

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 262 of 1990 (L)

Versus

Hon'ble Mr. Justice U.C.Srivastava, V.C.

Hon'ble Mr. K. Obayya, Member (A)

(By Hon'ble Mr. Justice U.C.Srivastava, VC)

The applicant was respondent before the Industrial and Labour Court, ~~has~~ challenged the award passed by the Labour Court directing the re-instatement of Shiv Parson and awarding ~~to~~ back wages. The order has been challenged on the ground that the witness itself ~~was~~ died and the services of Shiv parson was never terminated and as such there was no question of re-instanting his services and directing the back wages. The Union submitted a charter of demand for alleged workmen said to be working, whose services were terminated on 15.10.1972. It appears from the basis of Charter of demand a reference was made by the Central Government to the Labour Court regarding the unjust format, terminating the services of Shiv Parson without mentioning the date as to when his services were terminated. According to the applicant that Siv Parson never worked at Barabanki and no termination order issued from Barabanki and that's why the reply was filed on 18.4.1985 to the Charter of demand in which it was stated that he may be directed to file the complete proof about his place of working. The matter was before the conciliation officer and as the parties could not sit ⁱⁿ to the matter. Consequently, the matter was referred to Central Government and the

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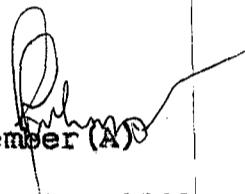
Central Government made a reference to the Labour Court and before the labour court, pleadings were exchanged and objections were raised, but the labour court after taking into consideration whatever evidence before it was passed a particular order.

2. Sri Arjun Bhargava learned counsel for the applicant contended that the services of Shiv Parson were never terminated and as a matter of fact, he was in ~~any~~ different unit and even if he has worked in any different unit and this unit he never worked. According to the applicant the medical memo was returned by him. Only after medical examination and other proceedings, he could have been regularised. The tribunal it appears did not confine itself to the year 1972-74. According to the tribunal, the said Shiv Parson continued to work upto 23.4.1982 and he was sent for medical examination with a medical memo, was signed by the attesting authority who was asked to go back to Assistant Engineer that is the applicant for obtaining the signature of proper authority. The medical memo was delivered to the workmen, thereafter, he was not given any duty and the allegation was that the person junior to him was retained in service while he was not given any duty. From the evidence, the tribunal came to conclusion as a matter of fact that Shiv Parson did work. Of course, Shiv Parson was never made a regular employee and he was sent for medical examination it is not true, if he worked for more than 240 days and after medical examination he could have attained the status but it appears that such stage never reached and that's why in this perspective observation was made by the court. As a matter of fact the award which should have been read as the said Shiv Parson will now be taken back in service as the juniors continued to remain in service and his case for further benefits after giving him medical examination is to be given and as such the application is allowed

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allowed to the extent and the award will now be read as the Said Shiv Parson will be taken back in service and will be deemed as if he was continued in service and only sent for medical examination for absorption of regular vacancy in scheduled caste quota and if found medically fit he may be given the same in case, no senior person if still waiting , but as he has not worked and he is also responsible for the same he will not be awarded back wages. No order as to Costs.


Member (A)


Vice-Chairman

Lucknow Dated: 3.2.1993.

(RKA)