

(1997) 05 AHC CK 0167
In the Allahabad High Court
Case No : Second Appeal No. 3172 of 1983

Mangroo and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-05-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 80

Citation : (1997) 05 AHC CK 0167

Hon'ble Judges : R.K. Mahajan, J

Bench : Single Bench

Advocate : Radhey Shyam, for the Appellant; M.K. Upadhya and Islam, for the Respondent

Final Decision : Allowed

Judgement

R.K. Mahajan, J.—This is a Second Appeal against the judgment and decree dated 25.8.1983 passed by VIIIth Additional District Judge, Allahabad, Shri S.C. Shukla in Civil Appeal No. 490 of 1982 in Original Suit No. 66 of 1980 allowing the appeal by setting aside the judgment and decree passed by the trial court and dismissing the Plaintiff/Appellant's suit for declaration.

2. The brief facts on which this appeal has arisen are as follows:

The Plaintiff-Appellants have filed a suit in the lower court that they were employed as Gangmen in Ashes Section by Permanent Way Inspector, Northern Railway as Class IV temporary employees at Allahabad and they were discharged from service w.e.f. 13.1.1978 without any notice. It is further alleged that suit was filed earlier also but for want of notice u/s 80, C. P. C, the same was dismissed and after serving the due notice u/s 80, CPC against the Defendants-Respondents, the suit has been again filed. It has been challenged in the suit that their discharge from the employment was arbitrary, illegal as the Juniors have been retained whereas they have been shunted out. It was also alleged that they have acquired the status of temporary Gangmen as they put in more than

four months service and as such could not be discharged without serving any notice of one month. The claim of the Plaintiffs-Appellants was denied by the Railway. The trial court found the contention of the Appellants valid regarding their temporary status. The trial court also relied upon Railway Board's Circular No. II-77/CL-146, dated 8.6.1981 to the effect that artificial break in continuous service shall be ignored. The trial court had rejected the paid vouchers produced by the Railway administration as admissible as they were not exhibited. They were thirty seven in number. The appellate court dismissed the suit and allowed the appeal of Defendants-Respondents on the ground that they have not completed four months period. The appellate court was also of the view that even if in these circumstances suit is decreed, it would mean to upset the entire state of things and those who are litigants in this case will get the salary without work and will be a bad example before the worker class. The appellate court also repelled the plea that the claim is not triable by the civil court. On these findings, the appellate court dismissed the suit holding that they are not having the status of temporary employees.

3. Feeling aggrieved the present Second Appeal has been filed. At the time of admission, the following substantial questions of law have been framed:

1. Whether the lower appellate court erred in relying upon certain vouchers filed by the Respondents which had been rejected as improved by the trial court?

2 Whether the lower appellate court has erred in not taking into consideration material evidence filed by the Plaintiff in the shape of Service Cards of Plaintiffs 1 and 3?

3 Whether the lower appellate court has wrongly held that the civil court had no Jurisdiction in this matter?

4. Shri Radhey Shyam, learned Counsel for the Appellants has submitted that the trial court has completely ignored the evidence of the Appellants and should not have ignored the finding of the appellate court without valid reasons. It has further been argued that the evidence of cards of employment showing working days have been ignored without any rhyme or reason. He further submitted that finding should not have been disturbed. He further submitted that the appellate court wrongly relied upon the evidence of vouchers which were produced by the Respondents. I am in agreement with the learned Counsel for the Plaintiff-Appellants. Reference would be made to record of service of casual labour Ram Chandra. It shows that he is working since 28.10.1976 and the total number of working days is 383 days in different spells. It is correct that the employment is not continuous. It is with breaks. It generally happens that the employment is given against the work available and these poor labourers do a very typical type of work. Similarly, Shri Mangroo's record shows that he is working from 1969 and total working days upto 1976 Is 1518. It is also correct that he has not worked continuously for four months but the intention of the Railway circular is that this artificial break is to be ignored. Similarly, there are so many rulings of

the Apex Court and which requires no reiteration laying the principle that artificial breaks are to be discarded and are ignored in computing the period for service.

5. Lower court has also given finding regarding third labourer Shri Moti Lal worked from 1976 to 13.1.1978 by relying on his statement. The lower court in its judgment referred the evidence of the labourers and ignored the evidence of Railway Authorities.

6. I have perused the order of the lower court and I find that the lower court has discussed the evidence regarding their spell of employment and conclusion of the lower court was correct and the appellate court should not have disturbed it. The appellate court should not have relied upon the vouchers. In paid vouchers, the presence of labourers is marked. It has not indicated categorically from record start of period of their employment upto date. The fact remains that these labourers worked at different spells of time depending upon the availability of work and their statement should not have been disbelieved.

7. Reliance has been placed on ruling of Hon"ble Supreme Court Union of India and Ors. v. Basant Lal and Ors. (1992) SCC 611, in which it was observed casual labour employed by Railway -- Continuously working for over 120 days. Held, entitled to be regularised as temporary workers. Railway cannot deny them the temporary status on the ground that they had been appointed as casual labour on a project work and not on construction work on open line and as such they would acquire the temporary status only after completing 360 days of service. In this case, the labourers have worked in open line and not on project and also not on construction work. So after completion of 120 days, they are entitled to status of temporary workmen. In the aforesaid judgment, so many circulars have been quoted regarding regularisation of workers who have completed four months service. Relevant reference of circular is quoted from the judgment. The worker has been given a casual labour grade. The Tribunal also referred the letter of General Manager, Northern Railway dated 29.12.1978 which contained reference of earlier reference vide letters dated 21/22 March, 1972, 23rd May, 1972 and 27th November, 1975 in accordance with which casual labourers whether employed on project or otherwise who had completed four months" continuous service were required to be considered for employment by Screening Committee for absorption against regular Class IV posts who as a rule be appointed against Class IV posts that may be required for operation and maintenance of new assets created and they were eligible for appointment on new section of the open line of the Railway concerned irrespective of the limitation of the Immediate area of the construction. It has been also observed that notice has to be given before their termination. The recent trend of the Hon"ble Supreme Court judgments, i.e., apparent in the Dharwa District P. W. D. Literate Railway Wage Employees Association v. State of Karnataka 1990 (2) SLR 43 and Mool Raj Upadhyaya v. State of Himachal Pradesh and Ors. JT 1994 (3) 453, is that the scheme has to be framed for the absorption and regularisation of daily wage employees/casual

workers and certain guidelines have been issued. In the judgment of Hon'ble Supreme Court Union of India v. Basant Lal, (supra), the casual labourers were ordered to be regularised and they were given temporary status of Class IV employees as postulated in Chapter XXV of Indian Railway Establishment Manual. It has been observed in the Chapter aforesaid that the casual labourer should not be deliberately discharged with a view to causing an artificial break in their service and thus prevent their attaining the temporary status. There is also guidelines given in Rule 2512 of Indian Railway Establishment Manual (Second Edition) regarding absorption of casual labour in regular vacancies I am of the considered view that the lower appellate court placed reliance on inadmissible evidence of paid vouchers and ignored the evidence of card and oral evidence.

8. The next point which has been submitted is that the appellate court should not have ignored the finding of the lower court and to this effect J.B. Sharma Vs. State of Madhya Pradesh and Another, , has been relied upon which lays down that in case the appellate court decrees the suit on assumption not supported by evidence and without considering the entire evidence, the High Court is Justified in setting aside finding u/s 100, CPC So the legal aspect is that the Second Appeal, if the approach of the lower court in appraisal of the evidence is unreasonable or document has been misinterpreted by wrong approach of law or there is a wrong approach also in the application of law, the High Court is certainly entitled to interfere in the finding. Keeping in view of this principle, the finding of the appellate court is not sustainable.

9. It has been submitted by Shri Radhey Shyam. learned Counsel for the Appellants that the matter is not covered under Industrial Disputes Act and has The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, and submitted that lower appellate court has wrongly relied upon this judgment as this is not an industrial dispute nor industrial dispute has been raised. He submits that it is enforcement of rules and regulations framed by the circulars under Railway Establishment Manual and declaration can be sought for. Since it is a declaration of a status and existing legal rights and in the facts and circumstances of the case, the civil court can declare the status and after 17 years it would not be in the interest of justice to disturb the finding on technical ground. Justice is supreme than technicalities. Should litigant suffer for technicalities. Courts are to deliver Justice and not to indulge in technicalities after such a prolonged litigation.

10. I, therefore, do not agree that this is covered by the Industrial Disputes Act.

11. I am of the view that the discharge of the Plaintiffs-Appellants was punitive as no notice was served and opportunity was not given as required under the Railway Establishment Rules. I am further of the view that termination of the labourers is arbitrary and illegal.

12. In view of the discussions and reasons recorded, the judgment of the appellate court is set aside and the appeal is allowed and the suit of the Plaintiffs

is decreed with a modification that the Railway Department can prepare a scheme, if not in existence, for their regularisation and absorption considering the facts and circumstances of the case.

13. With the aforesaid observations, the appeal is allowed and the judgment and decree dated 25.6.1983 is set aside and the suit of the Plaintiffs-Appellants is decreed.