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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

Registration No. 38 of 1986 (T)

Union of India ..... Applicant

Versus

Chandra Prakash ..... Respondent.

Present : 1. Hon. S.Zaheer Hasan, V.C.(J)

2. Hon. Ajay Johri, Member (A)

Judgement delivered by Hon'ble Ajay Johri, Member (A)

This is a civil appeal No. 268 of 1982 received on transfer from the Court of District Judge, Bareilly under Section 29 of the Central Administrative Tribunals Act 13 of 1985. The appeal has been filed by the Union of India against the judgement and decree passed by Additional Munsif VIII Bareilly in ordinary Suit No. 22 Chandra Prakash Versus Union of India decided on 6.4.198

2. The grounds of appeal are that the notice under Section 80 of the Civil Procedure Code was not proved at all, that the plaintiff respondent could not be held to be a temporary railway employee and therefore he was not entitled to any notice under Rule 2302 of the Establishment Code. He was only a casual labour and did not remain on duty for over four months at a time there being a break of service from 14.11.78 to 15.12.78 and that he could not be treated as on duty w.e.f. 7.4.79 (the date on which he was hurt on duty and hospitalised).

3. We have gone through the judgement delivered by the Additional Munsif VIII Bareilly who has held that the termination of services of the plaintiff respondent Shri Chandra Prakash was illegal, void and inoperative. The grounds on which the learned Munsif came to this

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conclusion were as follows :-

i) The break in service as claimed by the plaintiff respondent from 14.11.78 to 15.12.78 could not be proved in view of the fact that the DW1 Harish Chandra who was Head Clerk in the office of Defendant appellant could not say after seeing the statement filed as 40C whether any records were available in the office of the Defendant Appellant at the time of preparation of the statement placed at 40C. It has been claimed defendant appellant that all the documents in connection with the plaintiff respondent were destroyed in the fire on 26.11.79 in the office of the defendant appellant. The learned Munsif therefore doubted the verity of this statement. Also no other records were available in regard to the service particulars of the plaintiff respondents.

ii) The period for which the plaintiff respondent was hospitalised after being hurt on duty on 7.4.79 till he was released from there on 20.6.79, was considered to be on duty and in the service of the defendant appellant.

iii) When the plaintiff respondent approached the authorities for being taken on duty after being released from the hospital on 20.6.79 he was not taken back on work a and therefore this action was considered to be equivalent to dismissal.

iv) The defendant appellant has not brought out any arguments to rebut the claim made by the plaintiff respondent that he became medically unfit on account of the injuries sustained by him on 7.4.79 in which he suffered

injuries in his left hand and therefore he became incapable of working with the tools.

4. We have heard the learned counsel for both the parties. In the written statement filed on behalf of the Union of India which is placed as 23 KHA of the case file, it has been claimed that since none of the periods of engagement of the plaintiff respondent i.e. from 12.9.78 to 14.11.78 and 15.12.78 to 7.4.79 when he was hurt on duty, were periods of four months or more, the plaintiff respondent never acquired the status of temporary railway employee as alleged in the original plaint by him. In para 3 of the same written statement it has been stated by the defendant appellant that the plaintiff respondent ceased to be in employment after 7.4.79 when he was hurt on duty and he was not treated on duty after 7.4.79 as he did not remain in service and therefore he was not engaged in June, 1979 when he illegally reported for duty. He was discharged from the hospital on recovery after the treatment which was given to him on compassionate grounds as the same is provided in law. In the additional pleas taken by the defendant appellants, in this very written statement, they have said that the very engagement of the plaintiff respondent as casual labour was also wrong as no casual labour ought to have been engaged in that period by the concerned officer in view of the instructions dated 4.10.78 and 14.4.79.

5. The term casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Such staff are paid on daily basis.

They draw wages from contingencies till they get temporary status. They are given temporary status after working for four months. According to the latest directions issued by the defendant appellant, authorised absence and discontinuance of work for want of productive work does not constitute a break. This proviso came into existence in 1983. Such employees are railway servants under the Indian Railway Act but are not governed by the rules laid down for temporary and permanent employees in the various codes. When they are injured on duty they are entitled to indoor treatment and half monthly payment but no Hospital leave is granted to them. A card is given to each casual labour which is to be retained by him containing his name, father's name, date of birth, date of appointment, date of engagement and date of discharge. Each time a casual labour is discharged, Entries are filled up in this card. The periods of authorised absence are not considered as breaks and these are also shown in the card.

6. When a casual labour has worked for a continuous period of 120 days (for casual labour working on projects the period is 180 days) he is granted temporary status. For this purpose the following are normally not considered as breaks in his service :-

i) Absence due to medical treatment for injuries sustained on duty.

ii) Authorised absence with the permission of the supervisor, upto 20 days;

iii) Non performance of work on days of rest;

iv) Non performance of work when the establishment remains closed.

v) 3 days unauthorised absence.

vi) If the sanction of the work automatically expires on 31st March of a year and the work is started lateron and is given to the same casual labour.

7. On getting the temporary status casual labour is entitled to the rights and privileges admissible to the temporary railway employees for example scales of pay, medical facilities, leave, Provident Fund, benefits of D & A Rules, notice for termination of service and hospital leave. They are however not brought to permanent establishment till they are selected through regular Selection Board for class IV staff.

8. The point at issue is whether the plaintiff respondent attained temporary status. The learned Munsif arrived at the conclusion of treating him as having worked over for four months on the basis of the reasons given by him as reproduced in para 3 above. However, the most important document which is the card which is given to each casual labour when he joins service, which is retained in his possession, which contains his particulars and photographs and the days on which he has worked indicating the breaks has not been produced by the plaintiff respondent. The onus of proving that he worked for more than 4 months at a stretch lay on the plaintiff respondent. He has failed in putting forward or producing any supporting evidence. This card is a very impdrtant document and should have proved whether he has worked for over four months or not. Arriving by the learned Munsif at the conclusion on the bare basis of non-availability of records with the railway administration on account of their having been

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destroyed in the fire which took place on 26.11.79 when all the papers concerning the plaintiff respondent are alleged to have been destroyed cannot be considered as a sufficient cause for arriving at such a conclusion. The plaintiff respondent should have produced the card which is required to be in his possession on which all payments etc. made to him are entered. The learned Munsif therefore erred in arriving at the conclusion.

9. The plaintiff respondent worked from 15.12.78 to 7.4.79 when he got injured on duty. Thereafter he remained in the hospital upto 20.6.79. As has been brought out in the para supra he was not entitled to any hospital leave as a casual labour. When he is injured on duty he is allowed half monthly payment alongwith indoor treatment. Certain payments have been made to the plaintiff respondent as has been admitted by the defendant appellant. Though nothing has been brought before us to show what type of payments were made but looking into the entitlement of casual labour it would appear that these were the half monthly payment which must have been made to him during the period he was in the hospital. The period he spent in the hospital cannot be treated as period spent on duty. The only provision in the rules permits for such period not constituting a break . The plaintiff respondent therefore did not work for a period of four months or more and attain temporary status.

10. After release from the hospital the plaintiff respondent reported to his employer for duty but he was not taken back on duty and his reporting was termed as illegal. The defendant appellants have avered that he was

never treated on duty after 7.4.79 and that he did not remain in service after this date and therefore when he reported in June, 1979 after having been discharged from the hospital he was not engaged. The plaintiff respondent could not have reported for duty on 8.4.79 after he got so seriously injured that his left hand fingers were badly mutilated. To say that he ceased to be in service w.e.f. 8.4.79 as he did not attend duty will be a very unfair conclusion. The administration was in full knowledge of the fact that the plaintiff respondent was badly injured and he was admitted to the hospital and they had in accordance with the rules made payments to him fortnightly and perhaps also looked after him during the period he was being treated by the hospital authorities.

11. We find that there is no provision in the rules as made by the administration or in the instructions as issued by it from time to time in regard to situations where a casual labour, who has not attained temporary status, gets seriously injured and is hospitalised and remains in hospital for sufficiently long time, may be considered for continuance in the same job or alternative job (if he is not as a result of injuries sustained, suitable for the same job) if the job was continuing. It would be a different matter if the job finished and there was no more requirement of casual labour. In this case he was considered to have ceased to be in employment from the very next day of his getting injured. The administration considered the period after his injury as a break and treated him as ceased to be in employment from the very next day. This on the face of it appears to be

a poor Human Relations situation. How can a person who has been sweating and working for the administration be suddenly left in the lurch if he gets injured while doing the work? It will be inhuman to treat him in the comtemptual manner in which the administration has treated him by not considering him to be given either an alternative job when he reported back after release from the hospital or to continue him on the same job if he was capable to do the same and the job was continuing. The administration should have taken a compassionate view of the poor man and given him relief instead of treating his reporting for duty as illegal and ceasing his employment from the very next day when he was hospitalised.

12. After having worked for 113 days during the second period i.e. from 15.12.78 to 7.4.79 the plaintiff respondent was hospitalised from 8.4.79 to 20.6.79. In fairness to him this period should not have been considered " a break in service ". If the work on which he was engaged continued even, thereafter, the 'temporary status' that he would have attained after another weak or so was so crually snatched away from him by the quirk of fate. There was not even any compassion shown by the administration on his having become fit.

13. In the result we are of opinion that it has not been conclusively proved that the @@@@ plaintiff respondent had worked for 120 days (4 months). the plaintiff respondent did not work for more than four months and hence did not attain temporary status. The appeal is allowed. The judgement of the learned Munsif is set aside.

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The suit is dismissed. Parties shall bear their own costs throughout. We suggest that the plaintiff respondent may also be shown compassion and if there are suitable jobs available, he may be considered for employment against them and for this purpose the period from 8.4.79 to the date he is provided a job, be treated as one of non employment without break in his continuous service.

(S.Zaheer Hasan)
Vice Chairman (J)

(Ajay Johri)
Member (A)

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Dated the 29th August, 1986.