

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I

O.A. No.
Tx/xxx/No.

1392/ 1988

199

DATE OF DECISION 8.10.91Anand Kumar

Petitioner

Shri Mahesh Srivastava

Advocate for the Petitioner(s)

Versus
 Union of India, through
 its Secretary, Ministry of Commerce,
 Udyog Bhawan, New Delhi-1 and another

Respondent

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S.P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. T.S. OBEROI, MEMBER(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Y
2. To be referred to the Reporter or not ? Y
3. Whether their Lordships wish to see the fair copy of the Judgement ? W
4. Whether it needs to be circulated to other Benches of the Tribunal ? W

JUDGMENT

(Hon'ble Shri S.P. Mukerji, Vice Chairman)

In this application dated 11.7.88 the applicant who had been working as an Attendant on a daily wage basis in the Craft Museum, Pragati Maidan, New Delhi under the Deputy Director in the Office of the Development Commissioner for Handicrafts of the Ministry of Commerce, has challenged the order of termination of his services and has prayed that the respondents be directed to reinstate him with continuity of service and full back wages. The material facts of the case are as follows.

2. The applicant was recruited as Gallery Attendant through the Employment Exchange after an interview and joined duty on 23.11.1982. According to him he was kept in continuous employment till 30.6.1984, again given employment with a short gap of three days from 4.7.1984 to 30.9.84, again with a short gap of sixteen days reengaged from 17.10.1984 to 30.9.1985 and again with a gap of nine days, reengaged

from 9.10.1985 to 30.9.1986. In support of the period of his service he has produced a Certificate dated 14.8.86 at Annexure-A issued by the Deputy Director of the Crafts Museum. His grievance is that on the 1st of October, 1986 his services were terminated without following the procedure laid down in Section 25F of the Industrial Disputes Act. He has challenged the termination of his services further on the ground that four persons namely, S/Shri Revinder Pal, Sant Ram, Chat Ram and Ishwar Chand, who were junior to him, have been retained in service violating the principle of 'last come first go'. He has argued that having completed 240 days in a year, he is entitled to the protection contemplated under Section 25F and 25G of the Industrial Disputes Act. He raised an Industrial Dispute, but the Labour Commissioner vide his order dated 1.9.87 at Annexure-C rejected his case by an ex-parte order.

3. In the reply dated 5th December, 1988 the respondents have stated that the services of daily wage workers are dispensed with as soon as the purpose for which they are taken, is over. It has also been stated that the Industrial Disputes Act is not applicable to the Crafts Museum as it does not come in the category of Industry. In the parawise written statement respondents 1 and 2 have further stated that since the cause of action arose on 30.9.86, the application is time-barred. It has further been repeated that services of daily wage workers are dispensed with as soon as the purpose is over.

4. In the rejoinder the applicant has denied that the purpose for which he had been recruited is over. He has also contended that the respondents' assertion that Labour Court has no jurisdiction does not debar the jurisdiction of the Tribunal. He has argued

that the Tribunal has jurisdiction to adjudicate upon this case.

5. Neither of the parties nor their learned counsel were present despite the fact that this case has been allowed to remain on daily board since 19.9.91. The applicant had, as a matter of fact, filed a Miscellaneous Petition for early hearing on which the Hon'ble Chairman directed on 11.7.90 that the case be listed for final hearing on 20.11.90. No appearance was entered on that date. Thereafter from 9.8.91 the case was listed as a Special Bench case. Considering the circumstances of the case and the status of the applicant who is a low-paid employee, we propose to dispose of the application on merits as follows.

6. As regards the preliminary objection on limitation, we are satisfied that the cause of action arose after the Labour Commissioner passed the order dated 1.9.87 at Annexure-C rejecting the applicant's case for raising an Industrial Dispute. The present application was filed on 18th July, 1988 well within the period of limitation of one year. The respondents have not specifically denied the averment made by the applicant that four persons junior to him have been retained while his services have been dispensed with. This, according to us, is discrimination violating Articles 14/16 of the Constitution of India. The only reason given by the respondents is that the services of casual workers can be terminated in Government Department as soon as the purpose for which he was taken, is over. This general and bland statement does not, to our mind, justify the termination of the applicant's services while his juniors have been retained. It is nowhere stated that the purpose for which the applicant 'per se' was recruited, does not survive. Having been kept under continuous employment with short breaks, for more than three years it does not behove the respondents to summarily terminate the applicant's services while retaining his juniors. In A.Padamavally and ors. v.CPWD and Telecom,

1991(1)ATJ 197, a Five Member Bench of the Tribunal held that this Tribunal can entertain an application even in a case falling under the Industrial Disputes Act if there is violation of natural justice or Article 14 of the Constitution. The following observations of the Five Member Bench would be pertinent:-

" 38. A resume of the above decisions would go to establish that administrative authorities also are required to act fairly and in accordance with the principles of natural justice when determining rights of parties. If the authority acts contrary to law or the statute, the action of the authority can be set aside by the superior courts, exercising jurisdiction under Article 226 of the Constitution of India. Alternatively, it is open to the employee to plead violation of Article 14 of the Constitution and thereby seek redress without approaching the Industrial Tribunal for adjudication of rights vested under the provisions of the ID Act. The decisions relied upon by the learned Standing Counsel for the Central Government Sri Madan Mohan Rao do not militate against the view that if an order of termination is passed in violation of statutory requirement, it cannot be declared invalid or a nullity. None of the decisions cited namely Premier Automobiles case or Rehtas Industries case or Basant Kumar's case or the Full Bench of the Patna High Court rendered in Dinesh Prasad v. State of Bihar, lay down that where an employer has terminated the services of an employee contravening the statutory requirements contained in the ID Act the High Courts cannot interfere under Article 226 of the Constitution. It has nowhere been held that the High Court cannot declare the act or the order sought to be impugned either a nullity or as invalid and to direct reinstatement in the case of termination from service."

7. Since in the present application before us there has been a clear violation of Article 14 of the Constitution, without going into the question of the application or otherwise of the provisions of the Industrial Disputes Act, we allow this application and direct

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the respondents to reinstate the applicant forthwith and sanction to him back wages for the periods any of his juniors were allowed in casual employment after 30.9.1986. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.

T.S. Oberoi
(T.S. Oberoi)
Member (J)

S.P. Mukerji
(S.P. Mukerji)
Vice Chairman

Pronounced in the open court by me

S.P. Mukerji
8.7.91