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Reserved

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION O.A. NO. 1259 of 1987

Jagdish Prasad & another Applicants

Versus

The Divisional Railway Manager,
North Easter Railway, Varanasi
and others. Respondents.

Hon'ble D.S.Misra - AM
Hon'ble G.S.Sharma- JM

(Delivered by Hon.G.S.Sharma- JM)

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In this application under section 19 of the Administrative Tribunals Act no.XIII of 1985, the applicants have prayed that it be declared that the applicants are regular Class-IV employees of the N.E. Railway and are entitled to the benefits of continuous service from 5.4.1981 and 6.5.1981 respectively and for a further declaration that the termination of the services of the applicants by oral order dated 17.3.1982 is illegal.

2. The relevant facts of this case are that the applicants were employed as Casual Labours on 5.4.1981 and 6.4.1981 respectively under the respondents and after their continuous working for more than 4 months, they acquired the status of temporary Railway employees but the respondents

illegally prevented the applicants from attending their duties from 17.3.1982 despite their satisfactory performance. According to the applicants under para-2511 of the Railway Establishment Manual, they became entitled to certain rights and privileges admissible to temporary Railway employees and their services could not be arbitrarily and illegally terminated orally and under the law, ^{and} they should be deemed to be ~~continuously~~ ⁱⁿ in service.

3. The petition has been contested on behalf of the respondents and it has been stated that as the applicants were engaged as Casual Labour rates for a specific period of sanction of the posts, which were extended from time to time in the exigencies of work, they did not acquire the temporary status and they were discharged from duties on the availability of the permanent staff on being rendered surplus due to the closure of Mandua-Dih Transhipment Yard. No notice or other formalities were required for terminating the services of the applicants. The applicants had filed Civil Suit no.261 of 1982 in the Court of Munsif, Varanasi challenging the validity of their termination which was dismissed on 30.4.1983. The applicants did not go in appeal and allowed the judgment to become final. The applicants also approached the Industrial Tribunal, Kanpur under section 33-C(2) of the Industrial Disputes Act against their impugned termination, but their case was dismissed by ^{the} Labour Court on 2.9.85 and

in view of the finality attached to the orders of Civil Court and Labour Court, the present petition is not maintainable and the question of absorption of the applicants permanently does not arise. The applicants had also raised the matter through their Mazdoor Union and after thorough discussion in the PNM meeting, it was agreed to re-engage the petitioners as substitute Khalasi. In terms of Railway Board's letter no. E(NG)/II/80/CI/5 dated 18.12.80, only such casual labours who were engaged prior to 1.1.1981 can be appointed after that date and the appointment of the applicant as Casual Labour in April, 1981 was thus illegal and on scrutiny when this defect was detected, re-engagement of the applicants was terminated after due notice and the applicants are not entitled to any relief and their claim is also time barred.

4. In the replication, it was alleged that Civil Suit and the Industrial dispute were decided against the applicants on technical grounds of jurisdiction and the suit of the applicants is not barred by time. The applicants are entitled to the benefit of temporary status under para-2501 of R.E. Manual and their suit is not barred by time and the applicants are entitled to the reliefs claimed.

5. It appeared from the averments made in the reply filed on behalf of the respondents that the applicants

had concealed certain material facts and in the rejoinder, it was admitted by them before filing this petition, the applicants had filed a Civil Suit and also taken the matter to the Labour Court under the Industrial Disputes Act. The effect of the said litigations on the present petition has, therefore, to be seen. Annexure-I to the reply is a copy of the judgment dated 30.4.1983 passed by XIVth Additional Munsif, Varanasi in Suit no.261 of 1982 filed by the present applicants and two others for permanent and mandatory injunction with the allegations that after the continuous working for 240 days, they have acquired temporary status and the defendants were illegally pressurising them to leave their charge without lawfully terminating their services. On behalf of the defendants, it was stated that regular employees were appointed in place of the plaintiffs on 12.3.1982 and the plaintiffs stood relieved of their duties and they had no right to continue in service. The learned Munsif had held that though the plaintiffs had acquired the temporary status after continuously working for more than four months, but under para-2505 of the R.E.-Manual, no notice was required to terminate the services of the Casual Labours even after acquiring the temporary status. It was held that the plaintiffs could claim proper relief under the Industrial Disputes Act and their suit was not cognizable by the Civil Court. The suit was accordingly dismissed with costs. The contention of the applicants is that as the

suit was dismissed for want of jurisdiction, the decision under the said suit will not operate as res-judicata and the present petition of the applicants is maintainable. We are, however, unable to agree with this contention in part. It is true that a decision of a court having no jurisdiction may not have the binding effect of res-judicata in the subsequent proceedings between the parties, but it is not correct to say that the Munsif had no jurisdiction to decide the dispute regarding the service matter of the applicants and it was necessary for the applicants to go to the Labour Court under the Industrial Disputes Act. A number of suits and appeals have been received from the Civil Courts under section 29 of the Administrative Tribunals Act, 1985 and this Tribunal has given reliefs in proper cases without asking the plaintiffs to approach the Labour Court. The plaintiffs should have gone in appeal against the findings of learned Munsif and as they acquiesced to the decision given by the learned Munsif, they are not precluded from bringing a fresh case for the same subject matter in view of the bar of res-judicata.

6. It appears from the reply filed by the respondents that the applicants were re-engaged in accordance with the decision in the PNM meeting, but as their services have been terminated as their initial appointment was made after 1.1.1981 and they were not

entitled to appoint him as Casual Labour in April, 1981. The main relief claimed by the applicants in this petition is that they are entitled to continue as regular Railway Employees from the dates of their initial appointment in April, 1981. We are of the view that the present petition is clearly barred by the principles of res-judicata and no such relief can be granted to the applicants in this petition and it is not necessary for us to examine any other aspects of the case of the applicants.

7. The petition is accordingly dismissed without any order as to costs.

Shahid
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Memner (J)

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Member (A)

Dt/ 17 th October, 1988/
Shahid.