RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Registration (T.A.) No.1172 of 1986

Union of India ... Defdt.-Appellant-Applicant.

Versus

Bhola Sahani ... Plff.-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.)

Appeal No.213 of 1985 filed by the Union of India against the judgment and decree dated 22.5.1985 passed by the Munsif IV, Gorakhpur decreeing the suit No.1391 of 1981, Bhola Sahani v. Union of India, has been received on transfer from the court of District Judge, Gorakhpur under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The appeal has been preferred on the grounds that the judgment and decree is against law and facts, proper and legal issues were not framed by the trial court, and the judgment is against evidence on record. Further the provisions of Rules 76 and 77 of the Industrial Dispute Act,1957 have been applied and the termination of the plaintiff's services could not be vitiated on the ground that the seniority list was not published in time. According to the defendant-appellant the principles of last come first go had been definitely followed in this case because the juniors have not been retained in service and the plaintiff-respondent was not entitled to the payment of 1/30th of the average pay and Dearness Allowance and the termination was right and made accordingto rules.

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3. The plaintiff/respondent in (Suit No.1391 of 1981) was a Casual Labour, who alleged that he had worked from 22.7.1980 to 15.9.1980, 23.9.1980 to 15.12.1980, and 20.12.1980 to 15.7.1981 under Chief Engineer (Construction), North-Eastern Railway, Gorakhpur. According to him he had also worked during the Railway strike of 1974 and he should have been considered for regular employment by virtue of his having so worked but he was not considered for regular employment. Even in 1974 he claimed that he had worked for six months but he was not given the temporary status. During the year 1981 also he had worked for more than six months, but he was not given C.P.C. scale of pay. Since he was not given any notice or compensation when his services were terminated on 16.7.1981, the termination, according to him, was illegal. The defendant's case in that suit was that the plaintiff never worked continuously for six months and, therefore, he was not entitled to 1/30th of the pay scale and, therefore, no notice was also required to be given to him, since he was not governed by the rules covering Casual Labour, who had attained temporary status. His services were terminated because the work had come to a close because of lack of funds in the year 1981 and he was amongst the junior most, who were retrenched. Even in the year 1974 he had left service on his own accord and during the strike of 1980 he was absent from 16.9.1980 to 23.9.1980 and was re-appointed on 24.9.1980 and worked till 15.12.1980. From 20.12.1980 he worked under the Executive Engineer (Construction), Chhapra where his services were terminated because of reduction in work load. He had not worked in one Unit for 240 days continuously, therefore, he

was not eligible for the notice and the compensation, etc.

4. The learned Trial Court had framed 10 issues. Issue no.1 dealt with the illegality of the termination of his services from 16.7.1981, Issue no.2 was to come to a conclusion whether he had worked for more than 240 days continuously or not, Issue no.3 dealt with the fact whether he was working on a Project, and issue no.4 was to determine whether the plaintiff was discharged under Rules 76 and 77 of the Industrial Disputes (Central) Rules,1957. On these issues the learned trial court had held that the work on which the plaintiff was working was a Project. In regard to whether he had worked for 240 days continuously, the learned trial court had concluded that he had not worked continuously for 240 days in one Unit and, therefore, he was not entitled to the compensation and notice as laid down in paragraph 2514. Further in regard to his having temporary status, it was also concluded by the trial court that the plaintiff was not entitled to the benefit of such a status. He was also not covered by Rule 76 of the Industrial Disputes Act because his services under the Executive Engineer, Chhapra was not continuously for one year. The trial court had also held that since the seniority list was published on 30.6.1981 while it should have normally, under Rule 77, been published at least seven days before the retrenchment is ordered and it has not been proved that it was so displayed, therefore, one of the conditions of retrenchment was not followed by the defendants and, therefore, he held that the principle of last come first go did not appear to have been

followed while retrenching him. While concluding the judgment the learned trial court held that the termination order of 16.7.1981 was bad because the seniority list had not been displayed in accordance with the rules and the principle of last come first go had not been followed and the plaintiff was not paid 1/30th of the pay scale which became due to him when he worked under Executive Engineer, Chhapra from 20.12.1980 to 15.7.1981, which was a period of more than six months duration.

5. We have heard the learned counsel for the parties. The learned counsel for the defendant-appellant contended that the seniority list was displayed on 30.6.1981 and the plaintiff was amongst the juniormost persons and retrenchment compensation was not due as the Industrial Disputes Act did not apply to the case of the plaintiff-respondent and, therefore, the findings of the learned trial court were not correct. The learned counsel for the plaintiff-respondent, however, contended that the plaintiff had worked continuously for more than a year because he was working on a Project on the Railway, may be under different Engineers, but since the Project was the same, he was entitled to the protection under Rule 77 and since the retrenchment compensation had not been paid to him, the suit was correctly decreed in favour of the plaintiff-respondent.

6. Rule 77 of the Industrial Disputes (Central) Rules,1957 deals with the subject of Maintenance of the Seniority list of workmen. It lays down that the employer shall prepare a list of all workmen in a particular category from which retrenchment is contem-

plated arranged according to the seniority of their service and cause it to be displayed in a conspicuous place in the premises at least seven days before the actual date of retrenchment. Rule 76 says that if any employer desires to retrench any workman, who has been in continuous service for not less than one year under him he shall give notice of such retrenchment to the Central Government.

7. A workman referred to in Rules 76, 77 and 78 has the identical definition, i.e. one who has worked continuously for not less than one year under the employer. If a person has not worked continuously for one year he does not qualify for coverage under these rules. The trial court had held that the plaintiff-respondent had not worked for one year continuously. It was observed that the plaintiff-respondent had worked from 22.7.1980 to 15.12.1980 in the Gorakhpur Unit and from 20.12.1980 to 15.7.1981 in the Chhapra Unit. Since according to the copy of the Railway Board's letter of 27.2.1978 submitted by the plaintiff in the documents filed in the suit it is clearly laid down that for projects the unit of recruitment is XEN, the learned trial court rejected the claim of the plaintiff that he had worked continuously for one year because he was under the Chief Engineer (Construction), Gorakhpur, who was the over all incharge of the Project. Since he worked in two separate units he did not complete the requisite period of continuous working.

8. It was argued at the bar by the learned counsel for the plaintiff-respondent that according to para 2514(v) of the Indian Railway Establishment Manual, which reads :-

"(v) A worker who is employed directly on a Railway as a casual labourer for more than 240 days in the preceding twelve calendar mon-ths on a construction work or a project which has been going on for a period of more than two years and who will be retrenched will be entitled to be paid compensation in respect of retrenchment at the prescribed rates for every completed year of service or any part thereof in excess of six months under sub-section (2) of Section 25-FFF of the Industrial Disputes Act,1947, if he satisfies the other conditions laid down in that Act."

the term Railway in the broader sense covers the service on the railway and not the unit only. This interpretation is not correct. Casual Labours are generally employed locally where work is going on. By tradition persons do not move from one area to another. Also if a work is going on in a particular area or State, it is the persons of that State, who have a right for being employed rather than importing labour from a different State or far off place. It is the theory of the son of the soil ~~t~~ that prevails unless the employer creates a mobile labour force that can be taken from place to place to do a work. This is not only cumbersome but also difficult to work to. There can be so many problems of logistics that may not be in favour of such a practice. Hence local labour within the beat of an Executive Engineer is engaged, and the unit of recruitment in Projects is kept at the Executive Engineers level. In open line the unit is smaller because the work is localized.

9. Thus if the plaintiff-respondent had not been covered by the provisions of the definition of a workman who had worked continuously for one year. Rules 76 and 77 both do not apply to him. To this extent the conclusion

arrived at by the learned trial court was erroneous.

10. The seniority list was published on 30.6.81, and the termination order is dated 16.7.1981. The list shows the seniority position of the plaintiff-respondent. He is at Sl.No. 1607. The total number of persons was 1610. Thus he is nearly the last. He has not shown which of his juniors have been retained. He made a wild allegation. The trial court held that since the seniority list was not published a week in advance, and no evidence was brought forward to repel the contention of the plaintiff that juniors had not been retained, the plaintiff's statement is to be believed. We do not agree to this logic. The seniority list of 30.6.1981 shows the names of 1610 casual workers. It shows the position of the plaintiff and the plaintiff has not come forward with any definite names. In the face of the seniority list showing him, the junior most, the plaintiff's statement should not have been relied upon unless he came up with definite allegations and they were supported by documentary evidence. Vague allegations deserved to be rejected. Here also the trial court had erred.

11. As far as the question of having worked for six months continuously is concerned, the trial court had held that the plaintiff was entitled to 1/30th scale of pay. If the plaintiff would have become entitled to 1/30th of the scale pay per day, what benefits would he have drawn at the time of his retrenchment ? The Railway Board's letter No. PC-72/RLT/69-3, dated 12.6.1974 (63-Ga) has specified that such casual labour do not attain temporary status. The trial court had held that the plaintiff-respondent had not

attained temporary status.

12. So if the plaintiff-respondent was not covered by the provisions of the I.D.Act by virtue of his having not worked for a year continuously and he had not attained temporary status and there was no violation of the rule of 'last come first go' the plaintiff-respondent had no case except that he should have been paid 1/30th CPC scales of pay after he completed six months under the XEN, Chhapra and he was incorrectly paid. The defendant-appellants will check this aspect once again and, if he is due any arrears on this score, arrange to pay him the arrears at their earliest. But this cannot make the termination void.

13. On the above considerations we allow the appeal and set aside the judgment and decree passed in Suit No.1391 of 1981 by the Munsif IV, Gorakhpur. The suit is dismissed. Parties will bear their own costs throughout.

Vice-Chairman.

Member (A).

Dated: September 24, 1987.

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