

(S)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 21 198 6.
~~XXA~~ No.

DATE OF DECISION 30-10-1986

Magan Mohan and others Petitioner

Mr. P. H. Pathak Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent
(Gen. Manager, W. Rly.)

Mr. R. P. Bhatt Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi .. Vice Chairman

The Hon'ble Mr. P. M. Joshi .. Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No*

J U D G M E N T

Per : Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner Magan Mohan and other 14 employees represented by the Rail Mazdoor Panchayat a registered trade union, claim the arrears of salary from 27.8.1985 to the date with interest at 12 per cent, in this application under section 19 of the Administrative Tribunals Act, 1985. According to them, when they were ordered to be transferred from Porbandar to Jaipur, they challenged the action of the respondents by filing Special Civil Application No. 4554 of 1985 in the High Court of Gujarat, wherein the respondents were restrained from transferring services of the petitioners, pending hearing of the application vide order dated 29th August, 1985 (Annexure 'B'). It is further stated that despite the said order, the respondents have not allowed the petitioner-employees to join duty and have not paid the wages since 27.8.1985. The respondents in their affidavit in reply contended, inter-alia, that the petitioner-employees were informed on 26th August, 1985 about the orders of transfer dated 19th August, 1985 and accordingly they are deemed to have been relieved on the same date i.e. much before the date of obtaining the interim injunction. It is further contended that they were not taken back on the duty as the petitioner-employees were already struck off the rolls and there was no work for them available to be done due to contraction of the cadre and completion of the project.

It is pertinent to note that when High Court restrained the respondents from transferring the

services of the petitioner-employees by granting interim relief in S.C.A. No. 4554 of 1985, for all intents and purposes, they ought to have allowed them to resume their work. The respondents in their affidavit in reply have categorically admitted that the applicant and others were not taken back on duty. This action on the part of the respondents, apart from it being a contempt or otherwise of the stay order granted by the High Court, was clearly unjust and illegal, inasmuch as, it amounted to termination of the services of the said employees.

that

It is borne out from the Annexure 'A', all the 15 employees including the petitioner No. 1 are in the employment with the respondents since the year 1978. In view of the length of their services, they would fall under the category of the casual labour as defined under rule 2501 of the Indian Railway Establishment Manual. Now once an individual acquires temporary status, after full-filling the conditions indicated in (i) or (iii) of clause B of the rule 2501, he retains that status so long as he is in continuous employment on the Railways.

Mr. P.H. Pathak, learned counsel for the applicant contended that the action on the part of the respondents in not allowing the petitioner-employees, who were the applicants in S.C.A. No. 4554 of 1985, to resume their duty amounts to retrenchment within the meaning of section 25F of the Industrial Disputes Act, 1947 and when the condition laid down therein are not complied with, it would be illegal and invalid. In support of his contention, he has relied on the case of L. ROBERT D'SOUZA V. THE EXECUTIVE ENGINEER, SOUTHERN RAILWAY AND ANOTHER (1982 (1) SLR 864). Mr. K.K. Shah, the learned counsel for Mr. R.P. Bhatt on behalf of the respondents however

8

submits that the petitioner-employees are not retrenched by the respondents and hence they are not entitled to arrears of salary. We do not find any substance in the submission made in this regard.

There is no dispute that the petitioner-employees would be workmen within the meaning of the expression in section 2(s) of the Industrial Dispute Act. Moreover, the fact that 15 employees referred to in Annexure 'A', including the petitioner No. 1, were in continuous service since the year 1978, is not controverted. Therefore, the first condition of section 25F that they are workmen who had rendered service for not less than one year under the Railway Administration-an employer, carrying on an industry and that their services are terminated by not taking them back on duty, would constitute retrenchment. It is immaterial that they were daily rated workers. Therefore, the impugned act on the part of the respondents in not taking the said employees back on duty constitutes retrenchment and for not complying with the pre-conditions to valid retrenchment, the said action would be illegal and invalid. In this view of the matter, the petitioners-employees succeed in establishing their claim.

Accordingly, we allow this application. We declare that the respondents' action in not taking 15 employees (including the petitioner No. 1) referred to in Annexure 'A', back on duty was illegal and invalid and they continue to be in the employment of the respondents and they would be entitled to full backwages. It is directed that the respondents shall

calculate the backwages on the basis of working days and they pay the same within two months from the date of this order. They shall also pay to the petitioners, a sum of Rs. 300/-, being the costs of this application.

P.H. Trivedi
(P.H. TRIVEDI)
VICE CHAIRMAN

P.M. Joshi
(P.M. JOSHI)
JUDICIAL MEMBER