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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 324 OF 1987.
~~T.A.No.~~

DATE OF DECISION 22-11-1988

SHRI DINESH MOHAN Petitioner

MR. Y.V. SHAH Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents.

MR. R.M. VIN 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 ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal. No

Shri Dinesh Mohan,
C.Permanent Way Inspector,
Western Railway,
Dholka,
Dist. Ahmedabad. .... Petitioner.
(Advocate : Mr. Y.V.Shah)

Versus

1. Union of India,
through the General Manager,
Western Railway,
Churchgate, Bombay-20.
2. Divisional Engineer,
Western Railway,
Bhavnagar.
3. C. Permanent Way Insepctor,
Western Railway,
Dholka. .... Respondents.
(Advocate : Mr. R.M.Vin)

J U D G M E N T

O.A. No. 324 OF 1987.

Date : 22.11.88

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

The petitioner Shri Dinesh Mohan of Dholka, (Dist. Ahmedabad) has filed this application under Section 19 of the Administrative Tribunals Act, 1985 on 13.7.1987. It is averred by the petitioner that he was intially engaged as casual labourer on 19.8.81, and after acquiring temporary status, he continued to work, as such, till 21.3.1985 when his services were terminated by verbal orders on the ground of surplus. It is therefore, prayed by the petitioner that the impugned action on the part of the respondent railway administration in retrenching him be quashed and set asdie as it is violative of Article 14, 16 and 23 of the Constitution of India and offending the provisions contained under section

25 F, 25 G, 25 H, and 25 N of the Industrial Disputes Act 1947 and Rules 76 A, and (C) and 77 of the Industrial Disputes (Central) Rules 1957. He has further prayed that the respondents railway administration be directed to absorb him in service with all consequential benefits including backwages and seniority above his juniors, in terms of the scheme introduced by the railway board and approved by the Supreme Court in Judgment reported in 1985 in (2) S.C.C. 648 and A.I.R.1987, S.C.1153.

2. The respondents-railway administration in their reply conceded that the petitioner was engaged on 19.8.81. However, they categorically denied that he was orally retrenched on 25. 2.85. According to them, the petitioner left the job on his own accord as early as 25.2.85. It was further submitted that the petitioner during the course of his service was not on job for months together on several occassions with the result that he could not acquire temporary status also. According to them the petitioner has suppressed material facts and filed the application by making a false story of oral retrenchment and consequently, he is not entitled to any reliefs or benefits as he was not a "Project Casual Labourer".

3. When the matter came up for hearing we have heard Mr. Y.V.Shah and Mr. R.M.Vin the learned counsel for the petitioner and the respondents respectively, along with other cases of casual labourers wherin common question of law were raised. But we have not preferred to render a common Judgment as each case represented different set of facts and

circumstances. Both the sides were called upon to supply the information and materials in terms of our directions issued on 16.6.1988 and in terms thereof the respondents have placed relevant documents including the pay registers on record.

4. At the very outset, it may be stated here that the petitioner while filing the application and during the pendency of the proceedings has not produced the Service Card. It is the plea of the petitioner that he was initially engaged in the year 1981 and retrenched in March 86. It is his version that he has acquired temporary status and that he has been retrenched by verbal orders. These material averments could have been easily proved by producing the Service Card. A service card on prescribed form is given to each casual labourer as a documentary proof of his service in terms of instructions contained in para 2513 of Establishment Manual. Mr. B.S.Mainee in his book on " Railway Establishment Rules and Labour Laws" (17th Edition 1988), while quoting Railway Board's letter dated 30.11.1971 at page 425 has explained the utility and importance of the service card and the entires of service made therein as each sub-ordinate officers are required to make them without fail before discharging a casual labourer. When casual labourer is on authorised absence that does not constitute a break for counting towards the four month's period for conferring temporary status. It is undisputed that such "authorised absence" has to be shown as service. No seperate entry for such break is necessary. In the case of loss of

card, it should be reported to the nearest police station and a copy of F.I.R. lodged with the police should be furnished to the Railway authorities.

5. The stand of the respondents-railway administration is that the petitioner has materially suppressed his service particulars and has come out with a false plea that he has been retrenched verbally on 21.3.1985, especially, when as a matter of fact he has never reported for work since 25.2.1985. Relying on the case of Buckingham & Carnatic Co., Vs. Venkatiah & Anrs., (A.I.R. 1964 S.C. 1272), it was contended by Mr. R.M. Vin, the learned counsel for the respondent that the petitioner having abandoned or relinquished the service as back as on 26.2.1985, he is not entitled to any relief and his cause is also otherwise barred by limitation. Mr. Y.V.Shah, the learned counsel for the petitioner, during the course of his submissions had preferred to refer to several cases reported in A.I.R. 1986 S.C. 132, A.I.R., 1988 S.C. 8, A.I.R. 1982 S.C. 854, A.I.R. 1979 S.C. 582 and A.I.R. 1988 S.C. 390. Suffice it to say, that the broad principles laid down therein are not disputed. Having regard to the facts of the present case, they are all distinguishable and not applicable in the present case.

6. On the basis of the materials and the records produced before us, it is duly established that the petitioner worked as casual labourer during the following periods only.

..... 6/-

Wagemonth	Period of Absence From	To
1	2.	
21.8. to 20.9.81	1.10.81	1 Day
21.9. to 20.10.81	-	-
21.10. to 20.11.81	-	-
21.11. to 20.12.81	-	-
21.12. to 20.1.82	-	-
21.1. to 20.2.82 (see R 40)	-	-
21.2. to 20.3.82 (see R 35)	-	-
21.3. to 20.4.82	-	-
21.4. to 20.5.82 (see R 64)	-	-
21.5. to 20.6.82	-	-
21.6. to 20.7.82 (see R 73)	-	-
21.7. to 20.8.82 (see R 60)	-	-
21.8. to 20.9.82 (see R 61)	-	-
21.9. to 20.10.82 (see R 67)	-	-
21.10. to 20.11.82	-	-
21.11 to 20.12.82	-	-
21.12 to 20.1.83	-	-
21.1 to 20.2.83	-	-
21.2. to 20.3.83	-	-
21.3. to 20.4.83	-	-
21.4. to 20.5.83	-	-
21.5. to 20.6.83	-	-
21.6. to 20.7.83 (see R 46)	-	-
21.7. to 20.8.83 (see R47 p.3 Sr.No.20)	-	-
21.8. to 20.9.83 (see R48-A p.3 Sr.No.23)	-	-
21.9. to 20.10.83 (see R 45)	-	-
21.10. to 20.11.83 (see R 70)	-	-
21.11. to 20.12.83 (see R 36)	-	-
21.11. to 20.12.83 (see R 36)	-	-
21.12.83 to 20.1.84 (see R 68)	-	-
21.1. to 20.2.84	-	-
21.2. to 20.3.84	22.2.84	-
21.3. to 20.4.84 (see R 42)	-	-
21.4. to 20.5.84 (see R 43)	-	-
21.5. to 20.6.84	-	-
21.6. to 20.7.84	-	-
21.7. to 20.8.84 (see R38 p.1 Sr.No.2)	7.8.84 30.8.84	2 days
21.8. to 20.9.84 (see R39/R41 p.1 Sr.No.2)	3.9.84 9.9.84	2 days
21.9. to 20.10.84 (see R28 p.2, Sr.No.10)	2.10 to 4.10. 8.10 to 9.10 14.10	6 days
21.10 to 20.11.84 (see R 58)	-	-

1.		2.	
21.11 to 20.12.84 (see R 59)		-	-
21.12 to 20.1.85	1 1	14.1.85 20.1.85	-
21.1 to 20.2.85	1 1	4.2.85 5.2.85	-
21.2 to 20.3.85 (see R 51 p.9, Sr.No.31)		-	-

7. It is thus quite evident that the petitioner last worked as casual labourer upto 20.3.85. It is pertinent to note that it is not the case of the petitioner that his services are terminated by any order of retrenchment in writing. He has come out with a plea that he has been orally retrenched from service on 21.3.1985. Presumably, he has come out with such a version in order to conceal his long absence since 20.3.85 indicating his voluntary abandonment of the employment. A person like the petitioner can hardly afford to remain absent without being gainfully engaged elsewhere. In case of difficulty or inability to attend, a casual labourer would either inform the higher officer or make any representation himself or through recognised trade union or approach competent Court or Tribunal for redressal of his grievance. Nothing of the sort seems to have been done by the petitioner in this case. For the first time, in the application filed by him on 13.7.1987 he has come out with the version that he has been orally retrenched from service on 21.3.85.

8. Shri Vin's contention that retrenchment has not taken place in the case of the petitioner appears to be correct. The word "Retrenchment" has been defined under section 2(OO) of I.D.Act, 1947, as under :

"Retrenchment" means 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 -

(a) voluntary retirement of the workman; or
(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
(c) termination of the service of a workman on the ground of continued ill-health;

The retrenchment is mode of termination of service. It can be brought about by dismissal, discharge, removal from service. As per the present definition, it means termination by the employer of service of the workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action. "For any reason whatsoever" are now key words. There is divergence of the judicial opinion on the question. Whether the expression, "any reason whatsoever" is susceptible to any limitations or admits no exception. The correct law in view of ratio decidendi derived from various decision including, (1) State Bank of India V/s. N.Sundramoney (1976(1) I.L.J.P. 478 S.C.), (2) Hindustan Steel's case, 1977(1) L.I.J. p.1 (S.C.), (3) Delhi Cloth Mills Case, 1977 Lab.I.C. 1695(S.C.), (4) Santosh Gupte V/s. State Bank of Patiale,C.A.No. 3563/79 decided by S.C. on 29.4.1980, (5) Barsi Light Co.,Case, 1957(1) L.I.J. p.243(S.C.) & (6) Union of India V/s. S.B.Chatterjee case 1980 R.L.W. p. 188, where the Court on construction of "retrenchment" as defined in Section 2(OO) has unequivocally stated "retrenchment" means discharge of surplus labour or staff by the employer for any reason whatsoever. In the instant cases, the petitioners' services have

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neither been terminated nor he has been removed from service. It is not reasonable that ~~they~~ he should get compensation under I.D.Act on the basis that ~~they~~ he ~~have~~ has been retrenched.

9. It is true that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Bearing in mind all the facts and circumstances of this case we have no hesitation in holding that the petitioner intended to abandon service since 20.3.85. Thus, as petitioner has relinquished the service since the said date, he is not entitled to the relief as prayed for. Moreover it is not established that petitioner had worked as casual labourer on project. It is therefore, difficult to hold that petitioner can claim any benefit of the scheme prepared by the Railway Board, in terms of the difections issued in the case of Indrapal Yadav (supra).

In the facts and circumstances of the case, it is clear that the petitioner has failed to establish his claim. Accordingly, the application has no merit and fails. The application therefore, stands dismissed, with no order as to costs.

(P.M. JOSHI)
JUDICIAL MEMBER

(P.H.TRIVEDI)
VICE CHAIRMAN