

CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE. TA 1554/82
W.O. NO. 2423/83 OF

NAME OF THE PARTIES S. M. Mishra.....Applicant

Versus

U.O. F. Darsi.....Respondent

Part A.

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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 Basta

Dated15.9.11.

Counter Signed.....

9/9/11

Section Officer/In charge

[Signature]
Signature of the
Dealing Assistant

A-3
K/

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 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} ~~and~~ the termination order having been declared

illegal, The prescribed authority had a discretion ^{in the interest of combat law} to allow the compensation and in this particular case ^{in view of the law} taking into consideration the facts of the case ^{in view of the law} 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~~ ^{and amount to be increased} to the applicant. 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 SHEETCause Title T.A. 1554 of 1987 (CT)
W.P. No. 2423/03

Name of the parties S. M. Mishra

Applicant

Versus

Union of India (N.Rly)

Respondents

Part A.B.C.

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Order Sheet

TA no 1151/87 D-1

SCM Mira (VS. NO)

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
Alahabad. Let notice be issued
again to the parties.

List this case for orders
on 31-1-90.

AM

JM

31-1-90. Hon. Justice K. Naik, V.C.
Hon. K. J. Ramam, A.M.

Sgt. B. C. Sarker, 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.

AM

V.C.

Dinesh

29-3-90 no sitting Adj. to 17-9-90

29/3/90

This W.P. no 2423/83
received a transfer
from Lucknow High Court
alongwith other W.P.s
in May '87.

On the date of transfer
the case was not
admitted.

Transfer notices
issued by Addl. Office
but neither any
reply nor any
undelivered copy
received back.
Submitted for orders.

R.
5/11

052
Notice issued
13/12/89

OR
Notices
were issued
on 13/12/89.
No undelivered
copy received back.

G.P. Order

30/1

ORDER SHEET

A-2

A/4

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

1154

No.

OF 1980

S. M. M. S. vs. B.O.T.

Sl. No.	Date	Office Report	Orders
	28.8.81		No Siting adj to 19.9.81 S
	19/9/81	Hon. Mr. Justice U.C. Srivastava, R.C. Hon. A.B. Godhi, Rms.	on S.R.O. 8 18.9
	16.12.81	Committe approve it filed Today. List it for final hearing on 16/12/81.	led J.W. V.C.
	22.1.92	No Siting adj to 22.1.92 S	18.3.92

A-6

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

T.A.No. 1154 of 1987

(Writ Petition No. 2423 of 1983)

Shyam Manohar Misra

.....Petitioner.

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 :-

- Filed today
19.9.91*
1. That the official 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

*Northern Railway
Divisional Railway Manager
Northern Railway
Northern Railway*

:: 2 ::

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 ^{ing} Claim relief to the effect "the penalty towards the delayed payment", which means that the petitioner is himself claiming 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 in favour of the petitioner. Otherwise incase of deducted wages (not applicable in case of petitioner), it is the sole discretion of the prescribed authority ^{any amount of} to award compensation, may be two times, four

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 parasa 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.
- M. Jayaram
19/9/91*
*Executive Personnel Officer
Northern Railway
DCC NCR*

:: 5 ::

It is further submitted that under section ~~that~~
 XXXI 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, irrelevant, 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 accordingly it is liable to be dismissed infavour of the answering opposite parties and against the petitioner.

Lucknow.

Dated.

M. A. M.
 19/9/91
 Dependent Office
 Northern Railway
 Lucknow

Contd.....6

... 7 ::

P. 11

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. 19/9/91

M. A. I.
M. A. I. 19/9/91 Office
Northern Railway

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH, LUCKNOW

Gandhi Bhawan, Opp. Residency
Lucknow

No. CAT/LKO/Jud/CB/ 2451 Dated the : 13/12/09

⑨ T.A.No. of 1157 12/09 (T)

S. M. Misra.

APPLICANT'S

Versus

Union of India

RESPONDENT'S

⑩ To Shyam Mahanwar Misra, S/o K. L. Misra
10 Quarter no 7918, Model Colony,
Rae Bareli

Whereas the marginally noted cases has been transferred by
H C 240 Under the provision of the Administrative
Tribunal Act 13 of 1985 and registered in this Tribunal as above.

Writ Petition No. 2423/03
of 198
of the Court of H C 240
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/

- ② The Union of India through its DEPUTY REGISTRAR
Barela House New Delhi Manager N Rly
- ② The Chief Engineer Northern Railway,
Barela House New Delhi
- ③ The I.R.M. N Rly Hazratganj 240
- ④ The Revisional Personnel officer N. Rly
Hazratganj Lucknow

C-2
C-2
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH, LUCKNOW

***** Bandhi Bhawan, Opp. Residency
Lucknow -

No. CAT/LKO/Jud/CB/24517026 Dated the : 13/12/85

T.A. No. of 1156, 1985 (T)

AFFICANT'S

Versus.

RESPONDENT'S

To _____ From _____ Date _____
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. _____
of 198 _____
of the Court of _____
arising out
of Order dated _____
passed by _____

The Tribunal has fixed date of
13/12/85 1985. 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 _____ 1985.

dinesh/

DEPUTY REGISTRAR

② C-4
In the Central Administrative Tribunal
ब अदालत श्री मान ..Circuit Bench, Lucknow.....

वादी मुकदमा
प्रतिवादी मुद्रालय का वकालतनामा

S. M. Misra बनाम U.O.G. & others.

वादी मुकदमा
प्रतिवादी मुद्रालय

T.A. नं० मुकदमा 1154 सन 1987 पेशी की तारिख 22/7/91 द्वारा
उपर लिखे मुकदमा में अपनी ओर से श्री
(CWP No 2423 of 1983)

.....A.M.I.SRI VASUDEV ASTAVA..

एडवोकेट
महोदय

वकील

लो अपना वकील नियुक्त करके प्रतिज्ञा इकारार करता हूँ। लिखें देता हूँ। इस मुकदमा 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 डिक्शनी जारी करावें और स्पष्ट वसूल करेगा सुलहनामा इकबाल दावा अपील व निगरानी हमारी ओर से हमारें या अपने हस्ताक्षर से दाखिल करें और तसदीक करे या मुकदमा उठायें या कोर्ट में जमा करें या हमारी या विपक्ष फरीक्सानी का दाखिल किया स्पष्ट अपनें 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 हूँ। कि मैं हर पेशी स्वयं या किसी अपने ऐरोकार को भेजता रहूँगा अगर मुकदमा 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
दिनांक महीना
हस्ताक्षर
साक्षी गवाह
नाम अदालत
नं० मुकदमा
नाम फरीकन
22/7/91

Accepted
Sri Vasu Dev Astava
07/02/90

CIVIL

SIDE

CRIMINAL

GENERAL INDEX

A-12

(Chapter XLI, Rules 2, 9 and 15)

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

Name of parties..... Shyam Mondal M/sdg. 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 Answer.	36.	—	102-00			
2		Power.	1-	—	5-00			
3		order Sheet	1-	—	—			

I have this

day of

198

examined

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

Munsarim

Clerk

Group A 16 (B)

A-13

3656

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

2423
Writ Petition No. 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 2 17-21
5. Petition under section 15 of the payment of Wages Act. 3 22-27
6. Written statement 4 28-29
7. Order dated 18.2.1983 passed on the review petition 5 30-36

Vakalatnomia

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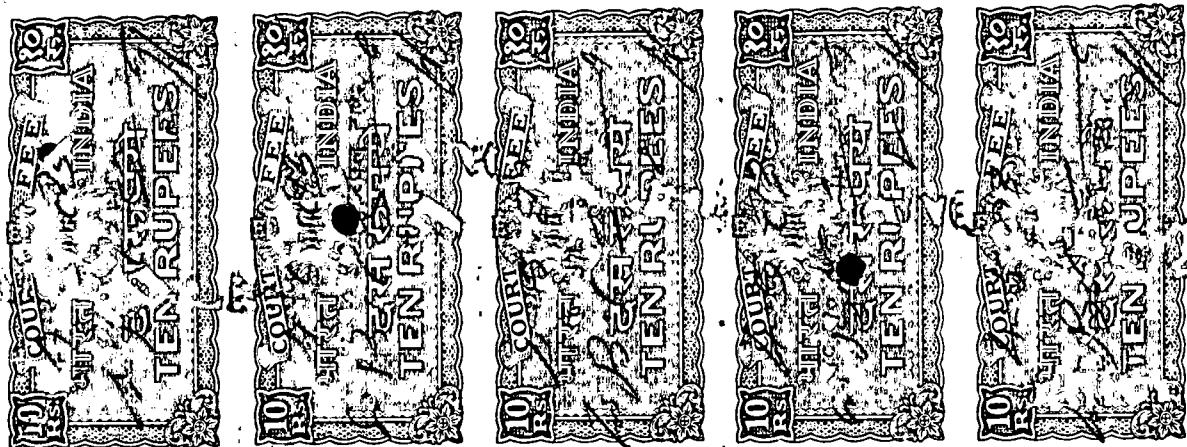
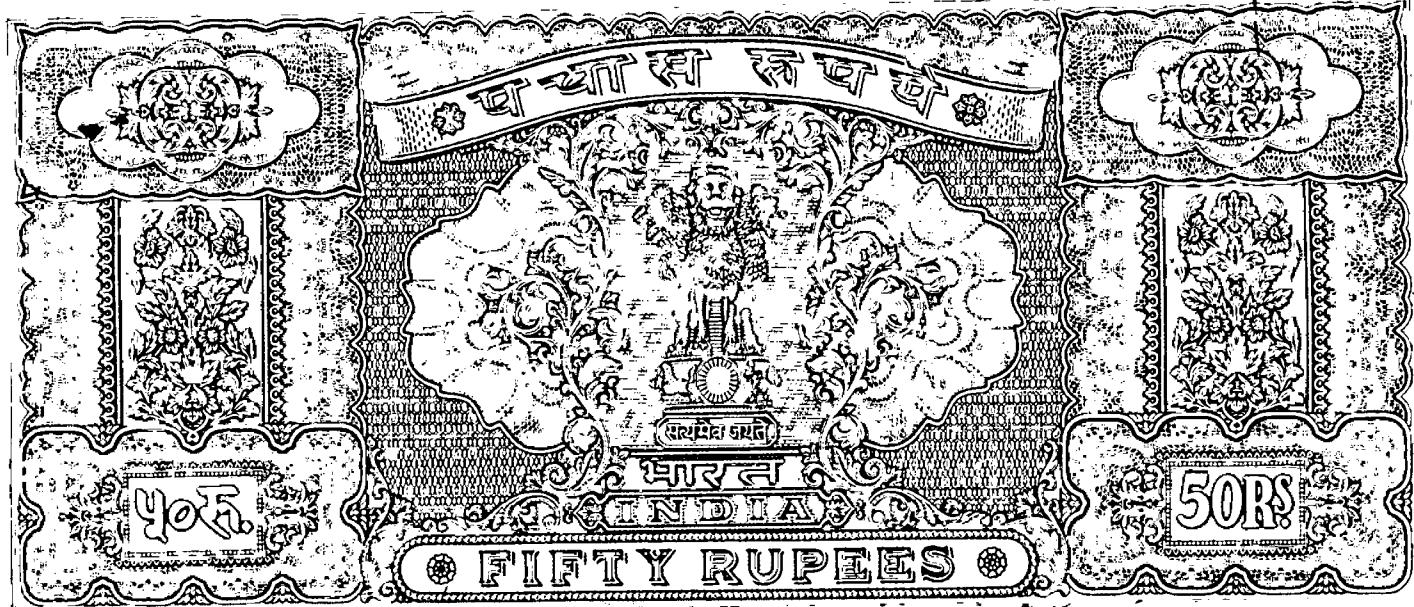
B.C.Saksena

(B.C.Saksena),
Advocate

INDIA COURT FEE

A-14

50 RS.



To the Mysore High Court of Judicature at Mysore
Kukkunur Beach Mysore

One copy Rs 50/-
5 sets Rs 250/-
100/-
150/-

209 No 188

Shyam Narayan Misra - Piliborus
Union of India Letters - Sh. Pandit
25

(R. B. C. S. 108210)
Advocate

A-15

1
2

A
10

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 Bareli

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

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 Bareli 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

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, II Temporary Civil and Sessions Judge, Rae Bareli 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 Bareli, the Railway Administration who were defendants in the suit preferred an appeal before the District Judge, Rae Bareli 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 Bareli 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 Mehta
Mona

-4-

7. That despite the termination order having been held to be invalid, ultravires and inoperative, the petitioner was not paid his wages since ~~1.6.65~~ 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 Bareli, the Prescribed Authority under section 15 of the Payment of Wages Act.

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

Shyam Narayan
Munshi

would show, had framed the following three issues:-

- 1(a) Whether the opposite-parties are responsible for payment of the petitioners wages? *Ans*
- (a) 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

Hyam MacShan
mome

GROUND: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 time 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.

Ran

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.Saksena
(B.C.Saksena)
Advocate
Counsel for the petitioner

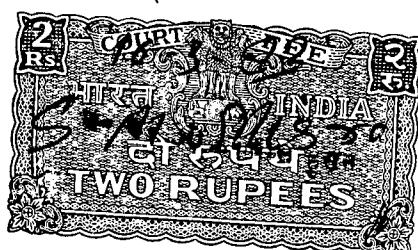
A-23

9

8/18

1983
AFFIDAVIT
55
HIGH COURT
ALLAHABAD

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



affidavit

in

Petition under Article 226 of the Constitution
of India

First Petition No. 1983

Plaint number 1983

--- Petition

versus

Union of India and others

--- Defendants



I, Ram Narayan Kishan, aged about 50 years,
son of Sri Kishan Lal Kishan, resident of No. 11
to 12, 72/B, Moti Lal Colony, New Delhi, Delhi
sovereign state of India, do declare as under:-

1. That I am the petitioner in the aforesaid
suit mentioned above and fully acquainted with
the facts of the case.

Yours sincerely
Ram Narayan Kishan

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 Sunder
more

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 Sunder
more

I identify the deponent who has signed in my presence.
R.K. Sarker
(Clerk to Sri B.C. Saksana, Advocate)

Solemnly affirmed before me on 10.3.83
at 11.30 a.m. by Sri *Shyam Sunder*
the deponent who is identified by Sri *R.K. Sarker*
clerk to Sri *B.C. Sarker*
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
Advocate
Office No. 140
High Court Building,
Lucknow Bench,
No. 5753
Date 10-3-83

A-25
11

Darul Haqbi High Court of Judicature At Allahabad
Western Bench Lucknow

WD No 9985

Shyam Monohor Misra - Petitioner

VS

Union of India & others - Opp. Parties

Amicus Curiae

4/20



Shyam Monohor Misra

A-26
12

आवश्यक स्टाम्प सहित। नोटिस बोर्ड पर प्राधिना-पत्र देने की तारीख	नकल तैयार होने की व सूचना की तारीख	नकल वापिस दिन जाने की तारीख	नकल वापिस देने वाले अधिकारी का हस्ताक्षर
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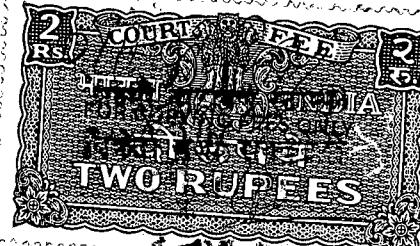
17-2-83

17-2-83

राजदूतवार

1983

Abasch



Copy of Judgment dated 17-11-82

passed by Sri D. R. Singh

In the court of III Additional Session Judge RBL

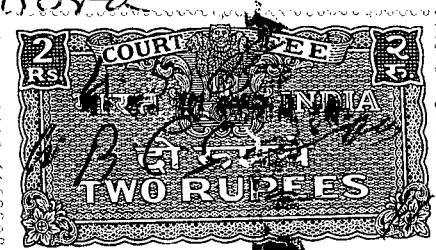
Misc. Civil Appeal No. 20 of 81

Sri Shyam Manohar Mishra - - - Appellant
Versus

Union of India, Railway Administration and
3 others

- - - Respondent

Shyam Manohar Mishra



17-2-83
4-3-83

इन दिन आनंदरुप अड्डेकोट आप जूडीकेर दृष्ट इत्याद्याद

लालानड बैच लालानड

दृष्ट प्रिटीशान नं आप 1983

श्याम भनोहर मिश्रा ----- ----- प्रिटीशानर

बनाम

यूनियन आप हॉटिड्या लधा अन्य ----- अपीजेट पाटिल्लि

संकार नं 2

प्रतिलिपि

न्यायालय श्री हर बत्त दुबे परमाधिकारी सदर, रायबरेली

वाद संख्या 133/79 अन्तर्गत धारा 15 प्रैमेन्ट आप

केज देक्ट वर्ष 1936

श्याम भनोहर मिश्रा बनाम यूनियन आप हॉटिड्या

निर्णय

श्री श्याम भनोहर मिश्रा पुत्र श्री कन्हैया लाल मिश्रा ने केनाक 26-10-76 की धारा 15 प्रैमेन्ट आप केज देक्ट सन 1936 के अन्तर्गत पह प्रार्थना पत्र प्रस्तुत करते हुए निवेदन कियाह कि प्रतिपक्षीयों को निर्देश दिये जाये कि वे प्रार्थी को 47655-05 केतन तथा केतन का वस दुना 4, 76, 550-40 लार्ना का अंगतान करें। प्रार्थी का कथन है कि वह उत्तरी रेलवे में 230-00 मासिक केतन परसन 1963 में ८५ मिस्ट्री के पद पर नियुक्त हुआ था। प्रतिपक्षीयों ने प्रार्थी को सेवाये समाप्त कर दिया तथा

Shyam mawshar उसे इसे लाय को जानकारो केनाक 25-8-65 की हुई। वह प्रोत्यक्तायों से

-2-

यह विवाद सुलभने लैं प्रयासशील रहा है। तभा अस्पष्ट लौंगे पर उसने सिविल जज महोक्य रायबरेलो के न्यायालय में बाद संच्या 9 बर्ष 1958 का छिल्लि किया जो आदेश दिनांक 30-9-72 को लिया गया। इस निर्णय के विरुद्ध प्रस्तुत अपेल जिला जज महोक्य दूरा दिनांक 6-11-73 को निरस्त कर दी गयी थी। द्वितीय अपेल माननीय उच्च न्यायालय लखनऊ बैच दूरा निर्णय दिनांक 28-10-75 से निरस्त कर दी गयी। उक्त निर्णय में प्राप्ति को सेवा समाप्त कर आदेश अवैधानिक मानती हुए रेलवे विभाग का स्थाई कर्मचारी धोधित 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 'जनुतमक'ए' संतुलन को है। जिसमें 15 जून 65 से जून 76 तक के वेतन को भणना करते हुए कुल रेलवे धनराशि निकालों गयी हैं 47, 655-04 लौंगा है।

प्रतिष्क्षियों की नोटिस जारी को गयो। भारत संघ को जीर से डिवीजनल बूपरिस्टेन्टलेन्ट उच्चरी रेलवे लखनऊ ने रिओडित ज्यान प्रस्तुत किया है जिसमें स्वोकर किया गया है कि माननीय उच्च न्यायालय के आदेश दिनांक 28-10-75 से प्राप्ति सेवा में बदल किया गया है। परन्तु वह अस्थाई कर्मचारी है। जून 65 में मूल वेतन 155-00 बताया गया है, जन्म भत्तों का उत्तेजनीय है। यह भी स्वीकार किया गया है कि प्राप्ति को एक जुलाही सन् 1976 से सेवा में लिया गया है परन्तु प्राप्ति दूरा प्रदानित बताया धनराशि को स्वीकार नहीं किया गया और यह कहा गया है कि अकाधे वेतन की भणना को जा रही है जो उसे भुगतान किया जायेगा। यह जो कहा गया है

Shyam Maedhar miora

कि प्राथर्मि का प्राथर्मि पत्र सम्यातीत है और इस कारण निरस्त हीने पर्याप्त है।

पक्षों के बिना के आधार पर निम्नलिखित बाद विन्दु बनाये गये हैं :-

1- क्या प्रतिवादों ।

- (अ) प्राथर्मि को वेतन का भुगतान करने के लिये प्रिमेजार है ?
- (ब) क्या प्रतिवादों प्राथर्मि पत्र में आवश्यक पक्ष है ।
- 2- क्या दावा या उक्ती कोई अंश सम्यातीत है ।
- 3- प्राथर्मि किस अनुत्तीर्ण का आधकारी है ।

बाद विन्दु । (स)

प्राथर्मि ने प्राथर्मि पत्र की पुस्ति में शापथ-पत्र भी प्रस्तुत किया था प्राथर्मि 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 हैं परन्तु इसमें प्राथर्मि का नाम अंकित नहीं है । रेलवे के ककील ने प्राथर्मि पत्र भी प्रस्तुत किया कि सप्लीमेन्ट्री बिल डिवीजन के जरूर उत्तरी रेलवे को स्वोकूप देतु भेजा गया है । यह स्पष्ट नहीं किया गया है कि यह बिल प्राथर्मि से स्वयंचित्त है अथवा नहीं इस प्रकार रेलवे की ओर से जो प्राथर्मि दो अनुसार ने दर्शाया गया है परन्तु न तो लिखित बिना में न प्रभाग में हो यह प्रकाशित किया गया है परन्तु न तो लिखित बिना में न प्रभाग में हो यह प्रकाशित किया गया है कि वास्तव में विभागीय गणना के अनुसार प्राथर्मि को बकाया देता है जो में

किसी धनराशि देय है। यह स्थिति में प्रायः दूरा बनता है।

में प्रदर्शित धनराशि उसे रेलवे विभाग दूरा देय है। वाद किन्तु स्वोकरात्मक निर्णित किया जाता है।

वाद किन्तु । (ब)

प्रतिवादीगण की ओर से प्रतिवाद के प्रत्युत्तर में ही कहा गया है कि प्रतिवादी भुगतान का जिम्मेदार नहीं है जोर उसे अनाबर्यक रूप से पता बनाया गया है। प्रायः पत्र में छिपीनक सुपरिनेंचरेंट उत्तरों रेलवे लघानउ चीफ, हन्जीनियर बढ़ोका दाउस, नई दिल्ली तथा भारत संघ रेलवे प्रशासन उत्तरों रेलवे दूरा जनरल मैनेजर का पता बनाया गया। सिंकेंज जज महोदय के न्यायालय में प्रस्तुत वाक्संख्या 9 सन 1968 में पर्याप्त प्रतिवादी थे जोर इनके विरुद्ध वाद लियी गई। माननाय उच्च न्यायालय में द्वितीय अपील संख्या 97 वर्ष 1984 में प्रतिवादीगण दूरा प्रस्तुत का गढ़ है। इस दस्तावेज में प्रतिवादी वाद में जाबर्यक पता है जोर बकाया देन के भुगतान के जिम्मेदार है। इस आधार पर वाद शुटिपूण नहीं है। वाद किन्तु तदनुसार निर्णित किया जाता है।

वाद किन्तु नं० 2

प्रतिपक्षीगण दूरा यह तक प्रस्तुत किया गया कि यह प्रायः ना किनाक 26-10-76 को प्रस्तुत किया गया है जबकि इनके दूरा 15 जून 1965 से केन्द्र का भुगतान चाला गया है जो सम्पादित है। पारा 15(2) प्रेक्षण जापु केज एकट के अन्तर्गत केन्द्र का दावा प्रस्तुत करने को अवैध बाहर भाल

निर्दिशित है। प्रार्थी के जनको तक किया गया है कि जयधित गणना माननीय उच्च न्यायालय के आदेश दिनांक 28-10-75 से को जाएगा। इस तथाय से गणना में प्रार्थीना पत्र समय के अन्दर है तर्क का पुस्तक में 1197415 स्स०४०४०१५४ दिल्लीय राय जारी होने में भारत संघ बांद उद्दरत किया गया। रेलवे के विद्युत अधिकारी ने भी स्वीकार दिया कि जयधित का गणना साननीय उच्च न्यायालय के आदेश को लिये से रोका जाय। इस प्रार्थीना पत्र समय के अन्दर है। बाद विन्दु नकारात्मक निर्णित किया जाता है।

वाद विन्दु नं० ३

प्रार्थी को बकाया बेतन व बकाया बेतन न धून्हान किया जाने के कारण छाना को धनराशि पाने का अधिकारी है। बाद विन्दु लक्ष्मा र निर्णित किये जाते हैं :-

आदेश

दृष्टीय पक्ष को निर्देश किया जाता है कि वे प्रार्थी को दिनांक

15-6-65 से 30-6-76 तक को बेतन का 47, 655 -04 बकाया बेतन तथा 25 रुपयाना जंदा करें।

अगस्त 14, 1981

६०/- इरक्त दुबे परगनाधिकारी
सदर रायबरेली 14-8-81

Pr-36
22
A/30

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 Bareli

--

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

Sri Shyam Manohar Misra, son of Sri Kanhay Lal
Misra, resident of 6, Chandra Nagar, Rae Bareli
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

-2-

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 employee 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.
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 whereupon 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 Maundhar
moral

- 3 -

by the Civil Judge, Ra^s Bareli vide order dated 20.9.1972 and the appeal filed by the opposite - parties has been dismissed by the District Judge, Ra^s 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 Prem Prakash. 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 interim 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

-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 compensation 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
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134

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

Writ Petition No. of 1983

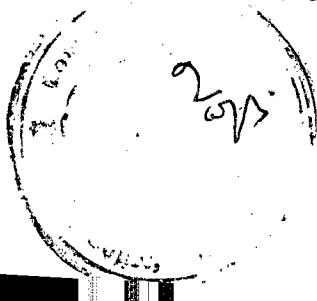
Shyam Manohar Misra.....Applicant.
terus

Union of India and others... opp. parties

Annexure No. 3 A

Months & year	Basic pay	Dearness Allowance	Addition- al dear- ness allow- ance	Second Addi- tional Dear- ness allow- ance	Total.
1	2	3	4	5	6
15th June 1965 to Dec.65.	1022.62	457.62	--	--	1460.24
Jan.66 to Dec.66.	1950.00	996.00	--	--	2926.00
Jan.67 to Dec.67.	1990.00	1240.00	--	--	3230.00
Jan.68 to Dec.68.	2050.00	1400.00	--	--	3450.00
Jan.69 to Dec.69.	2112.00	1464.00	--	--	3576.00
Jan.70 to Dec.70	2184.00	1464.00	250.00	--	3398.00
Jan.71 to Dec.71.	2256.00	1464.00	300.00	52.00	4052.00
Jan.72 to Dec.72.	2328.00	1464.00	300.00	136.00	4228.00

Shyam Manohar Misra



26/1

A
copy

-2-

1	2	3	4	5	6
Jan.73					
to	4584.00	192.00	--	--	4776.00
Dec.73					
Jan.74					
to	4728.00	709.20	313.00	60.50	5810.70
Dec.74.					
Jan.75					
to	4572.00	780.00	584.00	758.50	6766.50
Dec.75.					
Jan.76					
to	2496.00	874.40	299.40	312.40	3481.80
June.76.					
<hr/>					
Total Rs. 47655.04					
<hr/>					

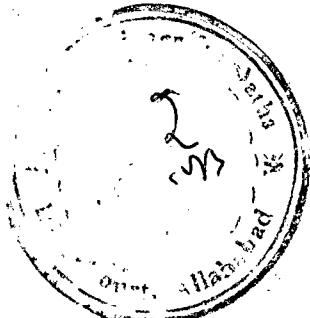
Shyam Macehdar Misra.
Applicant.

Through:

Dated Rae Bareli.
October 26, 1976.

(Haji Om)
Advocate.

True copy



Shyam Macehdar Misra

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

Annotation 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

A3

-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 maa Shastri
mona

On the Plaible High Court of Judicature of Bihar

Jackson Benet Jackson ~~18~~

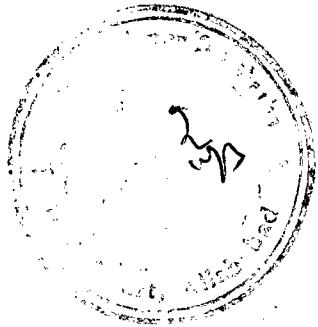
PP also ~~1983~~

Shyam Maedar Misra - Petitioner

1

Union of India 20th - Opp. Parties

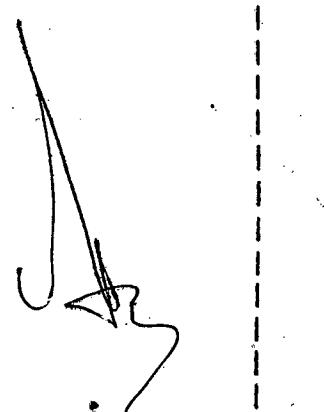
Annexure No 5

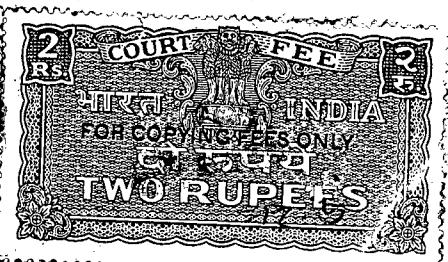
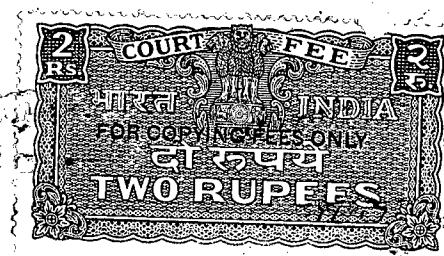


Shyam Maedar Misra

P-45
31

आवृत्त्यक स्टाप्प सहित नोटिस बोर्ड पर प्राधना-पत्र देने की तारीख	नकल तयार होने की तारीख	नकल वापिस दिए जाने की तारीख	नकल वापिस देने वाले अधिकारी का हस्ताक्षर
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21-2-83	3.3.83	3.3.83	
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Copy of order of Revenue Application of dated 18-2-83

Court of Third Addl. Distt. Judge

Rae Bareli.

Sham Manohar & Misra — App.

Versus

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

Sham Manohar Misra

IN THE COURT OF THE III ADDL. DISTRICT JUDGE, RAE BARELI

Present : Sri D.R. 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 Bareli sitting in his capacity as prescribed authority whereby he had directed the Railway Administration under Section 15(3) of Wages Act, 1936, to pay Sri Shyam Manohar Misra an amount of Rs 47655.04/- as arrears of his 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 ~~xxx~~ 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

.....
S.M.

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 6.11.75 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 Manohar 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 as 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.

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 Maimoona 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 property on my part to Suresh

re-assess the case and the questions of law enunciated in 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 AIR 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

A 49
- 4 -

re jected.

✓ 49

ORDER

The review application is hereby rejected.

35-

Sd/-

(D.R. Singh)
LIL-Addl. Distt. Judge
Rae Bareli.

18-2-83

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

Sd/-

(D.R. Singh)
LIL-Addl. Distt. Judge
Rae Bareli.

E.W. 1000

Typist by - C.M.

Can. by - S. H. M.

18-2-83

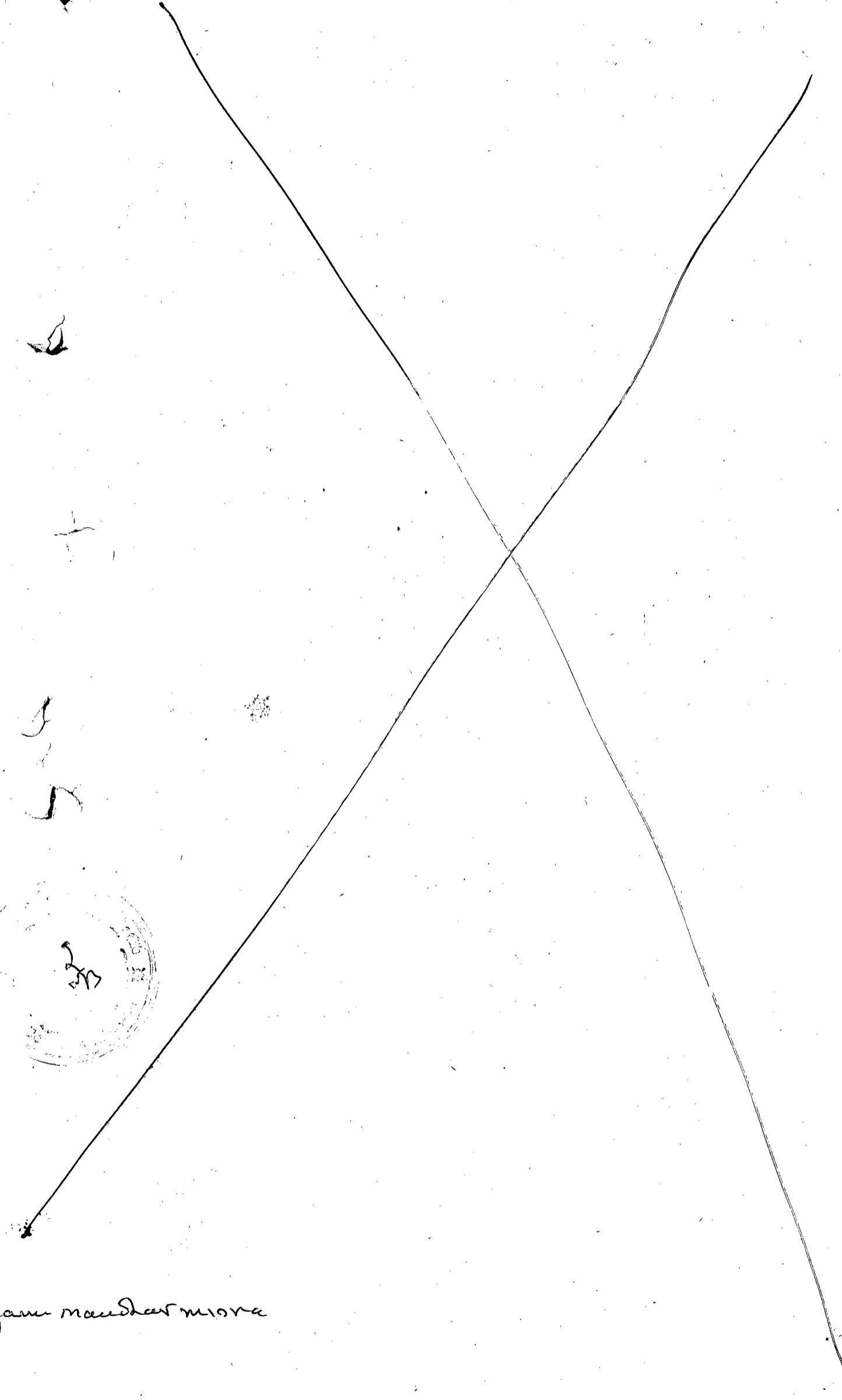
For Yashpal 3.3.83

2 W.B.

Swastha

A-SD

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Shyan macedoniana

~~The Hon'ble High Court of Judicature at~~
ब अदालत श्रीमान Mohabad Lucknow Benares L.R.O.

वादी (मुद्दई) For Petition का वकाल
प्रतिवादी (मुद्दाअलेह) Y



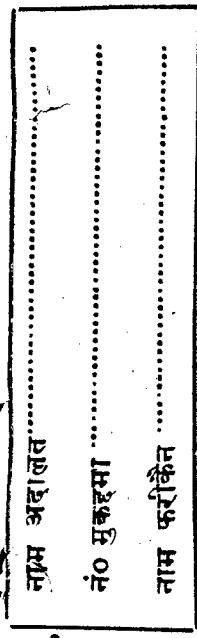
Shyam Narayan Misra

वादी (मुद्दई) 16-2-3
5-5-83

Union of India & Others बनाम प्रतिवादी (मुद्दाअलेह)

नं० मुकद्दमा सन् १९४३ पेशी की ता० १६ ई०
उपर लिखे मुकद्दमा में अपनी ओर से श्री

S. B. C. Salena Achrekar पंडितोकेट महोदय
वकील



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

Shyam Narayan Misra
हस्ताक्षर

साक्षी (गवाह) साक्षी (गवाह)

दिनांक महीना

Accepted B. C. Salena

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

No. 2423

of 1983

vs.

ASV 3

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1		3
22.5.83	Hon. R. P. D. Sharma, J. List next week, as regards admission. Sel.	
22.5.83	13-5-83 fixed for <u>bayan</u> order Hon. S. C. M. II	single
22.5.83	23-5-83 fixed for orders	single
22.5.83	Hon. S. C. M. II	
22.5.83	Hon. S. C. M. II	
15.7.83	fixed for orders	single
21.7.83	Hon. S. S. A. Mathur J fixed for orders	
27/7/83	S. S. A. Mathur fixed for orders	
27/7/83	Hon'ble S. S. Ahmad, J.	
2/8/83	Wait for orders	
	Hon. S. S. A. S	

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

TA NO 1554/82

CAUSE TITLE. WR NO 1105/84 OF

NAME OF THE PARTIES. *Smt. Suresh Kumar*.....Applicant

Versus

U.C. Secy. Respondent

Part A.

Sl.No.	Description of documents	Page
1	Index sheet	A1 to A2
2	Index sheet	A3 to A4
3	Writ Petition with Annexure, Tax order dt	A5 to A23
4	10-12-91 in Petitions	
5	Leave	A24
6	C.M. No 2560 stay Appli.	A25 to A26
7	H.C. Notices	A27 to A34
8	C.M. No 8435 vacation Application	A35 to A43
9	Rejoinder affidavit	A44 to A49
10	C.M. No. 3134	A50 to A54
11	H.C. order sheet	A55 to A56
12	True Copy on 9-9-92	A57
13	Leave / 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)

This file received from record room without book

Dated 20-9-11

Counter Signed.....

Rajeshwar

Section Officer/In charge

Signature of the
Dealing Assistant

19
A23
3
IN THE HON'BLE HIGH COURT OF ALLAHABAD.

(Lucknow Judicature) *for*

C.M. APPLICATION NO. 22 OF 1984.

In re:

WRIT PETITION NO.

1105 OF 1984.



✓ 182
28/11/84

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.

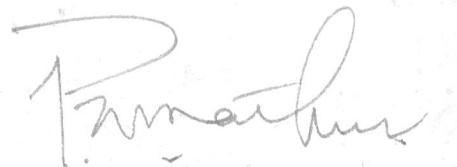
4. Assistant Engineer, Northern Railway, Shahjehanpur.

....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.


(P.N.MATHUR)
Advocate.
COUNSEL FOR THE PETITIONER.

22/3
both parties
counsel

Order sheet

TA no 1554 of 87

Smt. Suneeta Rani " vs. WOS

(A1)

4/24

Serial
number
of
order
and date

Brief Order, Mentioning Reference
if necessary

How complied
with and
date of
compliance

22/3/90

Hon. Mr. D.K. Agrawal, J.M
Hon. Mr. K. Obayya, A.M

Shri P. N. Mathur, for the
petitioner and Shri A. Srivastava,
brief holder of Shri V. Srivastava,
for the respondent are present.

Pleadings are complete.
List it for hearing on 20/7/90.

A.M.

J.M

No sitting adj. to 7-11-90

N

Hon. Mr. M. N. Bhatkar - A.M.
Hon. Mr. D. K. Agrawal. J.M.

Due to resolution of Bar
Association case is adjourned
to 12.12.90.

Hon. Mr. Justice K. Mathur vs
Hon. Mr. K. Obayya A.M.

D
P.O.

On the request of ~~re~~ Smt. P. N. Mathur
counsel for applicant case is adjourned

Dinesh

to 30.1.91. for hearing

A.M.

DR
VC

30.1.91.

No sitting adj. to 12.3.91.

of
This W.P. no 1105/84
received on transfer
from Lucknow High
Court along with
other W.P.s in May 84

On the date of
transfer the case
was admitted. C.A.
RT filed. Stay order
operative. Stay-
vacate application

Transfer notices
issued by Addl. Office
(or not received)
but neither any
reply nor any
undelivered copy
received back
submitted form

R
7/11/90

or
not received
21/12/90

or
Notices were
issued on 21.2.90
No answer
rept. cover has
been return
balle.

S. P.O.

L. 21/12

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 (Jndl.)

K. Kumar
(Kashel Kumar)
Vice Chairman

24-10-91.

Mr. J.N. Nathur - Proxy counsel for Mr.
P.N. Nathur, 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 (Jndl.)

K. Kumar
(Kashel Kumar)
Vice Chairman

One copy
sent to me
K.K. Velle
13/12/91

12/12/91
22/12/91
E.E. 2

ws 081-014
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.

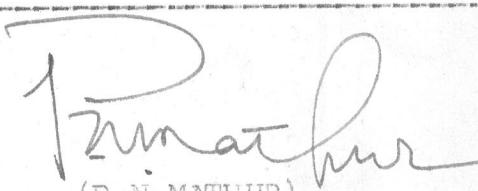
I N D E X

30/16

<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

10.12.81

Hon. Mr. Justice Srivastava, M.L.

Hon. Mr. A.B. Varki, A.M.

Sri A.K. Tarkari learned
Counsel for the applicant
States that the applicant's
services have been
regularised and as such
the terminatrix order
against which fines
against which fine
application has been filed
no longer survive.
So this application is
dismissed as infractions
without any order
as to costs.

V.C.

I

A.M.

(s)

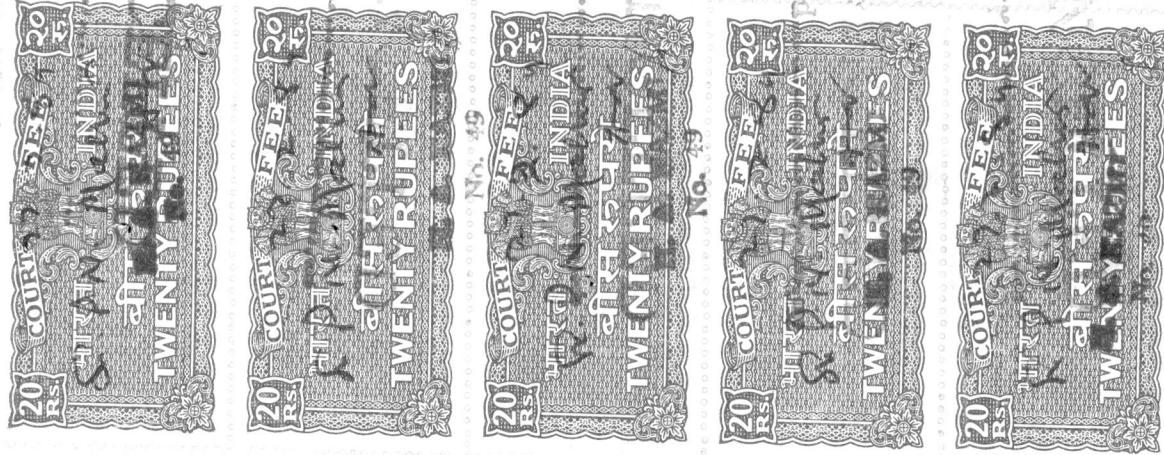
IN THE HON'BLE HIGH COURT OF ALLAHABAD,

(Lucknow Judicature)

WRIT PETITION NO. 1105 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



REBBS.

~~Impressed~~

Five Adhesive Rs. 10/-

Total →

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

In time up to

Papers filed. Copy of P. O.

Should also be filed

Copy - Bench.

* Last Impugned order Annex 2

Dt. 4-2-84

Visit. Moradabad

Justices
27.2.84
Se
Rm
27.2.84

B/e N.R.
B

(A6) *[Signature]*

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

Sunita Rayamajhi



(AP) A9

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 Ranu



AB

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appointment. The notice gives thirty days time from the date of the rec eipt 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 shemight 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 serv ed for more than 240 days is entitled to the protection given by Section 25-F of the Industrial Disputed 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



Sumita Patel

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'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

Sumita Ranee

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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/82/38/8 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,....."

Sumita Ranee

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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

Sunita Rawal



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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 specifies a date for the termination of service

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

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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 Gaxette."

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.

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

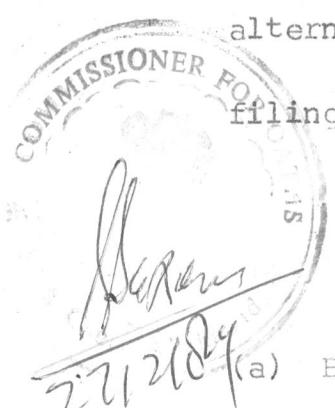
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pending. In the said writ petition stay has also been granted.

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-B 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

Sunita Rawal

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 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.

Sunita Rani

February 27, 84.


(P.N.MATHUR)
Advocate.
COUNSEL FOR THE PETITIONER.

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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...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 regula-
risation 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 availa 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.

Suneeta Rani

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/O-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.

Suneeta Rani

27/11/84

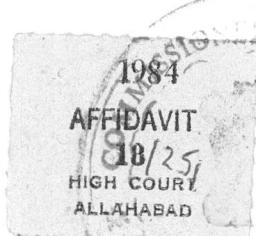
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IN THE HON'BLE HIGH COURT OF ALLAHABAD,
(Lucknow Judicature)

WRIT PETITION NO.

OF 1984.



High Court Allahabad
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, 11 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.



Suneeta Rani

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.

Sunita Rani

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

1 P.M.

at 11:00 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.

ASHARFI LAL
CLERK OF COURT
HIGH COURT, LUCKNOW
27-2-84

27-2-84

27-2-84

बा अदालत श्रीमान

[वादी] अपीलान्ट

प्रतिवादी [रेस्पांडेन्ट]

In the High Court of Judicature at
Allahabad (Under new Bench) Allahabad

महोदय

वकालतनामा

(टिक)

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Smt. Suneela Ram - Petitioner

नं० मुकदमा

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Union of India vs

पेशी की तातो

प्रतिवादी (रेस्पांडेन्ट)

- opp. Party -

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ऊपर लिखे मुकदमा में अपनी ओर से श्री

S. P. N. Malhotra Advocate

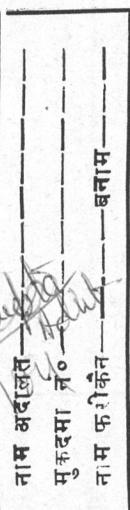
A. K. Tarkeshi Advocate

ASHUTOSH NIGAM Advocate
Bholch Gupta Advocate

महोदय

एडवोकेट

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं 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 बसूल करें या सुलहनामा 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)
रसीद से लेवें या पंच नियुक्त करे-वकील महोदय द्वारा की गई वह सब कार्यवाही
हमको सर्वथा स्वीकार है और होगो मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर
स्वयं या किसी अपने पैरोकार को भेजता रहूंगा 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।

Accepted
Suneela RamAccepted
A. K. Tarkeshi
AdvocateAccepted
J. N. Malhotra,
Advocate

हस्ताक्षर

Suneela Ram

साक्षी [गवाह]

साक्षी [गवाह]

दिनांक

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महीना

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सन् १६ ई०

दोवानी विभाग

हाईकोर्ट इलाहाबाद लखनऊ बेंच, लखनऊ

(अध्याय १२, नियम १ और ७)

प्रक्रीणांक (मुतफरिक) प्रार्थना - पत्र संख्या सन १६ ई०

W. P.

सं० ११०५

सन १६ ८५ ई० मे

Smt. Suneeta Rani

प्रार्थी

Union of India fallen प्रति

प्रत्याधी

Assistant Engineer, Northern Railway

Shahjahanpur

प्रत्याधी

चूंकि ऊपर लिखे प्रार्थी ने इस न्यायालय में उपर्युक्त मुकदमे के सम्बन्ध में

के नाम वे हिये प्रार्थना-पत्र

दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक ११ माह सन १६/११ 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 विज्ञाप्ति किशी और दिन होगी।

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

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक २६ माह ३ सन १६/११ को जारी किया गया।

के एडवोकेट

तिथि



Ramakant

डिप्टी रजिस्ट्रार
इलाहाबाद/लखनऊ

सूचना—इस न्यायालय १९५२ को नियमावली के अध्याय ३७ नियम १ के अधोन प्राप्त तलवाना मिल गया।

तलवाना प्राप्त करने वाले कलक के हस्ताक्षर

हाईकोर्ट इलाहाबाद लखनऊ बेंच, लखनऊ

(अध्याय १२, नियम १ और ७)

दोवानी विभाग

प्रकोण्डक (मुतफरिक) प्रार्थना - पत्र संस्था सन १६ ई०

W.P. ११८५ सन १६ ८४ ई० में

Smt. Suneela Rani प्रार्थी

Union of India & Others प्रति
Assistant Engineer, Northern Railway,
Shahjahanpur प्रत्याधी

प्रत्याधी

चूंकि उपर लिखे प्रार्थी ने इस न्यायालय में उपर्युक्त मुकदमे के सम्बन्ध में
के नाम बैठिये प्रार्थना-पत्र

दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक १६ माह सन १६ ई० M
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 विहित किशी और
दिन होगी।

विदित हो कि आप उपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी
राजवोकेट 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 अनुपस्थित
में हो जायेगी।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक २९ माह ३ सन १६ ८४
को जारी किया गया।

के राजवोकेट

तिथि



डिप्टी रजिस्ट्रार
इलाहाबाद/लखनऊ

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

तलवाना प्राप्त करने वाले छलक के हस्ताक्षर

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हाईकोर्ट इलाहाबाद लखनऊ बेंच, लखनऊ

(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रक्रीणांक (मुतफरिक) प्रार्थना - पत्र संख्या सन १६ ई०

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सन १६ ८७ ई० में

Smt. Suneeta Rane

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Union of India ^{प्रति} fallen

प्रार्थी

प्रत्याधी

The Divisional Personal office Northern Railway
Moradabad

प्रत्याधी

चूंकि उपर लिखे प्रार्थी ने इस न्यायालय में उपर्युक्त मुकदमे के सम्बन्ध में
के नाम वे हिये प्रार्थना-पत्र

दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक १६ माह ई० सन १६ ई०
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 कियी और
दिन होंगी।

विदित हो कि आप उपर लिखे दिनांक पर या उससे पहले स्वयं अधिका किसी
राजवकेट 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 अनुपस्थित
में हो जायेगे।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक २९ माह ई० सन १६ ई०
को जारी किया गया।

के राजवकेट

तिथि



Railway
छप्टी रजिस्ट्रार

इलाहाबाद/लखनऊ

सूचना—इस न्यायालय की १९५० के नियमानुसार के अध्याय ३७ नियम २ के अधीन प्राप्त
तलवाना मिल गया।

तलवाना प्राप्त करने वाले कलक के हस्ताक्षर

A28

A/3

हाईकोर्ट इलाहाबाद लखनऊ बेंच, लखनऊ

(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रक्रीणांक (मुतफरिक) प्रार्थना - पत्र संख्या सन १६ ई०

W. P. 1161 सन १६४५ ई० में

मैत्री विभाग
Smt. Suneeta Ram प्राधी

मैत्री विभाग
मुख्याधीनी प्रति

The General Personnel Office, Northern Railway
Moradabad.

प्रत्याधी

चूंकि उपर लिखे प्राधी ने इस न्यायालय में उपर्युक्त मुकदमे के सम्बन्ध में

के नाम वे हिंदे प्रार्थना-पत्र

दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक १ माह सन १६४५ 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 विज्ञापित किशी और दिन होगी।

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

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक २५ माह ३ सन १६४५ को जारी किया गया।

के एडवोकेट

तिथि



ठिप्पी रजिस्ट्रार

इलाहाबाद/लखनऊ

सूचना—इस न्यायालय की १६४५ को नियमावली के अध्याय ३७ नियम १ के अधीन प्राप्त तलवाना मिल गया।

तलवाना प्राप्त करने वाले कलक के हस्ताक्षर

(८२९)

१६७

४३

हाईकोर्ट इलाहाबाद लखनऊ बेंच, लखनऊ

(अध्याय १२, नियम १ और ७)

दीवानी विभाग

प्रक्रीणांक (सुतफर्रिक) प्रार्थना - पत्र संख्या सन १६ ई०

रु. 1. रु० ११०.५ सन १६४५ ई० मे

Smt - Sunela Rao Rani.

प्रार्थी

Union of India प्रति

प्रत्याधी

Union of India Chancery in General Manager

Northern Railway Baroda House,

New Delhi.

प्रत्याधी

चूंकि ऊपर लिखे प्रार्थी ने इस न्यायालय में उपर्युक्त मुकदमे के सम्बन्ध में

के नाम के हिते प्रार्थना-पत्र

दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक २१ माह सन १६४५ मे 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 विज्ञाप्ति कियी और दिन होगी।

विदित हो कि आप ऊपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी रेडवोकेट 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 आपको अनुपस्थित में हो जायेगे।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक २१ माह ३ सन १६४५ मे को जारी किया गया।

के रेडवोकेट

तिथि



High Court

डिप्टी रजिस्ट्रार

इलाहाबाद/लखनऊ

(B)

सूचना—इस न्यायालय की १६५६ की नियमावली के अध्याय ३७ नियम १ के अधीन प्राप्त तलवाना मिल गया।

तलवाना प्राप्त करने वाले कलक के हस्ताक्षर

A³⁰
A/32

हाईकोर्ट इलाहाबाद लखनऊ बेंच, लखनऊ

दीवानी विभाग

(अध्याय १२, नियम १ और ७)

प्रकोण्डक (मुतफारिक) प्रार्थना - पत्र संख्या सन १६ ई०

W.L. 1165
रु० सन १६८५ ई० में

Smt. Gurzeet Rani ~~जी~~

प्राधी

Union of India ~~जी~~ प्रति
Union of India through the general Manager
Northern Railway Baroda Terminus,
New Delhi
प्रत्याधी

चूंकि ऊपर लिखे प्राधी ने इस न्यायालय में उपर्युक्त मुकदमे के सम्बन्ध में
के नाम वे हिचे प्रार्थना-पत्र

दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक ११ माह ५ सन १९८५
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 विहारित 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 अनुपस्थित
में हो जायेग।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक २९ माह ३ सन १९८५
को जारी किया गया।

के एडवोकेट

तिथि



Release!
डिप्टी रजिस्ट्रार
इलाहाबाद/लखनऊ

सूचना—इस न्यायालय की १९८५ को नियमावली के अध्याय ३७ नियम ६ के अधीन प्राप्त
तलवाना मिल गया।

तलवाना प्राप्त करने वाले कल्कि के हस्ताक्षर

A31
2166
A/33

हाईकोर्ट इलाहाबाद लखनऊ बेंच, लखनऊ

दीवानी विभाग

(अध्याय १२, नियम १ और ७)

प्रकोण्डक (मुतफरिक) प्रार्थना - पत्र संख्या सन १६८५ ई०

W.P.

1105

सन १६८५ ई० में

Shri. Suneeta Rani

Union of India & others प्रति

The Divisional Railway Manager प्रत्याधी

Northern Railway, Moradabad

प्रत्याधी

चूंकि उपर लिखे प्राधी ने इस न्यायालय में उपुक्त मुकदमे के सम्बन्ध में

के नाम वे हाले प्रार्थना-पत्र

दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक माह सन १६८५
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 विज्ञाप्ति कियी और
दिन होगी।

विदित हो कि आप उपर 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 अनुपस्थित
में हो जायेंगे।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक २५ माह सन १६८५
को जारी किया गया।

के एडवोकेट

तिथि



Receiv'd

छप्टी रजिस्ट्रार
इलाहाबाद/लखनऊ

सूचना—इस न्यायालय की १६८५ को नियमावली के अध्याय ३७ नियम २ के अधोन प्राप्त
तत्वाना मिल गया।

तत्वाना प्राप्त करने वाले कल्कि के हस्ताक्षर

हाईकोर्ट इलाहाबाद लखनऊ बेंच, लखनऊ

दीवानी विभाग

(अध्याय १२, नियम १ और ७)

प्रक्रीणक (मुतफर्रिक) प्रार्थना - पत्र संख्या सन १६ ई०

W.P.

सं० ११०५

सन १६ ई० ४९ ई० में

Smt - Sunela Rani

प्राधी

Union of India प्रति

प्रत्याधी

The Divisional Railway Manager

Northern Railway, Moradabad

प्रत्याधी

चूंकि उपर लिखे प्राधी ने इस न्यायालय में उपर्युक्त मुकदमे के सम्बन्ध में

के नाम वे लिये प्रार्थना-पत्र

दिया है, अतः आपको आदेश दिया जाता है कि आप दिनांक १५ माह सन १६०८ 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 कियी और दिन होगी।

विदित हो कि आप उपर लिखे दिनांक पर या उससे पहले स्वयं अथवा किसी राज्यकार्यालय 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 अनुपस्थित में हो जायेगे।

मेरे हस्ताक्षर और न्यायालय की मोहर से आज दिनांक २१ माह ई सन १६०८ को जारी किया गया।

के राज्यकार्यालय

तिथि



Qilaundi
डिप्टी राजस्ट्रार
इलाहाबाद/लखनऊ

सूचना—इस न्यायालय की १६५६ की नियमावली के अध्याय ३७ नियम १ के अधीन प्राप्त तलवाना मिल गया।

तलवाना प्राप्त करने वाले कल्कि के हस्ताक्षर

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

C.M. An. No. 5435 (W) of 84.



1st May
m
11/5/84

5/5

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.

59
2/5/84
Lucknow, dated.
10.5.84

11

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

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



In re:

Writ Pet. No. 1105 of 1984.

Smt. Suneta 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. 330-560 plus the usual allowances permissible to her under extant 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.
- Dalbir Singh*

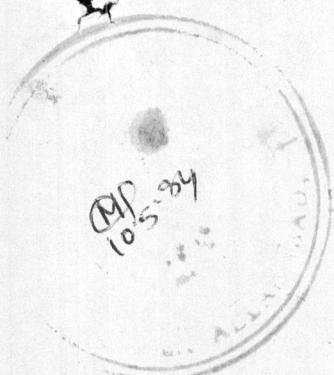


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5. That the contents of paragraphs 3 and 4 of the writ petition are admitted.
6. That the contents of paragraph 5 of the writ petition, as stated, are denied. It is admitted that the petitioner's services have been terminated vide order No. E-E/0-IV (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



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 XXII and not XXIII 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-T 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-T 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.

Dalbir Singh

22. That in reply to paragraph 21 of the writ

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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.

Dalbir Singh
Deponent.

Lucknow, dated,

10.5.84

Verification.

I, the deponent aforesaid 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

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. *S. Verma*
Advocate.

Solemnly affirmed before me on 10.5.84
at 12^o 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 (Law & Bench)
No. 34/3291
Date. 10.5.84



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

10

7/4/83

REJOINDER AFFIDAVIT

In re:

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WRIT PETITION NO. 1105 OF 1984.



Smt. Suneeta Rani.

..Petitioner.

Versus

Union of India and others.

..Composite 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 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

Sunita Rane



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

Sunita Ramel



AUB

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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 a 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 empanelled staff was available to the Head Quarters office and

Sunita Ranee



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

Sunita Ronie



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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 overruled and the stay order already granted deserves to be confirmed.

Lucknow. Dated.

June 29, 1984.

Sunita Rawal

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.

Sunita Rawal
DEPONENT.

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

Latif Elwani
Advocate.

Solemnly affirmed before me on 29/6/84
at 11:20, the deponent who is identified by
Sri Latif Elwani 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. 3136

Dated 29/6/84

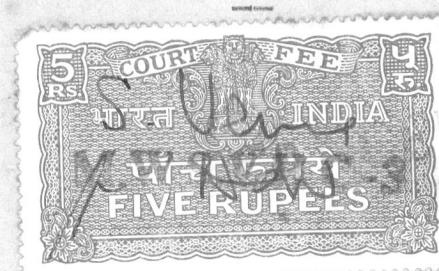
29/6/84

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.



Smt. Suneeta Rani

... Petitioner

Versus

Union of India and others

... Opposite parties

IIInd 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.

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

Writ Petition No. 1105 of 1984.

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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 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 deposed 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.

Shukla

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 necessitated the present IIInd 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

Jitendra

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} 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.

Luthra
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 derived 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.

J. B. B.
Lucknow,
Dated : 28.2.1985.

Luthra
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

Verma
(Siddharth Verma)
Advocate.

Solemnly affirmed before me on 28.2.85
at 10 A.M./P.M. by *Dr. G.C. Shukla*
the deponent who is identified by
Shri S. 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.

(Recd) 8/

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

W.P. No. 1105 of 1988.

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
28-2-88	<p>Mem R.N.-M.7 Mem S.S.A.7</p> <p>Admit Admit and connect with W.P. - - -</p> <p>Shall remain stayed.</p>	<p>Sol. R.N.-M.7 Sol. S.S.A. 28-2-88</p> <p>C.M. No 2560 (C) 88</p>
28-2-88	<p>Mem R.N.-M.7 Mem S.S.A.7</p> <p>For orders, see our order of date passed on the back of this W.P.</p>	<p>Sol. R.N.-M.7 Sol. S.S.A. 28-2-88.</p>
11-3-88	<p>Fixed for attendance and for filing C.A. in W.P.</p> <p>No. 1 to 0 - P. No. 1 to 11 by R.P.</p>	

Bona
29-3-88

Date	Note of progress of proceedings and routine orders	Date of which case is adjourned
1 13-5-84	2 Chm 2560-84. Wcs dh DEVJ.	3
	Ten days time prayed for and is allowed to file a reminder-affidavit, list thereafter.	Kg 13-5-84
285-84.	Service Report of 104. Lower and Counter affidavit filed	by ex. Siddhanta Verma, Aew May 1st proceed?
	Yes Lower So 26	285
	Fwd to Cm	
2560 (1) 84	CJ 104	S
	Cm-A no 3134 Qd 85 for vacation of stay order.	
13-3-85	Dear R.N.G., - - - but in the next week.	
	Sd: R.N.G. 13-3-85.	

PSUP-A. P. 1 Uchh Nyayala. -13-4-83-173-1983-50,000 (E).

22-3-85 22.3.85 Fwd to
a 2560 (1) 84 3134 (1) 85
Dmrg Jnknw.

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

No. 1108 of 1984vs. 1108K
50

	Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3	
		MINER S 4.85 Jus.	
		CR 25606/84, 31340/85	
		Case Adjourned.	
		Lri C-A. Bashir And Lri Siddhanta Verma are on leave. Stand out.	
S			17-4-85.
		CR 25606/84 31340/85	
		Fixed	CL/AB

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 against ~~which~~ this application has been filed no longer service. So this application is dismissed as ~~x~~ infructuous without any order as to caste.

checked
9/1/92

Sd/-
A.M.

Sd/-
V.C.

Certified Copy

10.12.91
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,
- - - - - C.M.A.N. No. 2560 (W) of 1984 W.P. No. 1105 of 1984
- - - - - Sesiseeta Banu

Plaintiff
Appellant
Petitioner

Versus

Wider of Indica

Defendant
Respondent
Opp. Party.

KNOW ALL MEN by these/present that I/We O. P. Valera

and authorise SarvaShri SiddhARTH VERMA RA-450 to appear and 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 hereby agree to rectify and confirm whatever shall be lawfully done by virtue of these presents.

IN WITNESS where of I/We hereinto set my/our
hand this day of 23-3-1986.

Accepted
Sherely

Divisional Railway Manager,
Northern Rly.
Moradabad.

for Union of Sedica

S.D
11-5-84 (SIDDHARTH VERMA)
ADVOCATE

Central Administrative Tribunal

Lucknow Bench

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

Smt. Suneeta Rani Applicant.
-Vs-

Union Of India (N. Railways).... 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 caste.

checked

Sd/

A.M.

Sd/

V.C.

16/1/92

// True Copy //

Vkm

J. K. T. S.
Deputy Registrar
Central Administrative Tribunal
Lucknow Bench,
Lucknow

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