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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 597 of 1986 (T)

Union of India Defendant Appellant

Versus

Rahmatullah Plaintiff Respondent

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

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

Appeal No. 31 of 1984, against the judgement of the Civil Judge II Gorakhpur dated 23.7.84 in Suit No. 193 of 1982 has been received on transfer under Section 29 of the Central Administrative Tribunals Act XIII of 1985 from the court of District Judge, Gorakhpur. The Appellant is Union of India. Grounds of appeal are that the Defendant was casual labour on a project and was not a temporary employee and that his services were not terminated on account of age as has been determined by the lower court ~~and the documents filed by the defendant in the lower court~~ have been wrongly relied upon.

2. The defendant's case is that he was initially appointed on 25.9.58 a casual Mason Highly Skilled under Bridge Inspector. At the time of appointment his age was 20 years. He was again appointed on 21.1.63 and worked upto 15.2.63 under Inspector of Works Gorakhpur. Then he was again engaged from 19.11.74 to 15.6.75 under the Inspector of Works Jarwal Road from 25.2.76 to October, 1979. He appeared in the screening test for

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regularisation on 26.10.78 but on 4.1.1979 in the results that were declared he was in the list of those ~~not~~ ^{as found} unsuitable & overage. He was intimated of this fact on 17.3.79. He challenged this on the grounds that it was in violation of Article 311 (2), when he joined in 1958 he was 20 years old and therefore, he cannot now be said to be overaged and he had served for 21 years from 25.9.58 to 17.3.79, the age relaxation was due to him to the extent he had served as casual labour i.e. 8 years 2 months. Further he has not been paid the retrenchment compensation and notice pay.

3. On the other hand the Appellant challenged the claim of the defendant on the grounds that no documents were available for the periods ~~of~~ 1958 and 1963 hence it could not be said that the defendant was engaged for any period prior to 1974. Moreover he was a casual labour on a project firstly under the XEN Construction B.6 Gonda I and later under XEN Const. Gonda II. He had not attained temporary status and was only getting 1/30th scale pay after completion of 180 days of continuous service. He was not found suitable in the screening test. He also did not produce any papers ~~to~~ ³⁶ ~~get advantage of~~ ^{on account} to ~~claim~~ age relaxation ~~on account~~ of his previous service if any. His services were terminated on 22.4.79 after due notice and compensation was paid to him for 45 days. Article 311(2) did not apply to him and there was no illegality in his termination.

4. The learned Civil Judge in his judgement decreeing the suit held that the order of termination of services of the defendant dated 8.3.79 was illegal and the defendant is to be considered to continue as temporary employee in the

service of the appellant. Under the circumstances the defendant was entitled to the arrears of salary etc. and if any compensation has been paid to him the same can be deducted from the arrears. He also declared his date of birth as 5.6.37. On the issue No.2 framed in the suit 'whether the termination' order is illegal, the learned Civil Judge has held that on the basis of the defendants date of birth being 5.6.37 he was about 42 years of age in 1979 and therefore his termination on account of being overage was wrong in terms of Railway Board's order on the subject (67 Ga). If the defendant's services are ~~terminated~~ ³⁶ ~~terminated~~ from 1958 to 1979 he had worked for 21 years and in terms of Railway Board's letter he cannot be treated as overage as the termination order shows. The learned Civil Judge did not accept the appellant's plea that the defendant had joined service in 1976 only and not in 1958 and that 83(Ga) a document which has been relied upon to accept that the defendant worked from 25.9.58 to 15.7.62, was not issued by competent authority and hence could not be admitted. The learned Civil Judge also relied on 86(Ga). The defendant had also been in service of the appellant during 1963 and hence the defendant could not be removed on the plea of being overaged after such long spell of service. Also since the defendant had worked for more than six months he became a temporary employee and is governed by Rule 2501 and no more by the rules applicable to casual labour. Since Railway Board's orders had not been followed the termination was bad in law. The learned Civil Judge also held that the defendant could only be removed by following the provisions of Article 311 (2). He therefore concluded that the services were terminated wrongly.

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5. In the service card (41 Ga) the defendant's date of birth is shown as 5.6.1947 and age 29 years and the first entry is of February, 1976. There is also an entry of 204 days for the period 15.7.62 to 15.6.75 for which the certificates were retained by the office after making the entry in his service book. There is no dispute about the number of days worked from 25.2.76 onwards upto 22.4.79. The claim of the defendant of having worked continuously from 25.9.59 to 15.7.1962 is not supported by any documents. Even if the medical test report is considered as correct it only shows that he was 20 years old. The document on page 83 (Ga) says that the defendant worked as casual Mason from 25.9.58 to 15.7.1962 in broken periods. It does not give the total number of days he worked during this period. The defendant has claimed that he worked continuously and in the absence of any document to the contrary of 83 (Ga) his claim ~~cannot~~ ^{SV} _n be relied upon, and except for the fact that he worked in broken periods it is liable to be rejected.

6. From the above it would seem plausible that the defendant did join the railway as casual labour under Bridge Inspector No. I Gorakhpur in Sept., 1958, when he was 20 years old. The appellant however has not been able to produce any documents in support for ~~this~~ ^{SV} period of employment. The learned Civil Judge has placed reliance on continuity of working on the Unions letter. This letter cannot be relied on for this fact because it is based on hearsay and on the representation made by the defendant to the Union. It does not give any authentic documents in support.

7. How the date of birth came to be entered as 5.6.1947 in the service card is not clear? The office has made entries

for the period 15.7.62 to 15.6.75. The papers from which these entries were transferred should be having some information of the age but there is no specific reference of the same. Hence the learned Civil Judge's conclusion that the date of birth was 5.6.1937 cannot be wrong, ^{if and} is the correct date of birth of the defendant.

8. Though the defendant worked in broken periods during the period 15.6.62 to 15.6.75, he came to be employed on projects in 1976 and he attained temporary status while working there. The rules on the employment of casual labour on projects and on open lines are sufficiently clear. On the open line after 120 days the casual labour attains temporary status while on the projects after 100 days he comes on the 1/30th of scale of pay of the category per day. He does not get temporary status. In any case temporary status has been defined in detail and it does not confer on the employee the status of a temporary employee. The learned Civil Judge was wrong in interpreting that the defendant had become a regular temporary employee and, therefore, his services could not be terminated under Rule 149 R.I. or under the Industrial Disputes Act, 1947 and it was necessary to follow the procedure under Article 311(2). There is no denial of the fact that the defendant was a project casual labour and that he was getting 1/30th of the scale pay of the post of Mason. Therefore, his services could be terminated under Rule 149 RI or the Industrial Disputes Act. He was paid the Retrenchment Compensation and was also given the notice. It has been accepted that the provisions of Section 25(F) of the ³⁴ *In his supplementary affidavit the defendant has also admitted that payment were made.* Industrial Disputes Act were followed. ³⁴ Hence on this account there was no illegality in the termination of his services.

9. In the order of 8.3.79 (57 Ga) the reason for termination has been shown as Unfit/Unsuitable. But this order is based on a list published on 4.1.79 (58 Ga). This list says 'were found unsuitable, overage etc.'. There is a reference from XEN (Const) Gonda (86 Ga) forwarding the application of the defendant where the mention is of the defendant's age being 20 years on his first appointment on 25.9.58 as Mason under BRI Gorakhpur. The XEN wanted the HQrs. office to take a decision on the extension of the services of the defendant. Thus there seems to be a doubt ^{of and} on the reason of the rejection of the defendant ~~on~~ ^{as} ~~as could well be to cause~~ basis of his age. The defendant joined the railways on 25.9.58, worked in broken spells upto 15.7.1962, then he worked for 204 days during 15.7.62 to 15.6.75 and thereafter for 1123 days till 22.4.79 when he was discharged. Reasons for discharge i.e. unsuitability or overage have not been shown in the list placed at 58(Ga). We, therefore, feel that the balance of convenience should lie in favour of the defendant and it would be quite reasonable to assume that overage was the cause otherwise on unsuitability account he could not be kept as a Highly Skilled Mason for so long. This is more so because the service card shows the age as 29 years on 25.2.76 (Date of birth 5.6.1947).

10. Railway Board's letter E(NG)11-74-CL/26 of 18.6.74 quoted in (49 Ga) makes it amply clear that casual labourers who have worked for long periods in broken ^{periods} and continuous ^{and} service should be given age relaxation keeping the criterion whether on initial engagement they were within the prescribed age limit and whether they have been more or less regularly working for railway since then. No documents have been filed

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by the appellants to show what action they took on 86(Ga).

Absence of any such paper will show that it remained undisposed and in the result the defendant suffered and his case went by default.

11. Thus the defendant was not a temporary railway servant. His termination was not illegal. The appeal is allowed. The judgement of the learned Civil Judge is set aside, the suit is dismissed. We, however direct that the administration should take a decision on the question of relaxation of age of the defendant as referred to by the XEN in his letter of 19.4.1979 taking into account his age at the time of first employment on 25.9.58 and the broken spell of service upto 15.7.1962 as shown in the letter of Bridge Inspector I Gorakhpur and the Railway Board's directives on the subject. If the defendant becomes eligible he should be regularised within two months. Parties will bear their own costs.

Yours
V.C.

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A.M.

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Dated the 28th Nov., 1986.