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Versus

Hon'ble D.S.Misra, A.M.  
Hon'ble G.S.Sharma, JM.

In this application under Section 19 of the ATAct XIII of 1985, the applicant has sought a declaration that he may be deemed as a substitute labour under SS/CNB since 9.1.1986 with full pay and allowances.

3. In the reply filed on behalf of the respondents,

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it is stated that the applicant worked as casual labour on purely temporary basis for the summer season and was declared fit in A-2 ,medical category, for being considered for appointment as a substitute porter; that his candidature was referred by the Station Superintendent Kanpur to the Divisional Personnel Manager, Northern Railway, Allahabad on 29.1.1986; that the applicant was engaged as a casual Hot Weather Labour in the summer of 1986; that on 25.5.86, he prevented the other hot-weather staff from working as mobile waterman in LUP Mail resulting in the nonavailability of water to the passengers in the gruelling heat; that the applicant was not considered to be fit persons for being engaged as a substitute porter by Railway Administration.

4. In the rejoinder-affidavit, filed by the applicant the allegations made about his conduct on 25.5.86 was denied and it was alleged that his services were terminated with the intention of appointing other men of their choice.

5. On the final date of hearing, the applicant appeared in person and presented his case. None was present on behalf of the respondents. We have carefully considered the documents on record. The applicant's claim for being appointed as substitute labour is based on the instructions contained in the Circular letter dated 15.1.1985 of the Divisional Railway Manager on the subject of filling up of vacancies of porters in the traffic department. In this letter, it is stated that the vacancies in the category of switchman will be manned by utilising porters and other class IV of grade 196-232

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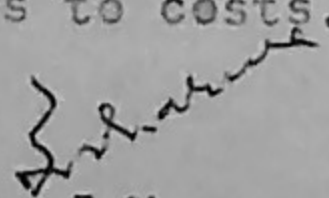
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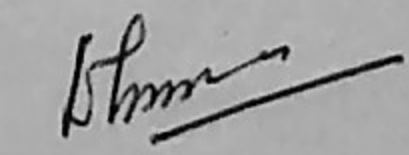
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that the resulted vacancies in the grade of porters and other class IV, which are clear long term vacancies shall be manned by engagement of substitutes; that the candidates/casual labours who have worked prior to 1.8.78 may be considered for engagement; that the only such persons who have passed medical examination will be appointed to such vacancies. It is not denied by the respondents that the applicant was engaged as casual labour on the basis of his claim that he had worked under the railway administration prior to 1.8.78. However, neither the applicant nor the respondents have given any details of the number of days for which the applicant has worked as casual labour prior to 1.8.78, or any other period prior to 25.5.86, the date on which his services were dispensed with on account of his misconduct. Even during the summer season of 1986, the period for which the applicant worked as casual water man is not indicated either by the applicant, or by the respondents. In these circumstances, it is not possible for us to determine whether the applicant has acquired any right to hold the post of casual labour. We are of the opinion that in the absence of such vital information, the applicant has failed to establish his right to continue on that post and the application is liable to be rejected.

We accordingly dismiss the application without any order as to costs.

  
J.M.

  
A.M.

JS/29.8.88