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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Registration T.A. No. 1239 of 1987

(Writ Petition No. 601 of 1983)

Achhaibar Lal .. Petitioner

versus

Union of India and others .. Respondents

Hon' Mr D.K. Agrawal, J.M.

Hon' Mr K. Obayya, A.M.

(By Hon' Mr D.K. Agrawal, J.M.)

Writ petition No. 601 of 1983 filed in the High Court of Judicature at Allahabad, on transfer to this Tribunal under section 29 of the Administrative Tribunals' Act, 1985, was registered as T.A. No. 1239 of 1987 as indicated above.

2. Briefly the facts are that the petitioner was engaged as daily rated casual labour to discharge the duties of Carpenter in July, 1975 and continued as such up to 25-3-1982 when his services were terminated without any order in writing. The petitioner made unsuccessful attempt and thereafter, filed writ petition in 1983 in the High Court of Judicature at Allahabad with a prayer that the respondents be directed to restore the petitioner to the post of Carpenter in the Office of Assistant General Manager, Kanpur Telephones, Kanpur. The respondents pleaded that the petitioner was retrenched for want of sanction of post.

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3. We have heard the learned counsel for the parties and perused the record. It is an undisputed fact that the petitioner has served with the respondents for more than 240 days in one calander year. In fact he has served with the respondents for number of years as indicated above. The first question, therefore, which calls for determination is, as to whether the Telephone Department is an ' industry ' within the meaning of Section (2)(j) of Industrial Disputes Act, 1947. If so, whether the services of the petitioner have been retrenched in violation of Section 25-F of Industrial Disputes Act, 1947. The scope of the definition 'industry' has been dealt with in the case of Bangalore Water Supply and Sewerage Board v. A rajappa and others (AIR 1978 S.C. 548). The Hon'ble Supreme Court had observed that where there is systematic activity, organized by co-operation between employer and employee for the production and distribution of goods and services calculated to satisfy human wants and wishes *prima facie*, there is an "industry" in that enterprise. They had further observed that professions, clubs, educational institutions, co-operatives, research institutes, charitable projects and other kindred adventures, if they fulfil the triple tests listed above, cannot be exempted from the scope of the definition of "industry". However, in regard to sovereign functions as strictly understood they qualify for exemption, not the welfare activities or economic adventures undertaken by Government

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or statutory bodies and even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within the definition."

4. In the case of Sakhety Lal vs. Union of India and others O.A. No. 675 of 1987 a Bench of this Tribunal by its judgment and order dated August 12, 1988, on a consideration of the above decision of Hon'ble Supreme Court held that Posts and Telegraph Department cannot be termed as an 'industry'. Having given our anxious consideration to the facts of the case, we find ourselves in an agreement with the judgment rendered in the above case. Therefore, we hold that the Telephone Department is not an 'industry' within the meaning of Section (2) (j) of Industrial Disputes Act, 1947. Consequently it follows that the petitioner was not a workman nor any question arises of violation of the provision of Section - 25-F of Industrial Disputes Act, 1947.

5. The second point for consideration is as to the law laid-down by the Hon'ble Supreme Court in regard to daily rated and monthly rated employees. The principle of equal pay for equal work and regularisation of the services of casual workers has been well laid-down by the Supreme Court during the last 5 years. Therefore, due weightage is to be given to the fact that the petitioner has served a government department about 7 years and is well qualified to hold an engagement with the Department of Telephone Kanpur. The only question is as to

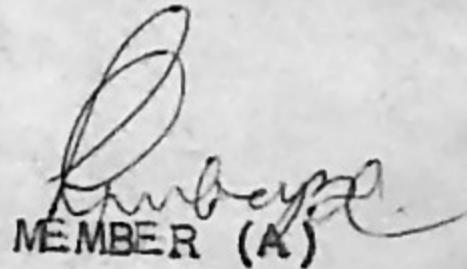
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whether he is or is not entitled to back wages.

We are of the opinion that the judicial pronouncement is in the nature of a fresh rule elaborated by a Court in the interest of justice and it can have effect only from the date of pronouncement. In other words it would mean that its effect will be only prospective and not retrospective like any other new rule of law emanating from the Parliament or the Executive. Therefore, we are of the view that the petitioner is not entitled to payment of backwages.

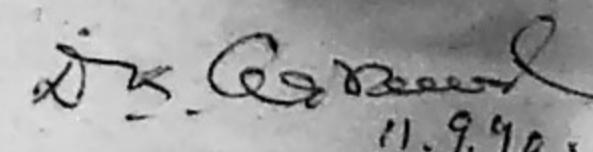
6. In the light of the above, we hereby allow the writ petition in part and direct the respondents to give employment to the petitioner for which he is qualified/suitable in accordance with the Rules in the first next vacancy which occurs under General Manager, Telephones, Kanpur.


MEMBER (A)

(sns)

September 11, 1990.

Allahabad.


11.9.90.
MEMBER (J)