

**Court No. - 5**

**Case :-** WRIT - A No. - 1167 of 1999

**Petitioner :-** Divisional Railway Manager Northern Railway

**Respondent :-** Presiding Officer Central Govt.

**Counsel for Petitioner :-** Mohd.Arif Khan, Mahendra Kumar Mishra, Neerav Chitravanshi

**Counsel for Respondent :-** Pranesh Kumar Sinha

**Hon'ble Irshad Ali, J.**

1. The case is called out in the revised call.
2. Heard learned counsel for the petitioner. None for the respondent.
3. By means of the present writ petition, the petitioner has challenged an award dated 30.6.1998, passed by the respondent No.1.
4. Factual matrix of the case is that respondent No.3 Ashish Kumar Barua was appointed as a Casual Labour and was declared successful in medical test. It was further pleaded that he was engaged prior to 1.6.1979 and was reappointed on the basis of previous work and performance on 22.11.1982 as substitute porter in grade 192-232. He had completed 240 days and on completion of 120 days, he was accorded temporary status. The service of the respondent No.3 was terminated on 11.6.1987 in breach of provision of Section 25-F of the Industrial Disputes Act.
5. The respondent No.3 raised a dispute by filing claim petition before the respondent No.1. In the claim petition, it was further pleaded that neither any notice, nor pay in lieu thereof as well as no retrenchment compensation was given to the respondent No.3 prior to termination of service, therefore, his termination is bad in law. The petitioner has contested the petition and filed his objection, denying the allegations made in the petition. It was further pleaded that the respondent No.3 had throughout been casual substitute, employed on day to day casualty and he is not a railway servant nor had acquired a temporary status. It was further pleaded that in view of Section 2-O, the respondent No.3, who was engaged as casual labour, is not workman and cannot assail the advantage under the Industrial Disputes Act. The claim statement is highly vague, ambiguous and is highly belated. The old records have been weeded out and the claim is outside the ambit of the Act.

6. The respondent No.3 has filed his reply to the objection cum reply filed by the petitioner. In support of the case, the respondent No.3 had examined himself besides that he had filed exhibit W-1 to W-10. Exhibit-1 was the letter dated 20.12.1982 which shows that respondent No.3 was allowed to work as a casual labour against day to day casualties. The petitioner has challenged the award on the following grounds :-

*"A) Because the opposite party no. 3 having failed to establish his case by leading positive evidence on record to show that he had ever been appointed as a Porter and had completed more than 240 days, thereby acquired the status of temporary servant, thereby the opposite party no. 1 has erred in law in giving the award holding the order of termination to be illegal which vitiates the order passed.*

*B) Because the opposite party no. 3 who was engaged casual labour on day to day casualties had not completed 240 days in a year and without there being any positive evidence on record to substantiate the allegations made by opposite party no. 3 merely in the absence of any evidence in rebuttal the award has been made holding the order of termination to be illegal and vitiated in law.*

*C) Because while making the award the opposite party no. 1 has failed to consider that the burden lies on opposite party no. 3 to substantiate his case by leading positive evidence to the effect that he was allowed to work as ported and has acquired the temporary status which he had failed to prove, the opposite party no. 1 has erred in law in giving the award in his favour holding the order of termination to be illegal for non-compliance of the provisions of Section 25-F of the Act, thereby the award is bad in law."*

7. While making submission, learned counsel for the petitioner invited attention of this Court on paragraph 3 of the objection filed before the labour court, wherein it is stated that workman in dispute has throughout been a casual substitute, employed on day to day casualties and in this view of the matter in spite of allegedly having been accorded temporary status, he is not and has never been a railway servant. Next submission is that the labour court has committed manifest error of law in reinstating the respondent No.3 in service on the ground that there is non compliance of Section 25-F, therefore, the order is liable to be set aside.

8. After having heard the submission advanced by learned counsel for the petitioner, I perused the material on record.

9. The finding recorded by the labour court has not been assailed in the writ petition that the labour court, due to non consideration of the material filed before it, has recorded perverse finding. It has also not been challenged that the reply submitted by the petitioner was not taken into consideration while passing the impugned order.

10. In the opinion of the Court, the impugned order does not suffer from infirmity or illegality. The writ petition lacks merit and is hereby **dismissed**.

**Order Date :- 20.4.2023**

Gautam