C.L. Termination (No)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 330 OF 1987.
~~T.A. No.~~

DATE OF DECISION 25-2-1992.

Mannuswami Nallamuthu, Petitioner

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

Versus

Union of India & Ors. Respondents

Mr. B.R. Kyada, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.Y. Priolkar, Administrative Member.

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✗
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✗

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Mannuswami Nallamuthu
C/o.Munukeshayan Nallaswamji,
P.W.I. Office Gang No.3
(narrow-Guage) Morvi. ... Applicant.

(Advocate: Mr.P.H.Pathak)

Versus.

1) Union of India,
Notice to be served through
Chief Engineer(C)
Railway Station, Ahmedabad.

2) Executive Engineer(C)
Near Irvin Hospital,
Jamnagar. .... Respondents.

(Advocate: Mr.B.R. Kyada)

J U D G M E N T

O.A.No. 330 OF 1987

Date: 25-2-1992.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr. P.H. Pathak, learned advocate for the applicant and Mr. B.R. Kyada, learned advocate for the respondents.

2. The applicant, a casual labourer working under the control of Respondent No.2, Executive Engineer(C) Jamnagar, has filed this application for a declaration that the impugned notice of termination dated 8th September,1985 vide Annexure-B of the respondent No.2, terminating the services of the applicant with effect from 10th September,1985 in terms of para 25F(a) of the Industrial Disputes Act under the guise of the reduction in work be quashed and the respondents

be directed to reinstate the applicant on his original post with backwages, continuity of service and other benefits. The applicant has amended the application during the pendency of the proceeding adding the relief that the Tribunal be pleased to direct the respondents to grant the benefits of the scheme modified by the Hon'ble Supreme Court of India and to employ under section 25H of the I.D. Act, 1947. The case of the applicant as alleged in the application is that he initially joined the service of the railway from 18th July, 1983 under the Permanent Way Inspector at Dwarka and he has been illegally retrenched by the notice Annexure-B dated 8th September, 1985 by Respondent No.2. It is alleged that his case is covered by the judgment of this Tribunal in the case of casual labourer in O.A. 159/86. It is alleged that though the reason for the termination is the reduction in work, fresh recruits are taken by the respondents. It is alleged that the applicant is entitled to the benefit of the judgment of the Hon'ble Supreme Court in Indrapal Yadav's case. It is alleged that the action of the respondents is arbitrary and discriminatory, violative of Article 14 & 16 of the Constitution of India and the respondent No.2 has adopted pick and choose policy. The applicant has referred to various provisions of the I.D. Act in

his application. It is alleged that the impugned termination is not due to shortage of work or non-availability of work, because the respondents are taking new hands but the impugned action is violative of Section 25F, 25G, 25N and Rule 77 of the I.D. Act & rules. It is alleged that if Rule 77 is not complied with by employer, then the termination is void ab initio. The respondents have filed reply contending that the applicant was engaged with effect from 18th July, 1983 in the unit under PWI(C) II Dwarka on the fixed term by the agreement dated 18th July, 1983 vide Annexure R-1, according to which, the service of the applicant would have automatically terminated with effect from 30th June, 1984 without any notice of termination. It is contended that in view of this agreement, the applicant cannot make complaint that his services are wrongly terminated. The learned advocate for the applicant rightly submitted that after the period as per the alleged agreement, Annexure R-1 was over, the applicant was continued in service. The learned advocate for the applicant submitted that the applicant has filed rejoinder denying that such an agreement Annexure R-1 was entered into by him, however, even if it is considered, the said agreement does not help the respondents because the service card produced by

the applicant at Annexure A shows that he was continued upto 10th September, 1985 on which date he was retrenched.

3. The respondents have further contended that the judgment of the Tribunal referred to by the applicant in his application and the judgment of Indrapal Yadav case are not applicable to the facts of the present case. The main contention of the respondents is that as there was no work with the railway department after completion of VOP Phase II conversion works in the year 1984, the applicant's service should have been terminated as per the agreement but due to various directions given by the High Court of Gujarat in various petitions filed by casual labourers that respondents authorities should find out work where it is available and that the labourers should be transferred on the other projects, and, hence railway administration had tried to find out the possibility of work and casual labourers were diverted to another projects. They contended in the reply that Rajkot division was in need of the casual labourers for their maintainance work and, therefore, along with the applicant other casual labourers were directed to the work under Rajkot division for some period but they were sent back to PWI Dwarka and therefore, the Executive Engineer, Western Railway, Jamnagar

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was not in a position to feed the applicant and therefore, a notice as required under I.D. Act and Rules was given to the applicant and other casual labourers who were junior most and terminated their services. The learned advocate for the applicant submitted that no seniority list was published under Rule 77 of Industrial Disputes Rules 1957 (Central) and the respondents have not followed the said rule .

4. The applicant had filed M.A. 412/87 in which the applicant demanded alongwith other documents seniority list of labourers (Rajkot division). The Tribunal passed an order dated 21st April, 1988 in that M.A. that so far item No.2, i.e. permission of the appropriate government to retrench the labourers is concerned under Rule 77 of Industrial Disputes Act if obtained be produced.

5. This matter was admitted by the Division Bench of this Tribunal on 20th July, 1987. The learned advocate for the applicant submitted that this matter can be disposed of considering Section 25F, 25G of I.D. Act r.w.Rule 77 of the Industrial Dispute (Central) Rules and he confined his arguments on these points only.

6. He submitted that the respondents have taken the contention in the reply that the applicant and other casual labourers who were

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junior most, their services were terminated and it is also contended that after following the procedure under I.D. Act and Rules, the services of the applicant was terminated after paying compensation with effect from 9th September, 1985, he submitted that in para 4 of the reply, the respondents have contended that it was also not correct that before terminating services of the applicants and other mandatory provisions of I.D. Act and Rules were not followed, but he submitted that the respondents have not followed the mandatory Rule 77 of the Industrial Disputes (Central) Rules 1957 which says that the employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated arranged, according to the seniority of their services in that catagory and cause a copy thereof to be pasted on a notice board in a conspicious place in the premises of the industrial establishment atleast 7 days before the actual date of retrenchment. The learned advocate for the applicant submitted that there is no documentary evidence produced by the respondents to show the compliance of Rule 77. He, then, referred to Section 25G of the I.D. Act which says that where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs

to a particular category of wlrkmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman. Mr.Pathak, learned advocate for the applicant submitted that an agreement to the contrary was not entered into but even if the agreement for a period of one year ending on 30th June 1989 produced by the respondents at Annexure R-1 is considered, the applicant was continued thereafter admittedly and hence that agreement will not have the respondents. The learned advocate for the respondents Mr.Kyada submitted that the applicant certainly would have faced the termination as per the agreement because the VOP work was over by that time, but it was due to various directions of the High Court of Gujarat in similar other cases that the applicant and other casual labourers were diverted to another project in Rajkot division in order to get some work for them. He submitted that in the instant case, the applicant, after getting and receiving compensation after the notice of retrenchment, has tried to come from the back door to get the benefits on the strength of some other decisions and he should not

be given the relief as he has received the compensation and he had not made any grievance about Rule 77 of Section 28G till this petition was filed. The learned advocate for the applicant submitted that assuming that compensation as contended in the reply was paid and assuming that this application was filed in 1987, if the provisions of the law applicable to this case help the applicant, there is no reason to deprive him of the benefits under that law and he submitted that there is decision on this point on all fours applicable to the facts of this case.

7. In support of his submission, learned advocate for the applicant has relied on the decision in Jivi Chaku Vs. Union of India & Ors. reported in (1987) 3 A.T.C. 413, Ahmedabad Bench, in which it was held by the Division Bench of this Tribunal that the railway authorities should prepare divisionwise seniority list of casual labour on the basis of last come first go, that pending completion of this work at least the date of appointment of the juniormost casual labour in each division proposed to be retained should be ascertained and with reference to it the fate of those transferred should be made known to them. In para 9 of this decision, it is held that the

respondents cannot pick and choose the casual labour to be terminated or transferred. It is further held that the casual labourers are paid on a daily wages basis and their employment could be seasonal or sporadic and drawn only from local sources, but when there is no work in the project or in the division they have claim to it in the order of last come first go, and the respondents are not free to ignore their claim in preference to anyone junior to them and the judgment of the Hon'ble Supreme Court in the case of Indrapal Yadav is relied. The question involved in that case was about the transfer of the casual labourers and the transfer was held unauthorised and the same was set aside and the respondents were directed to prepare seniority list divisionwise as directed by the Hon'ble Supreme Court on the basis of last come first go. The next decision on which reliance was placed is Shri Pravin Prabhudas V/s. Union of India & Ors. in T.A. 1379/86 decided on 15th Dec. 1988 by the Division Bench of this Tribunal in which an identical question of termination of the services of the casual labourer in terms of Sec.25F of Industrial Disputes Act was considered. The respondents in that case had denied that the employees junior to the applicant were retained and it was also contended that the applicant in that case was

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a daily wager on VOP only and his services were terminated due to contraction of cadre and on completion of said project. The applicant's main reliance was on Section 25F, 25G & Rule 77 of Industrial Disputes Act in that case. The Division Bench in para-8 of the decision held that after the decision (18th April,1985) of the Supreme Court of India in Indrapal Yadav & Ors. Vs. Union of India (1985(2) All India Service Law Journal, p.58) the respondents were required to prepare division-wise seniority list more over they were required to follow the principles of last come first go on the basis of the publication of the seniority list. The most important observation of the Division Bench of this Tribunal was as under :

> "In absence of the production of seniority list, it is presumed that no division-wise seniority list has been prepared and even published in terms of requirement of Rule 77 of the Industrial Disputes (Central) Rules 1957. The action of the respondents in terminating the service of the petitioner therefore cannot be sustained."

The application in that case was allowed and the applicant was reinstated in service with all consequential benefits with backwages. The learned advocate for the applicant submitted that even till the date of hearing, the respondents have not shown that the seniority list was published nor they

have ~~not~~ produced the same and therefore, it should be held that the action of the respondents was in violation of Rule 77 of the Industrial Disputes (Central) Rules, 1957 and also they have failed to establish that the applicant is a junior most as required under Section 25G of I.D.Act. Learned advocate Mr. Kyada for the respondents submitted that it was for the applicant to show that the junior most were retained and he was retrenched. In view of the Division Bench judgment, there is no reason for us to take a different view from the one taken by the Division Bench. Till today no such seniority list is shown or produced by the respondents. Even if the applicant has not established that the juniors are retained, unless seniority list is produced by the respondents, it cannot be presumed that the respondents have retrenched the applicant as he was the junior most as contended in their reply. Therefore, decision relied on by the applicant helps the applicant and it goes against the respondents. The reliance is also placed on the decision in Sukumar Gopalan & Ors. V/s. Union of India (Western Railway) & Ors. decided by the Division Bench of this Tribunal in O.A.331/86 & Ors. on 16th February 1987. In this group of cases also, the applicability of Section 25 of the ID Act and Rule 77 of the Industrial Disputes (Central)

Rule 1957 were under consideration. The Division Bench had also in that group of cases relied in the case of Indrapal Yadav case of Hon'ble Supreme Court of India. It was held that as per the provisions of I.D. Act, 1947 and Rule 77 of Industrial Disputes (Central) Rule 1957 the respondents were under the statutory obligation to paste a list of seniority before issuing an impugned order of retrenchment and if such a list of seniority had been pasted the respondents ought to have filed a copy thereof along with their reply. The reference was made of a case of Gaffar & Ors. Vs. Union of India & Ors. (1983(2)LLJ, 285) and Nav Bharat Hindi, Delhi, Nagpur Vs. Nav Bharat Sharenik Sangh & Ors. (1985(1)LLJ 742) in which it was held that the requirement mentioned in Rule 77 were mandatory and their violation rendered an order of retrenchment illegal. The exhibition of a list of seniority is necessary to protect the interest of workmen and to provide safeguard against contravention of the rules of last come first go. It was observed that when the seniority list, as envisaged in terms of the directions issued by the Supreme Court, has not been prepared, the condition precedent to the action for retrenchment has not been fulfilled. In the instant case, the learned advocate for the applicant submitted that no such

list is produced and therefore, in any case, the action of the respondents in terminating the applicant's services was illegal. He submitted that it was the duty of the respondents to produce the seniority list to establish that the junior most was retrenched in support of their contention and having failed to produce the seniority list and adverse inference must be drawn against the respondents in view of the decision in Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif and Ors.(AIR 1968 S.C. 1413) in which it is held that a party in possession of best evidence which would throw light on the issue in controversy withholding it, Court ought to draw an adverse inference against him notwithstanding that onus of proof does not lie on him. The ratio of the decision is that a party cannot rely on abstract doctrine of onus of proof or on the fact that he was not called upon to produce it. In the instant case, the facts remain that the respondents have not produced the same and therefore, according to learned advocate Mr. Pathak, an adverse inference must be drawn against the respondents. The view taken by this Tribunal in the decision in O.A.159/86 which has been referred to by the applicant in his application also is in line with decisions cited by applicant. Thus, it is clear that the

respondents have violated the provision of Rule 77 of the Industrial Disputes (Central) Rules, 1957 and Section 25G of the Industrial Disputes Act and hence the action of the respondents in terminating the service of the applicant under section 25 F cannot be held as legal and valid but the impugned notice terminating the service of the applicant shall have to be quashed and set aside. In the result, We pass the following order :

O R D E R

The application is allowed. The impugned notice terminating the service of the applicant is quashed and set aside. The respondents to reinstate the applicant in service. The learned advocate for the applicant has not pressed for backwages from the date of termination till filing of the present petition. Hence the respondents are directed to pay backwages from the date of the filing of this application till the date of reinstatement within four months from the date of receipt of this order and the reinstatement should be made within two months from the date of the receipt of this order. The application is allowed to the above extent. No order as to costs. The application is disposed of

(R.C.Bhatt)
Member(J)

(M.Y.Priolkar)
Member(A)