Reserved

Central Administrative Tribunal,Allahabad.

Registration T.A.No.372 of 1987

Laik Singh ... Applicant

Vs.

Union of India and another ... Respondents.

Hon.D.K.Agrawal,JM
Hon.K.Obayya,AM

(By Hon.D.K.Agrawal,JM)

Civil Misc. Writ Petition No. 7875 of 1979 on transfer to this Tribunal under the provisions of S.29 of the Administrative Tribunals Act XIII of 1985 was registered at the number indicated above.

2. The facts are that the Petitioner (herein-after referred to as Applicant) was employed as labour in the Northern Railway in 1970, given revised pay scale on 5.1.1978 and posted as Permanent Gangman w.e.f. 7.6.1979. His services were terminated in pursuance of order dated 29.8.1979 (annexure 1 to the petition). The case of the Applicant is that his services were terminated without compliance of the provisions of Industrial Disputes Act,1947.

3. It would appear that at the time of admission of the aforesaid writ petition in the High Court, an order was passed for connecting this writ petition with writ petition no. 6902 of 1979 which on transfer to the Tribunal was registered as T.A.No.357 of 1987. However, T.A.No.357 of 1987 has been decided on July 28, 1989. The facts of both the cases are similar. For the reasons contained in paragraphs 2 to 5 of the judgment in T.A.No.357 of 1987, this application is liable to be allowed. Paragraphs 2 to 5 of the said judgment are as under :-

"2. The respondents did not dispute the date of appointment of the petitioner except that it was contended that he was not appointed as a permanent gangman, but that, he was appoin -ted in the permanent gang. It was also alleged in paragraph 6 of the counter affidavit that the petitioner was removed from the service on account of a vigilance inquiry which record- ed a finding that the medical certificate submitted by the petitioner before the grant of authorised scale of post, was forged. The respondents have also taken a plea that the termination order was passed under the provisions of Rule 149 of the Railway Establish -ment Code treating the petitioner as a tempo- rary Railway employee.

3. The learned counsel for the petitioner contended before us that the petitioner having served the railway administration for more than a year acquired the status of a regular employee and in any case, even if, he was treated as temporary employee, compliance of the provision of S.25-F of Industrial Disput -es Act was mandatory; that his services could not have been terminated simplicitor under R.149 of the Railway Establishment Code We have no hesitation in making an observation that the petitioner was "a workman" within the meaning of Industrial Disputes Act. If so, the compliance of the provision of S.25- F should have been invoked and complied with. There is no manner of doubt that the provisions of the aforesaid Sections were not observed by the railway administration before terminat- ing the services of the petitioner. If,it was a case of retrenchment, the compliance of the provisions of the aforesaid section was mandatory as already mentioned.

4. In case, the services of the petitioner were terminated on account of a vigilance inquiry as mentioned in paragraph 6 of the counter affidavit, provision of Art.311 of the Constitution were attracted. It is also clear that no inquiry was held and the proce- dure followed for terminating the services of the petitioner. In the circumstances it can be said without any doubt that it was a case of retrenchment and the retrenchment was made without compliance of the provisions of S.25-F of the Industrial Disputes Act. Therefore, it was incumbent on the railway administration for following three fundamental requirements as laid down under S.25-F of the Industrial Disputes Act, 1947 :

(i) services of one month's notice giving reasons for retrenchment or payment of wages for the period of notice

(ii) payment of compensation which shall be equivalent to fifteen day's average pay for every completed year of continuous service or part thereof in excess of six months; and

(iii) service of notice on the appropriate government or the specified authority in the prescribed manner.

In the case of S.K.Sisodia Vs. Union of India and ors. (1988)7 ATC page 852, it was clearly held that mere fulfilment of requirement of R.149 is not sufficient in case of the railway employee falling within the category of "workman". In order to a valid termination, S.25-F of Industrial Disputes Act, 1947 has to be complied with. Non-compliance would render the order non est and the employee would be deemed to be in service.

5. The learned counsel for the Respondents urged that the petitioner having accepted 14 days pay is estopped from pleading of the applicability of S.25-F of Industrial Disputes Act, 1947. We are of the opinion that the arguments advanced by the learned counsel for the Respondents have no force. Firstly, because the provisions of S.25-F of Industrial Disputes Act have to be complied with as such; secondly, there is no estoppel against the statute.

4. In the above circumstances, this Application is liable to be allowed. The impugned order of termination dated 29.8.1979 (annexure 1) is quashed. The Applicant is to be reinstated forthwith without payment of backwages The Respondents shall be at liberty either to pass an order of retrenchment in accordance with law or draw the disciplinary proceedings on the basis of forged medical certificate alleged in para 6 of the Counter Affidavit. There will be no order as to costs.

MEMBER (A)

MEMBER (J)

Dated: 18th Dec 1989

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