RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Registration (T.A.) No. 904 of 1986

Union of India & another .. Defdt.-Appellant-Applicants.

Versus

Om Prakash ..... Plaintiff-Respondent.

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

(Delivered by Hon. Ajay Johri, A.M.)

This is an appeal against the decree and judgment passed by the Additional Munsif VIII, Kanpur dated 15.3.1982 in Suit No.886 of 1972, Om Prakash v. Union of India & another, received under Section 29 of the Administrative Tribunals Act XIII of 1985 from the court of District Judge, Kanpur. The grounds of appeal are that on issue no.1 the decision is against law and arbitrary. It is against Section 145 of the Evidence Act because if the argument are fully read then it could not be proved that the plaintiff-respondent was in continuous service from 1967 to 1971. On issue no.2 the judgment is also against law as the paras of the Railway Establishment Code, which do not apply, have been applied. This was outside the perview of the court, and that on issue no.5 also the decision is against law. No termination order was issued in July, 1971.

2. The case of the plaintiff-respondent was that he was engaged as a temporary Khallasi in February, 1958 and he continued in that capacity upto 1967. From 1967 onwards he was employed as an office Khallasi and according to him this employment was without break till 21.7.71 under the Inspector of Works, Kanpur. According to the

plaintiff he drew the salary continuously without suffering any break. He was also allowed weekly rests and National holidays and he never absented himself from duty. However, I.O.W.(Spl.) got displeased with the plaintiff and he was threatened with the termination of his services and in pursuance of this mala fide design I.O.W.(Spl.) issued a medical memo for A-1 vision test instead of C-2 in contravention of the rules because the A-1 vision test is prescribed only for running and operating staff while C-2 test is prescribed for office Khallasis. However, on 21.7.1971, the plaintiff alleges that his services were terminated on verbal orders without assigning any reason. This termination, according to him, was brought about by way of punishment and he should have been given an opportunity of being heard before any action was initiated against him. Since this was not done, the order of termination was bad in law. The plaintiff had already acquired temporary status having worked continuously from 1958 to 1971 and, therefore, was entitled to all the priviledges admissible to temporary Railway servants and ~~xx~~ his services could only be terminated after affording him opportunity and after serving him one month's notice as provided under the law. He was also entitled to retrenchment compensation. He had, therefore, prayed that a declaration be issued declaring that the order terminating his services with effect from 21.7.1971 is a nullity and he ~~is~~ still continues to be in service having acquired temporary status and is entitled to all the arrears of salary, etc. with effect from 21.7.1971.

3. The stand taken by the defendants in the suit was that the medical memo for A-1 vision test was issued

to the plaintiff correctly as he was to be appointed as a Loco Cleaner under Loco Foreman, Kanpur, after the expiry of the sanction of his post with I.O.W. (Spl.) on 21.7.71. The plaintiff was sent for the medical test on 12.7.1971 but he absconded and did not turned up for/service till 21.7.1971 when his services stood terminated automatically because of expiry of the sanction of the post. According to them the plaintiff was not entitled for retrenchment compensation nor a notice for termination. The defendants had further said that the plaintiff had worked on daily wages against temporary work charge post and he worked in various spells from 1966 to 1971. According to the defendants he worked from 25.6.1967 to 24.4.1969 and again from 6.5.1969 to 31.5.1971, which were the longest periods of his engagement. Since the office where he was working was belonging to the Construction Department which is entirely temporary department where no permanent post existed, he cannot become employee with temporary status as long as he worked in that Branch even continuously for any period of time. The plaintiff had appeared in a selection held by the Office of the Divisional Superintendent for the post of Loco Cleaner and was declared selected. He was accordingly brought on the panel for the post of Loco Cleaners vide letter No.220-E/38/E.Rectt., dated 5.7.1971 and he was to be medically examined before being so appointed. He was issued a medical memo but he took the memo and never turned up on duty and absented himself completely from 12.7.1971 onwards. He also did not submit the results of his medical examination nor applied for leave and since the sanction of that the temporary post against which he was working expired on 21.7.1971 his services stood terminated and no termination order was officially issued and no body stopped him from performing his duties. The fact was that he never back. His

termination of service was, therefore, valid and legal. He is also not entitled to any retrenchment compensation in terms of Section 25-F of the I.D. Act.

4. The trial court had framed proper issues. On issues no. 1, 2 and 5 which are the subject of the appeal filed by the Union of India the learned trial court had given the following decisions :-

On issue no.1 the learned trial court had relied on the affidavit submitted by S.P. Sinha, who had said that there was no preak between 1967 and 1971 in the service of the plaintiff, though in the master rolls submitted by the defendants there have been number of breaks at various intervals and since the defendants did not submit the other master rolls and in the evidence given by S.P. Sinha it had been indicated that there had been no breaks in the service of the plaintiff, this issue was decided in favour of the plaintiff and it was concluded by the learned trial court that there has been no break in service from 1967 to 1971 & and on this account he had attained temporary status and, therefore, was entitled to a notice and retrenchment compensation and the oral orders terminating his services from 21.7.1971 were illegal. The learned trial court had also referred to the Railway Establishment Manual on Recruitment of Railway Servants (page 113) where it has been indicated that the temporary workmen who acquired temporary status should be considered for regular employment without having go through the Employment Exchange. Also the

defendants have not given any documentary evidence to show that the plaintiff could not attained temporary status as he was in a temporary organisation.

(b) On issue no.2 which was whether the termination of services of the plaintiff was illegal and invalid, the learned trial court held that since it has been decided that there was no break and the plaintiff had worked for more than six months, he attained temporary status and, therefore, he was entitled to notice before services could be terminated and the same was not given. Therefore, the oral orders dated 21.7.1971 were illegal. Another point which was considered by the learned trial court was that under Para 2511 of the Indian Railway Establishment Manual a person who has attained temporary status has all the privile-ges of a temporary employee and thus the termination was violative of the provisions in regard to termination of service of a temporary employee.

(c) On issue no.5 whether the claim was justiciable, the learned trial court had held that the defendants' plea that the suit was not maintainable is not applicable because of the decisions on issues no. 1 and 2 where the termination of service on 21.7.1971 has been held as void.

5. The main question that needs examination is whether theplaintiff had attained temporary status and whether/working in the construction organisation such a

status could be conferred on him and the services could automatically come to an end if the sanction had expired as alleged by the appellants. According to the Railway Board's instruction issued under their letter No. E(NG) ii-75/CL/107, dated 18.1.1977 casual labour on projects are paid 1/30th of the appropriate scale rate on completion of six months continuous service in the same type of work from the date on which six months' service is completed. If there is a break in the continuity on the same type of work they ceased to be entitled to receive wages at 1/30th of appropriate scale rate. Such casual labours are not brought on monthly rates of wages on completion of 180 days. The appellants have said that ICW under whom the respondent was working belonged to the construction department and, therefore, there was no question of temporary status being given to the respondents. Casual labours are usually employed for seasonal work. They may be employed for intermittent, sporadic work for short periods and casual labours under the construction department or on projects are differentiated from the casual labours who are employed on the open line. The Industrial Disputes Act applies to them if they completed one year's service, i.e. if during the preceding 12 months they have worked for a period of 240 days. Those who do not fulfil this condition are not entitled to the provisions of the Industrial Disputes Act in regard to the notice and the compensation.

6. In para 16 of their reply the defendant-appellants have given the details of service of the plaintiff-respondent between the period 16.7.1966 and 21.7.1971. He has worked in the following spells :

(a) From 16.7.66 to 10.9.66 (less than 6 months)
(b) " 16.9.66 to 15.10.66 -do-
(c) " 17.10.66 to 16.1.67 -do-
(d) " 19.1.67 to 18.3.67 -do-
(e) " 24.3.67 to 23.6.67 -do-
(f) " 25.6.67 to 24.4.69 (more than 6 months)
(g) " 6.5.69 to 31.5.71 -do-
(h) " 6.6.71 to 21.7.71 (less than 6 months)

In August,1967 he was transferred to the office of the Inspector of Works (Special). Thus except for the spells between 25.6.1967 and 24.4.1969 & 6.5.1969 and 31.5.1971 which ended on 31.5.1971 the respondent had at the time when he did not report back on duty not worked for six months at a stretch and, therefore, had not become entitled to 1/30th of the pay scale temporary status. The status that he attained while working from 25.6.1969 to 24.4.1969 and 6.5.1969 to 31.5.1971 came to an end on the expiry of those sanctions and he did not carry the same status when he was re-engaged on 6.6.1971. Casual labours are also given service cards and those who have attained temporary status can only be discharged after due notice.

7. The respondent had not submitted his Casual Labour Service Book which was necessarily to be maintained to show his periods of working. In the absence of the same the periods of working as indicated above based on the averments made by the defendant-appellants in the original suit have to be taken as correct. Therefore, the conclusion arrived at by the learned Trial Court that the plaintiff-respondent had worked for more than six months at a time and, therefore, was possessing temporary status at the time of his discharge is erroneous and has to be set aside. Since he had not attained temporary status and since the work on which he was employed had come

to an end there was no question of any notice ~~abe~~ being given to him.

8. The appellants have said that the respondent was given a medical memo consequent to his selection as a Loco Cleaner for medical examination in A-1 category. The fact that he was selected as a Loco Cleaner has not been denied by the respondent. Therefore, his action in not presenting himself for the medical examination to take up his new assignment after the expiry of the sanction of the work with IOW (Spl.) can only be termed as irresponsible. He should have got himself medically examined as he was already empanelled for appointment as a Loco Cleaner and if his medical category would have been lower, he could have requested for alternative employment from the appellants. He had not done this. He remained away from duty and on 21.7.1971 when the sanction expired for the post on which he was working he was without a job. Normally, if there was another requirement subsequently he could have been re-engaged according to his position in the list of those whose names appeared on the rolls and who have worked on casual labour basis with the Senior Subordinate under whom they worked. There has been no mention of any discriminatory treatment having been given to the respondent in this regard. It seems that he never reported back to his previous employer as averred by the appellants.

9. In view of what has been stated above we feel that the judgment and decree in Suit No.886 of 1972 has to be set aside. However, since the respondent had already been empanelled as a cleaner, the appellants should now offer him the post if he is medically suitable and if he chooses to apply for consideration against the

post of cleaner. He can make this request within a period of one month from the date of issue of these orders and the appellants will finalise the matter within another two months thereafter by giving him necessary relaxations in age etc.

10. However, under the circumstances of the case the appeal No.447 of 1982 is allowed and the judgment and decree in suit No.886 of 1972 is set aside with the observations as made in the para supra. Parties will bear their own costs, through out.

Vice-Chairman.

Member (A).

Dated: January 12, 1988.

PG.