RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Review Application No.3 of 1987

In

Registration T.A.No.20 of 1986

Baboo Lal ..... Plaintiff-Appellant

Versus

Union of India & Others .....Defendants-Respondents

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

(By Hon. Ajay Johri, A.M.)

By this application the petitioner Baboo Lal is seeking a review of the judgement given by us in Registration No. 20 of 1986 (T) (C.A. No.300 of 1984). The petitioner had earlier filed a suit No. 85 of 1983 in the Court of Munsif (West) Allahabad which was dismissed on 30.3.84. The Civil Appeal No. 300 of 1984 against this judgement was received on transfer from the Court of District Judge, Allahabad.

2. The grounds for seeking the review are :

(i) That the findings of the Tribunal that the petitioner had claimed his appointment as of a casual nature are against the specific pleading of the petitioner in para 5 where he has claimed to be a confirmed employee.

(ii) That the petitioner being the senior most casual fitter was promoted as

wireless mechanic and if his appointment as wireless mechanic was put to an end he should have been sent back to his position as senior most casual Fitter instead of terminating his service.

(iii) That in para 15 of the judgement it has been mentioned that the petitioner has been paid upto 14.11.83 and his services were terminated on 15.10.83 and thus he was paid one months salary in lieu of notice, and he was entitled to six months salary as compensation also. Thus the provisions of Section 25-F of the Industrial Disputes Act which lays down condition precedent to termination were not complied with. This aspect was missed in the judgement. The payment made upto 14.11.83 of Rs. 176-40 does not mention days. One month salary will be more than this amount. Thus this amount could not be treated as payment of salary in lieu of notice. The payment of six months salary does not cure the defect in the notice. The payment of compensation and the payment of salary are conditions precedent to termination as required by Section 25-F of Industrial Disputes Act.

3. During the course of arguments the learned counsel for the petitioner contended that the above being errors apparent on face of record the judgement needs to be reviewed. There was no payment of one month's notice pay and the compensation was also not paid precedent to the termination. The learned counsel for the respondents maintained that there was no error,

and no prayer in the original suit has been made in this regard and no issues were so framed hence the application is liable to be rejected.

4. We will deal with the grounds on which the review has been asked for. The first error that has been pointed out is that the petitioner was a confirmed employee but in our judgement we have considered him as a casual employee with temporary status. It has not been challenged that the petitioner was appointed as a casual Fitter and when he had worked for 120 days he was given CPC scales. Even on his own showing, in para 8 of his review petition, he has said that he was the senior most casual Fitter. He was promoted as Wireless Mechanic. Wireless Mechanic according to his own showing again was in the grade Rs.260 - 400 which is the same grade as that of the Fitter(Para 11 of review petition). Hence he was put to work as Wireless Mechanic from the job of Fitter. Both appointments were of a casual nature. This is further supported by the petitioner's statement in para 8 of his plaint where he has wanted that he be sent back to his position of senior Casual Fitter as well as by the order dated 16.8.81(92-Ga) which clearly indicated that he was posted as a Casual Wireless Mechanic. Thus there has been no error in our conclusion that he was a Casual Fitter with CPC scales.

5. The second point raised is that instead of being terminated he should have been sent back as Casual Fitter. In his posting order issued by the Chief Wireless Inspector it is clearly mentioned that he is posted on a purely casual

basis against long term casual sanction. There was no condition that he will be sent back as casual Fitter rather the order says that ~~the~~ " You have no claim on this post if man from panel or direct recruited man is posted, against this sanction, by the administration." Hence the question of sending the petitioner back as casual Fitter ibid did not exist. He had no lien against a particular post. His appointment being of a casual nature it was liable to be terminated on the expiry of the work. Moreover the reliefs claimed in the Suit No.851 of 1983 were :-

(a) That the defendants.....be restrained from terminating the service of the plaintiff.

(b) .....

(c) .....

(d) That it be declared that the order dated 14.4.83 passed against the plaintiff is illegal, inoperative and without jurisdiction.

The main grounds in the appeal No.300 of 1984 were regarding the petitioner's status and lack of one months notice as required in case of temporary servants. This was a new issue taken up during the hearing of the appeal that the petitioner should have been sent back as a casual labour. This was opposed by the learned counsel for the defendants on the short point that this plea was not taken up in the pleadings in the trial court and therefore it could not be raised now. We did not take this ground into consideration for obvious reasons. New issues could not form basis of an appeal. Also it was not brought out that there was still a requirement of Fitters and he could be absorbed there. On the above considerations this grounds also fails.

6. The third ground relates to the one month's notice & the six months salary as compensation. It has been said that the payment

of Rs. 176-40 made for the period ending 14.11.83 was not a month's salary in lieu of notice. That the salary would have been much more than this amount and the payment of six months salary does not cure the defect of the lack of notice. According to the pleadings taken in the appeal, the notice given on 14.4.83 became inoperative after 28.6.83 and thus the termination became illegal in the absence of the notice. We had considered the requirements of Section 25-F of the Industrial Dispute Act which says :-

" No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay "for every completed year of continuous service" (b) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government(or such authority as may be specified by the appropriate Government by notification in the Official Gazette(c)."

This plea was again not taken in the trial court. It was raised only during the arguments in the appeal.

i) In para 15 of our judgement we had said :-

> "The learned Munsif had decreed the payment of this amount which the defendants have challenged in their appeal No. 84 of 1985. The learned counsel for defendants has not brought to our notice why, if termination took place with effect from 15.10.83, payment upto 14.11.83 was made, Even the appellant chose not to mention about it and he is only seeking relief against the notice of 14.4.1983."

ii) Para 16 of our judgement speaks of the requirement of the Industrial Disputes Act as stated in Section 25-F. We agree that our presumption that the payment shown as made from 15.10.83 to 14.11.83 was'notice pay' was not correct. We have gone over the facts once again. We have also gone over the written statement of the defendants in Suit No.851 of 1983. They have said in para 13 that the plaintiff was working as casual CPC Fitter. His temporary sanction on ELA basis automatically came to an end and he was served notice dated 14.3.83 and 14.4.83 and after paying six months salary his sanction was discontinued on and from forenoon of 15.10.83. Again in para 18 they have said that the plaintiff was on unauthorised absence and his whereabouts were not known as such the notice of discontinuation was pasted on the Chunar office where he actually worked. The order

dated 14.10.83 ready :-

> "In continuation of this office notice of even No. dated 14.3.83 and 14.4.83, your sanction of the post of CPC Casual Fitter is discontinued on and from 15.10.83 FN. You have been paid six months salary as compensation for the period from 14.3.83 as per extant rule of Labour Department Govt. of India."

It is this notice and the payments made as shown in paper 36-Ga that raised the ambiguity and we have observed in this para (Para 16 of the judgement) :-

> ".....Six months salary has further been decreed by the trial court. This should be against the compensation though not correctly quantified. A rough perusal of the period counting from 6.4.74 the date he was first employed shows a total of nine years of service. This would entitle the appellant to a maximum of 4½ months salary. The trial court has given him six months and the defendants have also on their own motion shown the same as compensation in their letter of 14.10.83. We consider that this was more than adequate compensation under the I.D.Act and the provisions of the Industrial Disputes Act have been substantially followed."

We thus find that even though Rs. 176-40 was not one month's salary, against 4½ months compensation that could have been due, the petitioner

had been paid six months salary by the trial court and we held that that was "more than adequate". On the other hand the defendants have maintained that the sanction expired and the order of appointment had clearly stated that the appointment will automatically cease on expiry of the sanction, and he had been given a notice on 14.3.83 & again on 14.4.83. 3/

8. In the review petition it has been urged that the provisions of the Industrial Disputes Act had not been followed. Our observations resulting in the upholding of the Trial Courts verdict did not agree with this contention. We had held that the provisions of the Industrial Disputes Act had been "substantially followed". Under Section 28 of the Administrative Tribunals Act XIII of 1985 as amended by the Act of 1986

" No court except :-

(a) The Supreme Court or

(b) Any Industiral Tribunal, Labour Court of other authority constituted under the Industrial Disputes Act 1947 or any other corresponding law for the time being in force,

shall have or be entitled to exercise any jurisdiction power or authority in relation to such recruitment or matters concerning such recruitment or such service matters." Thus the scope of the Industrial Dispute Act has been excluded from the jurisdiction of this Tribunal. The reason was perhaps that the rights and obligations under the Industrial Disputes Act could not be enforceable by this Tribunal. What the

Tribunal can adjudicate is what is within the scope of common law and not what lies in the domain of the Industrial Disputes Act. Thus we feel that this Tribunal has no power or jurisdiction to adjudicate in terms of the Industrial Disputes Act. Two forums are available to a person who is also covered by the Industrial Disputes Act. One is prayer for relief under common law when he can come to this Tribunal and the other is when he wants to invoke the provisions of the Industrial Disputes Act in which case he has to seek the shelter of the Industrial Tribunal. In terms of this amendment we are barred from adjudication of a dispute under the Industrial Disputes Act, and the relief would be limited to relief under Rule 149 RI of the Indian Railway Establishment Code Vol.I. ~~We had thus overstepped our jurisdiction under common law.~~ The administration is empowered to terminate the service of an employee after due notice. The notice was given on 14.3.83 and again on 14.4.83 and apart from this the trial court had ordered payment of six months salary which order we have upheld as according to us it substantially satisfied the provisions of Industrial Disputes Act. What is important is that the period of notice should not fall short of the statutory requirement. It cannot be claimed that a notice

becomes invalid if the service is not terminated on the date the notice expires. The requirement of the rule has been followed and we did not and do not find any violation even in this account.

9. We are thus of opinion that the petition must fail. We had allowed consideration of the pleas that were not raised in the trial court. We found that the trial court's decree did not need a change under the circumstances of the case. Justice had not suffered. Our observation that the payment made in November, 1983 was notice pay was no doubt erroneous, but it does not materially affect the conclusion. Thus no apparent error or mistake exists on the face of the judgement. No new discovery has been made. The stand taken in review petition and the pleadings in the appeal are inconsistent with the position taken in the trial court. We had earlier, in our judgement, sought to be reviewed, upheld the decree of the trial court and we repeat it here.

10. Under the circumstances we do not find sufficient reason to review our judgement. We, therefore, dismiss this petion. Parties will bear their own costs.

Vice Chairman (J)

Member(A)

Dated the 28th May, 1987

RKM