

UNREPORTABLE

*** HIGH COURT OF DELHI AT NEW DELHI**

+ WP (C) No. 21387/2005

Pronounced on : February 15, 2008

UNIOIN OF INDIA & ORS. Petitioners

! through : Mr. T. Mahipal, Adv.

VERSUS

\$ SH. INNOCENT SIMON Respondent

! through : Ms. Meenu Maini, Adv.

CORAM :-

*** THE HON'BLE MR. JUSTICE A.K.SIKRI
THE HON'BLE MR. JUSTICE VIPIN SANGHI**

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

A.K. SIKRI, J.

1. Union of India has preferred this petition under Article 226 of the Constitution challenging the judgment dated 20.4.2005 rendered by the Central Administrative Tribunal, New Delhi, in OA No. 1217/2000. By the said judgment, the tribunal has directed that name of the respondent be included in the Live Causal Labour Register and he be also

considered for re-engagement and other consequential benefits at par with juniors. In order to appreciate the controversy, it would be necessary to take note of the basic facts. The respondent had worked as casual labour with the Northern Railway at different locations and in different spells as under:

- i. From 3.5.1976 to 30.5.1976 under PWI Northern Railway Jagadhari Workshop.
- ii. From 16.9.1980 to 25.9.1980 under PWI Northern Railway, Ambala.
- iii. From 1.12.1982 to 14.2.1983 under PW1, Northern Railway, Saharanpur.

2. It is clear that on the first two occasions the respondent had worked for 27 days and 10 days respectively whereas his spell on the third occasion was about 2½ months. After 1983, the respondent was never engaged. Twelve years thereafter, he filed OA No. 103/1995 before the Central Administrative Tribunal praying for direction for entering his name in the Live Casual Labour Register. This OA was disposed of on 18.11.1996 directing the petitioners to examine the fact whether he was qualified to be included in the LCLR and inform the position. This OA was disposed of

by common order passed along with other two OAs. On 11.2.1998, Northern Railway, Ambala Division, got a notice published in the "Daily News Paper" inviting the applications from all the persons who had worked as casual labour under Ambala Division for being re-engaged for Group D post. Several persons applied but respondent was not one of those who ever responded and therefore, he lost that opportunity for re-engagement.

3. Be that as it may, the case of the respondent was considered having regard to the directions of the Tribunal and order dated 11.2.1999 was passed stating that his name could not be registered since he had worked before 1.1.1981 and did not file the required representation for his name being entered in the LCLR up to 31.3.1987. We may note at this stage that in so far as third spell of the respondent from 1.12.1982 to 14.2.1983 is concerned, the case of the petitioners as per their record is that the respondent did not work during that period and he had worked only on the first two occasions for 27 days and 10 days respectively.

4. After receiving this rejection order, the respondent filed another OA No. 1217/2000 challenging the validity of order

dated 6.7.1999. The petitioners herein contested this application on various grounds which included the contention that the OA was barred by limitation as cause of action arose in the year 1987 when the name of the respondent was not entered in the LCLR. The petitioners also contended that on 30.4.1997 the name of the respondent was wrongly included by Divisional Engineer-I, Northern Railway without the required approval of the competent authority and simply in compliance of order of the Tribunal passed in OA No. 103/95. This OA was dismissed by the Tribunal on 14.2.2001 relying upon the Full Bench of Tribunal dated 10.5.2000 titled as "Mahabir Singh & Others v. Union of India & Others" and holding that right of getting the name entered in the LCLR is not a continuing cause of action and as the respondent did not approach the Tribunal within the time limit, the said application was barred by limitation. The respondent challenged that order by filing writ petition No. 5868/2001 before this Court. Order of the Tribunal was set aside vide judgment dated 25.2.2005 by this Court and matter was sent for fresh adjudication. After the remand of the case, the Tribunal opined that the limitation was not an impediment which would come in the way of the respondent in view of the order of the High Court. The

Tribunal, thus, considered the matter on merits and held that the impugned order dated 6.7.1999 was not in accordance with law in view of the judgment of the Tribunal in “Mithal Lal v. Union of India & Ors.” - OA-1220/88(T) decided on 14.3.1989 holding that the instructions issued by Railways on 28.8.1997 would apply even to those casual workers who were disengaged before 1.1.1981 as well. It was, thus, held that since juniors to the respondent were included in LCLR, the name of the respondent should also be included, he be considered for re-engagement and for other consequential benefits. In this writ petition, the Union of India has challenged the aforesaid judgment primarily taking two grounds namely:

- i. The Tribunal was wrong in holding that question of limitation would not be an impediment as the High Court had not decided the issue of limitation in its order dated 25.2.2005.
- ii. Even on merits, the respondent had no claim.

5. We are of the opinion that this petition deserves to be allowed on both counts. We have perused the order dated 25.2.2005 passed by this Court in writ petition No. 5868/2001. Reading of the said order would indicate that

there was a challenge to the Tribunal's earlier order dismissing the OA on the grounds of limitation. However, what was argued by the respondent was that the question of limitation was decided without taking into consideration letter dated 21.10.1998 of the Divisional Railway Manager, Amabala Cantt. Addressed to the General Manager, Northern Railway. The said order was reproduced and after reproduction of the said letter, the High Court proceeded to observe as under:

“Therefore, it is contended before us that the impugned order suffers from non-application of mind and deserves to be set aside. Without saying anything on the merits, we set aside the impugned order and remand the case back to the Tribunal to decide the case on merits.”

6. It is clear from the above that this High Court simply took into consideration the argument of the respondent's counsel to the effect that while deciding the question of limitation the letter dated 21.10.1998 was not taken into consideration and therefore order suffers from non-application of mind. On this ground and without deciding the question of limitation itself, the High Court set aside the earlier order of the Tribunal and remanded the case back to the Tribunal “to decide the case on merits”.

However, the word “merit” in the context would clearly show that merit relating to the contention about the limitation as advanced by the petitioner herein and rebutted by the respondent herein. The High Court itself did not at all decide that question and therefore, it cannot be said that the Tribunal was not to decide the issue of limitation but only the claim of the petitioner in OA on merits. Therefore, in the impugned judgment Tribunal has wrongly concluded that in view of the aforesaid order, the issue of limitation would not be an impediment. In fact the intention behind the order dated 25.2.2005 is clear namely to decide the question of limitation on merits i.e. after taking into consideration letter dated 21.10.1998 on which reliance was placed by the counsel for the respondent herein.

7. In these circumstances, normally the course of action should have been to set aside the order and remand the case back to the Tribunal. However, we feel that no purpose would be served as even on merits the respondent has no case in view of legal position which has emerged in recent years.

8. The respondent herein worked on casual basis only on two

occasions for 27 days and 10 days. It happened in the years 1976 and 1980 respectively. In so far the claim of the respondent that he worked from 1.12.1982 to 14.2.1983, there is a dispute about that. Even if it is presumed that the respondent is correct in his averment that from 1976 to 1983 i.e. over a period of seven years the petitioner worked for about 3½ months in all. The respondent cannot claim inclusion of his name in LCLR and further consequential benefits having regard to the judgment of Constitution Bench of Apex Court in the Secretary, State of Karnataka v. Uma Devi, 2006 (4) SCALE 197.

9. We may point out that though Tribunal was influenced by the fact that some of the juniors were included in LCLR, neither any particulars are furnished by the respondent giving the basis of his inclusion nor is there any discussion about it in the impugned judgment. On the contrary petitioners have pointed out that on 11.2.1998 notice was published in "Daily News Paper" inviting applications from all such persons who had worked as casual labour and those persons who applied their cases were considered and among those who were found suitable were re-engaged.

10. Respondent missed the bus by not applying pursuant to

the said public notice. In case some of the persons who were allegedly junior to the respondent were re-engaged in the aforesaid circumstances, respondent cannot claim any right on that basis. It is also not understood as to in what manner the respondent who hardly worked at the best for 3½ months can claim the so-called seniority. We, therefore, allow this writ petition, set aside the impugned judgment of the Tribunal and dismiss the OA filed by the respondent before the Tribunal.

A.K. SIKRI, J

VIPIN SANGHI, J

FEBRUARY 15, 2008
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