A2/1

RESERVED

CENTRAL ADMINISTRA-TIVE TRIBUNAL ALLAHABAD

****

TRANSFER APPLICATION NO. 1115 OF 1986

Jai Ram ..... Plaintiff-A pplicant

Versus

Union of India & another .... Defendant-Respondents.

****

Hon'ble S. Zaheer Hasan, V.C.

Hon'ble Ajay Johri, A.M.

(Delivered by Hon'ble Ajay Johri)

Suit No, 1719 of 1983 has been received on transfer from the court of Munsif City, Kanpur under Section 29 of the Administrative Tribunal Act No.13 of 1985.

2. The plaintiff was working as a Tailor in the Ordnance Parachute Factory (Factory), Kanpur. He fell sick on 14.3.1969 and according to him he suffered from Tuberculosis. He had sent information and also submitted medical certificate vide his application dated 24.3.1969 for grant of leave. He, however, got no feedback whether his leave was granted or nct . Without giving him any information or notice his services were terminated after the expiry of a period of three months and they stood terminated with effect from 13.6.1969. The plaintiff's case is that he was not aware that his services have been terminated and he came to know of this only in 1975 when he was not allowed to resume duty after being declared fit by the Medical Authorities. After a number of representations requesting for reinstatement in service he was offered a post of an unskilled Labour with effect

A2/2

from 20.7.1977. The plaintiff has claimed that his reemployment on the post of Labour while he had initially held the post of Tailor was against the provisions contained in the Ministry of Defence U.O. No.8(1)/54/10313/D/(Appts.), dated 19.9.1956 according to which T.B. sufferers after being declared medically fit should be allowed to resume duty on the original post. He persuaded his case by repeated representations through Member of Parliament or directly and even addressed a representation to the Prime Minister in 1983 but he received no reply. According to him the termination order dated 23.6.1969 is unconstitutional, and ultravires because the order had been passed by an authority inferior in rank to the appointing authority. It contained no reasons and was non-speaking. It is arbitrary and it was not served on him and it amounted to retrenchment which is illegal in terms of the Industrial Disputes Act. The job of Labourer 'B' harshly operates on the plaintiff and is detrimental and injurious to his health. He, therefore, prayed that the termination order or his service dated 23.6.1969 and his re-employment on 20.7.1977 on a reduced rank be declared unconstitutional and illegal and he may be deemed to continue in service as Tailor through out with consequential relief and he may be restored to his original post.

3. The case of the defendants is that the plaintiff did not send any intimation of his alleged sickness. He did not submit any medical certificate. No leave was due to him hence the question of granting leave also did not arise. Having absented for more than

three months he was deemed to have resigned his appointment with effect from 23.6.1969 and for this no notice was required. A copy of the factory order dated 23.6.1969 was forwarded to his home address. He did not make any attempt to resume duty and it was only in December,1975 that he submitted an application for being allowed to resume duty. The question of allowing him to resume duty did not arise in view of his service having already come to an end. It was on the basis of his representations that his appointment was approved as Labour 'B'. The plaintiff was treated as a fresh enterant and consequently he had to start on the minimum of the scale. The defendants have disputed that representations were received from the plaintiff at various intervals. The plaintiff was initially appointed by the General Manager in 1962 and his discharge order was also made by the General Manager. He has made no appeals or memorials against the alleged order. His initial appointment had come to an end on his remaining absent and the appointment given in 1977 was a fresh appointment. There had been no violation of the Industrial Disputes Act. The defendants have taken a plea that the suit is barred by time because the cause of action arose in 1969 and he could have taken action within three years thereof. Even after his appointment in November,1977 he is agitating matter in 1983 is barred by time.

4. We have heard the learned counsel for both parties. The pleas made by the learned counsel for the plaintiff were that the order was not served on the plaintiff. No notice was given to him and he was deemed to have resigned. No rules had been cited and he should

have been reinstated rather re-appointed. He further made a plea that the Government service was not contractual and it was a right to property and the same has been violated. While the plea taken by the learned counsel for the defendants was that since no reply was received from the plaintiff it was concluded that he had accepted the termination order and he was deemed to have resigned since no medical certificate had been received and his re-appointment was,only as a result of compassion after receiving his representation. Learned counsel for the plaintiff had challenged the plea of limitation taken by the learned counsel for the defendant and taken a plea that since the termination was in violation of Article 311 it was not hit by limitation. He also ~~placed~~ raised the issue that the rules lay down a period of five years of absence and there is no rule of three months' absence after which the services could be terminated.

5. The plaintiff has submitted a photostat copy of the medical certificate issued by a Doctor of K.D.M. Memorial Hospital at Kanpur dated 14.3.1969. This certificate says "He is further advised about three years complete bed rest.....". There is no other communication from the plaintiff regarding his illness or request for extention of his leave. On his own showing he has indicated that it was only in 1975 when he came to report for duty that he came to know that his services have been terminated. The plaintiff was residing in Kidwai Nagar at Kanpur and the disease diagnosed was tuberculosis of the intestine. He was advised complete bed rest but he cannot take a plea that he could not inform his office which was also situated at Kanpur

regarding his illness. It is thus evident that he was not at all serious about his job. In their letter of 9.9.1976 addressed to A.D.G. (Administration), Calcutta, paper no.27-Ka, it has been mentioned that though the plaintiff has claimed that he was suffering from T.B. but there is no record in the factory about his affliction with T.B. He has also not furnished any authorised certificate about his alleged illness on the contrary, the medical certificates furnished by him ~~since 1969~~ to cover his absence were for his illness other than T.B. Therefore, his case had no merit. There is no doubt that the plaintiff has been not consistent to his own illness. The fact of his producing medical certificates for his illness other than T.B., as mentioned in the above letter, militates against his contention that he was so ill that he could not even inform his employers about his absence and, therefore, could not justify the same.

6. The case of the plaintiff was considered, as the letter at serial no.29-Ka shows, ~~that his case was considered~~ on extreme compassionate grounds in consideration of indigent family condition of the individual and he was given the fresh appointment thereafter.

7. The plaintiff's services were terminated after his absence of three months. In their written statement the defendants have said in paragraph 3 that the plaintiff absented himself for more than three months without any leave or prior permission and consequently he was deemed to have resigned his appointment with effect from 23.6.1969. The learned counsel for the ~~plaintiff~~ defendant has not been able to support this action of the defendants by any rules. Under Appendix XV of Leave

Rules for Defence Industrial Employees, Rule 16-A says that no industrial employee other than permanent shall be granted leave of any kind for a continuous period exceeding five years and where a permanent industrial employee does not resume duty after remaining on leave for a continuous period of five years, he shall unless the President in view of the exceptional circumstances of the case otherwise determines, be removed from service after following the procedure laid down in the C.C.S.(C.C. & Appeal) Rules,1965. Rule 17 deals with an industrial employee other than permanent who contracts tuberculosis and undergoes treatment in a recognised sanatorium or under a qualified T.B. specialist or a Civil Surgeon or a commissioned Medical Officer of equivalent status, may be granted extraordinary leave without pay upto a maximum period of 18 months including 3 or 6 months extraordinary leave and the President can in view of exceptional circumstances, Under Rule 18 grant leave of any kind for a continuous period exceeding five years.

8. In the case of the plaintiff though he had sent the medical certificate its receipt has been denied by the defenda-nts. He is a poor low paid employee. His contention that he sent the medical certificate covering three years of leave, a copy of which he has filed in the documents supported by Postal Receipts, is not entirely without foundation. He failed to cover up his further absence by proper authority. He presumed that his three years' leave had been sanctioned. This was against normal procedure. But we do not find any rule to terminate his services after three months of unauthorised

absence. He has now been given re-appointment after his case has been considered by the Competent Authority but his previous service has not been counted and he has also not been given the same employment from which he absented himself on falling sick. There is a document placed at serial no.22-Ka which deals with re-settlement in Government service of Central Government employees discharged on account of affliction with T.B. and this talks about employment of such person in the same post from which they were discharged, the actual previous service rendered by them should be treated as qualifying service for purpose of pension and seniority, and for purpose of pay they should be placed in the same position in which they were at the time of their discharge from service. The previous service will also be counted for purposes of satisfying length of service condition. The break in service between the date on which they were discharged from the service and the date of their re-employment would, however, not count for any purpose but the service will otherwise be regarded as continuous and the re-employment is done after their having been found physically fit. This letter was issued on 19.9.1956. It would have been but fair that on his reporting back to service and if he had proved his sickness on account of T.B. the plaintiff should have been covered by this O.M. of the Ministry of Defence. This was not done and the plaintiff was re-appointed as a Labour which is a lower category. We find that the plea that this has acted harshly on the plaintiff does have force. His miseries did not come to an end after his getting cured from his illness.

A2/8

9. In view of the above instructions the plaintiff's appointment as Labour was not in keeping with the instructions available. His case should have been dealt with in terms of O.M. dated 19.9.1956 on the re-settlement of discharged Government employees afflicated with T.B.

10. The plaintiff had been acting beyond the rules. He remained absent without finding out whether his leave was granted or not. He fell sick on 14.3.1969 and reported back at the end of 1975. Even the five year rule is about sanctioned leave. It cannot be implied that it also covers unauthorized absence of 5 years. In any case the plaintiff was absent for more than 5 years and hence he cannot take shelter behind that rule. This plea also has only formal value because he has been reappointed. The grievance that now remains is that he should have been re-appointed on the same post. The directions laid down in the Defence Ministries O.M. of 19.9.1956 amply cover the plaintiff's case as he fell prey to the deadly disease which is the subject matter of this O.M. His prayer that he may be deemed to continue in service as Tailor and may be paid consequential relief is liable to be rejected. His reappointment should have been on the same post in view of the guideline already available with the defendants.

11. On the plea raised by the defendants that the suit is barred by time because the cause of action arose in 1969 and even re-appointment was done in November,1977 and, therefore, the plaintiff agetating

A2/9

the matter in 1983 is barred by time was challenged by the learned counsel for the plaintiff on the plea that the termination of the service of the plaintiff was in violation of A-rticle 311 and, therefore, it should not be hit by bar of limitation. For this he has relied on the case of State of Himachal Pradesh v. Jai Dev Ram reported in 1984 Lab.I.C. 1492. In this case the Hon'ble Himachal Pradesh High Court has held as follows:

> "4. The legal position is thus well settled that a suit for declaration that an order of dismissal/removal is in violation of Art. 311 of the Constitution, as in the present case, is not hit by the bar of limitation. Under the circumstances, the lower appellate Court was right in taking the view that it did and in passing the decree which it passed."

32/

In the case of the plaintiff his services were terminated after three months' absence for which no rule has been placed before us in support of the action. According to C.S.R. Rules if a person does not report back after remaining on leave for a continuous period of five years he can be removed from service after following the procedure laid down in the C.C.S.(C.C. & Appeals) Rules, 1965. In this case the order of termination was sent to the plaintiff but he took no action on it./ He did not even appeal against that order/. For this own negligence and, therefore, he cannot say that he was not given adequate opportunity to represent against the termination order/. He has neither denied nor accepted that he received the termination notice. In view of the

circumstances of the case we do not think that the a-pplication made by the plaintiff ~~can~~ should be summarily rejected on the point of limita-tion. In any case he has now been given re-appointment and that should settle the matter.

12. In the result we direct that the plaintiff's case should be re-examined in terms of the O.M. dated 19.9.1956 to give him the benefits as would be admissible to employees discharged on account of affliction of T.B. and re-appointed after reporting back. The petition is disposed of accordingly with no order as to costs.

March 9th, 1987.

V.C.

A.M.