RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHAHABAD BENCH

Original Application No. 349 of 1994

Union of India
and Others ::::::: Applicants

Versus

Ram Dhani and Others::::::: Respondents

Hon'ble Mr. S.Das Gupta, Member (A)
Hon'ble Mr. T.L. Verma, Member (J)

(By Hon'ble Mr. S.Das Gupta Member 'A')

This application has been filed under Section 19 of the Administrative Tribunal Act, 1985 by the applicants i.e. Union of India through General Manager, Northern Railway and the Divisional Railway Manager, Northern Railway challenging the award dated 04.3.1993 given by respondent no. 2 in favour of respondent no.1 and praying that the same be quashed.

2. The facts of the case as set up by the applicants are that the respondent no.1 was appointed as a Casual Khalasi on 19.11.1969 and worked up to 29.9.1970 with breaks for total 310 days. He left the job of his own volition and did not turn up again in the office of the applicant till 1977. On the basis of the past working, the respondent no.1 was screened and his name was placed at sl.no.119 in the panel subject to production of original certificate regarding date of birth

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and ~~all~~ number of days worked. This panel was published on 25.5.1978. The respondent no.1 submitted the certificate of the date of birth issued from educ-ational institution named 'Balika Junior High School Dhakna Purwa', Kanpur in which it was indicated that he had passed class III. On receipt of the said document the applicants conducted an enquiry ~~which~~ to ascertain the genuineness of the certificate and the enquiry revealed that no such educational institution was ever in existance. The applicants informed to the respondent accordingly; thereupon respondent no.1 is alleged to have submitted another certificate issued by another educational institution of Pratapgarh which also indicated that the respondent no.1 had passed class III on 16.10.1957. In view of two contradictory documents alleged to have been furnished by respondent no.1, the applicants refused to appointed him on regular basis, However, he was re-engaged as daily rated casual labour in the year 1981 for 104 days and 186 days in the year 1982; thereafter, it was finally decided that since the respondent no.1 had committed fraudulent Act, he shall not be given regular appointment or engagement as casual labour and this decision was communicated

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by the applicant vide their letter dated 22.3.1983.

3. According to the applicants, the ~~app-~~ Respondent ~~licant~~ no.1 filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 on 11.3.1985. praying that he be treated as regularly absorbed in the grade of Rs.196-232 (~~PR~~ revised scales) and entitled to back wages of Rs.22,100/-. The presiding officer, Central Government Industrial Tribunal cum Labour Court, Kanpur decided the application on 02.5-1986 holding that the same was not maintainable observing inter-alia that the respondent no.11 was never given regular appointment and hence no back wages were due to him and that if, he had any grievance on being denied regular appointment, he should raised industrial dispute and the same could be decided on a reference being made by the Government. A copy of the order dated 02.5.86 is at Annexure A-3. Thereupon, the respondent no.1 filed a fresh application before the Tribunal Cum Labour Court, Kanpur alleging that the provisions of Section 25-N of the Industrial Dispute Act, 1947 had not been followed and his services were terminated without any notice or pay in lieu. The applicant filed an affidavit in opposition, Thereupon, the respondent no2 gave

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the impugned award dated 04.3.1993 holding inter alia that the action of the management in terminating the services of the workman was neither legal nor justified and ordered that he be reinstated in service w.e.f. 23.11.1982 and confirmed in the regular service from the date on which his juniors in the panel were made permanent in the service with full back wages and all consequential benefits.

4. The aforesaid ~~letter~~ order dated 04.3.1993 passed by respondent no.2 has been assailed in the application on various grounds, One of the grounds is that the respondent no.2 did not considered the material facts on records including the fact that the respondent no.1 had not fulfilled the basic requirements of regularisation but, had furnished forged and false aged certificate. Other points taken by the applicants to challenge the impugned order are ;

1. That the respondent no.1 did not approach the respondent no.2 with clean hands since he concealed materialfacts before the Court.

2. That the respondent no.1 is not entitled for any relief under section 25(N)or Section 25(G) of the Industrial Dispute Act, 1947 as he had not

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worked for 240 days in a year in order to invoke the said provision.

3. The respondent no.2 had no jurisdiction to adjudicate the matter which was decided earlier in another claim petition and thus the principle of res judicata would apply barring further adjudication of the matter.

4. The claims of the respondent no.1 was not an industrial dispute as he was seeking appointment on the basis of forged documents.

5. The case before the respondent no.2 was excessively time barred.

6. That the respondent no.2 by ordering reinstatement of respondent no.1 w.e.f 23.11.1982 and ordering his confirmation in the regular service from the date his juniors in the panel were made permanent acted in a manner as if he was functioning as an administrative or executive officer. The award, therefore, is bad in law.

5. In the counter-reply filed by the respondent no.1, the plea has been taken that this Tribunal has no jurisdiction to entertain the present application against the award of the Labour Court, since there is no provision in the Central Administrative Tribunal Act, 1985 empowering the Central Administrative Tribunal to entertain application against

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the award given by Labour Court/Industrial Tribunal under the provisions of the Industrial Dispute Act, 1947.. On the merit of the case, the respondent no.1 has denied that he left the job of his own volition. He has also denied that he had submitted a forged certificate in support of his date of birth. He has averred that the school from which he had obtained certificate was a private one and not in existance at the time of the alleged enquiry. He has averred that no opportunity was given to him of being heard before terminating his services and thus, the principles of natural justice were violated. He has also vehemently denied that he had submitted a second certificate from another school in support of his date of birth.

6. The applicants filed rejoinder-affidavit in which it has been stated that this Tribunal has jurisdiction to entertain the application in view of the decision made in Saroop Chand Shingla's case (1989(9) ATC 167 decided by Chandigarh Bench of the Central Administrative Tribunal On the merit of the case, they have reiterated their point made in the original application.

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7. We have heard the learned counsel for the parties and perused the record.

8. Before coming to the merit of the case, it is necessary to deal with the preliminary objection raised both by the applicants against the maintainability of the application before the respondent No. 2 and that raised by respondent No. 1 regarding maintainability of this application before this Tribunal. The pleaof the applicant, that the petition before respondent No. 2 was not maintainable as the matter did not constitue any Industrial Dispute has no force whatever in view of the fact that the impugned award, a copy of which has been annexed to the application itself makes it very clear that it was the appropriate goverrment which was the Central Goverrment in this case referred the matter to the respondent No 2 as an industrial dispute for adjudication of the Industrial Tribunal cum Labour Court. The point of adjudication in the reference was, whether the action of Divisional Railway Manager, Northern Railway, Allahabad in terminating the services of the respondent no.1 in this application w.e.f. 23.11.1982 was legally justified and, if not, to what relief was he was entitled.. When the appropriate goverrment has made a reference of dispute as an industrial dispute to the respondent no. 2, it does not lie in the mouth of the applicants in this case, who are a part of the Central Government, to say that the matter was not adjudicable by respondent no.2. The point raised regarding time bar does not also have any force as the reference was made by the appropriate

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government and in any case, the Industrial Disputes Act does not appear to lay down any period of limitation for making a reference of the Industrial Dispute to any machinery under the Industrial Dispute Act, 1947 for the settlement thereof.

9. As regards the point raised relating to res-judicata, the applications which was dismissed was under Section 33-C(2) of the Industrial Dispute Act in which back wages were claimed. This was dismissed on the ground that the respondent no.1 was never given regular appointment and, therefore, the basis of the claim for back wages was not established. The impugned order on the other hand is on the basis of the reference made by the appropriate Government of an industrial dispute arising out of termination of services of respondent no.1. The question of res-judicata does not , therefore, arise in adjudication of thismatter.

10. Coming to the issue raised by the respondent no.1 regarding the jurisdiction of the Tribunal to hear this O.A., it is sufficient to make a reference to the principle laid down in A. Padmavalley and Others Vs. C.P.W.D. & Telecom case. After the decision in A. Padmavalley's case, the jurisdiction of this Tribunal in hearing the matter arising out of an award given by an Industrial Dispute has been put beyond any doubt.

11. We next come to the merit of the case. The case of the applicants rests on the submission that the

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the respondent no.1 had furnished forged document in support of his date of birth. Neither in the application nor with the rejoinder affidavit, the allegedly false certificates were enclosed. These certificates also do not appear to have been produced before respondent no.2. We find on a perusal of the impugned award of the respondent no.2 that the Industrial Tribunal cum Labour Court had considered the submission made by the applicants in their affidavit in opposition in which it was submitted by them that the denial of regular appointment was on account of submission of false certificates. Despite this, the respondent no.2 on assessment of evidence on record and on the basis of the evidence produced during the course of hearing has come to a conclusion that the action of the management in terminating the services of the respondent no.1 was neither legal nor justified. The impugned award is a speaking one and the issues in this are well discussed. The question, therefore, is whether we should interfere with the findings of the Industrial Tribunal cum Labour Court by making reassessment of the evidence, as the applicants in the O.A. would like us to do. The various judicial pronouncement on this point would tend to indicate that as far as possible the courts excersing powers of judicial review should make attempt to sustain the awards made by the Industrial Tribunals. A reference in this regard can be made to in the case of Calcutta River Transport Association and others cited in 1988 A.I.R. SC 2168. Para 10 of the judgement in this case delivered by E.S. Venkataramiah, J. is relevant in this regard and is quoted below ;

"The object of enacting the Industrial Disputes Act 1947 and of making provisior

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therein to refer disputes to Tribunals for settlement is to bring about Industrial peace. Whenever a reference is made by a Government to an industrial tribunal it has to be presumed ordinarily that there is genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases an attempt should be made by the Courts exercising powers of judicial review to sustain as far as possible the awards made by industrial tribunals instead of pikking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by strking down awards on hyper-technical grounds."

12. A similar view was taken by the apex-court in this case of in which the judgement of Division Bench was delivered by Ranganath Mishra, J. The industrial dispute related to certain casual employees who, despite several years of service rendered were allegely being denied and deprived of the benefit and facilities applicable to permanent workmen, The industrial tribunal gave an award holding that 181 casual employees with full back wages and 50 other casual employees should also be regularised but without back wages. The award was assailed before the High Court and the Single Judge held that the relief of reinstatement with back wages should have been confined to 131 casual employees as they alone had worked for 240 days and set aside the award in respect of 50 others on the ground that they had not completed 240 days of service. In a writ appeal filed before the division bench found that there was great variation in the number of workmen for whom relief was claimed and that an entirely new case was thus sought to be introduced changing the case of non-employment on and from October 13, 1980 to non employment in the monthsof July, August

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September and October, 1980 and a specific case of non employment on and from October 16, 1980 and allowed the appeal. The apex-court held that the Division Bench of the High Court has adopted too strict an approach in dealing with the matter. We quote the paragraph of the Judgement which is germane to the issues before us :

> "Quantum of evidence or appreciation thereof for recording findings of fact would not come within the purview of High Court's extraordinary jurisdiction under Article 226 of the Constitution."

13. We have already stated that Industrial Dispute cum Labour Court has made an assessment of the evidence on record and also the evidence which was adduced during the course of argument and come to certain conclusion. The order is a speaking one and award well discussed one. The conclusion arrived at does not appear to be perverse on the face of the records. In view of this and also in light of the decisions given by the Supreme Court quoted in foregoing paragraphs, We are not inclined to interfere with the findings of the respondent no. 2 as regards the legallity or otherwise of termination of the services of the applicant and his claim for being given regular appointment. This is despite the fact that after we had heard the arguments of both the parties the learned counsel for the applicant made available to us photocopies of the certificates which were stated to have been furnished by the respondent no.1 in support of his date of birth. These certificates could have been produced in original by the applicants before respondent no.2 but, apparently they did not do so for reason not given to us.

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14. The next question which engaged our attention was the relief granted in the impugned award. Section 11-A of the Industria Dispute Act, 1947 provides that where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and such Court or Tribunal is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions if any, as it thinks fit, or give such other relief to the workman as the circumstances of the case may require.

15. It is, therefore, very clear that the Industrial Courts and Tribunals have vide powers in granting reliefs as they deem fit based on the circumstances of the case. The respondent no.2 was, however, fully competent to grant the relief as given to respondent no.1 in the award. Even then, we gave our anxious consideration to the fact that back wages were granted to respondent no.1 and whether this was justified, Keeping in view the fact that the respondent no 1 did not actually work after his services were terminated. In other words we considered whether the principle of "No work, No pay" shall be applicable in this case. On this point we, however, find that the superior court consistently taken a view that in such matter payment of full back wages would be the

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normal rule. Thus, in the Hindustan Tin case 1979 SCC (L & S) 53, the Supreme Court ruled:

> "If after such a protacted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved."

A similar view was taken in the case of Gujarat Steel Tubes Ltd Vs. Its Mazdoor Sabha 1980 SCC (L & S) 197. It was observed in these cases that full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. We are, therefore of the view that we have no reason to interfere in the award in as much as it grants back wages to the respondent no.1.

16. The only point we, however, find in the award which appears to suffer from an apparent error is ordering that respondent no.1 shall be <u>confirmed</u> in the regular service from the date on which his juniors in the panel were made permanent in the service. The relevant panelywas not really for confirmation of those empaneled but for regularisation of their services. Confirmation of a employee is dependent on his seniority in a particular grade and fulfilment of certain conditions. Such confirmation can only be subsequent to the regular absorption of casual employee in an appropriate grade. We are, therefore, of the view that while ordering that the respondent no.1 shall be confimed in regular service, what really was intended was that he

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would be absorbed in regular grade on a date on which his juniors in the panel were absorbed. To this extent, we are of the view that the award is required to be modified.

17. The application has otherwise no merits and the same is dismissed. The impugned award given by respondent no.2 is upheld subject to the modification indicated in the preceding paragraphs.

18. In these circumstances, we do not passed any order as to costs..

Member (J) Member (A)

Allahabad, Dated 02.9.1994

/M.M./