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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No. 497 /1989

Date of the order: 28-2-1990.

Between:

1. The Divisional Railway Manager,
S.C.Railway, Vijayawada Division,
Vijayawada.
2. The Assistant Engineer,
South Central Railway,
Vijayawada Division.

... APPLICANTS

A N D

1. Kalaga Krishna
2. Presiding Officer,
Labour Court (Central),
Visakhapatnam.

... RESPONDENTS

Appearance:

For the applicants : Mr.N.R.Devaraju, SC for Railways

For the Respondents : Neither appeared in person nor
represented through advocate.

CORAM:

The Hon'ble Mr. B.N.Jayasimha, Vice-Chairman

and

The Hon'ble Mr. D.Surya Rao, Member (Judicial)

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(JUDGMENT OF THE BENCH DELIVERED BY THE HON'BLE
SRI D.SURYA RAO, MEMBER (JUDICIAL). (P)

This is an application filed by the South Central Railway questioning the order of the Labour Court, Visakhapatnam dated 9-8-1988 passed in C.M.P. No. 2/87 whereby the claim of the petitioner before the Labour Court viz. the Respondent No.1 herein, for grant of arrears of pay amount to Rs. 14,006/- was allowed. The first Respondent herein submitted the claim before the Labour Court under Section 33(C)(2) of the Industrial Disputes Act claiming that he was initially employed as a khalasi on casual labour basis on 10-2-1964 under the Permanent Way Inspector, K a s i m k o t a. He claimed that he automatically attained temporary status as a temporary Railway servant on 1-8-72 as per Rule 2303 of Chapter XXIII of the Indian Railway Establishment Manual. He was made permanent from 23-7-1978. It was contended that from the date of grant of temporary status till 9-9-1973 he was paid only Rs.2/- per day & Rs.3.50 and Rs.312/- whereas he should have been paid Rs.140/- per month. From 10-7-1972 till the date he was made permanent he was paid only Rs.3-50 ps. per day whereas he should have been paid Rs.307/- per month. Based on these claims, he submitted a Memo. of calculation before the Labour Court stating that he was entitled to be paid a sum of Rs.14,006/- constituting the difference in wages.

2. The applicants herein filed a counter stating that the claim of the employee is based on the assumption that he has attained temporary status and that the date of eligibility of such status and the consequent claim for difference in wages cannot be gone into in a petition

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under Section 33(C) (2) of the Industrial Disputes Act before the Labour Court. It was contended that the Labour Court had no jurisdiction to entertain the claim. Without prejudice to this contention it was further contended in the counter that casual labourers on the open line had to complete 120 days of continuous service, while casual labourers on construction/project work had to complete 360 days of continuous service for attaining temporary service. The applicants herein stated that the claimant is put to strict proof of the date of completion of this period and the number of days of work rendered by him.

3. Before the Labour Court the 1st Respondent herein examined himself as WW-1 and produced as evidence exhibits W.1 to W.3 viz. service cards that he was appointed as a casual labourer on 10-12-1964 and that he worked as such from 10-7-1973 to 23-7-1978. On behalf of the Railways, the applicants herein, a clerk was examined who admitted that Ex.W.1 to W.3 were issued by the concerned officer. He, however, stated that there are no records available to prove whether the applicant had worked during that period. He also produced a circular letter Ex.M-1 to the effect that records will be destroyed after five years. However, the Labour Court held as follows:

".....It is true that Ex.M1 circular regarding preservation of records shows that the records will be preserved only for five years. However, it is not relevant in this case as there is the documentary evidence marked as Exs.W1 to W3 service cards issued by the competent persons to prove that the petitioner has worked during the relevant time. There is no question of any limitation to the claim under Section 33(c) (2) of the I.D. Act by an employee in service. Admittedly, the petitioner has been in service and he was made permanent from the year 1978.

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Hence, the petitioner is entitled for difference in wages as claimed in this petition in a sum of Rs. 14,006-00. The point is accordingly found in favour of the petitioner."

3. In this application it is reiterated that the application was not maintainable under Section 33(c) (2) of the Industrial Disputes Act before the Labour Court and that since there are no rules for preserving the records beyond five years it was not open to the respondent/petitioner to claim the difference in wages long years thereafter. The rule position regarding grant of temporary status to a casual labourer is that if he is working on the open line and has put in 120 days of continuous service then he will be eligible for temporary status. If the casual labourer is working on construction side/project, then he must have put in 180 days continuous service to be eligible for temporary status. Sri Devraj contends that this was the position after 8-6-1981 i.e. after issue of Railway Board's letter No.E(NG) 11-77 CL/46 dated 8-6-81. Prior thereto Sri Devraj contends that a casual labourer on open line had to complete 180 days to be eligible for temporary status while a casual labourer on the construction side/projects would have to complete 360 days to be eligible for temporary status. It is not denied that if the labourer attains temporary status then he would automatically be eligible to draw a daily wage calculated at 1/30th of the salary of a fresh employee in Group-IV (Group-D) service. Sri Devraj contends that the employee/Respondent No.1 had not proved or established when he had attained temporary status. But the lower court relying on the documentary evidence,

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Exhibits W.1 to W.3, service cards issued to him by the competent authority, came to the conclusion that the 1st respondent herein had attained temporary status and that from 10-9-73 to 23-7-1978 he was entitled to a monthly wage at 1/30th of the salary payable to a class-IV employee. The Labour Court based this finding on admissions made that exhibits W.1 to W.3 were issued by the authorities competent to issue them. In this application the correctness of the Labour Court's findings regarding the genuineness of Ex.W.1 to W.3 are not disputed. It was not averred either before the Labour Court or in the grounds before this Tribunal that Ex.W.1 to W.3 were not issued by the authority competent to maintain the service particulars of the 1st Respondent as a casual labourer or that the documents are forged or bogus. Hence the Labour Court's finding that these documents are genuine cannot be assailed. In the grounds also it is not averred that the applicant Ex.W.1 to W.3 do establish that the applicant had attained temporary status in accordance with the rules/instructions of the Railway Board. We, therefore, see no reason to differ from the findings of the Labour Court that if Ex.W.1 to W.3 are genuine and proved, the Respdt.1 is entitled to the wage due to a casual labourer who attains temporary status and that such a wage was payable from

5. Sri Devraj has further contended that it was not open to the Labour Court to have gone into the question when the applicant had attained temporary status. He contends that the questions such as the date from which an employee attains temporary status and consequently whether he is entitled to difference in wages are not

matters to be determined by a Labour Court under Section 33(c)(2) of the Industrial Disputes Act. Sri Devraj relies on a decision of the Division Bench of the Andhra Pradesh High Court reported in 1983(1) APLJ 218 (Divl. Supdt., S.C.Rly. Vs. Labour Court & another). That was a case wherein certain Railway employees claimed that they had worked for over 120 days during a period of six months and had acquired temporary status. As in the case before us they alleged that they were paid a daily wage whereas they were entitled to a monthly rate of wages. The High Court held as follows:-

"The petitioners have come up with a claim that they have acquired a temporary status and therefore entitled to certain benefit under clause 2501(c) of the Indian Railway Establishment Manual. But they have not produced any record in support of their claim. Except examining themselves the petitioners have not let in any other oral or documentary evidence. The Railways have examined the Officer presently incharge of the Department who stated that under the rules governing the maintenance and destruction of records, the records had to be destroyed after a period of ten years. It is brought to our notice and later this rule was amended and the maximum period for which the record is required to be maintained is reduced to five years. Accordingly the records pertaining to the petitioners were destroyed as stated in Ex.M-1. By the time the petitioners claims came up for enquiry the records pertaining to the relevant period including those pertaining to the petitioners were required to be destroyed. If in these circumstances the Railways plead their inability to produce the records, no adverse inference could be drawn against the management. In fact the casual labourers were given cards of employment. There is no reason why they should not have produced them and why an adverse inference should not be drawn against them for not producing the clinching evidence which ought to be in their possession. In our opinion on that scanty evidence, the Labour Court was not justified in coming to the conclusion that these petitioners had worked as casual labourers during the period and had thereby acquired the temporary status as pleaded by them and were consequently entitled to the monetary benefits as stated in the petition. The claim of the

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petitioners which was not substantiated by any evidence ought not to have been allowed. The Labour Court too had reached the finding it did not on the basis of any evidence, but upon mere inference which as already stated above is not justified in the circumstances of the case. That finding therefore cannot be sustained...."

The High Court in rejecting the claims of the petitioners before it, referred to the decision of the Supreme Court in AIR 1974 SC 1604 (C.I.W.T Corporation Vs. Workmen) wherein it was held that in a suit where a claim is made by a plaintiff against a defendant, the questions for determination would be (i) plaintiff's right to relief, (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not and (iii) the extent of the defendant's liability, if any. It was held that determinations of (i) and (ii) is the function of the Industrial Court and not the Labour Court under Section 33(c) (2) since a proceeding under Section 33(c) (2) is in the nature of an execution proceedings. The Supreme Court held that the dispute between the Corporation and the workmen required further investigation which was beyond the scope of an application under Section 33(c) (2). In our view the facts of the case before the Supreme Court in AIR 1974 SC 1604 and the A.P. High Court in 1983(1) APLJ 218 are different from the facts in the case before us. In the Andhra Pradesh case there was no evidence produced to establish that the workmen had obtained temporary status. In the case before us the finding of the Labour Court is that the Ex.W.1 to W.3 are admitted to be issued by a competent authority. Once they are admitted and payment as in the case of a temporary employee then the temporary status follows ipso facto viz. (b) (i) (a) by virtue of Rules 2501/and 2511/of the Indian Railway

Establishment Manual which read as follows:-

CHAPTER XXV

Casual Labour:

2501: Definition:-

(a) Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour.

(b) The casual labour on railwaysshould be employed only in the following types of cases, namely:-

(i) Staff paid from contingencies except those retained for morethan six months continuously --Such of those persons who continue to do the same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of the six months of continuous employment.

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2511(a): Rights and Privileges admissible to Casual Labour who are treated as temporary after completion of six months' continuous service:-

(a) Casual labour treated as temporary are entitled to all the rights and privileges admissible to temporary railway servants as laid down in Chapter XXIII of the Indian Railway Establishment Manual. The rights and privileges admissible to such labour also include the benefits of the Discipline and Appeal Rules. Their service, prior to the date of completion of six months' continuous service will not, however, count for any purposes like reckoning of retirement benefits, seniority, etc. Such casual labourers will, also, be allowed to carry forward the leave at their credit to the new post on absorption in regular service.

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6. Thus, the right of a casual labourer to a monthly rate of wages if he has attained temporary status is a right provided for under the rules. If the temporary status is admitted or established by the admitted documents of the employer, Railways as in the instant case, then the right of the workman stands established or provided for and the question of further investigation or adjudication or determination of the right does not arise. It would be useful in this regard to refer to AIR 1964 SC 743 (Central Bank of India Vs. P.S.Rajagopalan) wherein it was held that if an enquiry whether certain employees came within the category of employees covered by an award was only 'incidental' and necessary to give the relief asked for then the Labour Court would have jurisdiction. On the facts of the present case it is clear that determination of the question whether the wage which is payable to the 1st Respondent is only incidental to the question whether he has attained temporary status. Since by virtue of the admitted documents and the rules his status is determined, it cannot be held that the jurisdiction of the Labour Court is ousted. All that was left for the Labour Court was only calculation of the amounts payable. This the Labour Court was empowered to do.

7. For the reasons given above, we find no merit or ground in the present application for setting aside the order of the Labour Court. The Application is accordingly dismissed but in the circumstances without costs.

B.N.Jayasimha

(B.N.JAYASIMHA)

Vice-Chairman

D.Surya Rao

(D.SURYA RAO)

Member(J)

mhb/

S. Venkateswaran
Deputy Registrar (J)

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