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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 2 of 1986 (T)

(C.A. No. 182 of 1982)

Union of India & OthersAppellants-Defendants

Versus

Raghghoo Plaintiff-Respondent

Hon.S.Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

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Civil Appeal No. 182 of 1982 Union of India and Others Versus Raghghoo has been received on transfer from the Court of District Judge, Allahabad. The appeal is against the judgement and decree dated 22.9.1981 decreeing the suit No. 933 of 1979. The grounds of appeal are that the injunction application of the plaintiff was rejected and so the immunity for grant of ^{33 exempta work} Section 80(2) C.P.C. came to an end and notice was not served, therefore the suit was not maintainable. Also it was clearly admitted by the plaintiff that he did not join the duty from 6.12.79 and he gave no explanation for not joining duty. Therefore it was a clear case of unauthorised absence and the trial court mis-interpreted his statement. No notice or compensation was needed to be paid to an unauthorised absentee but the trial court held it otherwise and mis-interpreted the provisions of.

the Indian Railway Establishment Manual. No threatening or removal has ever been given by the appellant but the trial court committed a patent ^{38 in holding} illegality ^{22 was} that the suit ~~is~~ not pre-mature and therefore the findings of the trial court were against the established principles of law and the evidence on record.

2. The case of the plaintiff-respondent is that he was appointed in 1958 and was substantively posted as a Railway Khalasi on 19.11.77. According to him after one year's service he acquired a lien on the post and became confirmed. He filed the suit on the plea that the appellants-defendants were adamant to remove him from the service with a view to appoint their own man. inspite of his performance having been satisfactory and therefore he was being condemned unheard. Since sudden removal of the plaintiff-respondent from service shall cast an aspersion on his professional ability specially when several junior persons of his category were being allowed to continue, it shall be punitive in nature and will be hit by Article 311 of the Constitution, that he is entitled to a notice of termination or pay in lieu of notice before terminating his service and that he has not ^{yet} been communicated any order of removal or termination and is continuing. He has learnt that he will

be removed from service. He, therefore, prayed that the appellants-defendants be restrained by means of a permanent injunction from removing the plaintiff from service and it be declared that the termination of the service of plaintiff-respondent is illegal, inoperative and without jurisdiction.

3. The appellants-defendants case is that the plaintiff was appointed as a casual Gangman on 20.11.77. He attained temporary status but he was never appointed against regular post. The principles of confirmation after continuous working of 18 months in a post apply to empanelled regular employees and it was not applicable in the plaintiff-respondent's case and they were ³⁴ not ³⁵ adamant to remove the plaintiff-respondent from service. ³⁶ but ³⁷ The fact was that he ³⁸ was physically so weak and old that he ³⁹ was unable to perform his duties with the result that he ⁴⁰ was absconding from duty w.e.f. 6.12.79. Earlier he had reported sick from 12.11.79 to 5.12.79. When he was asked to present himself before the Railway ⁴¹ Doctor ~~Board~~ for medical examination he absconded from duty w.e.f. 6.12.79 onwards and he is on unauthorised absence till today. In such cases no notice was required to be given for termination of service as the termination is ip so facto and not on account of any act of the appellants-defendants. The question of communication of any order ⁴² of removal or termination also did not arise and he can be taken back in service in accordance with the rules.

4. The learned Munsif had held that the appellants-defendants had not been able to prove that the plaintiff-respondent had absented himself. According to the plaintiff-respondent he had been regularly working on the post of a Gangman but he fell sick and when he reported back after taking a fitness certificate he was not taken on duty and on the principles of un rebuttal the statement of the plaintiff-respondent was liable to be accepted. The appellants-defendants have also failed to produce any paper to show that the plaintiff-respondent did ³not absent for 20 days. It was due to non-production of any documentary evidence that the learned Munsif arrived at a conclusion that the plaintiff respondent, who had attained temporary status, was due to receive a notice for his discharge and since no notice was given, the termination of the service was illegal and void and on the basis of principles of natural justice he decided that the plaintiff respondent was entitled to remain in service of the appellants-defendants.

5. There is a medical certificate which is placed ³at ^{paper} 12-C where the Doctor had recommended 10 days medical leave w.e.f. 12.11.79. There is another certificate from the Asstt. Divisional Medical Officer, Northern Railway, Health Unit, Naini

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dated 11.12.1979 which says that the plaintiff respondent was sick and under treatment from 12.11.79 to 11.12.79 and he is now fit to attend his duties. It can, therefore, not be said that the plaintiff respondent absconded from duty w.e.f. 6.12.1979.

34 6. Our attention has also been drawn to paper 13-C which is a letter from PWI Allahabad addressed to PWI grade III Special, Allahabad in which it has been said that as the plaintiff-respondent appears to be more than 50 years of age and whereas he has written his age much less than his actual age as per orders of AEN Allahabad, he is brought to daily rates w.e.f. 6.12.79 and will continue till he produces a bonafide age proof other than ³⁴the ³⁴an affidavit. The plaintiff-respondent had attained temporary status and unless there was a break in his service which could not be condoned, he could not have been brought on daily scales of pay after having attained temporary status by such a simpliciter order. This order was, therefore, definitely ³⁴out of ³⁴be on jurisdiction and incorrect.

7. We have heard the learned counsel for both parties. The learned counsel for appellants-defendants Shri G.P. Agarwal maintained his contention that the plaintiff-respondent will be taken back on duty the moment he produces his age particulars. According to him even after the suit was decided in

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his favour the plaintiff-respondent has not cared to report for duty and the appellants-defendants are prepared to take him back on duty the moment he reports. According to the learned counsel for the appellants-defendants it is only because the plaintiff-respondent is physically unfit and too old to work that he is avoiding to report for work.

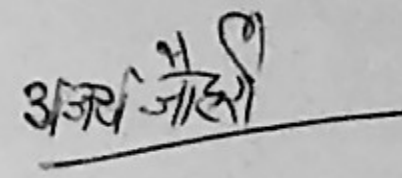
38 8. No papers have been produced by the plaintiff-respondent to show that he was not taken back on duty ^{when he reported on 11.2.79} or that his services have been terminated. There is also no evidence available to conclude that he was stopped from joining duty by the appellants-defendants. The plaintiff-respondent had in no stage made any representation to any superior authority that he was being terminated on flimsy grounds. He filed the suit on the plea that he was apprehending termination of his employment. The appellants-defendants have categorically ^{& maintained} ~~said~~ that they have not terminated his employment and that he absconded on his own. It, therefore, appears that this is a case of comedy of ^{& misunderstanding} ~~errors~~ and taking the appellants-defendants on their words, we see no force in the arguments being advanced by the learned counsel for the plaintiff-respondent that his services have been terminated illegally.

39 There is no termination order on record. 38

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9. On the above considerations we order that the plaintiff-respondent will report back to duty immediately and his absence will be condoned and his temporary status will continue from the date he decides to report back on his job. He will not be entitled for any payment for the period of his absence from 12.11.1979 onwards till the date he reports back. We do not think that the question of illegal termination due to lack of notice arises in this case as no documentary evidence ^{of termination} is available on the file. The decree and judgement of the learned Munsif is modified in these terms and the appeal is rejected. Parties will bear their own costs.


V.C.


A.M.

Dated the 21st Jan., 1987

RKM