



WEB COPY



W.A.No.2002 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.10.2022**

CORAM:

THE HONOURABLE MR.**JUSTICE R.SUBRAMANIAN**

AND

THE HONOURABLE MR.**JUSTICE K.KUMARESH BABU**

Writ Appeal No.2002 of 2019
and CMP No. 13538 of 2019

A. Natarajan

..Appellant

Vs.

1. The Chief Administrative Officer,
(Constructions), Southern Railway,
Egmore, Chennai 8.

2. The Presiding Officer,
Central Government Industrial Tribunal,
Cum-Labour Court, Chennai.

.. Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court dated 12.04.2019 passed in W.P.No.2873 of 2013.

For Appellant : Mr.L.Chandrakumar

For Respondents : Mr.V.Radhakrishnan,
Senior Counsel
for Ms.T.P.Savitha

R2 - Tribunal



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JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The appellant is aggrieved by the order in the Writ Petition, the challenge in which was to the order of the Central Government Industrial Tribunal cum Labour Court, Chennai, made in ID No.12 of 2011.

2. The appellant was appointed as a Bungalow Lascar in the Bungalow of the Deputy Chief Engineer, Gauge Conversion, Southern Railway, Tiruchirapalli with effect from 16.06.2005. The appointment was subject to several conditions. The appointment orders specifically stated that the appointment is only as a substitute and the appointee will have no claim for permanent status of a Railway employee. Upon completion of 120 days of continuous service, the appellant would be treated as a Temporary Railway Servant. The appointment order also provided that his services could be dispensed with at any time, if his service is found unsatisfactory by the officer concerned.



3. On 14.10.2005 an order of termination was issued stating that the services of the appellant has been found to be unsatisfactory and he was unauthorisedly absent from 12.09.2005, the termination was to take effect from 12.09.2005. This termination was challenged by the appellant before the Central Government Industrial Tribunal in Industrial Dispute (ID) No.12 of 2011, the Central Government Industrial Tribunal allowed the ID, set aside the order of dismissal and directed reinstatement. Aggrieved the Railways came up with the Writ Petition in WP No.2873 of 2013.

4. The Writ Court found that the petitioner having not completed 120 days of continuous service is not entitled to the benefits available to a temporary railway employee. The Writ Court also found that the order of termination on the ground that the services are unsatisfactory issued within the period of 120 days cannot be considered to be one casting a stigma on the petitioner. The claim of the appellant that he would be entitled to a month's notice as per the appointment order as a temporary railway servant was also rejected by the Writ Court. Aggrieved, the appellant is before us.



5. We have heard Mr.L.Chandrakumar, learned counsel appearing for the appellant and Mr.V.Radhakrishnan, learned Senior Counsel instructed by Ms.T.P.Savitha for the respondent.

6. Mr.L.Chandrakumar, learned counsel appearing for the appellant would submit that even as per the appointment order, the appellant is entitled to notice as the administration is bound to observe the conditions applicable to substitute/temporary service. It is very clear from the conditions that it will be open to the administration to terminate the services of the petitioner at any time, if it is found unsatisfactory. The appellant has, admittedly, not completed 120 days of service on the date when his services were terminated. Therefore, he would not be entitled to the privileges allowed to a temporary railway servant. The appellant is only a substitute employee as on the date of termination.

7. The Writ Court has considered this aspect and has rejected the contention of the petitioner relying upon the judgment of the Hon'ble Supreme Court in *Kunwar Arun Kumar v. U.P.Hill Electronics Corporation Ltd & Others*, reported in 1997 (2) SCC 191, wherein the



Hon'ble Supreme Court had held that termination of a probationer by observing that the services are not satisfactory would not cast a stigma on the probationer. The Writ Court has rightly concluded that the petitioner being a substitute employee would not be entitled to the privileges attached to a temporary railway servant.

8. On facts we find that the petitioner has not acquired the status of temporary railway servant and he was not entitled to notice or an enquiry before termination. We do not see any error in the order of the Writ Court, so as to enable us to interfere with the conclusions of the Writ Court, excepting to observe that the Writ Court has not adverted to the fact that the termination is one with retrospective effect from 12.09.2005. It is settled position of service law that no termination can be retrospective. Therefore, the termination could only be from the date of the order of termination, namely 14.10.2005. The petitioner therefore would be entitled to the salary for the period between 12.09.2005 and 14.10.2005.

9. In view of the above, the Writ Appeal is **partly allowed**, the order of termination would take effect from 14.10.2005 instead of



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12.09.2005, petitioner would be entitled to salary for the period between 12.09.2005 and 14.10.2005. In other respects the order of the Writ Court is confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) (K.KUMARESH BABU, J.)
28.10.2022

Index: No
Internet: Yes
speaking order
jv

To

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