IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn.No.OA 78/1987 Date of decision: 16.3.1990.

Shri Beer Singh ....Applicant

Vs.

Union of India & Others ....Respondents

For the Applicant ....Shri Malik B.D. Thareja, Counsel

For the Respondents ....Shri O.N. Moolri, Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporters or not? Yes

(The judgment of the Bench delivered by Hon'ble Shri P.K. Kartha, Vice Chairman(J)).

In a batch of applications filed under Section 19 of the Administrative Tribunals Act, 1985 and suits and writ petitions which stood transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985, questions as to whether casual labourers are entitled to any relief on the ground that they had allegedly abandoned service and whether their applications are barred by limitation, have been raised. It will be convenient to deal with the legal position in this regard in this judgment which deals with the application filed by Beer Singh. The other cases will be disposed of in the light of the legal position set out herein.

2. The legal position in regard to abandonment of service as enunciated by the Supreme Court may be briefly mentioned at the outset.

(1) Referring to the meaning given in the various dictionaries, the Supreme Court observed in G.T. Lad Vs. Chemical and Fibres of India Limited, 1979 SCC(L&S) 76 at 80 that it must be voluntary relinquishment and that it must be total and under such circumstances as clearly to indicate an absolute relinquishment. The failure to perform the duties pertaining to the office must be with actual or imputed intention, on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Temporary absence is not ordinarily sufficient to constitute an abandonment of office.

(2) In Buckingham & Carnatic Company Vs. Venkatiah, AIR 1964 SC 1272 at 1275, the Supreme Court observed that abondonment or relinquishment of service is always a question or intention, and, normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. But where parties agree upon the terms and conditions of service and they are included in certified Standing Orders, the doctrine of common law or considerations of equity, would not be relevant. Whether there has been any voluntary abandonment of service or not is to be determined in the light of the surrounding circumstances of each case.

(3) In M/s Jeewanlal (1929) Limited Vs. Its Workmen, AIR 1961 SC 1567 at 1569, it was observed that if an employee continues to be absent from duty without obtaining leave and in an unauthorised manner for such a long period of time that an interence may reasonably be drawn from such absence that by his absence he has abandoned service, then such long unauthorised absence may legitimately be held to cause a break in the continuity of service. It would also be a question of fact to be decided on the circumstances of each case whether or not a particular employee can claim continuity of service for the requisite period.

3. In G. Krishnamurthy Vs. Union of India & Others, 1989(9) ATC 158, the Madras Bench of this Tribunal observed that in the case of abandonment of service, the employer is bound to give notice to the employee calling upon him to resume his duty and also to hold an enquiry before terminating his service on that ground. The Tribunal followed the decision of the Bombay High Court in Gauri Shankar Vishwakarma Vs. Eagle Industries(P) Ltd., 1988(1) LLN 259.

4. Thus the question whether a casual labourer has abandoned service or not would depend on the facts and circumstances of each case. The employer is bound to give notice to the employee in such cases calling upon him to resume his duty. In case the employer intends to terminate his services on the ground of abandonment of service, he should hold an inquiry before doing so.

5. As regards the plea of limitation, the position would depend on whether the impugned order is void ab initio or not. If it is void ab initio, the application will not be barred by limitation. In this context reference may be made to the decision of the Supreme Court in The State of M.P. Vs. Syed Qamarali, 1967 SLR 229 at 234. In that case, the Supreme Court observed that the order of dismissal of an employee had been made in breach of a mandatory provision of the relevant rules and was totally invalid. Such an order had no legal existence. The Supreme Court rejected the defence of limitation raised by the appellant on that ground. A similar view was taken by the Supreme Court in Mohinder Singh ex-patwari Vs. Punjab State, 1977 SLNR 447. The decision of the Mysore High Court in State of Mysore Vs. Boramma, 1971(1) SLR 801 and of the Punjab and Haryana High Court in State of Punjab Vs. Ram Singh, 1986(3) SLR 379 are also to the same effect.

6. In the light of the aforesaid legal position, we may consider the facts of the applicant before us and whether he is entitled to the reliefs sought by him.

7. The applicant was appointed as a casual labourer on 18.8.1977 which is borne out from the casual labour card, photocopy of which has been produced at pages 21 to 28 of the Paper-Book. Upto 31.12.1983 he has worked for a total period of 529 working days. He had completed continuou working of more than 120 days during this period and he became eligible for payment of wages under the CPC Scale and

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and acquired status of a temporary employee. After a gap of 2 years he was again appointed on 15.7.1985 and again discharged on 14.8.1985. He has prayed that the respondents be directed to restore him to duty without considering the artificial break in his working, and that he be paid salary for the period during which he was not allowed to work.

8. The respondents have resisted the above claim in their counter-affidavit. According to them, he could not have been appointed after a gap of more than 2 years. They contend that he did not turn up for appointment on Ist and 15th of each month from 15.2.1983 to 28.5.1985. Vacancies were in existence during the years 1983 & 1984 to accommodate him. In July, 1987 there was a vacancy and he was appointed but he was discontinued on 14.8.1985 on the ground that "no casual labour can be engaged further". The respondents have not denied the averment made by the applicant that he had acquired temporary status. There is also no evidence of any notice of termination given to the applicant or any retrenchment compensation given to him.

9. We have carefully gone through the records of the case and have heard the learned counsel of both parties. Admittedly, the applicant has acquired temporary status after he had put in 120 days of continuous service. Railway Board's Circular No.220-E/190-VIII (E-IV) dated 21.3.1974 refers to the earlier circular dated 12.7.1973 wherein the Railway Board had decided that casual labour other than those employed on Projects should be treated as temporary after the expiry of 4 months continuous employment,

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instead of 6 months as existed previously. The respondents have not produced any evidence to substantiate their contention that the applicant did not turn up for appointment on Ist and 15th of each month from 15.2.1983 to 28.5.1985. They have also not indicated as to why a notice was not issued to him calling upon him to resume his duty. No notice of termination of service was also issued to him.

10. According to the Railway Board's instructions contained in their letter No.E(NG)II/80/CL/25 dated 2.4.1981, " the gap between the two spans after 21.10.80 may be condoned, if the gap is due to discontinuance of a casual labour on completion of work or for non-availability of further productive work. In case, the job is available and the retrenched casual labour on having been summoned, does not resume duty, the previous spell will not be counted and service will start fresh. Gaps to be condoned in terms of 21.10.80 orders are not subject to any time limit. The service in one unit is not taken into account if the incumbent joins another seniority unit after completion of the work in the former unit".

11. According to the Railway Board's letter No.E(NG)II/80/CL/5 dated 4.9.1980, "instructions already exist that due to a sizeable number of casual labourers having had to be discharged due to completion of works, shrinkage of budget etc., every effort should be made to reengage them as and

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when vacancies arise on the basis of their length of service and good conduct. Complaints have, however, been received that while engaging casual labour, the old ones, who have already worked for more days, are being ignored and fresh ones or who have put in less days of service are engaged on projects as well as on open lines. The Ministry of Railways have desired, that while engaging casual labour, preference should invariably be given to those who have already worked for more days as casual labour on open lines as well as on projects".

12. According to the Railway Board's letter No.E(NG)II/80/CL/25 dated 14.5.1984, "prior to 2.10.80, if a casual labourer was discharged due to completion of work or non-availability of further productive work, it was treated as constituting an interruption for purpose of reckoning continuous employment. After 2.10.80 termination of service on account of completion of work due to non-availability of productive work does not constitute such interruption of continuous employment. In other words, where a casual labourer is discharged from service after 2.10.80 on completion of work or due to non-availability of further productive work and employed later when the work is available, the previous spell of service as casual labour is reckoned as continuous with the subsequent spell of service in the manner clarified in this Ministry's letter dated 2nd April, 1981".

13. In the light of the forgoing discussion, we are of

the opinion that the disengagement of the services of the applicant is not legally sustainable. There is no evidence on record to indicate that the applicant voluntarily abandoned the service as alleged by the respondents. We, therefore, order and direct that the respondents shall appoint the applicant as casual labourer in the zone in which he was working, failing which anywhere else in India depending on the availability of vacancies and that he should be given all the benefits and privileges to which a casual labourer acquiring temporary status is entitled to.

14. In the facts and circumstances of the case, we do not make any order as regards payment of back wages to the applicant. The service put in by him from 18.8.1977 onwards will count for his seniority as casual labourer.

15. The respondents shall comply with the above directions within a period of three months from the date of communication of this order.

The parties will bear their own costs.

(D.K. CHAKRAVORTY)
MEMBER (A) 16/3/1990

16/3/90
(P.K. KARTHA)
VICE CHAIRMAN(J)