IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA 48/1990 AR. Date of decision: 14.09.1993

Shri Surinder Kumar ...Petitioner

Versus

Union of India & Others ...Respondents

For the Petitioner ...Shri R.N. Saxena, Counsel

For the Respondents ...Mrs. Avnish Ahlawat, Counsel

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL , ADMINISTRATIVE MEMBER

JUDGMENT (ORAL)
(of the Bench delivered by Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman)

The petitioner, on being sponsored by the Employment Exchange concerned, was given an appointment as daily wages workman in the Public Works Department of the Delhi Administration in October, 1980. According to him, he held the appointment from 30.10.1980 to 22.02.1987. On 22.02.1987 his services were arbitrarily terminated. In between, he made a number of representations but in vain.

2. The relief claimed in this O.A. is that the respondents may be directed to reinstate him in service.

3. A counter-affidavit has been filed on behalf of the respondents. In it, the material averments are these:

The petitioner was promoted as N.T.S. on

20.06.1981 on a daily wage rate. From that day, his attendance was marked in the muster rolls. He irregularly attended from 21.08.1986 onwards and finally disappeared from 14.03.1987. It is clear from the averments made in the counter-affidavit that the petitioner was employed as a daily worker between 20.06.1981 and 21.08.1986.

4. In paragraph 4(v) of the O.A. it is averred that the petitioner rendered service to the respondents for 240 days in each year of his service. This averment is denied in the counter-affidavit. However, even though the respondents have filed an extract of the muster roll from 21.08.1986 to 20.03.1987 in the form of Annexure R-1., no attempt has been made by the respondents to produce before us the muster roll between 1981 to 1986 to show that the petitioner had not rendered service for 240 days in each year. We see no reason to disbelieve the version of the petitioner that he, in fact, rendered service for 240 days in each year.

5. Judicial notice can be taken of the OM that, in order to be considered eligible for regularisation of service, a casual worker should put in 2 years continuous service and should render service for either 240 days or 206 days, as the case may be, during each year. We are satisfied that the petitioner is entitled to the benefit of the said O.M. and, therefore, he is entitled to be considered for regularisation, if and when vacancy occurs.

6. It has been strenously urged on behalf of the respondents by their counsel that this application is blatantly barred by time and, therefore, should not be entertained. The

submission is that the petitioner became absolutely inactive after abandoning his job in the year 1987. It is vehemently denied that the petitioner made any representation after 1987 and till the filing of this O.A.

7. Be that as it may, having recorded the finding that the petitioner rendered service from 1981 to 1986 continuously and also having recorded a finding that he had rendered service for 240 days in each year, the petitioner, in our opinion, was entitled to the benefit of Section 25 F of the Industrial Disputes Act, 1947. That provision, inter alia, provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until certain conditions are fulfilled. It is nobody's case that any of the conditions of Section 25 F were ever fulfilled. Section 2(oo) of the said act defines retrenchment to mean the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include certain stated situations. We are not concerned with those situations because none of them are applicable.

8. The contention is that the petitioner abandoned his service and, therefore, his name was struck of from the must roll. In the striking of the name of the petitioner from the muster roll, termination of his service was implicit. Therefore, his case squarely fell within the four corners of "retrenchment as envisaged in Section 2(oo) of Industrial Disputes Act. If Section 25 F was not complied with, there can be no escape from the conclusion that the

termination of his services was void.

9. It is a settled law that it is not necessary to challenge the legality of a void order at once. One can wait till that order is sought to be enforced against him. In these circumstances, it cannot be said that this application is barred by limitation.

10. We are not inclined to direct the reinstatement of the petitioner so as to enable him to get the back wages. He has to suffer for his own laches. However, we think that this is a fit case where we should direct the respondents that if the petitioner presents himself before them they shall reengage him in service. We make it clear that the reengagement shall be treated to be a fresh employment. We also direct that if the respondents comes to the conclusion that the petitioner is qualified for regularisation in service, his case shall be considered if and when situation arises.

11. With these directions, this application is disposed of finally but without any order as to costs.

(B.N. DHOUNDIYAL)
MEMBER (A)
14.09.1993

(S.K. DHAON)
VICE CHAIRMAN
14.09.1993

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