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Reserved.

Central Administrative Tribunal, Allahabad.

Registration T.A.No. 1588 of 1986 (Civil Appeal No.43 of 1984)

Jagan Lal Rastogi ... Applicant

Vs.

Union of India and another ... Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This transferred application is a Civil Appeal and has been received by transfer from the Court of VIIth Addl. District Judge, Bareilly under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The applicant Jagan Lal Rastogi (hereinafter referred to as the plaintiff) had filed suit no. 268 of 1983 in the Court of Munsif City Bareilly against the respondents (hereinafter referred to as the defendants) for an injunction to direct the defendants to allow the plaintiff to continue in his service on the post of Casual Painter under I.O.W. Izatnagar Bareilly and from causing any interference in his service with the allegation that the plaintiff was appointed as a Painter on casual basis by the IOW under the Divisional Railway Manager, Izatnagar respondent no.2 and after completing the service of 120 days as casual labour, he acquired the temporary status and after completing the service of 592 days, he became entitled for screening test for appointment against a permanent vacancy. According to him, he regularly worked from 1.8.1981 as a Painter but the defendants did not grant him the status of temporary employee and when the plaintiff suspected that they would deny him the job on which he was posted, he hurriedly filed the present suit seeking exemption under Section 80(2) for filing the suit without giving statutory notice under that Section.

3. The defendants contested the suit and pleaded in their written statement that the Railway Board vide their letter dated 18.12.1980 had imposed a complete ban on engagement of casual labour from open market without prior approval of the General Manager and the IOW Izatnagar was not competent to engage the plaintiff as a casual labour without the prior approval of the General Manager. The appointment of the plaintiff from the very inception i.e. 16.9.1981 was, therefore, illegal and he cannot derive any advantage of his illegal engagement. The vigilance Department of the Railway had reported that the engagement of the plaintiff was without any lawful authority and as such, he was not allowed to function any more w.e.f. 29.11.1982 and his suit for injunction is not maintainable. A casual labour neither holds a civil post nor is a railway servant and as such, he does not enjoy any protection under Article 311 of the Constitution of India. The engagement of a casual labour comes to an end at the close of each day. The plaintiff had not completed ~~continuous &~~ 120 days ~~complete~~ service as casual labour and he is not entitled to the status of a temporary employee and he is not eligible for screening test for empanelment. It is not correct to say that the plaintiff regularly worked from 1.8.1981 as a Painter. His suit is barred by the provisions of Sections 34 and 41 of the Specific Relief Act and is not maintainable for want of a notice under Section 80 Civil Procedure Code.

4. The trial Court framed 7 issues in the case. On issue no.1 regarding the effect of filing the suit for want of a notice under Section 80 CPC, it was held that this objection should have been raised by the defendants at the time the permission was granted to the plaintiff to sue without giving notice and the plaint could not be returned to the plaintiff for want of a notice at a later stage. The issue no.2 regarding the bar

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under Sections 34 and 41 Specific Relief Act was not pressed and was decided against the defendants. On issue no.3 regarding cause of action, it was held that the plaintiff has got a cause of action but as he has claimed the relief for mandatory and prohibitory injunction while he should have sought the relief of declaration as well as consequential relief, the relief claimed is infructuous. On issue no.4 to the effect whether the suit has become infructuous, it was held that the plaintiff was discharged from service on 24.11.1982 and he filed the suit in May 1983 and as such, his suit has become infructuous. On issue nos. 5 and 6 which were considered together, it was held that the plaintiff should be treated as temporary employee and not as casual labour. Issue no.7 relates to reliefs and in view of the findings on issue no.4, the suit was dismissed and the parties were directed to bear their own costs.

5. The plaintiff filed the present appeal against the findings recorded against him but the defendants did not prefer any cross-objection against the findings recorded against them. On behalf of the plaintiff, it was contended before us that the relief for injunction involves the question of declaration and the plaintiff was not required to seek a separate relief for declaration and the findings recorded by the trial Court against him are not sustainable under the law. The learned counsel for the defendants has disputed the contention of the plaintiff and it was contended that neither the plaintiff had acquired the temporary status nor he gave notice under Section 80 CPC before filing the suit nor he sought proper relief and as such, there is no force in this appeal.

6. We have carefully considered the contentions raised on behalf of both the parties before us and find that by an amendment, an explanation was added to rule 22 of O.41 C.P.C. in 1977

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which lays down that a respondent aggrieved by the finding of the Court in the judgment on which the decree appealed is based may file cross objection in respect of the decree in so far as it is based on that finding notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the purpose of the suit, the decree is, wholly or in part in favour of the respondent. Rule 22(1) of 0.41 C.P.C. provides that the respondent may state that the finding against him in the Court below in respect of any issue ought to have been in his favour and may also take any cross-objection to the decree which he should have taken by way of appeal, provided he has filed such objection in the appellate Court within one month from the date of the service of notice of appeal. We are, therefore, of the view that unless a cross-objection as provided by 0.41 R.22(1) and the explanation thereto is filed by the respondent, he cannot challenge the correctness of the findings recorded by the trial Court against him and in favour of the appellant.

Under the general provisions of 0.41 R.23 CPC, the Court may consider the nature of the relief irrespective of a cross-appeal or objection but when it is not a question of nature of relief but is a question of the findings on which the relief is based, the respondents should file a cross-objection. As in the present case the defendant-respondents did not file any cross-objection against the findings on issue nos. 5 and 6 against them under which it was held that the plaintiff had acquired the status of temporary employee and he was not a casual labour, they cannot be heard in this appeal to say that the plaintiff, in fact, had not acquired such status and the findings recorded by the Court below are incorrect.

7. In view of this legal position, there remains now only the question of granting the proper relief to the plain-

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tiff. The learned trial Court has held that as the plaintiff was not in service on the date the suit was filed and he ought to have filed the suit for declaration with consequential relief, the suit for mandatory injunction is not maintainable and has become infructuous. We are of the view that the plaintiff in this case is guilty of suppression of material facts as well as of stating wrong facts with a view to get the relief claimed. On the own admission of the plaintiff Jagan Lal made as P.W.1 before the trial Court in ~~cross-objection~~^{examination &}, he was removed from service w.e.f. 24.11.1982 and he had filed the suit giving rise to this appeal on 31.5.1983. He was, therefore, not in service on that date and he not only claimed continuity in service on that date but also sought an exemption for filing the suit without giving a notice under Section 80 CPC by stating wrong facts. The relief of injunction whether permanent or mandatory is in the discretion of the Court and should be refused when the plaintiff does not come to the Court with clean hands. However, instead of taking the extreme view against the plaintiff, we will like to give him some relief specially when he has not claimed any arrears of pay. The plaintiff having acquired the temporary status has a right to continue in service as such till his services are dispensed with under the provisions of Railway Servants (Discipline and Appeal) Rules, 1968 or under any provision applicable to temporary railway employees.

8. We accordingly allow the appeal in part and direct the respondents to consider the claim of the plaintiff-appellant for providing him some duty on the basis of his acquiring temporary status before 24.11.1982. The plaintiff shall, however, not be entitled to get any arrears of pay for the period, during which he actually did not work, under this order. There shall be no order as to costs of this appeal.

MEMBER (A)

Bhama
18.1.88

MEMBER (J)

Subarna
19.1.88