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Reserved

Central Administrative Tribunal, Allahabad.

Registration No. T.A.-19 of 1986.

Tahammul Husain ..... Appellant

Vs.

Union of India and
3 others ..... Respondents.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This civil appeal (no.223 of 1984) against the judgement and decree dated 1.3.1984 passed by X Additional Munsif, Allahabad dismissing suit no.135 of 1981 for a declaration, has been received by transfer from the Court of III Addl. District Judge, Allahabad under section 29 of the Administrative Tribunals Act XIII of 1985.

2. The facts giving rise to this appeal are that the appellant Tahammul Husain had joined the railway department as a casual labour in 1976 and from 15.2.1978, he continuously worked in the department upto 14.4.1980. It is alleged by the appellant that he thereby acquired the status of a class IV temporary employee of the railway department but his services were wrongly terminated w.e.f. 15.2.1980 by the defendant-respondents. According to him, one Vinod Kumar, who was junior to the appellant was still working when his services were terminated and thereby respondents

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acted in contravention of Art.14,16 and 311(2) of the Constitution of India. After giving a notice under section 80 Code of Civil Procedure, he accordingly filed a suit for declaration that the termination of his services was illegal, in-operative and without jurisdiction and he continued to be in the service of the defendant-respondents.

3. The respondent no.1 is the Union of India. Respondent no.2 is Divisional Railway Manager and respondent no.3 is Divisional Engineer, Northern Railway, Lucknow while respondent no.4 is Assistant Engineer, Northern Railway, Prayag. The suit was contested by the respondents and in the joint written statement filed on their behalf, it was pleaded by them that the appellant was engaged as a daily rated casual labour by Permanent Way Inspector (in short PWI) (special) Unchahar of Northern Railway on 7.7.1976 on a project to complete the track renewal under the control of the respondent nos. 1 to 3 and with breaks he worked upto 14.5.1978. Thereafter, he continuously worked ~~in~~ in the project from 15.11.1978 to 14.4.1980 in the same capacity under various TLRs. He, however, never worked under respondent no.4. The appellant had not acquired the status of a temporary employee. The project in which the appellant was working under various TLRs was sanctioned only upto 15.4.1980 and his services automatically came to an end on the expiry of the period of sanction. Vinod Kumar is now no more working as a casual labour. The suit as

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filed by the appellant is not triable by the trial Court. No part of cause of action arose under the territorial jurisdiction of the Munsif in whose Court, the suit was filed and as such, theCourt had no jurisdiction to try it. The suit is bad for want of notice under section 80 CPC and it merits dismissal.

4. The parties had produced oral and documentary evidence in this case and the learned Munsif after considering the evidence of the parties held that the appellant had acquired the status of a temporary railway employee and the order of termination of his service is illegal and beyond the powers of the respondents. It was further held that this suit was not triable by the Munsif as no cause of action arose within the jurisdiction of Munsif Allahabad and as such, no relief can be granted to the appellant though he had otherwise established his claim. The suit was accordingly dismissed and the parties were directed to bear their own costs. Aggrieved by the findings on the question of jurisdiction, the plaintiff-appellant had filed the present appeal, which has now come up before us under the changed law.

5. The main question arising for determination in this case is whether the Munsif Allahabad in whose Court the appellant had filed the suit, had jurisdiction to try it. Our attention was drawn on behalf of the appellant on the address of respondent no.4 and it was contended that the respondent no.4 is posted at Prayag within the jurisdiction of Munsif Allahabad and as he

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had actually terminated the services of the appellant, the Allahabad Court had jurisdiction to try this case and the learned trial Court wrongly decided this fact against him. On the other hand, the contention of the respondents is that the respondent no.4 had nothing to do with the employment of the appellant and he had not terminated his services and as the appellant was working at Unchahar situated in district Rae Bareli, only the Munsif at Rae Bareli had jurisdiction in the matter.

6. A perusal of the plaint shows that it was drafted very cautiously and the appellant deliberately did not like to disclose as to where he was working at the time his services were terminated. He also did not disclose the name and designation of the officer by whom he was appointed as a casual labour and had taken work from him continuously from 15.2.1978 to 14.4.1980. In paragraph 3, it was ofcourse alleged that his services were terminated by defendant no.4. In paragraph 9 relating to cause of action, it was pleaded by the appellant that the cause of action arose on 15.2.1980 when the services of the appellant were illegally terminated by defendant no.4 and as the defendants have got their permanent establishment and carry on their business at Prayag through defendant no.4, the Court had jurisdiction to try the suit. But respondents had, however, come to the Court with the specific allegation that the appellant was engaged as a daily rated casual labour on 7.7.1976 by PWI (Spl.), Unchahar, Rae Bareli and his services were not terminated by defendant no.4 but his

engagement stood automatically discharged on 15.4.1980 on the expiry of the sanction. It was further pleaded that the respondent nos. 1 to 3 have no office at Prayag. The appellant Tahammul Hussain had examined himself as P.W.1 and it was stated by him that from 1976 till 14.4.1980, he had worked as a Watchman and from 15.2.1978 to 14.4.1980, he had worked regularly in the railway department and he was removed from service by the Assistant Engineer, Northern Railway-respondent no.4 without giving him any notice or salary in lieu of it. It was further stated by him that his junior Vinod Kumar was still working in the railway department at the time of the termination of his services. In his cross-examination, it was stated by him that he was working under respondent no.4 and his duty was allotted by him. It was further stated by him that the record of his service as casual labour is available and in the beginning he had worked under the PWI (Spl.), who was under the Assistant Engineer, Prayag. It was also stated by him that he did not get any appointment order nor any other order in writing regarding his allotment of duties from time to time. Without any plea, it was also suggested to him in his cross-examination on behalf of the respondents that the appellant himself had abondoned his work.

7. On behalf of the respondents, one Sharda Prasad Upadhyay was examined as DW 1 and it was stated

by him that he was posted as PWI at Unchahar since 1979 and the appellant had worked under him as a casual labour. The appellant was engaged for a specific period. He had worked regularly as a casual labour from 15.11.1978 to 14.4.1980 under different TLAs. It is also in his statement that the appellant never worked under respondent no.4. The attendence of the appellant was marked in the muster roll and his signatures were also obtained therein. The last leg of the employment of the appellant was sanctioned by the Assistant Engineer, Northern Railway, Lucknow and it was also terminated by him.

8. In his cross-examination, it was stated by this witness that he is working on the post of PWI (Special) from 1981. This post was not formerly under the Assistant Engineer, Prayag but it was placed under him from Aug.1980. It is also in his statement that he came under the respondent no.4 after Aug.1980. He could not deny the fact that Vinod Kumar, who was junior to the appellant, was still working at Unchahar on 14.4.1980 when the services of the appellant were terminated. He denied the suggestion that the plaintiff had acquired the status of a temporary railway employee and he was removed by respondent no.4.

9. Ex.8 on record is the record of service of the appellant as casual labour. It shows that at the time of his appointment in 1978, the appellant was posted under PWI (Spl.),Northern Railway, Unchahar. He worked

from 15.2.1978 to 14.4.1980 as a Watchman and even at the time of the termination of his services, he was posted under PWI (Spl.) Northern Railway, Unchahar. The appellant thus had not filed any document to show that his services were terminated by respondent no.4 or he had ever worked under him. According to Sri Sharda Prasad Upadhyay, PWI, Unchahar was not under respondent no.4 upto Aug. 1980 and only after that he came under the respondent no.4. The appellant who was undisputedly working under PWI, Unchahar, thus, could not be under the respondent no.4 in April 1980 when his services were terminated and we are unable to believe the oral testimony of the appellant that without any jurisdiction or concern, the respondent no.4 had terminated the services of the appellant in April, 1980. We, therefore, agree with the contention of the respondents that the respondent no.4 had nothing to do in the matter of the employment of the appellant and he seems to have been impleaded in this case merely to confer jurisdiction on Allahabad Court.

10. Section 20 of the Code of Civil Procedure lays down that subject to the limitation prescribed by Sections 15 to 19 CPC, every suit shall be instituted in a Court within the local limits of whose jurisdiction the defendant, or each of the defendants at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, or the cause of action, wholly or in part, arises. In our opinion,

in the case of the Government or any department of the Government, the defendant should be deemed to carry on the business at the place its principal office is situated or the cause of action arises. So far as the applicability of clauses (a) and (b) of Section 20 CPC is concerned, the respondent nos. 1 to 3 did not have their principal office at Allahabad nor the cause of action arose to the appellant for filing the suit at Allahabad. The appellant was neither engaged by any railway officer posted at or in the district Allahabad nor the services of the appellant were terminated by such officer and as such the Allahabad Court had no jurisdiction to try the case of the appellant and the mere fact that the respondent no.4 has his office at Allahabad is immaterial in this case as he had no control over the PWI Unchahar and the casual or other employees working under him before Aug. 1980. We, therefore, agree with the finding recorded on the question of jurisdiction by the learned Munsif in this case.

11. We are, however, of the view that the learned trial Court after deciding the issue no.2 regarding validity of the order of termination of the services of the plaintiff, should not have dismissed the suit merely for want of jurisdiction and should have passed an order under Order VII Rule 10 of the CPC to return

the plaint to the plaintiff for presentation to the proper Court. We are, therefore, unable to maintain the order of dismissal of the suit.

12. We have not been addressed on behalf of the parties on the question as to what should be done in this case now. Had there been no change in the law, the appellate Court should have ordered the return of the plaint to the plaintiff for presentation to the proper Court. This is now not possible because the plaint can be returned to the plaintiff but the Munsif at Rae Bareli will not entertain the plaint as he has now no jurisdiction to try any case relating to service matters of the Central Government employees. Unless he entertains the plaint, the same cannot stand transferred to the Tribunal and as such, the plaintiff-appellant will have no remedy for the wrong alleged to have been done to him. We further feel that ultimately the case will have to come to the Tribunal even if the plaint is returned to the plaintiff and on being presented to the Munsif Rae Bareli it is entertained. So we will not like to have this futile exercise merely on technical ground. As the ultimate jurisdiction remains with the Tribunal, we would like to decide the case finally inspite of the fact that the trial Court had no jurisdiction to try the case.

13. Coming to the merits of the case, we find that out of 5 issues, the issue no.1 regarding valuation and court fee, has been decided in favour of the plaintiff. Issue no.2 to the effect "whether the termination of the services of the plaintiff is illegal, inoperative and without jurisdiction" has also been decided in favour of the

plaintiff. Issue no.4 regarding the suit being defective for want of a notice under section 80 CPC has also been decided against the respondents but issues no.3 and 5 alone have been decided against the plaintiff and it has been held that the suit is not cognizable by the trial Court. Under issue no.6 relating to relief, it was held that though the plaintiff was wrongly removed from service, no relief can be granted to him for want of jurisdiction and the suit was accordingly dismissed and the parties were directed to bear their own costs.

14. The respondents could not file an appeal against the findings on issues no.1 ,2 and 4 against them but they could file cross-objections against the said findings on being served with the notice of this appeal as provided by O.XLI Rule 22 CPC. The respondents thus neither filed any cross-objection in this appeal nor any arguments were advanced on their behalf on the merits of the case before us, we therefore, take that the findings on issues no.1 , 2 and 4 recorded by the trial Court in this case are acceptable to the respondents and they do not dispute their correctness. In view of this, the appeal deserves to be allowed.

15. We accordingly allow the appeal and set aside the judgment and decree of the trial Court and declare that the termination of the services of the plaintiff-appellant being in contravention of the provisions of Art. 311 of the Constitution of India, is illegal and inoperative and direct the respondents to pass suitable orders regarding payment of pay and allowances,

to the plaintiff for the intervening period in accordance with relevent rules applicable in such cases and direct the parties to bear their own costs.

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Member (A)

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Member (J)

Dated 31-10-1986
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