

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

T.A. No. 7/2000

DATE OF DECISION 22-5-2002

Union of India & Another Petitioner

Mr. V.S. Gurjar Advocate for the Petitioner (s)

Versus

Ram Narain Respondent


Mr. Vinod Goyal Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. M.P. Singh, Member (Administrative)

The Hon'ble Mr. J.K. Kaushik, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement ? yes
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? —
4. Whether it needs to be circulated to other Benches of the Tribunal ? —

  
(J.K. KAUSHIK)  
MEMBER (J)

  
(M.P. SINGH)  
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH : JAIPUR

Date of Decision : 22-5-2002

T.A. NO. 07/2000.

1. The Secretary through Union of India, Human Resource and Development Ministry, Government of India, Education Ministry, New Delhi.
2. Principal, Jawahar Navodaya Vidyalaya, Chan, Distt. Tonk.

.. APPLICANT.

v e r s u s

Ram Narain s/o Ram Jeevan, caste Jat, residence-vill. Ganeti Tensil, Distt. Tonk.

... RESPONDENT.

Shri V. S. Gurjar counsel for the applicant.  
Shri Vinod Goyal counsel for the respondents.

CORAM

Hon'ble Mr. M. P. Singh, Administrative Member.  
Hon'ble Mr. J. K. Kaushik, Judicial Member.

: O R D E R :

(per Hon'ble Mr. J. K. Kaushik)

The applicant U.O.I. and Anr. filed a First Civil Appeal No. 15/96 before the court of District Judge, Tonk, challenging the judgement dated 01.06.1996 passed in Civil Suit No. 12/91, Ram Narain vs. U.O.I., another by Learned Judge (क्र.सं.) and Munsib Magistrate First Class Tonk. The same has been transferred to this Tribunal under Section 29 of the Administrative Tribunal Act, in view of the notification dated 12.08.1999 issued in respect of Navodaya Vidyalaya, by which this Tribunal has been given jurisdiction for hearing the service matters in respect of employees employed in Navodaya Vidyalaya. The same has been registered



as TA No. 7/2000.

2. The case of the applicant is that one Shri Ram Narain filed a Civil Suit for seeking a permanent injunction on the ground that he was continuously employed from 10.12.1988 in Institution, Jawahar Nagar Vidyalaya. He rendered appreciable service and was employed on the post of Assistant Cook from 12.12.1988 to 17.05.1990. It was also mentioned that the service of the plaintiff became regular as per the rules. The respondents have no right to terminate his service without prior notice but the respondents were went upon to out him from service in an unauthorised manner. He had worked for about 25 months continuously on the post of Cook, Chaukidar, Group-D post. He was paid his wages except for certain period when he worked on the holidays. It was mentioned that the applicant did not make the payment from January 1991 to the said Shri Ram Narain. It was told that they will keep somebody else in place of the plaintiff and he prayed that he should be declared as a regular employee and should be taken back in the service with all benefits of salary including the interest thereon. In reply to the same, the applicant submitted that the dispute related to the Hon'ble Court. The plaintiff Ram Narain worked as a Casual Labour and he was paid accordingly. He did not work after 01.12.1990 and there was no question



of making any payments to him thereafter. Requests were also sent to the Employment Exchange for appointment of Daily Wages Workers for different posts. The selections were made and the post were filled on temporary basis . There was no other post vacant and the plaintiff Ram Narain was not employed in the school.

3. The appeal has been filed on multiple grounds mentioned in the Transfer Application which we will be dealing in the later part of this order.

4. No reply has been filed to the appeal.

5. We have heard the learned counsel for the parties and have carefully perused the record of the case, keeping in view the legal provisions and the law laid down by the Apex Court in the matter.

6. At the very outset, Learned counsel for the applicant (respondent in Civil Suit) have stressed that the complete findings have been given on the ground that the applicant has completed 240 days and as per the provisions of ID Act, he has been declared as regular. In this view of the matter, the Civil Court had no jurisdiction to entertain the matter and the matter should have been adjudicated by the Hon'ble Tribunal as per the provisions of Industrial Disputes Act. In support



of his contentions he has referred to a judgement of the Apex Court in the Rajasthan State Road Transport Corporation and Anr. vs. Krishna Kant etc. reported in AIR 1995 SC 1715. Further he has taken support of the another judgement of the Apex Court in Miss A. Sundarambal vs. Government of Goa, Daman and Diu and Others, 1998 (SC-2)-GJX-0340-SC, wherein it has been held that the educational institutions has to be treated as industry. The contention of the applicant now submitted is that the respondent was a Workman within the meaning of Industrial Disputes Act and the Civil Court had no jurisdiction to adjudicate upon in the matter, since the matter was covered by the provisions of Industrial Disputes Act.

7. We have given a considerable thought to the contentions of the Learned Counsel for the applicant as the judgement in Miss A. Sundarambal (Supra) is concerned. The applicant was holding a Group-D post in an Educational Institution and was definately a Workman as per the Industrial Disputes Act. Since the Educational Institutions has to be treated as an Industry except, however, the Teachers cannot be treated as Workman, thus the applicant was a Workman within the meaning of 2(S) of the Industrial Disputes Act.

8. Now the next question come regarding the



jurisdiction of the Civil Court in dealing with the matters, for which the remedy has been provided under the Industrial Disputes Act. The judgement in Rajasthan State Road Transport(Supra), covers up the controversy and lays down that if the Industrial Disputes Act relates to enforcement of a right or an application created under the Act then the only remedy available to a Workman is to approach appropriate forum under ID Act. However, Para 33 and 34 of the judgement in Miss A. Sundarambal vs. Government of Goa, Daman and Diu and Others (Supra) provides that the decrees in respect of some of the cases were left undisturbed since the position of the law was not clear, till now and it cannot be said that the respondents had not acted bonafidely in instituting the Suits. Further there is a specific mention that the judgement shall not apply to the matters pending in appeal or Second appeal. These paras are extracted as under :-

"33. Applying the above principles, we must hold that the suits filed by the respondents in these appeals were not maintainable in law. Even so, the question is whether we should set aside the decrees passed in their favour by the Civil Courts. So far as Civil Appeal No. 3100 of 1991 is concerned, this Court had, while granting leave (in S.L.P. (C) No. 194 of 1991) ordered on January 29,1991 that "insofar as respondent is concerned, he (appellants counsel) that he will abide by the decree. Application for stay is rejected". Therefore, there is no question of setting aside the decree concerned in this appeal. However, so far as the other appeals are concerned, the

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position is slightly different. In Civil Appeal No. 4948 of 1991 and in civil appeals 5386, 5387/95 arising out of S.L.P. (C) Nos. 10902 of 1992, 13152 of 1993 and 10263 of 1993, not only there is no such condition but this Court had granted stay as prayed for by the appellant-Corporation in two other matters viz., in Civil Appeal No. 9314 of 1994 and civil appeal 5389/95 arising out of S.L.P. (C) No. 14169 of 1993 the only order is to issue notice. Having regard to the facts and circumstances of these matters, we modify the decrees in these matters (except the decree concerned in Civil Appeal No. 3100 of 1991) by reducing the backwages to half. The decrees in all other respects are left undisturbed. These orders are made in view of the fact that the position of law was not clear until now and it cannot be said that the respondents had not acted bona fide in instituting the suits. Appeals disposed of accordingly.

34. It is directed that the principles enunciated in this judgement shall apply to all pending matters except where decrees have been passed by the Trial Court and the matters are pending in appeal or second appeal, as the case may be. All suits pending in the Trial Court shall be governed by the principles enunciated herein as also the suits and proceedings to be instituted hereinafter."

9. In this view of the matter, we are of the considered opinion that the Transfer Application cannot be thrown on the ground of jurisdiction and the Civil Suit was maintainable and rightly entertained by the Civil Court.

10. Now on the merits, Learned Counsel for the applicant has embarked on the judgement of the Learned Munsib that there is no rule to treat the Casual Labour as regular merely on the ground that he has completed 240 days. It has also been further argued that for regularisation any

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employee, a set of procedure has been provided the selection is required to be conducted. The vacancy which permulgated the names are called through Employment Exchange and the selection is conducted by a duly constituted board. This exercise is done when there are clear vacancies but no such exercise was done and the applicant was merely engaged as a Casual Labour without subjecting to any selection and without completing all the formalities required for appointment on regular basis. No right accrues to the applicant least to say of treating him as a regular employee.

11. Learned counsel for the respondents (plaintiff in Civil Suit) could not show us any rule or policy laying down that merely if a person who has completed 240 days will be treated as regular. Section 25 F provides certain protection to a Workman on completion of 240 days. The extract of the Section 25F of the Industrial Disputes Act are produced as under :-

"25-F. Conditions precedent to retrenchment of workmen.-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 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;

(b) the workman has been paid, at the time



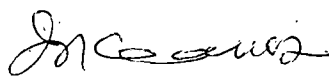



of retrenchment, compensation which shall be equivalent to fifteen days' average pay [(for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

12. The perusal of the aforesaid provision would reveal that it does not laydown anything about regularisation least to say 'automatically treated as regular' on completion of 240 days service. Thus, the judgement of the Civil Judge First Class, Tonk, suffers from infirmity inasmuch as the respondents (plaintiff in Civil Suit) could not have been treated as regular employee and since there was no regular employee, no other benefits admissible to the employee holding the post on regular basis would have been extended to him. In our view the judgement is not sustainable in law and the same deserves to be quashed.

13. In view of the aforesaid discussion, the Transfer Application ~~is~~ merits acceptance. The same is hereby allowed and the order and judgement of the Learned Civil Judge, First Class Court, Tonk, dated 01.06.1996 is hereby quashed and set aside. The Civil Suit No. 12/91 Ram Narain vs. U.O.I. & Anr. stands dismissed, accordingly. However, in the facts and circumstances of the case parties are directed to bear their own costs.

  
(M. P. SINGH)  
MEMBER (J)

  
(M. P. SINGH)  
MEMBER (A)