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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No.479 of 1986 (T)

Bachau Ram & Others Union of India & Another

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

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

The following cases have been received on transfer from the Courts of District Judge, Varanasi and the Hawali Munsif Varanasi under Section 29 of the Central Administrative Tribunals Act 13 of 1985.

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- Regn.No.479 of 1986(T) Bachau Ram Versus Union of India (Suit No. 296 of 1985 received on transfer from the Court of Hawali Munsif, Varanasi).
- Regn.No.127 of 1986(T) U.O.I. & Others Versus Raj Kumar and Others (Suit No.76 of 1985 received on transfer from the Court of VI District Judge, Varanasi).
- Regn.No.1236 of 1986(T) Shiv Nath Prasad Versus Union of India and Others (C.A.No.295 of 1985 received on transfer from District Judge, Varanasi).
- Regn.No.1222 of 1986(T) Sita Ram & Others Versus Union of India & Another (C.A.No.252 of 1985 received on transfer from District Judge, Varanasi) connected with Regn.No.477 of 1986(T) Sita Ram Kharwar & Others Versus Union of India & Another (Suit No.287 of 1985 received on transfer from the Court of Hawali Munsif, Varanasi).

The matters in these appeals and suits are of a similar nature and involve a common point of law. These cases are therefore being dealt with under a common judgement.

2. In suit No.296 of 1985 Bachau Ram Versus Union of India & Another the plaintiffs entered railway service as Substitute Box Porters during 1975, 1976 and 1977. They

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temporary status they have become regular employees. They have also been empanelled for regular absorption. Apprehending break in their continuous regular service without following Disciplinary & Appeal Rules or the provisions of Industrial Disputes Act 1947 and which will deprive them of their rights and privileges of a temporary railway servant, they filed the suit for issue of a permanent injunction restraining the defendants from illegally breaking their continuous service and any other relief.

3. The defendants' case is that there are no posts of substitute Box Porters. The plaintiffs were employed as substitute for utilization against vacancies of casual nature. They have been screened and empanelled. They have attained temporary status but they are not regular employees. They are absorbed according to their position in the panel against regular vacancies. The plaintiffs are still working as substitutes and they are not being denied of their privileges.

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4. In accordance with Railway Board's letter No. E(NG).II 7358/14 dated 6.3.1974 the benefit of temporary status is given to the substitutes on completion of four months' continuous service. Substitutes are engaged in following circumstances :-

- (i) Against regular vacancies of unskilled and other categories of class IV staff requiring replacement for which arrangements can not be made within the existing leave reserves.
- (ii) Against a chain vacancy in the lower category of Class IV staff arising out of the incumbent in a higher class IV category being on leave, where it is not possible to fill the post from within the existing leave reserve.

(iv) Against vacancies in other circumstances specified by the Railway Board from time to time.

These substitutes when engaged are paid regular scales of Pay & Allowances admissible to the posts on which they are utilised irrespective of the nature or duration of the vacancy. They are also given all the rights and privileges as are admissible to temporary railway servants by virtue of the status that is granted to them but this does not entitle them to automatic absorption/appointment unless they are in turn for such appointment after due screening against regular railway posts.

5. Para 2315 of the Indian Railway Establishment Manual defines a 'Substitute' as a person engaged in Railway Establishment ^{3/} on regular scales of pay & allowances on posts which may fall vacant on account of railway servant being on leave or due to non-availability of permanent or temporary railway servant and which post cannot be kept vacant. Para 2318 of the same Manual lays down the rights and privileges admissible to the substitutes which have been extracted in para above. The learned counsel for the petitioners has placed emphasis on the fact that after having worked for 120 days and attaining temporary status and also having been screened and empanelled the services of the plaintiffs should be continuous and it is ^{3/} due to ~~against~~ the apprehended break in this continuous service which ^{4/} according to ~~them~~ will result in the withdrawal of privileges which are being enjoyed by the petitioners that the suit has been filed. While Shri G.D. Mukherjee, learned counsel for the respondents has emphatically denied that temporary status would be taken away. He has said

in his reply that the status will not be taken away. They have already been empanelled and they will be used on days when a vacancy ~~and~~ ^{on which these} substitutes can be utilized, is available. By not giving a job on a day when there is no vacancy ~~the~~ ^{as} temporary status of the petitioners does not get withdrawn. Substitutes cannot claim for any compensation of payment for days on which they could not be employed as no regular workman was absent. Substitutes are more or less like Badli workers. They are persons engaged in regular scales of pay & allowances on posts which may fall vacant due to railway servant being on leave or due to non-availability of permanent or temporary railway servant on posts which cannot be kept vacant. While casual labours are those whose employment is seasonal, intermittent, sporadic or extends over short periods. Casual labours are paid on daily basis and it is only after they attained temporary status that they come on monthly scales of pay. It is therefore clear that the substitutes can only be given a job when there is a vacancy available and they do not have any guaranteed ^{as} right for employment. They are casual employees without any right to be employed.

6. It is therefore clear that after once having attained temporary status even if there is a break in service and the plaintiffs are reemployed on occurrence of a vacancy in the manner indicated in paras above they will not lose their temporary status and the privileges that they are entitled to. Under the circumstances the plaintiffs' request for the issue of prohibitory injunction restraining

the defendants from illegally breaking their continuous service is not well founded and is liable to be rejected.

7. In the result Suit No.296 of 1985 (Regn.No.479 of 1986 (T) is dismissed with costs on parties.

8. In Registration No.127 of 1986 (T) Raj Kumar and Others Versus Union of India and Others (Suit No. 76 of 1985)- the plaintiffs entered railway service as substitute Porters during the years 1974, 1975, 1976 and 1979. They also attained temporary status after having worked for 120 days. *By the case of plaintiffs in* Their case is similar to *the* Suit No. 296 of 1985 and the relief asked for by them is also similar to this suit. Being a common point of law the observations made in suit No. 296 of 1985 apply equally well to this suit. This suit is therefore dismissed with costs on parties.

9. In Regn. No.1236 of 1986 (T) (Civil Appeal No.295 of 1985) the plaintiff Shiv Nath who was a substitute Shuntman at Mughalsarai had come in appeal against the judgement and decree passed by the IXth Munsif Varanasi in Suit No. 72 of 1985 dismissing the suit. The plaintiff was one of the petitioners in the suit. The plaintiff in this suit had also made prayer similar to the prayer of Suit No.296 of 1985. This suit was dismissed by the learned Munsif IX Varanasi. The observations made in Suit No.296 of 1985 are equally applicable to the matters raised in the suit which was decreed against the plaintiffs and against which order they have come in appeal now. The appeal is dismissed and the judgement of the Munsif is upheld. *Parties will bear their costs throughout.*

is against the interim order dated 2.7.85 passed by the XII Munsif Varanasi in suit No. 287 of 1985. The plaintiffs Sita Ram and Others^{3/} were all working as Substitute Leverman at Mughalsarai. In the Suit No.287 of 1985 these plaintiffs had asked for issue of interim injunction against break of their continuous service as Substitute Leverman. This request was rejected by the learned Munsif as the issue of the injunction was barred by U.P. Civil Laws Amendment Act. The relief claimed by the plaintiff being similar to the relief claimed by plaintiffs in Suit No. 296 of 1985, the observations made by us in Suit No.296 of 1985 hold good for the reliefs claimed in this suit^{3/} as well. The Suit No.287 of 1985 is dismissed with costs on parties. In view of this, the appeal against the interim orders of the learned Munsif IX Varanasi^{3/} for issue of temporary injunction becomes infructuous and is dismissed.

3/ 12. In all the above cases the parties will bear their own costs throughout. A copy of the judgement be placed on the files of each of the Appeals/suit disposed off in paras supra.

Yours
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Dated the 28th Nov., 1986.

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36/12. In all the above cases the parties will bear their own costs throughout. A copy of the judgement be placed on the files of each of the Appeals/suit disposed off in paras supra.

Yours
V.C.

APPROVED
A.M.

RKM
Dated the 28/11 Nov., 1986.

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Yours
V.C.

RECORDED
A.M.

RKM
Dated the 28th Nov., 1986.