

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH.

T.A.No.17 of 1987 (T)

IN

(O.S.No.22 of 1986)

Anil Kumar Plaintiff.

Versus

1. General Manager Ordnance Clothing Factory, Shahjehanpur.
2. Director General Ordnance Clothing Factory 44 Park Street Calcutta.
3. Union of India through Secretary Defence Ministry, Government of India, New Delhi

..... Defendants.

Hon'ble Mr. A.B.Gorthi, Member(Administrative)

Hon'ble Mr. S.N.Prasad, Member(Judicial)

(By Hon'ble Mr.S.N.Prasad, J.M.)

The above Original Suit No.22 of 1986 which was filed in the Court of Munsif, Shahjehanpur has been received in this Tribunal by way of transfer under section 29 of the Administrative Tribunals Act, 1985 and the transferred application has been numbered as 17 of 1987 (T).

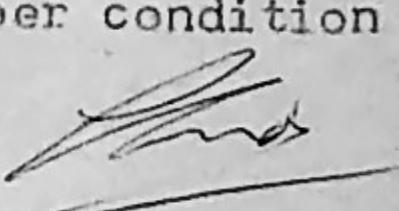
2. The plaintiff has filed the above suit for declaration to the effect that the factory order part 3rd No.687 dated 9.10.1982 passed by the defendant No.1 (General Manager of the aforesaid Factory) terminating the service of the plaintiff with effect from 9.10.1982 (afternoon) is invalid, void and illegal and plaintiff is entitled to be re-instated in the service of the defendants with all the consequential benefits.

3. Briefly stated the plaint allegations of the aforesaid suit, inter-alia, are that the father of plaintiff was declared medically boarded out before attaining the age of superannuation and the plaintiff was appointed in his place on compassionate ground, as

R/2
2/2

casual labour and the plaintiff worked as such from 19.8.1980 to 9.10.1982 and his work was found satisfactory in all respects in as much as that he was awarded Rs.50/- by the aforesaid factory for his commendable services, as per Factory Order No.35 dated 23.1.1982. There has been no complaint against the plaintiff of any kind and the plaintiff was not even censured or warned for any lapse on his part, and plaintiff was issued identity-card by the aforesaid factory. Though many workers junior to the plaintiff are still working in the aforesaid factory and though other persons are being appointed, but the plaintiffs' services were terminated by the defendant no.1 on 9.10.1982 without any rhyme or reason. The plaintiff sent registered notice to the defendants under section 80 of the CPC but that proved ineffective, hence the above suit was filed by the plaintiff.

4. From the side of the defendants, counter-affidavit has been filed by Shri Viney Bhalla, Works Manager Administration of the aforesaid factory, dated 23.4.1987 wherein it has been stated that the father of the plaintiff namely Shri Jimmey of the aforesaid factory retired from service w.e.f. 31.12.1977 on attaining the age of super-annuation as 60 years and he was not medically boarded out as alleged by the plaintiff. The plaintiff was appointed as labourer 'B' (now labour unskilled) w.e.f. 19.8.1980 on casual basis for a period not exceeding 89 days subject to approval by the competent authority and he was discharged and re-appointed on several times with a break of couple of days every time and ultimately his services were terminated w.e.f. 9.10.1982(afternoon) being a casual employee as per condition No.2 of his appointment

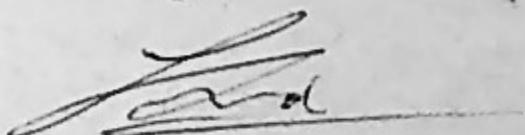


letter No. LB/2442-A dated 6.8.1982. The plaintiff did not work in the aforesaid factory as regular employee as claimed by him, but he was appointed purely on casual basis as per details given hereunder for a period not exceeding 89 days:-

19.8.1980 to 15.11.1980
18.11.1980 to 14.2.1981
17.2.1981 to 14.5.1981
16.5.1981 to 12.8.1981
14.8.1981 to 16.11.1981
10.2.1982 to 6.5.1982
12.11.1981 to 6.2.1982
8.5.1982 to 3.8.1982
6.8.1982 to 9.10.1982

Section of Rs.50/- as cash awarded to the plaintiff as mentioned in the plaint, has been admitted. After termination of the service of the plaintiff as per aforesaid order dated 9.10.1982, his identity card was collected back as per existing rules, as the identity card was issued to the plaintiff to secure his entry into the aforesaid factory and it has got no relevancy with any other matter. In view of the above circumstances, the plaintiff's suit is liable to be dismissed with cost.

5. The plaintiff has filed his rejoinder-affidavit dated 23.7.1987, while reiterating the plaint allegations has, inter alia, stated that it is wrong and incorrect that the plaintiff was appointed for a period of 89 days, but in fact his appointment was made on compassionate ground in place of his father (against the permanent vacancy) who was medically boarded out before attaining the age of his superannuation ^{at} 60 years and as such the contentions of the defendants are wholly illegal and arbitrary and against the principles of natural



justice. It has further been stated that the plaintiff has worked continuously from 19.8.1980 to 9.10.1982 and the break in his service as shown in the counter-affidavit by the defendants is infact not a break ^{~ due to prejudice, of superior officers ~} but artificial break, and this artificial break should be treated as earned leave. It has further been stated that many persons namely Mohammad Iqbal, Irshad Ali, Ram Dularey, Rajendra, Shyam Ji and others, who are juniors to the plaintiff, are still working as casual labourers but the services of the plaintiff have been terminated and this ground alone is sufficient to set aside the impugned order. It has also been stated that the plaintiff has acquired a temporary status as he has completed more than 240 days in a year and as such termination of his services without giving any notice to him is against the rules and against the principles of natural justice.

6. We have heard the learned counsel for the parties at length and have thoroughly and carefully gone through the records of the case.

7. The learned counsel for the plaintiff has argued that the plaintiff has worked for about more than 700 days which is much more excess than the requisite period of more than 240 days for acquiring temporary status, and has further argued that Ordnance Clothing Factory is an industry as per provisions of Industrial Disputes Act and as such the plaintiff had acquired temporary status at the time of the termination of his services on 9.10.82 through impugned order dated 9.10.82, and has further argued that Sarva-Shri Mohammad Iqbal, Irshad Ali, Ram Dularey, Rajender, Shyamji and some others, who were juniors to the plaintiff, have been still working and as such the impugned order is in violation of the provisions of Article 14 and 16 of the Constitution of India and

against principles of natural justice and against the provisions of Section 25 (F) of the Industrial Disputes Act and as such the plaintiff's suit be decreed and in support of his arguments, he placed reliance on the following rulings;

(i) (1987)3 A.T.C. 879 "Dr (Mrs) Prem Lata Chaudhari (petitioner) Vs. Employees State Insurance Corporation (respondent)" at page 879 wherein it has been enunciated:-

"Termination-Adhoc appointment-Employees' State Insurance Corporation employing doctors on adhoc basis initially for ninety days-continued after giving a few days' break but total spell not allowed to exceed one year-On analysis of Section 17, EST Act, 1948 held such view not warranted—Practice declared unconstitutional-Relief-Government directed to continue petitioners without break-one of the petitioners not in service directed to be reinstated- Spells of break to be treated as leave for the purpose of continuity in service-Constitution of India, Articles 14 & 16 Employees' State Insurance Corporation Act, 1948 Section. 17 "

(ii) AIR 1978 Supreme Court 548, " Bangalore Water Supply and Sewerage Board (appellant) Vs. A. Rajappa and others (respondents)" at page 548-549, wherein it has been enunciated:-

"Industry' as defined in S.2(i) has a wide import. Where there is (i) systematic ... automatic activity, (ii) organized by cooperation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and ~~or~~ distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making on a large scale, prasad or food), prima facie there is an 'industry' in that enterprise.

[Signature]
In the above rulings, we find that the -----

Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations."

8. The learned counsel for the defendants has argued that the Ordnance Clothing Factory, Shahjahanpur wherein the plaintiff was engaged purely on casual basis for some days not exceeding 89 days at any time, and as such the plaintiff has not acquired any status or temporary status; and has further argued that the provisions of Industrial Disputes Act do not apply in regard to the aforesaid factory as it is not an industry, and as such the impugned order was passed validly and legally, and the plaintiff is not entitled for any relief.

9. We have perused the above rulings and have considered the law points as enunciated therein.

10. This is not-worthy that the plaintiff's commendable services have culminated into award of Rs. 50/- to him (to the plaintiff) and this fact has been clearly admitted by the defendants in their written statement as specified above.

11. This is significant to point out that about the period during which the plaintiff is stated to have worked, as mentioned in the counter-affidavit of the respondents (defendants) as specified above, it is clear that the plaintiff had worked during the period ranging between 19.8.1980 to 9.10.1982 for about more than 700 days intermittently and as such, it is fully established that the plaintiff had worked more than 240 days during a year and as such and in view of the provisions contained under [~]Section 25(F) of the Industrial Disputes Act, and keeping in view the entire material on record and keeping in view the law-points in the above rulings, we find that the aforesaid Ordnance

AV
R/A

Clothing Factory is an Industry and we hold that the plaintiff had acquired temporary status, and thus

this being so, the services of the plaintiff could not have been terminated without service of notice on him under Section 25(F) of the Industrial Disputes Act.

12. Thus, in this view of the matter and keeping in view the provisions of Section 25(F) of the Industrial Disputes Act, and having regard to the principle of law as laid down in the above rulings relied upon by the learned counsel for the plaintiff (applicant), we find that the impugned order is illegal and invalid as the provisions, contained under Sec. 25(F) of the Industrial Disputes Act have not been complied with by the Defendants (Respondents) and there is violation of the provisions of Article 14 and 16 of the Constitution of India.

13. Having considered all the aspects of the matter and in view of the above reasons, we set aside the impugned order dated 9.10.1982 and the plaintiff's suit No. 22 of 1986 for declaration to the effect that the order dated 9.10.1982, passed by the defendant no.1 terminating the services of the plaintiff with effect from 9.10.1982, is invalid, illegal and void, is decreed against the defendants; and the plaintiff is re-engaged in the service of the defendants on the post of labourer on which he was working immediately preceding his termination; and the plaintiff shall be deemed to be in the continuous service of the defendants for all other purposes but shall not be entitled for back wages for the intervening period i.e. from 10.10.1982 till the date of the resumption of the duty by him. The defendants are directed to re-engage the plaintiff, accordingly within a period of thirty days from the date of the receipt of the copy of this judgment. The aforesaid suit of the plaintiff is decreed as above against the defendants.

In the circumstances of the case, the parties to bear
their own costs.

~~Member (J)~~

~~7.2.92~~

~~transcript~~

Member (A)

Dated: 7.2.1992

(n.u.)/(u.c.Ø)