

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE TA 1554/82
WP No 2423/83 OF

NAME OF THE PARTIES S. M. Mishra Applicant

Versus

U. P. Govt. Respondent

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CERTIFICATE

Certified that no further action is required to be taken and that the case is fit for consignment to the record room (decided)
This file received from record room without Batta

Dated15.9.11

Counter Signed.....

Section Officer In charge

Signature of the
Dealing Assistant

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A/3

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

T.A.No. 1154/87

(Writ Petition No. 2423 of 1983)

S.M. Mishra

Petitioner

versus

Union of India & others

Opp. Parties.

Applicant in person

Shri Anil Srivastava for respondents.

(Hon. Mr. Justice U.C.Srivastava, V.C.)

The applicant ~~who~~ was in the employment of Northern Railway. His services were terminated with effect from 29.6.1965 while he was working as Work Mistry in the Northern Railway. The applicant/petitioner filed a suit No. 9 of 1968 challenging the termination order and the suit was decreed vide judgment dated 30.9.72 and a declaration was granted that the order of termination was illegal, ultra vires and inoperative; and the plaintiff/petitioner will be deemed to continue in service. The Railway Administration filed an appeal which was dismissed vide judgment dated 6.11.1973 by the District Judge, Bareilly. The respondents filed second appeal which was also dismissed vide judgment dated 28.10.1975. The respondents delayed the reinstatement of the petitioner and he was reinstated only on 1.7.1976. The opposite parties did not pay

the petitioner his wages and the petitioner filed a petition under section 15 of the Payment of Wages Act for payment of wages amounting to Rs 47,655.04 and also compensation of ten times of the actual wages due amounting to Rs 4,76,550.40. The application was opposed by the Railway Administration and it was pleaded that the application was barred by time and that the applicant was not entitled for salary. It was pleaded that it was not a case of deductions but ~~it~~ was a case of delayed wages and that too for a particular period. The prescribed authority rejected the plea that the application was barred by time and allowed the claim of wages amounting to Rs 47,655.04 for the period from 15.6.1965 to 30.6.1976 and compensation of Rs 25.00 only was awarded in view of section 15(ii) of the Payment of Wages Act.

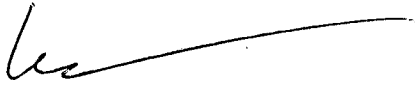
3. The applicant filed appeal which was dismissed whereafter, he filed a writ petition before the Hon'ble High Court, which has been transferred to this Tribunal by operation of law.

4. The case of the applicant is that in case the termination~~x~~ orders were held to be illegal and he was deemed to be in continuous service, he was illegally deprived of his salary for a period of 11 years. It was only a deduction from the wages and in the normal course he would have earned interest on the amount not paid. In view of the matter, it was a case of delayed payment ~~and~~ the termination order having been declared ~~invalid~~

u

A-5

illegal, The prescribed authority had a discretion to allow the compensation and in this particular case, ^{within the ambit of law} taking into consideration the facts of the case, ^{in view of the} the prescribed authority and the appellate authority did not allow him compensation which in the instant case, should have been allowed, as the applicant was out of employment for 11 years. In this particular case a sum of Rs 25/- per month would have been awarded to the applicant as compensation. Accordingly, this application deserves to be allowed and the respondents are directed to pay to the application compensation of Rs 3,300.00 at the rate of Rs 25.00 per month for 11 years, for the period during which the applicant was out of service and the respondents are directed to pay ~~Rs 3,300.00~~ ^{Said amount to be} to the applicant. ^{accorded} The appellate order will be deemed to ^{have been} amended to this extent. The payment shall be made within a period of three months from the date of communication of this order. It is further being made clear that this case will not be taken as a precedent, as this order has been passed taking into consideration the facts and circumstances of this case. *No order as to costs*


Vice Chairman.

Shakeel/

Lucknow Dated: 18.3.92.

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

INDEX SHEET

Cause Title T.A. 1554 of 1987 (T)
W.P. No. 2423/87Name of the parties S. M. Mishra Applicant.

Versus

Union of India (N.Rly) Respondents.

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Order Sheet-

TA no 1154/87 A-1

S.M. Misra, C.J. U.O.

Serial number of order and date

Brief Order, Mentioning Reference if necessary

How complied with and date of compliance

9-11-89

Hon. Mr. D.K. Agrawal - JM
Hon. Mr. K. Obayya - AM

This case has been received on transfer. None present for the parties. Notices issued to the parties by the office at Allahabad. Let notice be issued again to the parties.
List this case for orders on 31-1-90.

OR
This WP no 2423/83 received a transfer from Lucknow High Court along with other WPs in May '87.
On the date of transfer the case was not admitted.
Transfer notices issued by Ald. Office but neither any reply nor any undelivered cover received back.
Submitted for order.
R.
5/11

OR
notice issued
13/12/89

31-1-90

Hon. Justice K. Nair, V.C.
Hon. K.J. Ramani, A.M.

Sr. B.C. Saxena, learned counsel for the petitioner before the High Court says that he has no instruction as he had transferred his brief to the client long ago. The notice issued to the applicant has been returned with the postal report that no person of the name of the applicant was found residing at the house given in the address.
Re-list the case for orders on 29.3.90 to consider whether this case may be dismissed for non-prosecution.

OR
Notices were issued on 13/12/89.
No undelivered have been returned back.
J.P. order
30/1

OR
A.M. V.C.

Dinesh

29-3-90

no sitting day to 17-9-90

29/8/90

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD/C.B. LUCKNOW

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4

1154

No.

OF 1980

J.

S. M. M. S. vs.

b-o-f

Sl.No.	Date	Office Report	Orders
	28.8.91	No sitting adj 19.9.91	J
	19/9/91	Hon. Mr. Justice U.C. Srivastava, J.C. Hon. A.B. Gouthi, Jm.	S. No 8 189
		Comte affidavit filed Today. List it for final hearing on 16/12/91.	VC.
		Jm.	VC.
	16.12.91	No sitting adj 22.1.92	J
	22.1.92	No sitting adj to 18.3.92	L

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

T.A.No. 1154 of 1987

(Writ Petition No. 2423 of 1983)

Shyam Manohar MisraPetitioner.

Versus

Union of India & others Opp. Parties.

COUNTER REPLY ON BEHALF OF OPPOSITE
PARTY NO. 1 TO 4.
=====

N. K. Jain
I, ~~Asstt Personnel Officer~~ working as

Assistant Personnel Officer in the office of Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow do hereby solemnly affirm and state as under :-

- 1, That the ~~Officials~~ above named, is working as Asstt. Personnel Officer in the office of Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow and has gone through the averments made in the writ petition, as such he is fully conversant with the facts and circumstances of this case. He has been

Contd....2

*Filed delay
19.9.91*

Shyam
19/9/91
Northern Railway
Lucknow
19.9.91

authorised on behalf of respondents no. 1 to 4 to file present reply.

- 2- That the contents of para 1 of the writ petition so far it is matter of record are admitted but rest of the contents of the para are denied. The petitioner filed a claim before opposite party No. 6 Claim^{ing} relief to the effect "the penalty towards the delayed payment^m", which means that the petitioner is himself clai^ming relief that he should be given compensation (penalty to be given by opposite party no. 2 to 4) for alleged delayed payment.

Accordingly the opposite party no. 6 awarded compensation for the alleged delayed payment in-favour of the petitioner and against the opposite party, strictly as per provisions of the Payment of Wages Act. It is further stated, as per provision of the said Act, the maximum compensation of Rs.25/- for alleged delayed payment was awarded infavour of the petitioner. Otherwise incase of deducted wages (not applicable in case of petitioner) , it is the sole discretion of the prescribed authority to award^{any amount of} compensation , may be two times, four

Hyain
19/9/91

6. That in reply to the contents of paras 5 & 6 of the writ petition so far it is matter of record are admitted but rest of the contents of the paras are denied.
7. That the contents of para 7 of the writ petition are not admitted as stated. The petitioner was reinstated in service on 1.7.76 and accordingly he was informed that his arrears are being worked out and as soon as it is finalized, the same will be paid to the petitioner. It is also relevant to mention here that claiming arrears for more than 10 years do not come under the purview of Payment of Wages Act. Under the Payment of Wages Act a claim can be made for the period of 12 months only prior of to the date of filing of the application before the Payment of Wages Authority.
8. That the contents of paras 8 and 9 of the writ petition are admitted.
9. That the contents of paras 10 and 11 of the writ petition so far the matter of record are admitted.

It is further submitted that under section ~~that~~
~~xxx~~ 15(2) of the Payment of Wages Act, a claim
can be entertained only for a period of 12 months
prior to the date of filing of the claim.

10. That the contents of paras 12 and 13 of the writ
petition so far the matter of record are admitted
but the rest of the contents of paras are denied.
11. That in reply to the contents of para 14 of the
writ petition it is stated that grounds mentioned &
therein are misconceived, false, erroneous, irrele-
vant, illegal and not applicable to this case.
12. That in view of facts and reasons stated herein
above, the writ petition has not merit and accord-
ingly it is liable to be dismissed in favour of the
answering opposite parties and against the
petitioner.

Lucknow.

Dated.

Mya
19/9/91
Deponent's Office
Northern Railway
Lucknow

Contd.....6

... 7 ::

VERIFICATION

I, the official abovenamed do hereby verify
that the contents of para 1 of this counter reply
is true to my personal knowledge and those of paras
2 to 12 of this counter reply are believed by me to
be true on the basis of records and legal advice.

Lucknow:

Dated. 19/9/11

Alpan
19/9/11
Northern Railway
Lucknow

C-1

21/12/89

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH, LUCKNOW

Gandhi Bhawan, Opp. Residency
Lucknow

No. CAT/LKO/Jud/CB/ 2451

Dated the : 13/12/89

T.A.No. of 1154 1987(T)

S. M. Misra

AFFLICTION'S

Versus

Union of India

RESPONDENT'S

To Shyam Mohanchar Misra; S/o K. L. Misra
210 Quarter no 29/18, Model Colony.
Rae Bareilly

Whereas the marginally noted cases has been transferred by
H. C. Lko Under the provision of the Administrative
Tribunal Act 13 of 1985 and registered in this Tribunal as above.

Writ Petition No. 2423/83
of 1986
of the Court of H. C. Lko
arising out
of Order dated
passed by

The Tribunal has fixed date of
31.1.90 198. The hearing order
of the matter.
If no appearance is made
on your behalf by your some
one duly authorised to Act
and plead on your behalf

the matter will be heard and decided in your absence.

Given under my hand seal of the Tribunal this
31 day of 11 1989.

dinesh/

DEPUTY REGISTRAR

- ② The Union of India through the General Manager M. Rly
Beorade House New Delhi
- ② The Chief Engineer Northern Railway.
Beorade House New Delhi
- ③ The D. R. M. N. Rly Hazratganj Lko
- ④ The Divisional Personnel officer M. Rly
Hazratganj Lucknow

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CPC

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH, LUCKNOW

Sandhi Bhawan, Opp. Residency
Lucknow -

No. CAT/LKO/Jud/CB/245/1702459

Dated the 13/12/89

T.A.No. of 1154 1989 (T)

APPLICANT'S

Versus

RESPONDENT'S

To

Whereas the marginally noted cases has been transferred by
Under the provision of the Administrative
Tribunal Act 13 of 1985 and registered in this Tribunal as above.

Writ Petition No. 1154/89
of 198
of the Court of
arising out
of Order dated
passed by

The Tribunal has fixed date of
13/12/89. The hearing
of the matter.

If no appearance is made
on your behalf by your some
one duly authorised to Act
and plead on your behalf

the matter will be heard and decided in your absence.

Given under my hand seal of the Tribunal this

day of 13/12/89.

dinesh/

DEPUTY REGISTRAR

P. 70

In the Central Administrative Tribunal

ब अदालत श्री मान .. Circuit Bench, Lucknow

वादी .. मुद्दाई ..

✓ प्रतिवादी .. मुद्दालय .. का वकालतनामा

S. M. Misra

बनाम U.O. 9.4 others.

वादी .. मुद्दाई ..

प्रतिवादी .. मुद्दालय ..

T.A. नं० मुकद्दमा 1154 सन 1987 पेशी की तारीख ~~22/7/91~~ 22/7/91 ई०

उपर लिखे मुकद्दमा में अपनी ओर से श्री

(WP No 2423 of 1983)

..... ANIL SRIVASTAVA ..

रडवोकेट

महोदय

वकील

को अपना वकील नियुक्त करके प्रतिज्ञा .. इकरार .. करता हूं । लिखें देता हूं । इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्न करेगा अन्य कोई कागज दाखिल करें या लौटा दें हमारी ओर से

डिक्री जारी करावें और स्पष्टा वसूल करेगा सुलहनामा, इकबाल दावा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करे या मुकद्दमा उठावें या कोर्ट में जमा करें या हमारी या विपक्ष .. फरीकसानी ..

का दाखिल किया स्पष्टा अपने या हमारे हस्ताक्षर युक्त .. दस्तखती .. रसीद से लेदेगा पंच नियुक्ति करें वकील महोदय द्वारा की गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं भी यह कहता हूं । कि मैं हर पेशी स्वयं या किसी अपने

पैरकार को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरी वकील पर न होगी ।

इसलिये यह वकालतनामा लिख दिया कि प्रमाण रहें और समय पर काम आवें ।

साक्षी .. गवाह ..

हस्ताक्षर ..

दिनांक .. महीना

साक्षी .. गवाह ..

नाम अदालत ..

नं० मुकद्दमा ..

नाम फरीकन ..

Accepted

Int. Srivastava

07/02/90

CIVIL

SIDE

CRIMINAL

GENERAL INDEX

(Chapter XLI, Rules 2, 9 and 15)

Nature and number of case..... W.P. No. 2423 - 83

Name of parties..... Shyam Manohar Missra vs. Union of India

Date of institution..... 5-5-83

Date of decision.....

File no.	Serial no. of paper	Description of paper	Number of sheets	Court-fee		Date of admission of paper to record	Condition of document	Remarks including date of destruction of paper, if any
				Number of stamps	Value			
1	2	3	4	5	6	7	8	9
					Rs. P.			
	1-	W.P. with affidavit and Annex.	36.	-	102.00			
	2-	Power.	1-	-	5.00			
	3-	order sheet	1-	-	-			

I have this

day of

198

examined

I have examined the record and compared the entries on this sheet with the papers on the record. I have made all necessary corrections and certify that the papers correspond with the general index, that they bear Court-fee stamps, that the aggregate value of Rs. that all orders have been carried out, and that the record is complete and correct up to the date of the certificate

Munsarim

Clerk

Group A 14 (B)

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3686

18/8

In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow

Writ Petition No. 2423 of 1983

Shyam Manohar Misra

--Petitioner

versus

Union of India and others

--Opp-parties

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4. Judgment dated 14.8.1981 passed by
opposite-party no. 6

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5. Petition under section 15 of the
payment of Wages Act.

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6. Written statement

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7. Order dated 18.2.1983 passed on
the review petition

5 30-36

Vakalatnama

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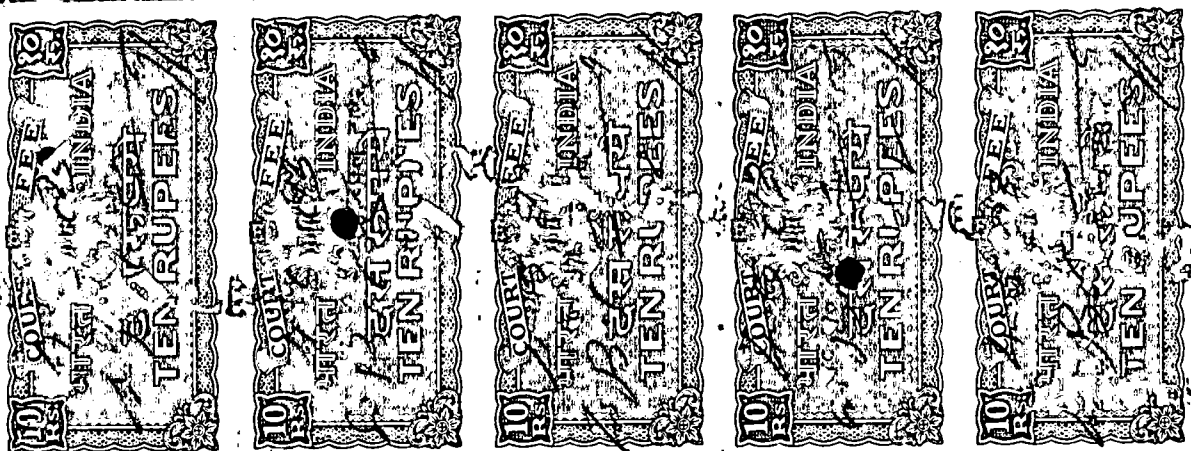
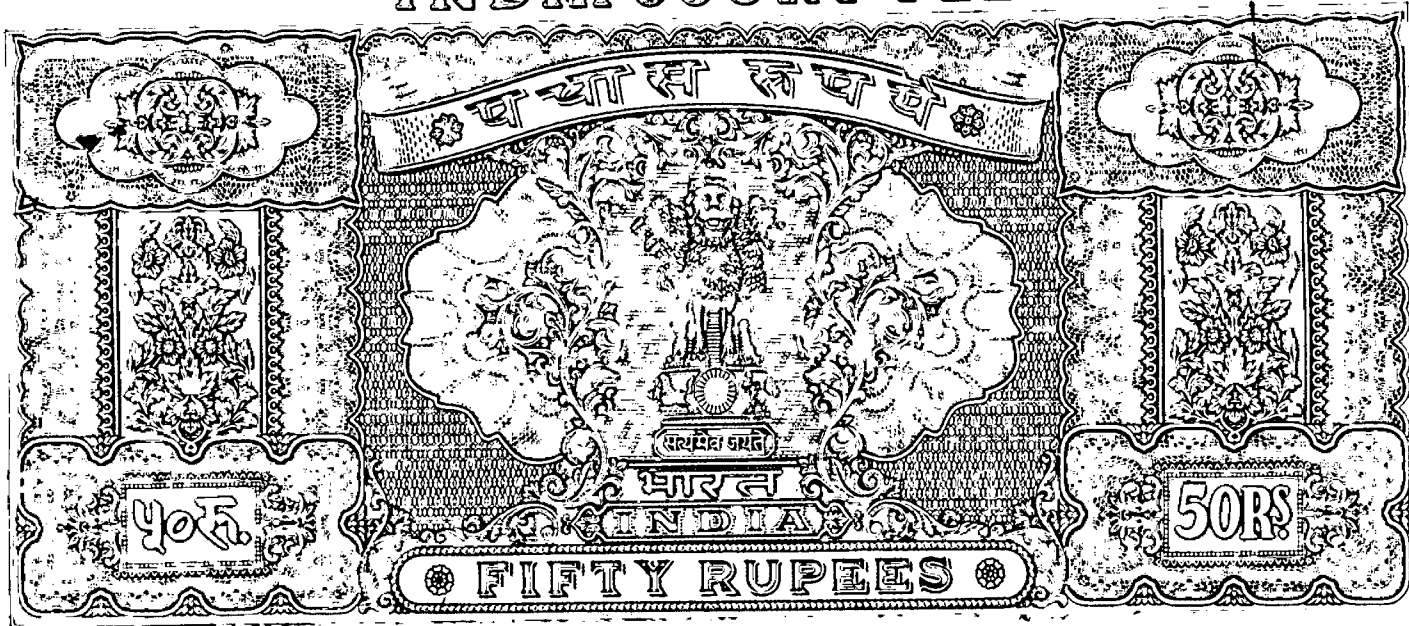
B.C. Saksena

(B.C. Saksena)
Advocate

INDIA COURT FEE

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50 Rs.



X
9

on the Honble High Court of Judicature at Allahabad

mekanaw Baneh mekman

209 No 188

Shyam Manohar Mishra - Patilomuz

as

Union of India fathers - Ept. Pankaj

One Imp Rs 50
5 of Rs 50
100/-
51583

(B. C. Saksena)
Advocate

A-15 1/2

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In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow.

Petition under Article 226 of the Constitution
of India

Writ Petition No. 2423 of 1983

Shyam Manohar Misra, aged about 53 years, son of
Sri Kanhaiya Lal Misra, resident of quarter
no. 79/B, Model Colony, Rae Bareilly

Petitioner

versus



1. The Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi
2. The Chief Engineer, Northern Railway, Baroda
House New Delhi
3. The Divisional Railway Manager, Northern Railway,
Hazratganj, Lucknow.
4. The Divisional & Personnel Officer, Northern
Railway, Hazratganj, Lucknow

Shyam Manohar Misra

5. The District Judge, Rae Bareilly ^{Rae Bareilly}
6. The Sub-Divisional Magistrate, Sadar, acting as Prescribed Authority under section 15 of the Payment of Wages Act. ^A_U

Opp-parties

This humble petition on behalf of the petitioner above-named most respectfully sheweth:-

1. That the present writ petition is directed against the part of the judgment and decree passed by Sri Har Datt Dube, Sub-Divisional Magistrate, Sadar, Rae Bareilly acting as the Prescribed Authority under section 15 of the Payment of Wages Act refusing to grant ten time [✓] of compensation and instead granting only Rs. 25/- as compensation rendered in Petition no. 133 of 1979 as also the judgment passed in appeal by opposite-party no. 5 dated 17.11.1982 rejecting the petitioners appeal filed against the part of the judgment of opposite-party no. 6. Copies of judgments of opposite-parties nos. 5 and 6 are being annexed as Annexures nos. 1 and 2 respectively.

2. That the facts giving rise to the said application under section 15 of the Payment of Wages Act filed before opposite-party no. 6 are as follows:

3. That the petitioners services were terminated with effect from 29.6.1965 while he was working

Yash Maheshwar
Miora

on the post of Work Mistry in the Northern Railway .

4. That aggrieved by the said order of termination, the petitioner filed a suit which was numbered as Regular Suit no. 9 of 1968 . The said suit was decreed by Sri L.S.P. Singh, 11 Temporary Civil and Sessions Judge, Rae Bareilly by a judgment dated 30.9.1972. The learned Civil and Sessions Judge was pleased to grant a declaration that the order of termination passed against the petitioner was illegal, ultra vires and inoperative. The plaintiff shall be deemed to continue in service as temporary employee on his post. The suit was decreed with costs.

5. That aggrieved by the said judgment and decree of the temporary Civil and Sessions Judge, Rae Bareilly, the Railway Administration who were defendants in the suit preferred an appeal before the District Judge, Rae Bareilly which was numbered as Civil Appeal no. 14 of 1972. The said appeal was dismissed by Sri P.N. Goel, the then District Judge, Rae Bareilly by judgment dated 6.11.1973.

6. That the defendants in the said suit filed a second appeal in this Hon'ble Court which was numbered as Second Appeal no. 97 of 1974. The said second appeal was dismissed by Hon'ble Mr. Justice Prem Prakash by a judgment dated 28.10.1975.



Shyam mander
moma

7. That despite the termination order having been held to be invalid, ultravires and inoperative, the petitioner was not paid his wages since June, 1965. The petitioner was reinstated in service on 1.7.1976. Even so, the opposite-parties 1 to 4 did not pay the petitioner his wages and accordingly the petitioner filed a petition under section 15 of the Payment of Wages Act before opposite-party no. 6 and therein claimed a direction to the opposite-parties to pay wages amounting to Rs. 47,655.04 as also compensation of ten times of the actual wages due amounting to Rs. 4,76,550.40. A true copy of the said application under section 15 of the Payment of Wages Act is being annexed as Annexure no. 3 to this petition along with its enclosure.

8. That a written-statement in reply to the said petition was filed by opposite-parties nos. 1 to 4. With a view to place on record the pleadings contained in the written-statement, a true copy thereof is being annexed as Annexure no. 4 to this petition.

9. That the said petition under section 15 of the Payment of Wages Act came up for orders before Sri Har Datt Dube, the then Sub-Divisional Magistrate, Rae Bareilly, the Prescribed Authority under section 15 of the Payment of Wages Act.

Opposite-party no. 6, as a perusal of his judgment

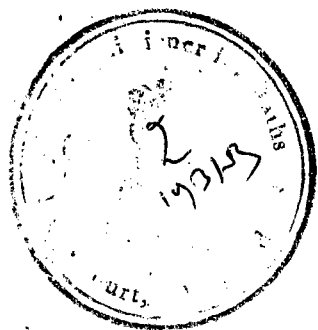


Shyam Narayan
Mona

would show, had framed the following three issues:-

- 1(a) Whether the opposite-parties are responsible for payment of the petitioners wages? $\frac{A}{M}$
- (ab) Whether the opposite-parties are necessary parties in the petition?
2. Whether the claim or part thereof is barred by limitation?
3. ~~What~~ To what compensation is the petitioner entitled?

Opposite-party no.5 answered issue no.1(a) and issue no. 1(b) in the affirmative and answered issue no.2 in the negative and found the claim ~~to~~ not barred by time. On issue no.3 opposite-party no . 6 found that the petitioner^{was} entitled to a direction to the opposite-parties to pay him the arrears of wages amounting to Rs. 47,655.04 for the period 15.6.1965 to 30.6.1976 but found that the petitioner is entitled to compensation of Rs.25/- only.



10. That the petitioner aggrieved by the non-grant of compensation to the extent of ten times of the wages found due and payable to him preferred an appeal before opposite-party no. 5. Opposite-parties nos. 1 to 4 also preferred an appeal before opposite-party no.5 against the direction given by opposite-party no. 6 against them for payment of total amount of wages amounting to Rs. 47,655.04 as also Rs.25/- by way of compensation. The petitioners appeal was numbered as Misc. Civil

Ryan MacShan
more

GRUNDS:

A
16

(a) Because opposite-parties nos. 5 and 6 erred in taking the view that non-payment of the wages to the petitioner for the period between wrongful dismissal and subsequent reinstatement in consequence of the final decision of the Hon'ble High Court was case of delayed payment within the meaning of section 15(3) of the Payment of Wages Act and was not a case of wrongful deduction of wages.

(b) Because the lower appellate court erred in taking the view that non-payment of the said dues was not covered by the provisions of sections 7 to 13 of the Payment of Wages Act and therefore cannot be construed as a deduction from wages.

(c) Because opposite-parties nos. 5 and 6 on the basis of the aforesaid erroneous conclusion erred in refusing to direct opposite-parties nos. 1 to 4 to pay to the petitioner compensation to the extent of ten times of the amount of arrears of wages as provided in section 15(3) of the Payment of Wages Act.

(d) Because opposite-party no. 5 erred in distinguishing the various judicial decisions cited by way of precedence before him.

For

Wherefore, it is respectfully prayed that this Hon'ble Court be pleased:-

(i) to issue a writ of certiorari or a writ, order or direction in the nature of certiorari to quash the judgment dated 17.11.1982 passed by opposite-party no.5 in so far as Misc. Civil Appeal no.20 of 1981 has been dismissed by him as also the order dated 18.2.1983 passed by opposite-party no. 5 and contained in annexure no. 5 to the writ petition and the judgment passed by opposite-party no. 6 dated 14.8.1981 contained in annexure 2 to the writ petition in so far as it contains a direction for payment of only Rs.25/- by way of compensation to the petitioner.

(ii) to issue such other writ, direction or order, including an order as to costs which in the circumstances of the case this Hon'ble Court may deem just and proper.

Dated Lucknow

27.4.1983

B.C. Saxena

(B. C. Saxena)
Advocate

Counsel for the petitioner

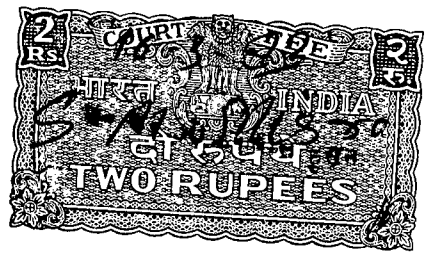
A-23

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18

1983
AFFIDAVIT
55
HIGH COURT
ALLAHABAD

In the Hon'ble High Court of Judicature at Allahabad
(District Bench), I declare



--
Affidavit
in

Petition under Article 226 of the Constitution
of India

--
Writ Petition No. of 1983

Shyam Narayan Mishra -- Petitioner
VERSUS
Union of India and others -- (Opponent)



--
I, Shyam Narayan Mishra, aged about 50 years,
son of Sri Karamji Lal Mishra, resident of Plot No.
72/B, Mohali colony, near Bahadri, do hereby
solemnly take oath and affirm as under:-

1. That I am the petitioner in the above-mentioned
writ petition and am fully acquainted with
the facts of the case.

you may have
ruona

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-2-

10 A/19

2. That contents of paras 1 to 13 of the accompanying petition are true to my own knowledge.

3. That annexures nos. 2, 3 and 4 have been compared and are certified to be true copies.

Dated
Lucknow March 10, 1983

Shyam Nandhar
Mishra

Deponent.

I, the deponent named above do

hereby verify that contents of paras

1 to 3 are true to my own knowledge.

No part of it is false and nothing

material has been concealed; so

help me God;

Dated
Lucknow 10.3.1983

Shyam Nandhar
Mishra

Deponent

I identify the deponent who has signed in my presence.

(Clerk to Sri B.C. Saksana, Advocate)

Solemnly affirmed before me on 10.3.83
at 7.16 a.m./p.m. by Shyam Nandhar Mishra
the deponent who is identified by Sri R.K. Saksana
clerk to Sri B.C. Saksana
Advocate, High Court, Allahabad. I have satisfied
myself by examining the deponent that he understands
the contents of the affidavit which has been read out
and explained by me.

10.3.83

SATISH CHANDRA
NOTARY PUBLIC
High Court Bench,
Lucknow Bench,
No. 57/83
10.3.83



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11

State Emblem High Court of Judicature At Allahabad
Uttarakhand Bench Uttarakhand

W.P. No. of 1985

Shyam Mohan Mishra — Petitioner
vs

Union of India & others — Opp. Parties

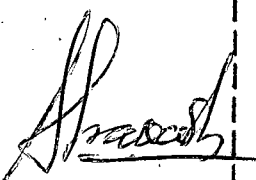
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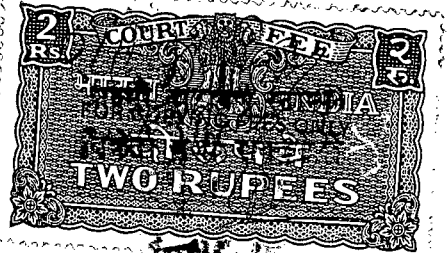
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Shyam Mohan Mishra

A-26
12

आवश्यक स्टाम्प सहित प्रार्थना-पत्र देने की तारीख	नोटिस बोर्ड पर नकल तैयार होने की व सूचना की तारीख	नकल वापिस दिए जाने की तारीख	नकल वापिस देने वाले अधिकारी का हस्ताक्षर
28-1-83	17-2-83 रजिस्ट्रारी 1983	17-2-83	



Copy of Judgment dated 17-11-82
passed by Sri D. R. Singh

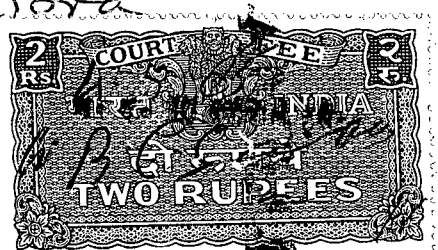
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In the Court of III Additional Session Judge RBL
misc. Civil Appeal No. 20 of 81
Sri Shyam Monohar Mishra - - - Appellant
Versus

Union of India, Railway Administration and
3 others

- - - Respondent

Shyam monohar Mishra



14/2/83
4.5.83

Shyam monohar Mishra

इन दि जानरेवुल जइकोर्ट आफ जूडोकेचर एट इलाज्जाद

लखनऊ बेन्च लखनऊ

रिस्ट पिटीशन नं. आप 1983

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श्याम मनोहर मिश्रा ----- -- पिटीशनर

बनाम

यूनियन आफ इण्डिया तथा अन्य-----अपोजिट पार्टी

एनकर नं. 2--

प्रतिनिधि

न्यायालय श्री हर दत्त दुबे परगनाधिकारी सदर, रायबरेली

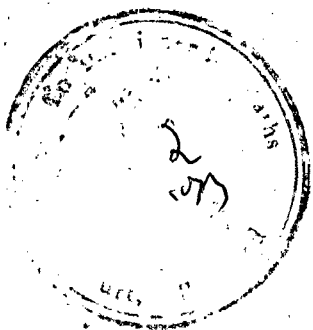
वाद संख्या 133/79

(अन्तर्गत धारा 15 पेमेन्ट आफ

वेज एक्ट वर्ष 1936

श्याम मनोहर मिश्रा बनाम यूनियन आफ इण्डिया

निर्णय



श्री श्याम मनोहर मिश्रा पुत्र श्री कन्हैया लाल मिश्रा ने दिनांक 26-10-76 को धारा 15 पेमेन्ट आफ वेज एक्ट सन 1936 के अन्तर्गत यह प्रार्थना पत्र प्रस्तुत करते हुए निवेदन किया कि प्रतिपक्षियों को निर्देश दिये जाये कि वे प्रार्थनों को 47655-05 वेतन तथा वेतन का प्स गुना 4, 76, 550 - 40 छाना का भुगतान करें। प्रार्थनों का कथन है कि वह उत्तरी रेलवे में 230-00 मासिक वेतन परसन 1963 में वर्क मिस्त्र के पद पर नियुक्त हुआ था। प्रतिपक्षियों ने प्रार्थनों को सेवाये समाप्त कर दिया तथा

Shyam manohar mishra
उससे तथ्य को जानकारी दिनांक 25-8-65 को हुई। वह प्रतिपक्षियों से

यह विवाद सुलभ करने हेतु प्रयासशील रहा है। तब जा जब फरमान लेने पर
 उसने सिविल जज महोदय रायबरेली के न्यायालय में वाद संख्या 9 वर्ष 1958
 का खिल किया जो आदेश दिनांक 30-9-72 को जारी हुआ। इस
 निर्णय के विरुद्ध प्रस्तुत अपील जिला जज महोदय द्वारा दिनांक 6-11-73 को
 निरस्त कर दी गयी थी। द्वितीय अपील माननीय उच्च न्यायालय लखनऊ
 बेंच द्वारा निर्णय दिनांक 28-10-75 से निरस्त कर दी गया। उक्त
 निर्णय में प्राप्ति की सेवा समाप्ति का आदेश अवैधानिक मानते हुए रेलवे
 विभाग का स्थाई कर्मचारी घोषित किया गया। जब 1965 में उसका
 वेतन 269-00 मासिक था। न्यायालय के आदेश के बाद उसे दिनांक 1-7-76
 से सेवा में लिया गया। जून 65 से 30 जून 1976 तक का वेतन उसे नहीं दिया
 गया। उसने एकतालिका अनुसूचक 'ए' संतुलन को है। जिसमें 15 जून 65 से जून
 76 तक के वेतन की गणना करते हुए कुल देय धनराशि निकाली गयी है जो
 47, 655-04 होता है।

प्रतिपक्षियों को नोटिस जारी की गयी। भारत संध को जीर से
 डिवाइजन्त सुपरिन्टेन्डेन्ट उत्तरी रेलवे लखनऊ ने लिखित बयान प्रस्तुत किया है
 जिसमें स्वीकार किया गया है कि माननीय उच्च न्यायालय के आदेश दिनांक
 28-10-75 से प्राप्ति सेवा में बहाल किया गया है। परन्तु वह स्थाई कर्म-
 चारी है। जून 65 में मूल वेतन 155-00 बताया गया है, अन्य भत्तों का
 उत्तेजननीय है। यह भी स्वीकार किया गया है कि प्राप्ति को एक जुलाई
 सन् 1976 से सेवा में लिया गया है परन्तु प्राप्ति द्वारा प्रदर्शित बताया धन-
 राशि को स्वीकार नहीं किया गया और यह कहा गया कि कमाये वेतन की
 गणना को जा रही है जो उसे भुगतान किया जायेगा। यह भी कहा गया है



Shyam maheshwar Mishra

कि प्राथी का प्रार्थना पत्र समयातीत है और इस कारण निरस्त होने योग्य है।

पक्षों के बयानों के आधार पर निम्नलिखित वाद विन्दु बनाये गये हैं :-

1- क्या प्रतिवादी।

(अ) प्राथी को वेतन का भुगतान करने के लिये जिम्मेदार है ?

(ब) क्या प्रतिवादी प्रार्थना पत्र में आवश्यक पक्ष है।

2- क्या दावा या उसकी कोई अंश समयातीत है।

3- प्राथी किस अनुतोष का अधिकारी है।

वाद विन्दु 1 (ए)

प्राथी ने प्रार्थना पत्र की पुष्टि में शपथ-पत्र भी प्रस्तुत किया तथा प्रार्थना पत्र देकर वेतन बिल तलब कराया। रेलवे की ओर से मई सन् 71 व मई सन् 1976 के बीच 16 मासिक वेतन बिल दाखिल किया गये है परन्तु इसमें प्राथी का नाम अंकित नहीं है। रेलवे के वकील ने प्रार्थना पत्र भी प्रस्तुत किया कि सप्लीमेंट्री बिल डिजीजन्त मैनेजर उत्तरी रेलवे को स्वीकृत हेतु भेजा गया है। यह स्पष्ट नहीं किया गया है कि यह बिल प्राथी से सम्बन्धित है अथवा नहीं इस प्रकार रेलवे की ओर से जो प्राथी को अनुक्रम में दर्शाई गई गणना के अनुसार वेतन के स्र में तैयार धनराशि से इन्कार को किया गया है परन्तु न तो लिखित बयानों में न प्रमाण में ही यह प्रदर्शित किया गया है कि वास्तव में विभागीय गणना के अनुसार प्राथी को क्या वेतन के स्र में



Shyam maestra mirra

कितनी धनराशि देय है। यह स्थिति में प्राचीन द्वारा अनुमानित।
में प्रदर्शित धनराशि उसे रेलवे विभाग द्वारा देय है। वाद विन्दु
स्वोकारात्मक निर्णित किया जाता है।

वाद विन्दु 1(ब)

प्रतिवादीगण की ओर से प्रतिवाद के प्रत्युत्तर में ही कहा गया है
कि प्रतिवादो भुगतान का जिम्मेदार नहीं है और उसे आवश्यक पद से पदा
बनाया गया है। प्रार्थना पत्र में खीजिन्त सुपरिन्टन्डेंट उत्तरो रेलवे
लखनऊ चीफ इंजीनियर बढोदा हाउस, नई दिल्ली तथा भारत संध
रेलवे प्रशासन उत्तरो रेलवे द्वारा जनरल मैनेजर का पदा बनाया गया।
सिविल जज महोदय के न्यायालय में प्रस्तुत वादसंख्या 9 सन 1968 में यही
प्रतिवादी थे और इनके विरुद्ध वाद छिड़ी हुआ। माननीय उच्च न्यायालय
में द्वितीय अपील संख्या 97 वर्ष 1984 में प्रतिवादीगण द्वारा प्रस्तुत की गई।
है इस स्थिति में प्रतिवादो वाद में आवश्यक पदा है और बकाया वेतन के
भुगतान के जिम्मेदार है। इस आधार पर वाद श्रुतिपूर्ण नहीं है। वाद विन्दु
तदनुसार निर्णित किया जाता है।

वाद विन्दु नं० 2

प्रतिपक्षीगण द्वारा यह तर्क प्रस्तुत किया गया कि यह प्रार्थना पत्र
दिनांक 26-10-76 को प्रस्तुत किया गया है जबकि इनके द्वारा 15 जून 1965
से वेतन का भुगतान चाहा गया है जो समयातीत है। धारा 15(2) पेमेंट
जाफु केज एक्ट के अन्तर्गत वेतन का दावा प्रस्तुत करने की अवधि बाहर माह

Shyam madeshwar mima

निश्चित है। प्रार्थना के अनेकों तर्क किया गया है कि जवाबि गणना माननीय उच्च न्यायालय के आदेश दिनांक 28-10-75 से को जायेगा। इस तथ्य से गणना में प्रार्थना पत्र समय के अन्दर है तर्क का पुष्टि में 1197415 एस0सी0सी0154 क्लिजाम राय जारी होने में भारत संध आदि उद्धृत किया गया। रेलवे के विद्वान अधिवक्ताओं ने भी स्वीकार किया कि जवाबि का गणना माननीय उच्च न्यायालय के आदेश की तिथि से हो का जाय। अतः यह प्रार्थना पत्र समय के अन्दर है। वाद विन्दु नकारात्मक निष्पत्ति किया जाता है।
वाद विन्दु नं० 3

प्रार्थना को बकाया वेतन व बकाया वेतन न भुक्तान किया जाने के कारण हजाना को धनराशि पाने का अधिकारी है। वाद विन्दु तदनुसार निष्पत्ति किये जाते है :-

आदेश

द्वितीय पक्ष को निर्देश दिया जाता है कि वे प्रार्थना की दिनांक 15-6-65 से 30-6-76 तक की वेतन का 47, 655 -04 बकाया वेतन तथा 25 रु हजाना अदा करें।

अगस्त 14, 1981

ह0/- हस्तक्षुब्ध परगनाधिकारी
 सदर रायबरेली 14-8-81

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In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow

--

Writ Petition No.	of 1983
Shyam Manohar Misra	--Petitioner
vs.	
Union of India and others	--Opp-parties

Annexure no. 3

In the court of the Sub-Divisional Magistrate,
Rae Bareilly

under section 15 of the Payment of Wages
Act, Act No. XIV of 1936

--

Sri Shyam Manohar Misra, son of Sri Kanhaiya Lal
Misra, resident of 6, Chandra Nagar, Rae Bareilly
City

Applicant

versus

1. Union of India, Railway Administration Northern
Railway, through the General Manager, Northern
Railway, Baroda House, New Delhi
2. The Chief Engineer, Northern Railways, Baroda
House New Delhi
3. The Divisional Superintendent, Northern Railway,
Hazratganj, Lucknow

Opp-parties

Application under section 15 of the payment
of wages Act.

Valuation is Rs. 47655.04



Shyam Manohar
Misra

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Court fee paid Rs. 1.50

Sir,

The applicant above named begs to state as under:-

1. That the applicant was appointed as Work Mistri in the year 1963 at the monthly salary of Rs. 230.00 as wages in the Northern Railways at Rae Bareli .

2. That the applicant is a Railway emplyee and resides at Chandra Nagar, Rae Bareli city and the opposite-parties nos. 1 to 3 are the personal responsible for the payment of the wages under section 3 of the Act and the addresses whereof are given as above.

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3. That the applicant continued to be the work Mistri of the opposite-parties and on 29.6.1965 the opposite-parties terminated the services of the applicant and the applicant on 25.8.1965 came to know of the said order of termination and where-~~after~~ upon the applicant has been trying with the opposite-parties to settle up the matter but in vain and consequently the applicant filed a suit for declaration that the termination of the service of the applicant are void and the suit was registered as Regular Suit no.9 of 1968 which has been decreed

Shyam Maundhat
more

by the Civil Judge, Rae Bareli vide order dated 20.9.1972 and the appeal filed by the opposite parties has been dismissed by the District Judge, Rae Bareli on 6.11.1973. The opposite-parties filed an appeal against the said order before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow being the Second Appeal no. 97 of 1974, Union of India vs. Shyam Manohar Misra and the same appeal has been dismissed on 28.10.1975 by the Hon'ble Mr. Justice Premprakash. Thus the order of termination has been held to be invalid and the applicant has been declared to be the employee of the Union of India and the opposite-parties and shall be deemed to be an permanent employee entitled to receive the wages per month with increments.

4. That consequently the applicant is the employee of the opposite-parties and his wages in June 1965 were Rs.269.00 p.

5. That thereafter the increments and intermin reliefs have been due to the applicant and in the month of September, 1976 the applicant would be deemed to be entitled to Rs. 572.00 p. and the applicant has been put back to work from 1.7.1976.

6. That the wages of the applicant have not been paid by the opposite-parties from June 1965 to 30.6.1976 which comes to Rs. 47,655.04 m.p. as appended in the schedule 'A'.



Shyam Manohar
Misra

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-4-

7. That since the opposite-parties have deliberately and intentionally with a view to harass the applicant are not payment the wages and therefore the applicant is entitled to the compensaion of ten times of the actual wages due, amounting to Rs. 4,76,550.40 NP.

8. That this application is valued at Rs. on which a court fee of Rs.1.50 NP. has been paid.

9. Wherefore, it is prayed:-

A. That a direction be issued for the payment of wages amounting to Rs. 476,550.04.

B. That a payment of rs. be directed to be made as penalty towards the delayed payment or such amount equivalent to ten times as compensation for the wages so delayed amounting to Rs. 4 ,76,550.40 NP.

The applicant certifies that the statement of facts contained in this application is to the best of his knowledge and belief accurate.

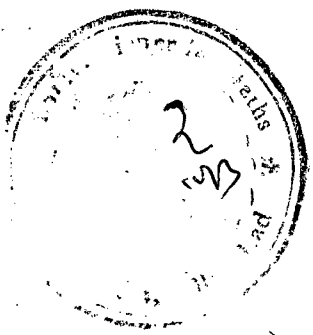
Shyam Manohar Misra
Applicant

Through

Dated Ras Bareli
October 26, 1976

(Hari Om)
Advocate

shyam manohar
misra



A-40
26

A/34

In the Hon'ble High Court of Judicature at Allahabad
Lucknow Bench, Lucknow.

Writ Petition No. of 1983

Shyam Manohar Mishra..... Applicant.

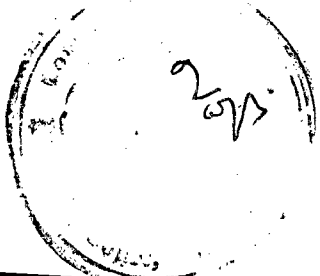
versus

Union of India and others... ..opp. parties

Annexure No. 3 A

Months & year	Basic pay	Dearness Allowance	Additional dearness allowance.	Second Additional Dearness allowance.	Total.
1	2	3	4	5	6
15th June 1965 to Decr. 65.	1022.62	437.62	--	--	1460.24
Jan. 66 to Decr. 66.	1933.00	996.00	--	--	2929.00
Jan. 67 to Decr. 67.	1990.00	1240.00	--	--	3230.00
Jan. 68 to Decr. 68.	2050.00	1400.00	--	--	3450.00
Jan. 69 to Decr. 69.	2112.00	1464.00	--	--	3576.00
Jan. 70 to Decr. 70	2184.00	1464.00	250.00	--	3898.00
Jan. 71 to Decr. 71.	2256.00	1464.00	300.00	52.00	4072.00
Jan. 72 to Decr. 72.	2328.00	1464.00	350.00	136.00	4278.00

Shyam Manohar Mishra



1	2	3	4	5	6
Jan. 73 to Dec. 73	4584.00	192.00	--	--	4776.00
Jan. 74 to Dec. 74.	4728.00	709.20	313.00	60.50	5810.70
Jan. 75 to Dec. 75.	4872.00	780.00	584.80	758.70	6966.50
Jan. 76 to June. 76.	2496.00	574.40	299.40	312.40	3481.80

Total Rs. 4765.04

Shyam Manohar Misra.
Applicant.

Through:

Dated Rae Bareilly.
October 26, 1976.

(Hari Om)
Advocate.

True copy



Shyam Manohar Misra

A-42

28

A/36

In the Hon'ble High Court of Judicature at Allahabad,
(Lucknow Bench), Lucknow

--
Writ Petition No. of 1983

Shyam Manohar Misra

--Applicant

versus

Union of India and others

--Opp-parties

Annexure no 4

1. The appointment of the applicant is denied. The applicant was only engaged as casual labour work-Mistry on 1.11.1963.
2. It is denied that the opposite-parties are responsible for the payment of wages of the applicant. They have wrongly been impleaded.
3. It is not disputed that by the final order of the Hon'ble High Court dated 28.10.1975 the applicant has been reinstated. But it is denied that the applicant is a permanent employee. He is a temporary employee and has not so far acquired the permanent status.
4. That the fact of the applicant being an employee is not disputed. His pay in June 1965 was Rs.155/- in grade Rs.150-240 (AS).
5. It is not disputed that the applicant has been put back on work from 1.7.1976. The emoluments due to the applicant as stated are not admitted. The amount



Shyam Manohar Misra

A-43

29

A/32

-2-

of arrear is being worked out and will be paid in due course.

6. Not Admitted.

7. Not Admitted.

8. Not disputed.

9. The applicant is not entitled to the relief as claimed.

Additional pleas

10. The application is not maintainable inasmuch as the opposite-parties have been impleaded unnecessarily and are not the persons responsible for the pay of the applicant.

11. The applicant can claim wages under the Act for a period of twelve months only prior to the making of the application as such the claim of the applicant is time-barred.

12. The application is liable to be dismissed.

Union of India through the Divisional Superintendent, N. Railway, Lucknow

Dated Divisional Superintendent, Lucknow

The opposite-party certifies that the statement of facts contained in the written-statement is to the best of his knowledge and belief on the basis of official records, correct.

Sd. Illegible

Divisional Superintendent, Lucknow
27.5.1977



Shyam Mani Shastri
more

On the Public High Court of Judicature at Allahabad

known Bench known ^{8/8}

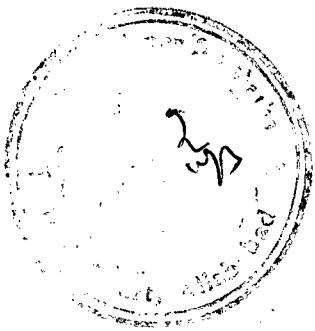
222 No. of 1983

Shyam Mohan Misra — Petitioner

vs

Union of India & others — Opp. parties

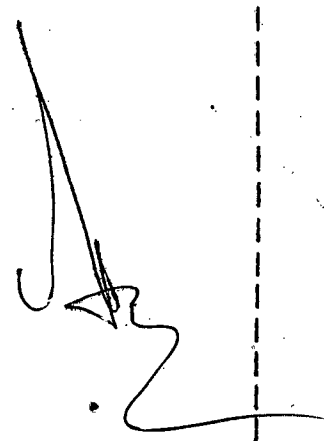
Annexure No 5



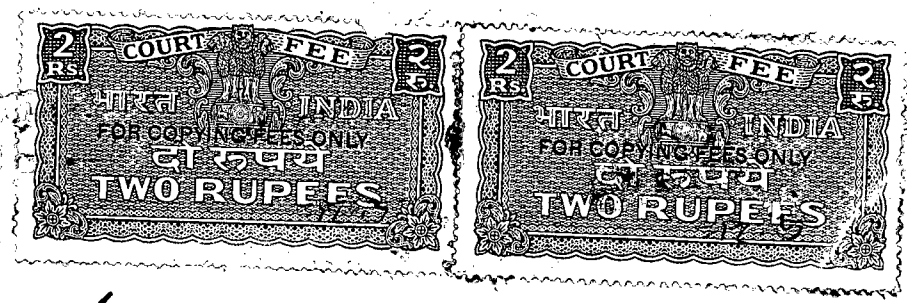
Shyam Mohan Misra

10

A-45
31

आवश्यक स्टाम्प सहित नोटिस बोर्ड पर प्रार्थना-पत्र देने की तारीख	नकल तैयार होने की व सूचना की तारीख	नकल वापिस दिए जाने की तारीख	नकल वापिस देने वाले अधिकारी का हस्ताक्षर
21-2-83	3.3.83	3.3.83	

4/422



Copy of order of Review Application of dated 18-2-83

Court of IIIrd Adlt. Distt. Judge
Rae Bareilly.

Sham Manohar Misra — Appt.

Versus

Union of India Railway Administration.
and others ————— opposite parties.

Shyam Manohar Misra

A-46
32

IN THE COURT OF THE III ADDL. DISTRICT JUDGE, RAJ BAREILLY

Present : Sri D.B. Singh, M.A. LL.B. H.J.S.

Miscellaneous case No. : 1 of 1983.

Sri Shyam Manohar Misra Applicant

Versus

Union of India, Railway Administration & 3 others

..... Respondents.

---0000---

JUDGMENT

1. Miscellaneous Civil Appeal No. 20 and 25 of 1981 were decided and dismissed on 17.11.82 in this court. The aforesaid appeals were preferred respectively by Sri Shyam Manohar Misra and Union of India, Railway Administration & 3 others against the order dated 14.8.81 of Sub-Divisional Magistrate, Rae Bareilly sitting in his capacity as prescribed authority whereby he had directed the Railway Administration under Section 15(3) ^{payment} of Wages Act, 1936, to pay Sri Shyam Manohar Misra an amount of Rs 47655.04/- as arrears of his ^{salary} salary and Rs 25.00/- as compensation for delay in payment of his wages. The application under section 114 and order 47 Rule 1 C.P.C. giving rise to the present miscellaneous case, has been made by Sri Shyam Manohar Misra to review the judgment of this court dated 17.11.82 for the reason that no appeal is provided by the Act against such a decree.

2. The grounds on which the applicant wants the court to review its judgment are that certain case laws cited and relied upon by the parties ~~xxxxxx~~ were misinterpreted and other case laws were not considered. The applicant has mentioned the specific citations which were either mis-interpreted or not considered while delivering the judgment and dismissing both the appeals.

3. For the better appreciation of the implications of the questions of law and interpretation of the citations specifically referred on this application, it is necessary to have a look on the basic structure of the facts of the case. Sri Shyam Manohar Misra was a work-Mistry in the Administration of Northern Railway till June 28, 1965 on the monthly salary of

Sumera

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A-47 A-46

33

A/41

Rs 230/- . His services were terminated with effect from June 29, 1965, challenging the validity of the order and the notice terminating his services, Sri Shyam Manohar Misra filed Regular Suit No. 9 of 1968 which was decreed on 30.9.72 . The first appeal was dismissed on 6.11.73 and the second appeal on 28.10.75. Though the order of termination of his services was finally held to be invalid, ultra-vires and inoperative, but his wages, since June 1965 to the corresponding month of year 1976, were not cleared. The petition was made by Sri Shyam M/ano har Misra under Section 15 of payment of wages Act, 1936, on 26.10.76 wherein he claimed alongwith arrears of his salary and the amount of compensation ~~ay~~ equivalent to ten times the amount of arrears of salary. Though the learned ~~magistrate~~ Prescribed Authority allowed his claim as regards the amount of salary but treating his case as that of delayed payment, he allowed Rs 25,00/- as compensation which was the maximum amount prescribed as payable under this act.

4. The grievance of the applicant was that the learned Prescribed Authority failed to hold that the case of non-payment of wages for the period between his wrongful dismissal and subsequent reinstatement in consequence of the final decision of the Hon'ble High Court should have been held as a case of "deduction of wages" instead of "delayed payment of wages".

5. It was alleged by the applicant that " court has not considered A.I.R . 1959 Allahabad 664 and misinterpreted the ruling". If the said case of law was not considered, nothing is known how it can be said to have been mis-interpreted.

2
The fact is that it has been referred in the Judgment dated 17.11.82. Therefore, the allegation that it has not been considered is wrong. It was then alleged that A.I.R. 1958 Punjab relied upon by the applicant was also mis-interpreted. Likewise, the allegations have been raised that 1980 S.C.C. 464 Maimona Khatoon & another Versus State of Uttar Pradesh & another and 1974 S.C.C. 554 Dilbagh Rai Jarry Versus Union of India and others ^{were} also misinterpreted.

. Irrespective of the question of propriety on my part to

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A-48
X/42

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re-assess the case and the questions of law enunciated in the aforementioned cases, I liked going through the cases once again in order to eliminate the possibility of improper appreciation of the observations made therein. I find that the interpretation of the provisions of law, considered in my judgment in the light of the aforementioned cases, are correct.

6. The learned counsel for the applicant has relied upon A.I.R. 1956 Rajasthan 145 Anant Ram & others Versus District Magistrate Jodhpur and 1969 Allahabad 472 Raj Kumar Manohar Lal Versus Union of India. The first mentioned case was neither referred in oral nor written argument and nor the book was given to me at the time of the judgment of the case before 17.11.82. However, I have gone through this case many a times, I do not find any observation made therein that the cases of the nature of the applicant have been held in this case to be covered by the term "deduction from wages". In the latter mentioned case observation has, indeed, been made under para 6 of the judgment to the effect that the case of Raj Kumar Manohar Lal was covered by the phrase "deduction of wages". It was so held because the part of the claim of the employee was that "He was paid lesser wages for the period between 13th September, 1958 and the 31st January, 1959". Whereas there was specific finding that the employee was not paid full wages for the period between those dates., it was decidedly a case of "deduction of wages" and not a case of "delayed payment of wages". Therefore, this case does not help the applicant.

7. There is no force in the application and it should be

rejected.

ORDER

The review application is hereby rejected.

Sd/-

(D.B. Singh)
LL-Addl. Distt. Judge
Rae Bareli.

18-2-83

Judgment signed, dated and pronounced in the open court today.

Sd/-

(D.B. Singh)
LL-Addl. Distt. Judge
Rae Bareli.

18-2-83

E.W. 1000

Typed by - C.M.

Can by - Officer

For Yashpal
3.3.83

2ms

Smisra

A-SD

36 7/10



Shyam mauldar miora

A-51 37

~~The Honble High Court of Judicature at~~
व अदालत श्रीमान Allahabad Income Tax Bench F.K.O.

वादी (मुद्दे) For Petitioner का वकील
प्रतिवादी (मुद्दाअलेह) Y



Shyam Mohan Misra

वादी (मुद्दे) 14-5-37

Union of India & others बनाम

प्रतिवादी (मुद्दाअलेह)

नं० मुकद्दमा सन् १६८३ पेशी की ता० १६ ई०
ऊपर लिखे मुकद्दमा में अपनी ओर से श्री

Sh. B. C. Salasena Advocate पटवोकेट

महोदय
वकील

नाम अदालत	नाम फरीकैन
नं० मुकद्दमा	

को अपना वकील निरुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिग्री जारी करावें और रुपया वसूल करें या सुलहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपक्ष (फरीकसानी) का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करें - वकील महोदय द्वारा की गई वह कार्यवाही हमको सर्वथा रबीकार है और होगी मैं यह भी स्वीकार करता हूँ कि मैं हर पेशी स्वयं या किसी अपने पैरोकार को भेजता रहूँगा अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरी वकील पर न होगी। इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

Accepted B. Salasena

हस्ताक्षर Shyam Mohan Misra

साक्षी (गवाह) साक्षी (गवाह)

दिनांक महीना

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

W.P.

No.

2423

of 1983

vs.

A52 3

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
5.5.83.	Hon. R.C.D. Sharma, J.	
	List next week as regards admissions. Sl.	
9.5.83	13-5-83 fixed for order Hon.	Paycom Singh
17.5.83	23-5-83 fixed for order	Singh
23.5.83	Hon. S.C.M. J.	
24.5.83	Hon. S.C.M. J.	
15.7.83	fixed for order Hon. S.A.S.	Singh
21.7.83	Hon. S.S.A. Mathur J. fixed for orders	
27/7/83	S.S.A. Mathur Fixed for orders.	
	Hon'ble S.S. Ahmad, J.	
2/8/83	wait for orders Hon. S.S.A. J.	

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

TA NO 1554/87
CAUSE TITLE WRNO 1105/84 OF

NAME OF THE PARTIES *Smt. Susheta Rani* Applicant

Versus

U.P. Govt. Respondent

Part A.

Sl.No.	Description of documents	Page
1	Index sheet	A1 to A2
2	order sheet	A3 to A4
3	wait petition with annexure, for order dt.	A5 to A23
4	10-12-91 in petitions	
5	pages	A24
6	C.M. No 25 to stay appli.	A25 to A26
7	H.C. Notices	A27 to A34
8	C.M. No 8435 Vacation Appli / counter	A35 to A43
9	Rejoinder Affidavit	A44 to A49
10	C.M. A. No 3134	A50 to A54
11	H.C. order sheet	A55 to A56
12	True Copy on 9-9-92	A57
13	pages / order copy	A58
14		
15		
16		
17		
18		

CERTIFICATE

Certified that no further action is required to be taken and that the case is fit for consignment to the record room (decided)

Dated 20-9-11

Counter Signed.....

Section Officer/In charge

Signature of the
Dealing Assistant

19
(A23)
3/1
IN THE HON'BLE HIGH COURT OF ALLAHABAD,

(Lucknow Judicature)

22 600
C.M.APPLICATION NO. OF 1984.

In re:

1105
WRIT PETITION NO. OF 1984.



Smt. Suneeta Rani, daughter of Sri Khanna,
Assistant Teacher, Northern Railway Primary
School, Sitapur City.Petitioner.

Versus

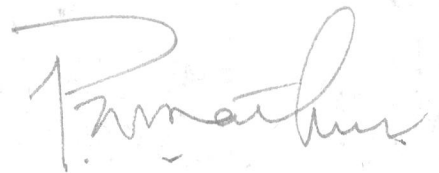
1. The Union of India through the General
Manager, Northern Railway, Baroda House,
New Delhi.
 2. The Divisional Railway Manager, Northern
Railway, Moradabad.
 3. The Divisional Personnel Officer, Northern
Railway, Moradabad.
 4. Assistant Engineer, Northern Railway,
Shahjehanpur.
-Opposite Parties.

APPLICATION FOR STAY.

For the facts and circumstances mentioned in the writ petition, it is prayed that operation of the termination order dated 4.2.1984 contained in Annexure No. 2 may be stayed till the disposal of the writ petition.

Lucknow, Dated.

February 27, 84.

20 (A24)
2
4/26


(P.N. MATHUR)

Advocate.

COUNSEL FOR THE PETITIONER.

22/3
both parties
& counsel

Order sheet-

TA no 1554 of 87

Smt. Suneeta Kani² vs WOS

(AI) 4/2

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
22/3/90	<p>Hon. Mr. D.K. Agrawal, J.M. Hon. Mr. K. Obayya, A.M.</p> <p>Shri P.N. Mathur, for the petitioner and Shri A. Srivastava, brief holder of Shri V. Srivastava, for the respondent are present.</p> <p>Pleadings are complete. List it for <u>hearing on 20/7/90.</u></p> <p>A.M. J.M.</p>	<p>of This W/O no 1105/89 received on transfer from Lucknow High Court along with other W/Os in May 89. On the date of transfer the case was admitted. C.A. & RA filed. Stay order operative. Stay-vacate apply pend. Transfer notices issued by Hld office (or not received) but neither any reply nor any undelivered copy received back. Submitted form R 7/11/89</p>
20-7-90	<p>No sitting. Adj. to 7-11-90</p>	
7.11.90	<p>Hon. Mr. M.Y. Pralokar - A.M. Hon. Mr. D. K. Agrawal - J.M.</p> <p>Due to resolution of Bar Association case is adjourned to 12.12.90.</p>	<p>or notice of adj. 21/2/90</p> <p>or Notices were issued on 21.2.90. No answer yet. cover has been returned.</p>
12.12.90	<p>Hon. Mr. Justice K. Mathur vs Hon. Mr. K. Obayya, A.M.</p> <p>On the request of the Shri P.N. Mathur Counsel for applicant case is adjourned</p>	<p>S.F.O. L. 21/12</p>

Dinesh to 30.1.91. for hearing P.O.C.
A.M. VC

30.1.91. - No sitting Adj. to 12.3.91

21-10-91.

T.A.No. 1554/87(T)
(W.P. No. 1105/84)

(A2)

None present for the Applicant,
Mr. Anil Srivastava - Proxy counsel for
Mr. A.V. Srivastava,
Counsel for the
respondents.

May be listed for hearing
on 24/10/91.

(S.N. Prasad)
Member (Judl.)

(Kamshal Kumar)
Vice Chairman.

24-10-91.

Mr. J.N. Mathur - Proxy counsel for Mr.
P.N. Mathur, counsel for
the applicant.

None present for the respondents.

On the request of the learned
proxy counsel for the applicant, may be
listed for hearing on 10/12/91.

(S.N. Prasad)
Member (Judl.)

(Kamshal Kumar)
Vice Chairman

In Copy
an fine
K.K. Velle
13/12/92

रिसिविंग
सुनीताशर्मा
६.६.९२

ws 881-014
Group A 14 (a) 1782

IN THE HON'BLE HIGH COURT OF ALLAHABAD,

(Lucknow Judicature)

WRIT PETITION NO. 1105 OF 1984.

Smt. Suneeta Rani.

...Petitioner.

Versus

The Union of India and others.

...Opposite Parties.

I N D E X

30/8

<u>Sl. No.</u>	<u>Description of papers.</u>	<u>Number of pages.</u>
1.	Writ Petition.	... 1 to 12.
2.	<u>ANNEXURE NO. 1.</u> True copy of the letter of appointment of the petitioner...	13-14
3.	<u>ANNEXURE NO. 2.</u> True copy of the termination order dated 4.12.1984.	... 15
4.	Affidavit.	... 16-17
5.	Power.	... 18
6.	Application for stay.	... 19-20

Lucknow, Dated.

February 27, 84.

(P.N. MATHUR)

Advocate.

COUNSEL FOR THE PETITIONER

10.12.41

Hon. Mr. Justice Srivastava, VC
Hon. Mr. A.B. Borthwick, AM

Sri A.K. Jankari, learned
Counsel for the applicant
states that the applicant's
services have been
regularised and as such
the termination order
against which this
application has been filed
no longer survive.
So this application is
dismissed as infructuous
without any order
as to costs.

W

VC

d

AM

(M)

IN THE HON'BLE HIGH COURT OF ALLAHABAD,

(Lucknow Judicature)

WRIT PETITION NO. 1102 OF 1984.

PETITION UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA.



Smt. Suneeta Rani, daughter of Sri Khanna,

Assistant Teacher, Northern Railway Primary

School, Sitapur City.

.....Petitioner.

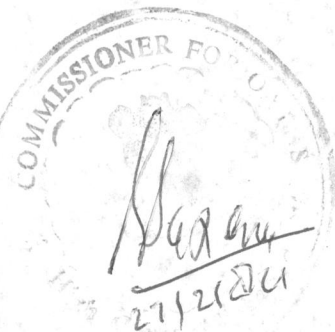
Versus

1. The Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Moradabad.
3. The Divisional Personnel Officer, Northern Railway, Moradabad.
4. Assistant Engineer, Northern Railway, Shahjahanpur.

.....Opposite Parties.

The petitioner respectfully submits as under:-

Suneeta Rani



50/-100/-
Ru
27-2-84

~~Impressed~~

Five Adhesive Rs. 100/-

Total

Correct but final Court-fee receipt
will be made on receipt of lower
Court record.

In time up to

Papers filed. Copy of F. C.

Should also be filed.

Single - Bench.

* Last Impugned order Annex 2

Dt. 4-2-04

Distt. Moradabad

Subh
27.2.04
So.
Rm
27.2.04

B/e NRE
[Signature]

AG 1/8

1. That this writ petition is directed against the order of termination of services of the petitioner as a teacher in the Railway Primary School at Sitapur City.

2. That by an order No. 3-E/O-IV/Schools/EMC-3 (A) dated 21.8.1982 the petitioner was appointed as a substitute primary school teacher in the Railway Primary School at Sitapur city in the pay scale of Rs. 330-560/- (RS) plus usual allowance payable as a temporary ad hoc measure. The petitioner had been given the said appointment letter after she had undergone the prescribed Medical examination and had obtained the certificate No. 646666 dated 19/20.8. 1982. A true copy of the letter of appointment issued to the petitioner is ANNEXURE NO.1.

3. That the petitioner possessed all the requisite qualifications necessary for appointment of a primary school teacher when she had been given the appointment letter. She had passed her Intermediate Examination of the U.P. Board and had also obtained a training Certificate in Basic Education known as B.T.C. The petitioner was and continues to be qualified in all respects for the post of Assistant Teacher in the Primary School.

4. That having joined duties at the Primary

Sumita Ramu



A7
A/a

Railway School at Sitapur on 23.8.1982 the petitioner is still continuing the work on that post. During this period she has also earned an increment in accordance with pay scale. She was also paid bonus admissible to railway servants for the year 1983-84 and she has been extended the other facilities which are available to workmen in the Railways like railway travelling pass and the concessional travelling fare known as P.T.O. in the Railway.

5. That no fault was ever found in the work of the petitioner. Her performance has been satisfactory throughout. The petitioner came to know from the Station Master of Sitapur Railway Station that the Divisional Personnel Officer, Moradabad has terminated her services through an order No. E-E/O-IV(Schools EMC-3(A) IV dated 4.12.1984. The Station Master has received a copy of the termination order, but the petitioner has not yet received the said order. A true copy of the order of termination dated 4.12.84 is ANNEXURE NO.2.

6. That a perusal of Annexure 2 would show that no reason has been assigned for terminating the petitioner's services. It only mentions that the services of the petitioner are being terminated as as the panelled teachers are now available for



Sumita Rane

AS

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appointment. The notice gives thirty days time from the date of the receipt of the notice for termination of the service. Since the notice has not yet been received by the petitioner she is still serving on the post but it is apprehended that she might be receiving the notice any day when her services would stand terminated in an unreasonable and illegal manner.

7. That the Railway is an Industry and all its employees [✓] who are drawing salary less than Rs. 500/- per month are workmen within the definition of that term in Section 2 (s) of the Industrial Disputes Act. The petitioner, having served for more than 240 days is entitled to the protection given by Section 25-F of the Industrial Disputes Act.

8. That the petitioner had been appointed to the post of Assistant Teacher in the Primary Railway School in the vacancy which had been caused by the retirement of Smt. Sushila Devi which was filled up by appointment of Smt. Surekha Singh, who subsequently resigned. Thus the post which was offered to the petitioner was a clear vacancy to which no other teacher had a lien.

9. That in the appointment letter it was mentioned that the appointment of the petitioner was as a

COMMISSIONER
S. S. Rana
27/2/89

Sanita Rana

'substitute' . The said term is defined in paragraph 2315 of Chapter XXXII of the Indian Railway Establishment Manual which reads as under:-

"Substitutes' are persons engaged in Indian railway establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts may fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant."

10. That it would thus appear that a substitute is appointed in place of either permanent or a temporary servant but the vacancy may be a permanent vacancy. The definition of temporary servant is contained in 2301 of Section A Chapter XXIII of the Indian Railway Establishment Manual which reads as under:-

"A temporary railway servant means a railway servant without a lien on a permanent post on a railway or in other administration or office under the Railway Board. The term does not include casual labour, a contract or part-time employee or an apprentice."

11. That paragraph 2318 of the said Manual further provides that substitute should be afforded all the rights and privileges which are admissible to temporary servants of six months continuous



Sanita Rane

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service. Substitute teachers are, however, provided the status of temporary servants if they have put in continuous service of three months, but their temporary service would not be considered for the purposes of seniority on their eventual absorption against regular posts after selection. The special status given to the teachers is contained in the Railway Board's letter No. P(NG)II/82/38/9 dated 12.3.1983 addressed to all General Managers of the Indian Railways and other officers in which it is specifically mentioned that the substitutes in the matter of grant of temporary status would be those teachers who have completed three months' of service.

12. That the Indian Railways is undoubtedly an Industry within the meaning of the Industrial Disputes Act, 1947 and under Section 2 (s) a workman has been defined as under:-

"Workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge, or retrenchment has led to that dispute,....."

COMMISSIONER FOR OFFICIALS
Saxena
22/2/84

Sumita Ramesh

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13. That under the Indian Railway Establishment Code Volume I Rule 149 postulates that the services of a railway servant who is covered by the Industrial Disputes Act cannot be terminated except in accordance with the notice as required by that law. The relevant portion of Rule 149 (6) reads as under:-

"Notwithstanding anything contained in clauses (1) (2) and (4) of this rule if a railway servant or apprentice is one to whom the provisions of the Industrial Disputes Act, 1947 apply, he shall be entitled to notice or wages in lieu thereof in accordance with the provisions of that Act."

14. That the petitioner had been in continuous service from the date of her appointment on 23.8.1982 when she took charge till now and comes within the definition of continuous service for the purpose of the Industrial Disputes Act as provided by Section 25-B (2) (a) (ii) of that Act. The relevant portion is reproduced below:-

"(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman."

(2) Where a workman is not in continuous

COMMISSIONER F
29/4/84

Sunata Rana

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service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case,

(b) X X X X .*

15. That Section 25-F of the Industrial Disputes Act lays down the conditions precedent to retrenchment of workmen. It reads as under:-

"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.

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specified a date for the termination of service

(b) the workman has been paid, at the time of retrenchment, compensation which shall



Sumita Rana

be equivalent to fifteen days' average pay (for every completed year of continuous service) on 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."

16. That the Railway Rules envisage that service even by casual workmen who have been in continuous for one year cannot be terminated otherwise than in accordance with the Industrial Disputes Act. The said Act provides that all termination of service of persons who have put in one year of continuous service is retrenchment; and where retrenchment takes place it is obligatory to observe the provisions of Section 25-F of the said Act. Thus in the case of the petitioner she being a continuous workman for more than one year, the services could not be terminated without assigning any proper reason and without paying compensation and also without serving notice to the Labour Department which is the appropriate authority under the Act to protect the interest of the workman. Thus the petitioner's termination order contained in Annexure 2 is on the face of it illegal and without jurisdiction.

COMMISSIONER
Saxena
20/2/84

Sumita Rande

17. That as the petitioner has been working

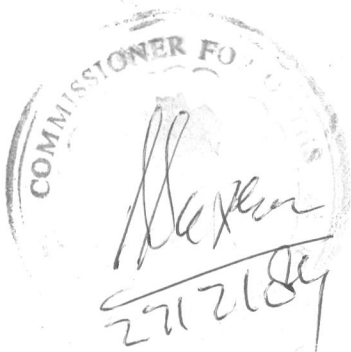
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for more than one year continuously on a post to which no one had a lien, she stands regularised on that post after having put in more than three months of service and cannot be now retrenched to yield place to any other workman whom the Railway now intends to employ.

18. That to the best of the petitioner's knowledge and belief no arrangement has been made so far for the appointment of any person to fill up the post which would fall vacant if the petitioner is required to give up her appointment.

19. That the petitioner's father has also sent a representation to the Railway authorities for a kind consideration of the matter and bringing it to the notice of the authorities that in the past in similar circumstances many teachers were not disturbed and were regularised. The said representation has not yet been disposed of as no reply has yet been received by him.

20. That the petitioner has learnt that the writ petition No. 881 of 1984 in which similar questions arise for consideration has already been admitted by this Hon'ble Court on 17.2.1984 and is

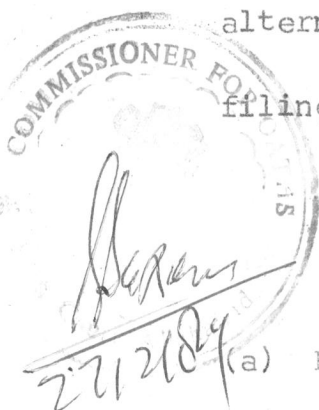


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pending. In the said writ petition stay has also been granted.

21. That as no other effective and efficacious alternative remedy is available, the petitioner is filing this writ petition on the following:-



-G R O U N D S-

- (a) Because the petitioner comes within the definition of a workman and would be governed by the Industrial Disputes Act, in view of Rule 149 of the Indian Railway Establishment Code Volume I the petitioner's services could not be terminated until the provisions of Section 25-F of the Industrial Disputes Act were fully observed.
- (b) Because no retrenchment benefit or compensation having even been offered to the petitioner, and no information through a notice having been given to the Labour Department of the Government, the order of retrenchment is illegal and inoperative.
- (c) Because by reason of having completed more than three months of continuous service the petitioner is entitled to be treated as a temporary employee railway servant and her services could not be terminated by an order evidence by Annexure 2.
- (d) Because the petitioner being in continuous

Sumita Ramlal

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employment could not be retrenched so long as the post exists against which she was working, and it is not open to the opposite parties to substitute one temporary employee by another. An employee who has worked for a long time of more than one year has acquired the status of a temporary employee against the particular post and until any fault is found in her work, she cannot be retrenched from that post.

The petitioner, therefore, prays as under:-

- (i) That a writ, direction or order in the nature of certiorari may be issued calling for the original of the order dated ^{4.2.84} 21.8.1982 contained in Annexure 2 and quash the same.
- (ii) That a writ, direction or order in the nature of mandamus may be issued commanding the opposite parties to treat the petitioner to be continuing in service on the post of an Assistant Teacher in the Railway Primary School at Sitapur and
- (iii) that costs of the writ petition may be allowed to the petitioner.

Lucknow, Dated.

Sumita Rames

February 27, 84.

P.N. Mathur

(P.N. MATHUR)

Advocate.

COUNSEL FOR THE PETITIONER.

IN THE HON'BLE HIGH COURT OF ALLAHABAD,

(Lucknow Judicature)

WRIT PETITION NO. OF 1984.

Smt. Suneeta Rani. ...Petitioner.

Versus

The Union of India and others. ...Opposite Parties.

ANNEXURE NO...1.

Northern Railway.

Divl. Rly. Manager's Office,
Moradabad.

No. %-E/O-IV/Schools/EMC-3 (A)
Dated 21.8.1982.

Smt. Suneeta Rani D/O Shri Khanna having passed the prescribed medical examination in C-2 vide ADMO/Line/MB', fit certificate No. 646666 dated 19/20. 8.82 is appointed as substitute Asstt. Teacher on pay Rs. 330/- P.M. in grade Rs. 330-560 (RS) plus usual allowance purely as temporary, stop gap measure in Railway primary School, Sitapur against the leave vacancy. This appointment as substitute will not confer upon Smt. Suneeta Rani any claim for regularisation of her appointment on permanent basis against permanent vacancies nor she will have claim over and



Suneeta Rani

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and above the selected/empanalled and senior candidates in future or the present vacancy. Her pay will be charged from the date she starts working independently

Her date of birth is 15.3.1956 and qualifications is Inter B.T.C.

Sd/-

(H.N.Khare)

Divisional Personnel Officer,
Northern Railway,
Moradabad.

b/21.8.

Copy forwarded for information and necessary action:-

1. Smt. Suneeta Rani (in office). She should resume her duty at Sitapur taking over the charge of school Teacher from station Master, Sitapur.
2. Head Clerk (Pass), D.R.M. Office to please issue a pass ex. MB. to SPC available up to 25.8.82.
3. Sr. D.A.O. N.R.M.B.
4. G.M.(P.)/NDLS in reference to his letter No.220-E/1208-XII (E.vi) dt. 26.9.1981.
5. Station Master/SPC. Her date of resumption may be advised to this office.

COM. OVER FOR OATHS
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27/8/84

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IN THE HON'BLE HIGH COURT OF ALLAHABAD,

(Lucknow Judicature)

WRIT PETITION NO.

OF 1984.

Smt. Suneeta Rani.

..Petitioner.

Versus

The Union of India and others. ...Opposite Parties

ANNEXURE NO....2.

NORTHERN RAILWAY.

Divl. Rly. Manager's Office.
Moradabad.

No. 3-E/C-iv (Schools)/EMC-3(A) IV. Dated 4.12.1984.

Shrimati Suneeta Rani,
Subs. Asstt. Teacher.
Rly. Primary School,
Sitapur City.

Sub:- Termination from Railway Services.

Ref:- This office L. No. 3-EO/IV/Schools/EMC-3
(A) dated 21.8.1982.

Your service of Substitute Teacher in Railway

Primary School/Sitapur City being no longer required, shall be terminated on any date after expiry of 30 days from the date of receipt of this notice as the panelled Teachers are available for appointment. This is in conformity with terms and conditions of your appointment quoted above.

charge
You should hand over complete/of the School to SM/SPC or any other person subsequently authorised by this office.

Divl. Personnel Officer.
Moradabad.

Copy to SM/SPC to ensure compliance which should be reported to this office.

COMMISSIONER FOR
Smt. Suneeta Rani
29/12/84

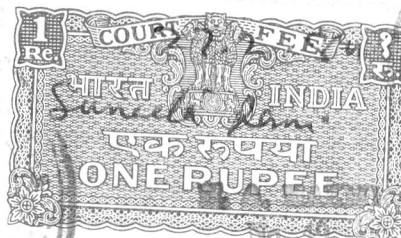
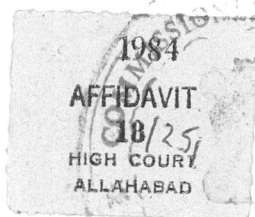
Smt. Suneeta Rani

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IN THE HON'BLE HIGH COURT OF ALLAHABAD,
(Lucknow Judicature)

WRIT PETITION NO.

OF 1984.



Smt. Suneeta Rani.

....Petitioner.

Versus

The Union of India and others. ...Opposite Parties.

A F F I D A V I T

I, Suneeta Rani, aged about 28 years, daughter of Sri Khanna, Assistant Teacher, Northern Railway Primary School, Sitapur, City, do hereby state on oath as under:-

1. That deponent is the petitioner in the above noted case and is well conversant with the facts of the case.

2. That the contents of paras 1, 3, 4, 6, 8 and 17 to 20 of the writ petition are true to my own knowledge, contents of paras 2, 5 of the writ petition are believed by me to be true on the basis of records while the contents of paras 7, 9 to 16 and 21 are believed by me to be true on the basis of legal advice received from my counsel.

3. That Annexures 1 and 2 are true copies which are believed by me to be true copies.

Lucknow, Dated.

February 27, 84.

Suneeta Rani
DEPONENT.

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I, the deponent above named do hereby verify that the contents of paras 1 to 3 of this affidavit are true to my own knowledge. No part of this affidavit is false and nothing material has been concealed. So help me God.

Sumita Ramee
DEPONENT.

I identify the deponent above named who has signed this affidavit before me.

Asharfi Lal
Clerk of Sri P.N.Mathur,
Advocate.

Solemnly affirmed before me on 27-2-84
AMR

at 11.54 the deponent who is identified by Sri Asharfi Lal Clerk of Sri P.N.Mathur Advocate, High COURT, Lucknow Bench. Lucknow.

I have satisfied myself by examining the deponent that he has understood the contents of this affidavit which have been read over and explained by me.



Signature
DATE COMMISSIONED
Sri P.N.Mathur
18-2-84
27-2-84

ब. अदालत श्रीमान

In the Hon'ble High Court of Judicature at
Allahabad (Lucknow Bench) Lucknow

[वादी] अपीलान्त

प्रतिवादी [रेस्पांडेंट]

श्री

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वकालतनामा



(टिक

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Smt. Suneeta Ram - Petitioner

Union of India

बनाम

प्रतिवादी (रेस्पांडेंट)

नं० मुकदमा

सन्

पेशी की ता०

१६ ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री

S. P. N. Mahesh Advocate

A. K. Jauhari Advocate

ASHUTOSH NIGAM Advocate

Bhatnagar Gupta, Advocate

महोदय

एडवोकेट

नाम	अदालत	मुकदमा नं०	नाम फौजदारी	बनाम

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ कि इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या मुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावें या कोई रुपया जमा करें या हमारी या विपक्षी (फरीकासनी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसोद से लेवें या पंच नियुक्त करे-वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूँगा अगर मुकदमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर

Suneeta Ram

साक्षी [गवाह]

साक्षी [गवाह]

दिनांक

महीना

सन् १६ ई०

हाईकोर्ट इलाहाबाद लखनऊ बेंच, लखनऊ

(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रकीर्णक (मुतफरिफ) प्रार्थना - पत्र संख्या सन १९ ई०

W.P. 1105 सन १९ ४९ ई० में

Smr Suneila Rani

प्राथी

Union of India & others

प्रति

प्रत्याथी

Assistant Engineer, Northern Railway

Shahjahanpur

प्रत्याथी

चूंकि ऊपर लिखे प्राथी ने इस न्यायालय में उपर्युक्त मुकदमें के सम्बन्ध में

..... के नाम के लिये प्रार्थना-पत्र

दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक ११ माह ३ सन १९४९ को या उससे पूर्व उपस्थित होकर कारण बतलायें कि प्रार्थना-पत्र क्यों न स्वीकार कर लिया जाय। उक्त प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञप्ति किसी और दिन होगी।

विदित हो कि आप ऊपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी एडवोकेट या ऐसे व्यक्ति द्वारा, जो आपकी ओर से कार्य करने के लिए कानूनन अधिकृत हों उपस्थित न होंगे तो उस प्रार्थना-पत्र की सुनवाई और निर्णय आपकी अनुपस्थिति में हो जायेंगे।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक २९ माह ३ सन १९४९ को जारी किया गया।

..... के एडवोकेट

तिथि



Revised

डिप्टी रजिस्ट्रार

इलाहाबाद/लखनऊ

सूचना—इस न्यायालय में १९५२ की नियमावली के अध्याय ३० नियम २ के अधीन प्राप्त तलवाना मिल गया।

तलवाना प्राप्त करने वाले क्लर्क के हस्ताक्षर

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15/28

हाईकोर्ट इलाहाबाद लखनऊ बेंच, लखनऊ

(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रकीर्णक (मुतफरिफ) प्रार्थना - पत्र संख्या सन १९ ई०

W.P. 1/58 सन १९ ४५ ई० में

Smt. Sumela Rani प्राथी

Union of Indian Farmers प्रत्याथी

Assistant Engineer, Northern Railway,
Shahjahanpur

..... प्रत्याथी

चूंकि ऊपर लिखे प्राथी ने इस न्यायालय में उपर्युक्त मुकदमें के सम्बन्ध में
..... के नाम वेलिये प्रार्थना-पत्र

दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक 11 माह 2 सन १९४५ को या उससे पूर्व उपस्थित होकर कारण बतलायें कि प्रार्थना-पत्र क्यों न स्वीकार कर लिया जाय। उक्त प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञप्ति किशी और दिन होगी।

विदित हो कि आप ऊपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी एडवोकेट या ऐसे व्यक्ति द्वारा, जो आपकी ओर से कार्य करने के लिए कानूनन अधिकृत हों उपस्थित न होंगे तो उस प्रार्थना-पत्र की सुनवाई और निर्णय आपकी अनुपस्थिति में हो जायेंगे।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक 29 माह 3 सन १९४५ को जारी किया गया।

..... के एडवोकेट

तिथि



डिप्टी रजिस्ट्रार
इलाहाबाद लखनऊ

सूचना—इस न्यायालय की १९५२ की नियमावली के अध्याय ३० नियम २ के अधीन प्राप्त तलवाना मिल गया।

तलवाना प्राप्त करने वाले क्लर्क के हस्ताक्षर

हाईकोर्ट इलाहाबाद लखनऊ बेंच, लखनऊ

(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रकीर्णक (मुतफरिफ) प्रार्थना - पत्र संख्या सन १९ ई०

W.P. 1105 सन १९ ४९ ई० में

Smt. Suneeta Rane प्राथी

Union of India प्रति प्रत्याथी

The Divisional Personal Officer Northern Railway
Moradabad

..... प्रत्याथी

चूंकि ऊपर लिखे प्राथी ने इस न्यायालय में उपर्युक्त मुकदमें के सम्बन्ध में

..... के नाम वे लिखे प्रार्थना-पत्र

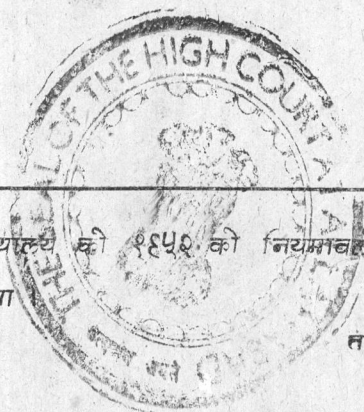
दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक ११ माह ५ सन १९४९ को या उससे पूर्व उपस्थित होकर कारण बतायें कि प्रार्थना-पत्र क्यों न स्वीकार कर लिया जाय। उक्त प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञप्ति किसी और दिन होगी।

विदित हो कि आप ऊपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी एडवोकेट या ऐसे व्यक्ति द्वारा, जो आपकी ओर से कार्य करने के लिए कानूनन अधिकृत हों उपस्थित न होंगे तो उस प्रार्थना-पत्र की सुनवाई और निर्णय आपकी अनुपस्थिति में हो जायेंगे।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक २९ माह ३ सन १९४९ को जारी किया गया।

..... के एडवोकेट

तिथि



Ramesh
डिप्टी रजिस्ट्रार
इलाहाबाद/लखनऊ
B

सूचना—इस न्यायालय की १९५२ की नियमवली के अध्याय ३० नियम २ के अधीन प्राप्त तलवाना मिल गया

तलवाना प्राप्त करने वाले क्लर्क के हस्ताक्षर

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हाईकोर्ट इलाहाबाद लखनऊ बेंच, लखनऊ

(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रकीर्णक (मुतफरिफ) प्रार्थना - पत्र संख्या सन १६ ई०

W.P. 1161 सन १९०५ ई० में

Smt. Sureeta Ram प्राथी

Union of India प्रत्याथी

The Dominional Personnel Officer Northern Railway
Moradabad.

..... प्रत्याथी

चूंकि ऊपर लिखे प्राथी ने इस न्यायालय में उपर्युक्त मुकदमें के सम्बन्ध में

..... के नाम वे लिखे प्रार्थना-पत्र

दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक ११ माह ५ सन १९०५
को या उससे पूर्व उपस्थित होकर कारण बतलायें कि प्रार्थना-पत्र क्यों न स्वीकार कर
लिया जाय। उक्त प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञप्ति किशो और
दिन होगी।

विदित हो कि आप ऊपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी
एडवोकेट या ऐसे व्यक्ति द्वारा, जो आपकी ओर से कार्य करने के लिए कानूनन अधिकृत
हों उपस्थित न होंगे तो उस प्रार्थना-पत्र की सुनवाई और निर्णय आपकी अनुपस्थिति
में हो जायेंगे।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक २१ माह ३ सन १९०५
को जारी किया गया।

..... के एडवोकेट



.....
डिप्टी रजिस्ट्रार
इलाहाबाद/लखनऊ

सूचना—इस न्यायालय की १९५२ की नियमावली के अध्याय ३७ नियम २ के अधीन प्राप्त
तलवना मिल गया।

तलवना प्राप्त करने वाले क्लर्क के हस्ताक्षर

हाईकोर्ट इलाहाबाद लखनऊ बेन्च, लखनऊ

(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रकीर्णक (मुतफरिफ) प्रार्थना - पत्र संख्या सन १९ ई०

..... सो 11.05. सन १९४५ ई० में

Sm - Suneeta Rani.

प्राथी

Union of India प्रति

प्रत्याधी

Union of India through the General Manager

Northern Railway Baroda House,

New Delhi.

प्रत्याधी

चूंकि ऊपर लिखे प्राथी ने इस न्यायालय में उपर्युक्त मुकदमें के सम्बन्ध में

..... के नाम के लिये प्रार्थना-पत्र

दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक 11 माह 5 सन १९४५ को या उससे पूर्व उपस्थित होकर कारण बतलायें कि प्रार्थना-पत्र क्यों न स्वीकार कर लिया जाय। उक्त प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञप्ति किसी और दिन होगी।

विदित हो कि आप ऊपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी एडवोकेट या ऐसे व्यक्ति द्वारा, जो आपकी ओर से कार्य करने के लिए कानूनन अधिकृत हों उपस्थित न होंगे तो उस प्रार्थना-पत्र की सुनवाई और निर्णय आपकी अनुपस्थिति में हो जायेंगे।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक 29 माह 3 सन १९४५ को जारी किया गया।

..... के एडवोकेट

तिथि



रजिस्ट्रार

डिप्टी रजिस्ट्रार

इलाहाबाद लखनऊ

सूचना—इस न्यायालय की १९५२ की नियमावली के अध्याय ३७ नियम २ के अधीन प्राप्त तलवाना मिल गया।

तलवाना प्राप्त करने वाले क्लर्क के हस्ताक्षर

A30

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हाईकोर्ट इलाहाबाद लखनऊ बेंच, लखनऊ

(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रकीर्णक (मुतफरिफ) प्रार्थना - पत्र संख्या सन १९ ई०

W.P. 1165 ... सन १९४५ ई० में

Smt. Sureste Rani ... प्राथी

Union of India ... प्रति ... प्रत्याथी

Union of India through the General Manager

Northern Railway Baroda House,

New Delhi

प्रत्याथी

चूंकि ऊपर लिखे प्राथी ने इस न्यायालय में उपर्युक्त मुकदमें के सम्बन्ध में

के नाम ... वैलिये प्रार्थना-पत्र

दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक 11 माह 5 सन 1945 को या उससे पूर्व उपस्थित होकर कारण बतलायें कि प्रार्थना-पत्र क्यों न स्वीकार कर लिया जाय। उक्त प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञप्ति किसी और दिन होगी।

विदित हो कि आप ऊपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी एडवोकेट या ऐसे व्यक्ति द्वारा, जो आपकी ओर से कार्य करने के लिए कानूनन अधिकृत हों उपस्थित न होंगे तो उस प्रार्थना-पत्र की सुनवाई और निर्णय आपकी अनुपस्थिति में हो जायेंगे।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक 29 माह 3 सन 1945 को जारी किया गया।

के एडवोकेट

तिथि



हिण्टी रजिस्ट्रार
इलाहाबाद/लखनऊ

सूचना—इस न्यायालय की १९४२ की नियमावली के अध्याय ३७ नियम २ के अधीन प्राप्त लखनऊ मिल गया।

लखनऊ प्राप्त करने वाले क्लर्क के हस्ताक्षर

A31
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2166

हाईकोर्ट इलाहाबाद लखनऊ बेंच, लखनऊ
(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रकीर्णक (मुतफरिफ)

प्रार्थना - पत्र संख्या

सन १९८४ ई०

W.P. No. 1105

सन १९८४ ई० में

Shri. Sumeta Rani

Union of India & others

प्रति

प्राथी

The Divisional Railway Manager

प्रत्याथी

Northern Railway, Moradabad

प्रत्याथी

चूंकि ऊपर लिखे प्राथी ने इस न्यायालय में उपर्युक्त मुकदमें के सम्बन्ध में
के नाम

वे लिखे प्रार्थना-पत्र

दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक ११ माह ५ सन १९८४
को या उससे पूर्व उपस्थित होकर कारण बतायें कि प्रार्थना-पत्र क्यों न स्वीकार कर
लिया जाय। उक्त प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञप्ति किशी और
दिन होगी।

विदित हो कि आप ऊपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी
एडवोकेट या ऐसे व्यक्ति द्वारा, जो आपकी ओर से कार्य करने के लिए कानूनन अधिकृत
हों उपस्थित न होंगे तो उस प्रार्थना-पत्र की सुनवाई और निर्णय आपकी अनुपस्थिति
में हो जायेंगे।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक २९ माह ३ सन १९८४
को जारी किया गया।

के एडवोकेट

तिथि



डिप्टी रजिस्ट्रार
इलाहाबाद/लखनऊ

सूचना—इस न्यायालय की १९६२ की नियमावली के अध्याय ३७ नियम २ के अधीन प्राप्त
तलवाना मिल गया।

तलवाना प्राप्त करने वाले क्लर्क के हस्ताक्षर

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हाईकोर्ट इलाहाबाद लखनऊ बेंच, लखनऊ

(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रकीर्णक (मुतफरिफ) प्रार्थना - पत्र संख्या सन १९ ई०

W.P. 1105 सन १९४१ ई० में

Smt - Suneela Ram प्राथी

Union of India प्रति प्रत्याथी

The Divisional Railway Manager
Northern Railway, Moradabad

प्रत्याथी

चूंकि ऊपर लिखे प्राथी ने इस न्यायालय में उपर्युक्त मुकदमें के सम्बन्ध में

..... के नाम वे लिखे प्रार्थना-पत्र

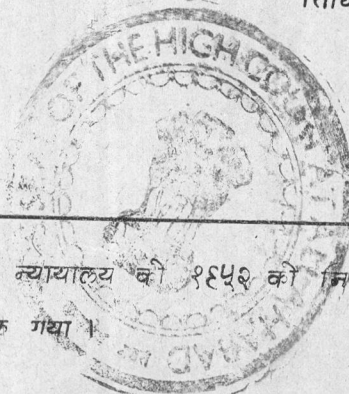
दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक 11 माह 12 सन १९४१ को या उससे पूर्व उपस्थित होकर कारण बतलायें कि प्रार्थना-पत्र क्यों न स्वीकार कर लिया जाय। उक्त प्रार्थना-पत्र की सुनवाई उसके बाद नियमानुसार विज्ञप्ति किशो और दिन होगी।

विदित हो कि आप ऊपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी एडवोकेट या ऐसे व्यक्ति द्वारा, जो आपकी ओर से कार्य करने के लिए कानूनन अधिकृत हों उपस्थित न होंगे तो उस प्रार्थना-पत्र की सुनवाई और निर्णय आपकी अनुपस्थिति में हो जायेंगे।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक 29 माह 3 सन १९४१ को जारी किया गया।

..... के एडवोकेट

तिथि



हिप्पी रजिस्ट्रार
इलाहाबाद/लखनऊ

सूचना—इस न्यायालय की १९५२ की नियमावली के अध्याय ३० नियम २ के अधीन प्राप्त तलवाना मिल गया।

तलवाना प्राप्त करने वाले क्लर्क के हस्ताक्षर

5-10-84

In the Hon'ble High Court of Judicature at Allahabad,
Lucknow Bench, Lucknow.

C.M.An.No. 5433 (W) of 84.

8/3/84



104-1457-
m
11/5/84

In re:

Writ Pet.No.1105 of 1984.

Smt. Suneeta Rani

----Petitioner.

Versus

Union of India and others

----Opp-parties.

(4)

Application for vacation
of stay order.

The opposite-parties 1 to 4 state as under:-

That for the facts, reasons and circumstances
stated in the counter-affidavit the abovenoted writ
petition has got no force to linger on and therefore
it is respectfully prayed that the Hon'ble Court
be pleased to vacate the stay order and dismiss the
writ petition with costs.

H
✓
2/5/84

Lucknow, dated.
10.5.84

Siddharth Varma
(Siddharth Varma)
Advocate,
Counsel for the opp-parties 1-4.

SP
11-5-84

(A\$)

In the Hon'ble High Court of Judicature at Allahabad,
Lucknow Bench, Lucknow.



65 75

In re:

Writ Pet.No.1105 of 1984.

Smt. Suneeta Rani

----Petitioner.

Versus

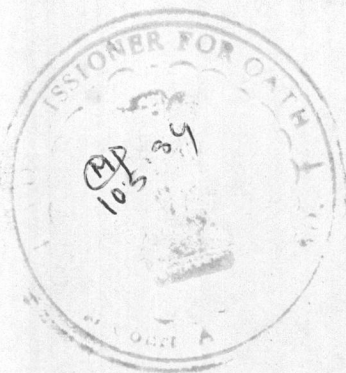
Union of India and others

----Opp-parties.

Counter-affidavit on behalf of
Opposite-parties no. 1 to 4.

I, Dalbir Singh, aged about 28 years, son of Sri
Parbhu Singh, presently working as Assistant Engineer,
Northern Railway, Shahjahanpur, hereby state and
affirm on oath as under:-

1. That the deponent is opposite-party no.4 in
the abovementioned writ petition and has read and
understood the same and is well conversant with the
facts deposed hereunder. The deponent is authorised
to file this counter-affidavit on behalf of opposite-
parties no.1 to 3, also.
2. That the deponent has been advised that the
above-mentioned writ petition is not maintainable on the
following grounds:-



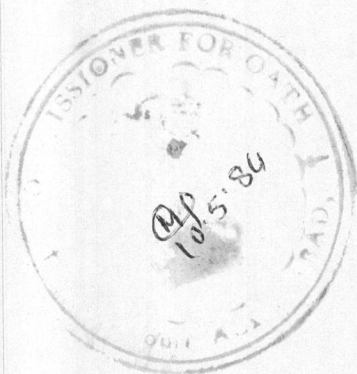
Dalbir Singh
10/5/84

- a) That the discharge/termination of the petitioner from service has been done in terms of her contract of service after proper notice. The order being simple order of discharge in terms of her appointment, without any stigma and without being penal, there is no violation of principles of natural justice hence Article 311 of the Constitution of India are not attracted.
- b) That the petitioner being school teacher, does not come within the definition of 'workmen'.
- c) That since the petitioner herself claims to be governed by the provisions of the Industrial Disputes Act, she had an alternative remedy available and the same having not been availed by the petitioner, this petition is not maintainable.

3. That the contents of the paragraph 1 of the writ petition are admitted.

4. That the contents of paragraph 2 of the writ petition are admitted only to the extent that the petitioner was appointed as Substitute Assistant Teacher in Grade No. 350-560 plus the usual allowances permissible to her under extent rules. It is most respectfully submitted that as it would be evident from her letter of appointment, reproduced in Annexure no.1 of the writ petition, her appointment was purely on temporary, stop gap measure and it was not to confer on her any claim for regularisation of her appointment on permanent basis against permanent vacancies nor she would have claim over and above the selected/empanelled and senior candidates in future or the present vacancy.

Salim Singh



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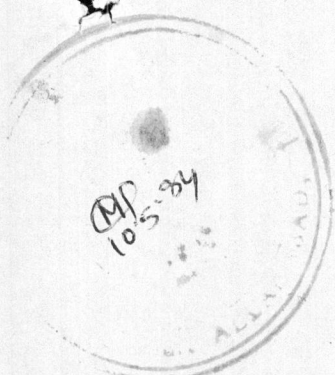
5. That the contents of paragraphs 3 and 4 of the writ petition are admitted.

6. That the contents of paragraph 5 of the writ petition, as stated, are denied. It is admitted that the petitioner's services have been terminated vide order No. E-E/O-IV(Schools)EMC-3(A)IV dated 4.12.84, but it is incorrect to state that the said termination notice has not been received by her. This notice was received by her on 13.2.84, through the Station Master, Sitapur city. The said notice was also sent to her by registered post.

7. That the contents of paragraph 6 of the writ petition as stated, are denied. The order of termination of petitioner has been passed in terms of conditions of her appointment, which were in her knowledge and were duly accepted by her. As per extant rules, notice of 30 days was obligatory on part of the Railway Administration. As submitted in the foregoing paragraph, the notice of termination was received by her on 13.2.84. It is denied that the petitioner's services were terminated in an unreasonable and/or illegal manner.

8. That the contents of paragraph 7 of the writ petition as stated, are denied in view of the fact that firstly, teachers are not workmen, and secondly, even though the petitioner cannot be placed in the category of workmen, she has been allowed compensation amounting to Rs869.20 apart from 30 days' notice in conformity with law/rules in force.

Dalbir Singh



A28

A/39

9. That the contents of paragraph 8 of the writ petition are denied. It is incorrect to state that the petitioner was engaged as Substitute Assistant Teacher in the vacancy created due to retirement of Smt. Sushila Devi and/or on the resignation of Smt. Surekha Singh. In fact, Smt. Sushila Devi had retired and in her place Smt. Surekha Singh had been appointed. Smt. Surekha Singh was absent from duty from 21.5.82 and did not join her duty even on opening of school on 1.7.82. Smt. Surekha Singh remained on unauthorised absence upto 20.8.82, hence she was deemed to have resigned from 21.8.82.

10. That the contents of paragraph 9 of the writ petition are admitted with a clarification that the Chapter is XXIII and not XXXII as mentioned in the said paragraph.

11. That the contents of paragraph 10 of the writ petition are admitted only to the extent that the substitute employees are appointed either against temporary or permanent vacancies. They are also appointed in the exigencies of service.

12. That the contents of paragraph 11 are admitted with a clarification that the petitioner was given all the benefits under the rules to such substitute teachers and for which she was entitled.

Dalbir Singh

13. That the contents of paragraph 12 of the writ petition are admitted.



14. That the contents of paragraph 13 of the writ petition are admitted with a clarification that the provisions of the Industrial Disputes Act are not applicable to teachers as they are not workmen.

15. That the contents of paragraph 14 of the writ petition are admitted with an exception that the provisions of the Industrial Disputes Act will not be applicable to the petitioner as teachers are not workmen.

16. That the narration of Section 25-F of the Industrial Disputes Act given in paragraph 15 of the writ petition are admitted. It is most respectfully mentioned that these provisions will not be applicable in the case of the petitioner as teachers can not be placed in the category of 'workmen'. However, the petitioner has been allowed compensation amounting to Rs 869.20 in addition to 30 days' notice for termination of her services.

17. That the contents of paragraph 16 of the writ petition are denied. It is most respectfully submitted that the provisions of Section 25-F will not be applicable in the case of petitioner as she cannot be placed in the category of workmen.

18. That the contents of the paragraph 17 of the writ petition are denied. As submitted in the foregoing paragraphs, the provisions of the Industrial Disputes Act, and hence provisions pertaining 'retrenchment' thereunder will not be applicable in the case of petitioner. Moreover, under the terms and conditions

Dalbir Singh



of petitioner's appointment as Substitute Assistant Teacher, she cannot claim any regularisation of her services.

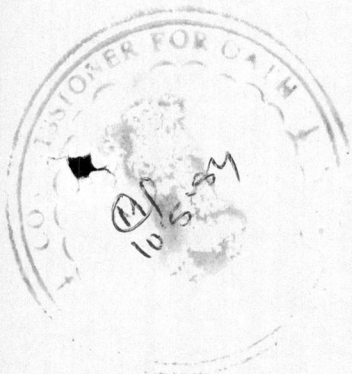
19. That the contents of paragraph 18 of the writ petition are denied. The empanelled staff made available by the Head Quarters' Office is available and is awaiting orders. One of such empanelled staff would have joined in place of the petitioner had this Hon'ble Court not granted the stay order. In view of the submissions made in the foregoing paragraphs, the petitioner is required to make way for such empanelled staff.

20. That the contents of paragraph 19 of the writ petition are denied. It is most respectfully submitted that there were many teachers on the Division whose services were terminated. Some of them are, Smt. Manorama Nigam and Smt. Archana Sharma etc. Their services were also terminated under similar circumstances.

21. That the contents of paragraph 20 of the writ petition are admitted. It is, however, submitted that in the writ Petition no. 881 of 1984, counter-affidavit on behalf of the Railway Administration has already been filed and the application for vacation of stay orders of this Hon'ble Court is pending.

22. That in reply to paragraph 21 of the writ

Dalbir Singh



petition, the deponent has been advised to state that in view of the submissions made in the foregoing paragraphs of this counter-affidavit, the grounds enumerated from (a) to (d) are untenable in the eye of law and the petitioner is not entitled to any of the reliefs claimed in (i) to (iii) and this writ petition is liable to be dismissed with cost.

23. That it is further submitted that the opposite-parties have scrupulously complied with the orders staying the termination order of the petitioner. But in view of the fact that the Railway Board has decided that all the substitute teachers are to be replaced by the empanelled teachers and such empanelled staff is already available and awaiting orders, the Railway Administration is facing serious difficulties and therefore, it is most respectfully prayed that the stay order staying the termination of the petitioner be vacated.

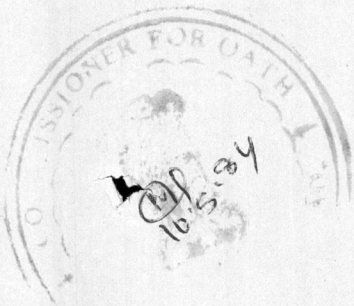
Lucknow, dated,

10.5.84

Dallu Singh
Deponent.

Verification.

I, the deponent abovenamed do hereby verify that the contents of paragraph 1 of this affidavit are true, to my personal knowledge and those of paragraphs 3 to 21 and 23 are based on



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-8-

based on the record available to the deponent and the same are believed to be true. The contents of paragraphs 2 and 22 are based on legal advice and the same are believed to be true and no part of it is false and nothing material has been concealed so help me God.

Lucknow, dated,
10.5.84

Dalbir Singh
Deponent.

I identify the deponent who
has signed before me. Sherene
Advocate.



Solemnly affirmed before me on 10.5.84
at 1²⁰ A.M./P.M. by Dalbir Singh
the deponent who is identified by
Shri Siddharth Verma
Clerk to Shri
Advocate High Court Allahabad.

I have satisfied myself by examining the deponent that he understands the contents of this affidavit which have been read out and explained by me.

Meena Pandey
High Court (Allahabad Bench)
34/32
No 10.5.84
Date

IN THE HON'BLE HIGH COURT OF ALLAHABAD,
(Lucknow Judicature)

REJOINDER AFFIDAVIT

In re:

WRIT PETITION NO. 1105 OF 1984.



Smt. Suneeta Rani.

..Petitioner.

Versus

Union of India and others.

..Opposite Parties.

I, (Smt.) Suneeta Rani aged about 28 years,
daughter of Sri Khanna, Assistant Teacher, Northern
Railway, Primary School Sitapur City, solemnly state on
oath as under:-

1. That the deponent is the petitioner in the above
noted case and is conversant with the facts of the case.
She has read the copy of the counter affidavit filed on
behalf of the opposite parties by Sri Dalbir Singh to
which this rejoinder affidavit is being filed.
2. Para 1 of the counter affidavit needs no reply.
3. Para 2 of the said counter affidavit is not admitted.
The grounds mentioned therein are grounds mentioned
therein are not tenable and are not therefore admitted.



Suneeta Rani

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In this connection the deponent is advised to state that the termination order of petitioner's services is ~~invalid~~ because the petitioner comes within the definition of workman under the Industrial Disputes Act. Since the Railways has acted in a high handed manner, and it being a part of the State under Article 12 of the Constitution of India, it should have acted in a reasonable manner and in accordance with law. The action of the Railway being without jurisdiction, it is not necessary to invoke in aid the provisions of the Industrial Disputes Act. Further, since the petitioner cannot refer the dispute to the Labour Court or the Tribunal of her own accord, there is no effective alternative remedy available to her. It is submitted that the Labour Courts have no power of granting injunction and full and complete remedy in the circumstances is not available in those Courts, hence where the order of the Railways is palpably misconceived and contrary to law as well as without jurisdiction, it is not necessary to refer the matter to the Labour Court without first challenging the invalidity through a writ petition. It is further submitted that existence of an alternative remedy is not an absolute bar to the consideration of the disputed matter in writ jurisdiction.

4. Para 3 of the counter affidavit needs no reply.

5. Para 4 of the counter affidavit is not admitted. It was only initially that the petitioner's appointment



Smriti Rane

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was on a temporary basis, but on account of her continued service for an indefinite period of more than 240 days has conferred special rights to her under Section 25-F of the Industrial Disputes Act. It cannot, therefore be said that the employment could be terminated without any reference to the petitioner and without finding fault in her work or following principles of natural justice or serving her with the requisite legal notice and compensation as envisaged by Section 25-F.

6. Para 5 of the said counter affidavit needs no reply.

7. Para 6 of the counter affidavit is not admitted as stated. The petitioner had not been served with the order of termination upto the date of the filing of the writ petition. It was only subsequently received by her from the Station Master Sitapur.

8. Paras 7 and 8 of the counter affidavit are not admitted. The contents of paras 6 and 7 of the writ petition are reiterated.

9. Para 9 of the counter affidavit is not admitted as stated. The contents of para 8 of the writ petition are reiterated. Even if the facts stated in para 9 of the counter affidavit are admitted, it shows that on the retirement of Smt. Sushila Devi Smt. Surekha Singh had been appointed on that post. Since she did not join the



Sumita Ramee

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duty and remained on unauthorised absence, she was deemed to have resigned her post on 21.5.1982. The fact remains that the petitioner had been appointed on a post to which no one else had a lien. It was a clear vacancy in which her appointment had been made.

10. Paras 10 to 16 of the counter affidavit relate to the various provisions of law as mentioned in paragraphs 9 to 15 of the writ petition. The said paragraphs of the writ petition are reiterated. It is submitted that the interpretation put by the opposite parties to these provisions does not appear to be correct.

11. Para 17 of the counter affidavit is not admitted. The contents of para 16 of the writ petition are reiterated.

12. Para 18 of the counter affidavit is not admitted. The contents of para 17 of the writ petition are reiterated. It is further submitted that it is not a case of regularisation of service, but by operation of law the petitioner's services could not be terminated, as she had worked for more than 240 days in an year unless the requirements of Section 25-F of the Industrial Disputes Act were fulfilled.

13. Para 19 of the counter affidavit is not admitted. In the said paragraph it is mentioned that some empaneled staff was available to the Head Quarters office and



Sanjay Ramani

was awaiting orders. It is submitted that if such a person was not available for more than 240 days, the right to appoint such person is forfeited by the employer in view of Section 25-F of the Industrial Disputes Act. It is submitted that the Hon'ble Court's stay order was a just and fair order to protect interest of a workman.

14. Para 20 of the counter affidavit is not admitted. as stated. Even if the services of some of the teachers were terminated; it does not mean that even those teachers who have acquired any legal rights under any law should also meet the same fate.

15. Para 21 of the counter affidavit needs no reply.

16. Para 22 of the counter affidavit is not admitted.

17. Para 23 of the counter affidavit is not admitted. It is submitted that if the Railways allowed any teacher to work in a clear vacancy for more than one year, and within that period it did not appoint any other person to that post whether from the empanelled staff or otherwise, then the temporary appointee on account of duration of service has acquired a special right which prohibits the employer from terminating the employment unless the provisions of Section 25-F of the Industrial Disputes Act are complied with. The fact that the Railway Board is now feeling any difficulty in removing such appointee is



Sanjay Ramesh

immaterial and irrelevant. If the Railway Board did not act with any sense of despatch in making appointment from amongst the empanelled persons within the appropriate time it cannot now complain that it is finding difficulty in appointing another substitute in place of the petitioner. In fact the law is designed to prevent such mischief and it clearly spells out protection to persons who have worked for a continuous period of more than one year.

18. That the deponent is advised to state that the objections of the opposite parties are liable to be over ruled and the stay order already granted deserves to be confirmed.

Lucknow. Dated.

June 29, 1984.

Smriti Rane

DEPONENT.


I, the deponent above named do hereby verify that the contents of paras 1, 2, 4, 6, 7, 8, 11, 15, 16, are true to my own knowledge while the contents of paras 3, 5, 9, 10, 12, 13, 14, 17 and 18 are believed by me to be true on the basis of legal advice received from my counsel. No part of this affidavit is false and nothing material has been concealed. So help me God.

Smriti Rane
DEPONENT.

I identify the deponent above named who has signed this affidavit before me.

Kalpi Tewari
Advocate.

Solemnly affirmed before me on. 29/6/84.
at 11:26 the deponent who is identified by Sri Lalji Tewari Advocate, High Court, Lucknow Bench, Lucknow.
I have satisfied myself by examining the deponent that he has understood the contents of this affidavit which have been read over and explained by me.


(Surendra Saxena)
Advocate Oath Commissioner
Allahabad High Court
Lucknow Bench, Lucknow

No. 3/366

Date 29/6/84



In the Hon'ble High Court of Judicature at Allahabad,
Lucknow Bench, Lucknow.

Civil Misc. Application No. 3134 (W) of 1985.

In re :

Writ Petition No. 1105 of 1984.



FILED.

12/12/85
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12/12/85

Smt. Suneeta Rani

... Petitioner

Versus

Union of India and others

... Opposite parties

Ind APPLICATION FOR VACATION OF STAY ORDER ON BEHALF
OF OPPOSITE PARTIES NO. 1 TO 4.

This application on behalf of opposite parties
No. 1 to 4 most respectfully sheweth :-

That for the facts, reasons and circumstances
stated in the counter affidavit and the affidavit
accompanying this application, it is most respectfully
prayed that in the interest of justice, this Hon'ble
Court may be pleased to vacate the stay order whereby
the operation of Annexure No. 2 to the writ petition
was stayed.

Such other orders which are deemed fit and
proper in the circumstances of the cases may also
kindly be passed.

Lucknow,
Dated : 1.3.1985

Siddharth Verma

(Siddharth Verma)
Advocate,
Counsel for opposite parties
No. 1 to 4.

A52

In the Hon'ble High Court of Judicature at Allahabad,
Lucknow Bench, Lucknow.

Writ Petition No.1105 of 1984.

A/S

1985
AFFIDAVIT
31
HIGH COURT
ALLAHABAD



Smt. Suneeta Rani

... Petitioner

Versus

Union of India and others

... Opposite parties

AFFIDAVIT ON BEHALF OF OPPOSITE PARTIES NO.1 TO 4 IN
SUPPORT OF THEIR 11nd APPLICATION FOR VACATION OF
STAY ORDER.



I, G.C. Shukla, aged about 46 years, son of
Shri Ram Nath Shukla, presently working as Assistant
Personnel Officer in the Office of the Divisional
Railway Manager, Northern Railway, Moradabad do
hereby affirm and state on oath as under :-

1. That the deponent is presently working as Assistant Personnel Officer in the Office of the Divisional Railway Manager, Northern Railway, Moradabad and is well conversant with the fact deposited hereunder.
2. That in the above mentioned writ petition this Hon'ble Court was pleased to stay the operation of the order contained in the Annexure No.2 of the writ petition, whereby the services of the petitioner was sought to be terminated.

G. C. Shukla

ASS

- 2 -

A/53

3. That the opposite parties No.1 to 4 had filed their counter affidavit alongwith an application for vacation of the aforementioned stay order of this Hon'ble Court, but the same has not been listed for orders even for once. This has necessiated the present IInd Application for vacation of stay order of this Hon'ble Court.

4. That the petitioner was appointed as Assistant Substitute teacher on pay of Rs.330/- per month against the leave vacancy purely as temporary, stop gap measure in Railway Primary School, Sitapur against the leave vacancy with a stipulation that such appointment shall not confer upon the petitioner any claim for regularisation of her appointment on permanent basis against permanent vacancies nor she will have any claim over and above the selected/empanelled and senior candidates in future or the present vacancy.



5. That on availability of the empanelled candidate, the services of the petitioner were sought to be terminated vide Annexure No.2 of the writ petition, which was stayed by this Hon'ble Court.

6. That for the reasons mentioned in the counter affidavit which is already on record, the deponent is advised to state that the present writ petition is devoid of merits and is liable to be dismissed with cost.

7. That the opposite parties No.1 to 4 have been scrupulously complying with the stay order of this

[Handwritten signature]

Hon'ble Court with considerable difficulty that the empanelled candidate is not able to join on the post of the petitioner, but the salary is being paid to such candidate and thus the the opposite parties No.1 to 4 are burdened with a liability to pay two persons on the same post ^{by offering alternative post till} and therefore, it would be ^{vacation of stay order} expedient in the interest of justice to vacate the stay order.

Lucknow,
Dated : 28.2.1985.

[Signature]
Deponent.

Verification

I, the deponent above named do hereby verify that the contents of paragraph 1 to this affidavit are true to my personal knowledge and those of paragraphs 2 to 6 are based on the knowledge derided from the record available to the deponent. The contents of paragraph 7 of this affidavit is based on the legal advice and the same is believed to be true. That no part of this affidavit is false and nothing material has been concealed. So help me God.

Lucknow,
Dated : 28.2.1985.

[Signature]
Deponent.

I identify the deponent who has signed before me

(MADAN MOHAN)
OATH COMMISSIONER
High Court, Allahabad
Lucknow Bench

No. 31/123
Date 28.2.85

[Signature]
(Siddharth Verma)
Advocate.

Solemnly affirmed before me on 28.2.85
at 10 A.M./P.M. by *[Signature]*
the deponent who is identified by
Shri *[Signature]*
Clerk to Shri
Advocate High Court Allahabad.

I have satisfied myself by examining the deponent that he understands the contents of this affidavit which have been read out and explained by me.

Aug 8

ORDER SHEET
IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
W.P. No. 1105 of 19884.
vs. _____

45

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
28-2-84	Mem K.N.-M, 7 Mem SS A, 7 Admit Admit and connect with W.P. - - - - - - Shall remain stayed. Sd. K.N.-M Sd. SSA 28-2-84 C.M. No 2560 (CN) 84	
28-2-84	Mem K.N.-M, 7 Mem SS A, 7 For orders, see our order of date passed on the back of this W.P. Sd. K.N.-M Sd. SSA 28-2-84 11-5-84 Fixed for attendance and for filing C.A. in W.P. No. 1 to 6 - P. No. 1 to 11 by R.P.	

Bong
29-3-84

Date	Note of progress of proceedings and routine orders	Date of which case is adjourned
1	2	3
M-584	<p>Chun 2560-84. hrs du 108 VS. Ten days time prayed for and is allowed to file a rejoinder-affidavit, list thereafter.</p>	<p>Chun</p>
Ks	18-5-84	
285-84.	<p>Severe Repose of 104. lower and Counter affidavit filed by in Siddhanta Verma, New May also proceed?</p>	<p>2/5</p>
	<p>yes lower So 2/6</p>	
	frank chun	
	2560 10 dy	of 108
	<p>um-Anno 3134 Qd 85 For vacation of stay order.</p>	
13-385	<p>rem R-N-G, in the next week.</p>	
	<p>Sd. R-N-G. 13-385.</p>	

22-305 22.3.05 frak in
a 256000dy 3134 6005
du 108 VS.

ASo

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ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

No. 1105 of 198 4
vs. 1105

	Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
	1	2	3
	17/11/85	5 u. 85 <i>jud.</i> C-25606184, 3134008 <i>Mr</i> <u>HOPDAYAT.</u> Lr C.A. Bashir And Lr Siddhanta Verma are on leave. Stand out. S 17-11-85.	
		<i>fixed</i> C/A C-25606184 3134008	

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

T.A.No. 1554 of 1987 (T)

Smt. Suneeta Rani

.....Applicant.

Versus

Union Of India & Ors. (N.R.) Respondents.

10.12.91

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

Hon'ble Mr. A.B. Gorthi - A.M.

Shi A.K. Jauhari learned counsel for the applicant states that the applicant's services have been regularised And as Such the termination order aganist ^{which} this application has been filed no longer service. So this application is dismissed as ~~x~~ infructuous without any order as to costs.

Sd/-
A.M.

Sd/-
V.C.

Certified Copy

Incharge

Judicial Section

C. A T.

LUCKNOW.

amit..

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SPECIAL POWER OF ATTORNEY.

In the Court of High Court of Adjudication, High Court Bench, Lucknow,
-- SMAN NO. 2560 (W) of 1984 WP NO. 1105 of 1984
-- Suseta Bani --

Plaintiff
Appellant
Petitioner

Versus

Union of India

Defendant
Respondent
Opp. Party.

KNOW ALL MEN by these/present that I/We O. P. Mohra
Siv. Rly. Manager, Northern Railway, Moradabad do hereby appoint
and authorise SarvaShri Siddharth Verma RA-Who to appear
plead and act for me/us jointly or severally in the above
noted case and to take such steps and proceedings as may be
necessary for the prosecution or defence of the said matter,
as the case may be and for the purpose to make sign, verify and
present all necessary plaints, petitions, Written statement
and other documents to compromise the suit, admit the claims
and to lodge and deposit money in court and to receive
payment from the court of money deposited and to file and
withdraw documents from the court and General to act in the
premises and in all proceedings arising thereout whether
by way of execution, appeal or otherwise or in any manner
connected therewith as affectually to all intents and
purposes as I/We could act if personally present. I/We
herely agree to rectify and confirm whatever shall be
lawfully done by virtue of these presents.

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IN WITNESS where of I/We hereinto set my/our
hand this day of 23-3-1984.

H
2/3/84

Accepted
Shering

(SIDDHARTH VERMA)
ADVOCATE

O. P. Mohra
Divisional Railway Manager,
Northern Rly.
Moradabad.
for Union of India

SD
11-5-84

Central Administrative Tribunal

Lucknow Bench

T.A.No. 1554 of 1987 (T)

Smt. Suneeta Rani

.....
-Vs-

Applicant.

Union Of India (N. Railway)....

Respondents.

10.12.91

Hon. Mr. Justice U.C.Srivastava V.C.

Hon. Mr. A.B.Gorthi A.M.

Sri A.K. Jauhari learned counsel for the applicant states that the applicant's services have been regularised and as such the termination order against which this application has been filed no longer service . So this application is dismissed as infructuous without any order as to costs.

checked

[Signature]

16/1/92

Sd/
A.M.

Sd/
V.C.

// True Copy //

Vkm

[Signature]
Deputy Registrar
Central Administrative Tribunal
Lucknow Bench,
Lucknow

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