Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.150 of 1986 (C.A.462 of 1979.)

Union of India and two others .... Appellants.

Vs.

Ram Narain and 8 others .... Respondents.

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

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

This civil appeal against the judgment and decree dated 31.7.1979 passed by the IX Additional Munsif, Varanasi in suit no.478 of 1974 has been received by transfer from the Court of I Additional Civil Judge, Varanasi under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff-respondents had filed the suit giving rise to this appeal in the Court of Munsif Hawali Varanasi for permanent injunction to restrain the defendant-appellants from derecognising the rightful status of the plaintiffs and terminating their services otherwise than in accordance with law with the allegations that the plaintiffs started working as Casual labourers since 1968 and they acquired the status of temporary railway servants on the completion of 6 months continuous service. They were admitted by the railway administration to the CPC scales. Apprehending that the defendants were interested in

terminating their services arbitrarily treating them as casual labourers, they filed the suit after giving a notice under Section 80 of the Code of Civil Procedure. The suit was contested by the defendants and it was pleaded in their written statement that the plaintiffs were ~~recorded~~ recruited & as casual labourers in the year 1972 and they worked against the casual sanction from time to time. From 1972 to 1974, the plaintiffs were working as casual labourers under projects and according to the Railway Board's letter dated 12.6.1974, the plaintiffs cannot acquire even temporary status if they were working continuously in a project. The plaintiffs were never granted any CPC scale and they were being paid Rs.7.84P per day. The services of the plaintiffs have already been terminated according to law and their suit is not maintainable. Certain other legal and technical pleas were also raised on their behalf.

3. The trial Court framed 9 issues in the case and held that all the plaintiffs had acquired the status of temporary railway servant ~~w~~e.from before the Railway Board's letter dated 5.10.1974 and their services could not be terminated without a month's notice and 15 days pay by way of compensation. Plaintiffs' suit was not found barred or defective on any legal or technical ground. It

A2/3

was accordingly decreed with costs for permanent injunction to restrain the defendants ~~not to~~ from ignoring the status of the plaintiffs as temporary railway servants and not to dispense with their services otherwise than in accordance with law. Aggrieved by the findings against them, the defendants preferred this appeal in the Court of the District Judge, which was transferred to the Court of I Additional Civil Judge. During the pendency of this appeal, the plaintiffs moved an application, paper no. 24-A, before the I Addl. Civil Judge for removing their names from the array of the respondents with the allegation that their application moved before the Chief Engineer Construction, has been forwarded to the Law Officer of the Eastern Railway and they do not want to contest the appeal. The appellate Judge accordingly allowed the appeal and set aside the decree of the trial Court and dismissed the suit on 17.7.1981. The plaintiffs thereafter, moved an application, paper no. 5-C, before the appellate Court on 17.12.1984 for setting aside the aforesaid order dated 17.7.1981, purporting to be an application under Order XLI Rule 21 read with Section 151 CPC, with the allegation that the plaintiffs are illiterate persons and the application, paper no.24-A aforesaid, was drafted by the railway counsel and they got the same moved through his lawyer son Sri Rakesh Kumar Srivastava,

without explaining the contents to the plaintiffs. It was further stated that the plaintiffs never intended to withdraw from the appeal and all this was done at the instance of railway counsel and his son and only when the plaintiffs knew that their services are being terminated, they got an inspection of the record made and knew about the correct things. An application under Section 5 of the Limitation Act was also moved to condone the delay in filing such application. The learned Additional Civil Judge vide his order dated 15.10.1985 came to the conclusion that the plaintiffs had simply requested in their application, paper no.24-A, that they do not want to contest the appeal and their names be removed from the array of the respondents and on that basis the appeal was allowed without entering into the merits of thecase and as such, the said order was not in accordance with law. The order dated 17.7.1981 was accordingly vacated and the appeal was restored. Thereafter, the defendant-appellants moved an application on 18.12.1985 purporting to be cross-objections against the order dated 15.10.1985 with the allegation that the restoration application of the plaintiff-respondents was not within time and there was no mis-representation and it was wrongly allowed merely on the basis of presumption and in case the defendants were aggrieved by the order dated 17.7.1981, they

should have gone in second appeal and they have no right to get that order set aside under O.XLI R.21 and Section 151 CPC. Before that application could be disposed of, the case was transferred to the Tribunal and it is thus, before us.

4. The said application/ cross- objection of the appellants has been opposed on behalf of the plaintiff- respondents before us and it has been contended that this application too is barred by time and even otherwise, it is not maintainable under the law. We had heard the learned counsel for the parties on this controversy as well as on the merits of this appeal. Regarding the orders dated 17.7.1981 and 15.10.85, we are of the view that the learned Additional Civil Judge was not right in allowing the appeal vide his order dated 17.7.1981 merely on the ground that the plaintiff-respondents filed an application for their discharge from the appeal. In such a case, the appellate Court should have examined the appeal of the defendant-appellants on merits and it could be dismissed or allowed ex-parte after considering the material available on the record. As this was not done and the appeal was allowed simply onthe ground that the plaintiff-respondents requested for their discharge from the array of the respondents, the learned Civil Judge was right in recalling

the earlier order dated 17.7.1981 and restoring the appeal for hearing it on merits. As this has been done to serve the ends of justice, we will not like to recall the order dated 15.10.1985. Had the order dated 17.7.1981 been passed on the basis of a compromise, the things would have been different. But in this case, as the application, paper no.24-A was not treated as a compromise and merely on the ground of this application, the appeal was allowed without entering into the merits of the case, no injustice was done to the defendant-appellants by recalling the order dated 17.7.1981. At the most, we can ignore the arguments advanced on behalf of the plaintiff-respondents in this appeal before us on the basis of the application, paper no.24-A, but cannot dismiss their suit merely on this ground.

5. Now coming to the merits of the case, we find from the allegations made in paragraph 3 of the plaint that the plaintiffs were working as casual labourers since 1968 and from 12.2.1972, they were continuously working against the clear permanent vacancies and had acquired the status of temporary railway servants on the completion of 6 months continuous service and were admitted to CPC scales. The allegations made in paragraph 3 of the plaint were denied by the defendant-appellants subject to their additional pleas. In paragraph 16 of their written statement, the defendants had stated that the plaintiffs were ~~recorded~~ recruited as casual labourers in 1972

and worked against casual sanction from time to time and from 1972 to 1974, they were working as casual labourers under project of Remodelling and Mechanisation of Down Marshalling yard at Mughalsarai. It was nowhere stated that the plaintiffs had not completed the continuous service of 120 days for acquiring the status of temporary railway servants and the main plea of the defendants simply was that as the plaintiffs were working on projects, they could not acquire the status of temporary railway servants.

6. The defendant-appellants had filed a number of documents before the trial Court but the same were taken back by the railway counsel on 12.11.1981 and have not been produced before us. We are, therefore, unable to comment about them. On behalf of the plaintiffs, one of them Ram Narain was examined as PW 1 before the trial Court and it was stated by him that all the plaintiffs are continuously working in the railway as casual labourers from 8.12.1972 without any break. It was further stated by him that after their continuous working for 6 months, they began to receive their pay monthly. There is nothing in his cross-examination to challenge his statement on these points. On behalf of the defendants, Suraj Prasad D.W.1 and K.N.P.Sinha D.W.2 were examined. Suraj Prasad, DW 1 was IOW, Mughalsarai from 1972 to June 1977 under whom the plaintiffs had worked.

There is nothing in his statement to rebut the aforesaid statement of Ram Narain , P.W 1. K.N.P. Sinha, DW 2 is also a railway employee and he was examined to prove some notices but he too did not say anything about the continuous working of the plaintiffs. It is also not in the statement of these witnesses that the plaintiffs were working under project from the very beginning. It has further come to our notice that the Railway Board in the light of the decision of the Hon'ble Supreme Court, issued a circular order on 11.9.1986 giving the status of temporary employee to the project casual labourers and to re-employ them in phases in case of their retrenchment before that order.

7. The trial Court has held in this case that the plaintiffs acquired the status of temporary railway employee on account of their continuous working on the project from 1972 to 1974 (according to admitted case of the defendants) and their case was not covered by the circular letter dated 26.6.74 issued by the Railway Board denying the status of temporary employee to the project labourers. We are, therefore, of the view that the plaintiffs had already worked for the requisite period to acquire the status of temporary railway employees by the time, the suit was filed by them in 1979 and their

A2/9

services could not be dispensed with without complying with the provisions of Rule 149 of the Railway Establishment Code Vol.I and Section 25 F of the Industrial Disputes Act. Their suit was, therefore, rightly decreed by the trial Court and there is no force in this appeal.

8. The appeal is accordingly dismissed. The parties are, however, directed to bear their own costs.

6.2.1987
Member (A)

6.2.1987
Member (J)

Dated 6.2.1987
kkb