

(2005) 09 AHC CK 0317
In the Allahabad High Court
Case No : Second Appeal No. 894 of 1985

Radhey Shyam Mishra

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 30-09-2005

Acts Referred:

Administrative Tribunals Act, 1985 — Section 29(2)
Constitution of India, 1950 — Article 311(2)

Citation : (2006) 5 AWC 4321

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : V.K. Pandey and R.P. Mishra, for the Appellant; Govind Saran and K.C. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard learned counsel for the appellant and learned counsel for the respondent.

2. The Substantial question of law that arise for consideration in Second Appeal and framed at the time of admission is whether a casual labourer who had acquired temporary status under Rule 2501 (b) of the Indian Railway Establishment Manual is debarred from the rights and privileges admissible to a temporary employee.

3. The facts giving rise to this Second Appeal are, that the plaintiff after having passed the written test for appointment as a "Skilled Mechanic" was appointed, on 15.10.1975, on daily rated wages at Rs. 8/- and was posted at Bindki Railway Station Fatehpur under the Telecommunication Inspector, Northern Railway, Kanpur. It was alleged in the plaint that he worked upto 27.4.1976 for 188 days and was thereafter reappointed on the same post w.e.f. 4.5.1976 on daily rated wages. On completing six months service, he was paid Rs. 13.30 per day w.e.f. 4.11.1976. He was not provided with any railway quarters. He was trade tested in May 1978 for the post of WM/TCM/Skilled Mechanic by oral, written and

practical examinations on 27.8.1977. While performing the duties at Bindki Railway Station, he fell ill suffering from diarrhoea and became physically incapable of performance of duties. He had to leave at about 04.00 PM for easing himself and requested his colleagues Shri Maharaj Singh to perform his duties. He left at 08.00 PM after handing over the charge to Shri Maharaj Singh.

4. On the next day, he was ready to take charge of his duties. He met Sri B. Ram, Telecommunication Inspector, who refused to allow him to resume duties on 31.8.1977. He received a letter from Telecommunication Inspector, Microwave, Kanpur Centre alleging that he had absconded from duties and was found absent at 07.05 hours on 27.8.1977. On 2.9.1976 plaintiff submitted his explanation. Thereafter he was not allowed to join duties giving him cause of action to file the suit.

5. Both the parties filed documents in evidence. Plaintiff did not examine himself and did not produce any witness. Both the parties dispensed with formal proof of documentary evidence and did not choose to examine any witnesses. The trial court found that the plaintiff had acquired temporary status in employment and that his services could not be terminated without following the procedure of giving 14 days notice as provided in para 2302 of the Indian Railway Establishment Manual Vol. 2. The suit was consequently decreed with the declaration that the plaintiff is entitled to work as skilled mechanic. The statement of the defendant that his services came to an end on 27.8.1974 was declared to be void. The First Appeal No. 482 of 1983 against judgement and decree dated 19.4.1983 was, however, allowed by the XII Additional District Judge, Kanpur by the judgement and order dated 28.1.1985 on the ground that the plaintiff was not absorbed in service and did not attain temporary status. The Railway Establishment Manual does not have statutory force and that the plaintiff had abandoned his employment which was proved by the fact that he had pleaded guilty and had prayed for pardon.

6. Learned counsel for the appellant submits that having worked for more than six months as a Skilled Mechanic, the plaintiff had attained temporary status. It was not necessary for the railways to issue a specific order of absorption. Para 2511 of Indian Railways Establishment Manual V.II gives the employee the benefit of temporary employment. It is a protection given to the casual labourers against exploitation and the services of such an employee can be terminated only after following the procedure of giving notice under para 2302 of the Railways Establishment Manual Vol. II. The termination in such case can only be made, if it is on account of the expiry of the officiating vacancy, or removal and dismissal from service as a disciplinary measure after following with the provisions of Article 311(2) of the Constitution of India, or when he is deemed to have resigned from his appointment. It gives a right to the employee to a notice and pay for the period of notice provided a notice of termination is given by the authority which is not lower than the appointing authority and where he is an apprentice, after following the provisions of Industrial Disputes Act 1947.

7. In the present case, it is denied in the written statement that the plaintiff had completed more than six months of daily rated service. In para 1 and 2 it is admitted that the petitioner was appointed as Skilled Mechanic w.e.f. 4.5.1976. He took leave for attending the selections conducted by the headquarters for recruitment of mechanics from open market. In para 15 it is stated that there was no question of removing the plaintiff from retrospective effect from 27.8.1976 as he was not at all in service at that time. In para 23 it is stated that he was found absent from duties and on an enquiry it was found that he had left the place of duty at 08.00 hours on 26.8.1977 and had not come back. Thereafter he did not turn up till 31.8.1977. When he came to Kanpur on 31.8.1977 he was required to give his explanation for his absence, on which he submitted a reply and accepted his guilt, left the place and thereafter did not turn up for duties.

8. The explanation submitted by the petitioner vide his letter dated 2.9.1977 clearly states that he had requested Sri Maharaj Singh to look after the duty on 27.8.1977, as he had very urgent work. He admitted that he did not take permission before leaving duties. On 2.12.1977 the plaintiff was informed as follows;

"Ref.: Your application dated 14/11/77

It is intimated that you were engaged as a casual rated worker in the Artisan category against temporary labour application sanction only, and, therefore, your engagement on casual rated basis is governed by the extant rules on the subject. You were not permanent employee of the railway. Sr. Signal & Telecom. Engineer/MW"

9. I find that Appellate Court grossly erred in law in holding that the Indian Railway Establishment Manual, Part II is non statutory compilation of rules. In *L. Robert D'Souza v. The Ex. Engineer Southern Railway* AIR 1982 SC 854 it was held that Indian Railway Establishment Manual Vol. II is a compilation of Rules and is applicable as conditions of service to the Railway servants. The plaintiff having worked for more than six months continuously had attained the temporary status under para 2511 (1) and could only be terminated from service after following the procedure under para 2302 which conforms to para 2505 for termination of service and the provisions of Article 311(2) of Constitution of India. There was no evidence on record and that the documents filed by the parties do not justify the findings of the lower appellate court that the plaintiff quit his job on his own accord. This was not even the case set up in the written statement. The letter dated 2.12.1997 in reply did not even suggest that plaintiff had quit the job.

10. It is admitted that the Railway administration did not give any notice of termination of service to the plaintiff-appellant. Even if he had left the place of his duty without informing his superior officers, he could have explained his absence. I find that sufficient explanation was given by the plaintiff for his

absence. He urgently required leave and that when he came back on the next date he was not allowed to join duties. He was just informed that as a temporary labour his engagement on casual rated basis is governed by the rules implying that his services could be disposed off at any time.

11. This matter was not transferred as Central Administrative Tribunal as the Second Appeals have been saved by Section 29(2) of the Administrative Tribunals Act. The lower appellate court committed gross error of law in holding that the petitioner had quit the job. The plaintiff had attained the temporary status of employment. His services could not be terminated without following the procedure provided in para 2302 of the Indian Railway Establishment Manual.

12. Shri Govind Saran, learned counsel for the defendant respondent states that the findings that plaintiff-appellant had quit his job are findings of fact, and that the Railway Establishment Manual is not statutory in nature, vide The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others, He further submits that no substantial question of law arises for consideration vide Govindaraju Vs. Mariamman,

13. I find that the pleadings and the documentary evidence led by parties, clearly raised the question of the status of employment and its consequences on termination of service. It is a substantial question of law which was not appreciated by the Lower Appellate Court and was wrongly decided against the plaintiff, who had not quit the job and was entitled to notice of termination. It was a case of misconduct and called for an enquiry before the notice of termination could be given.

14. The plaintiff as such is entitled to the reliefs claimed in the suit.

15. The Second Appeal is allowed. The judgement passed by XII the Additional District Judge, in Civil Appeal No. 482 dated 28.1.1981 and the decree dated 23.2.1985 is set aside. The plaintiff suit shall stand decreed in terms of the directions issued by the trial court. The plaintiff shall be entitled to the costs of the suit throughout.