civil Appeal No. 3595-3612 of 1999, 1861-2063 and 3849/
2001, 3520-24/2002 and 1968/2006 (Arising out of SLP(C)
9103-9105 of 2001) regarding regularization of person
employed temporary, casual or on contract basis.**

A copy of judgment dated 10.4.2006 delivered by Honourable Supreme
Court of India along with summary of the judgment is sent herewith for
information and guidance.

Please acknowledge receipt.

DA: As above.



(B. Majumdar)
Director Establishment (LL)

No. E (LL) 2006/AT/NRE/1

New Delhi, Dated: 23.6.2006

The General Secretary, AIRF, NFIR (10 spares).
The Secretary General, IRPOF, FROA, AIRPFA (2 spares)



(B. Majumdar)
Director Establishment (LL)

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Summary of the judgement

The Five Judge Bench presided by the Honourable Chief Justice of India Shri Y.K. Sabharwal have ruled as follows (Some of the important portions of the judgement have been reproduced in verbatim which explains the view of the Honourable Supreme Court) :-

1. "Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf."
2. "Thus, any public employment has to be in terms of the constitutional scheme."
3. "It is time, that Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance, tends to defeat the very Constitutional scheme of public employment."
4. "There may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently."
5. "There is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation."
6. "And the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed."
7. "Can the court impose on the State a financial burden of this nature by insisting on regularization or permanence in employment, when those employed temporarily are not needed permanently or regularly? "
8. "The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight."
9. "The court ought not to impose a financial burden on the State by such directions"
10. "It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the

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strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules."

11. "High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme."
12. "It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open."
13. "It would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible."
14. "A total embargo on such casual or temporary employment is not possible, given the exigencies of administration."
15. "When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post."
16. "There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service."
17. "There may be cases where irregular appointments as explained in of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date."

Note : The summary is enclosed only for guidance. Before deciding/contesting cases on the basis of the above cited judgement, the Railways must invariably seek Legal Opinion.