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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 332 OF 1987
~~O.A. No.~~

DATE OF DECISION 8-12-1988

Shri Jamal Haji Petitioner

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

Versus

Union of India & Anr. Respondent

Mr. B.R. Kyada 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 ? *Y*
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*

1. Shri Jamal Haji,
at Village-Panchasar,
via Amarpara :
Taluka-Wankaner

.....Petitioner.

Versus

1. Union of India,
through The Executive Engineer (C),
Kothi Compound,
Rajkot.

2. Permanent way Inspector, (C)
Kothi Compound,
Rajkot.

.....Respondents

JUDGMENT

O.A. No. 332 OF 1987

Date : 8-12-1988

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

The petitioner Shri Jamal Haji of village "Panchasar" (Taluka-Wankaner, Rajkot-District), has filed this application on 14.7.1987 under section 19 of the Administrative Tribunals Act 1985 (hereinafter referred to as "The Act"). The petitioner has challenged the validity of the action of the respondents-railway administration, whereby his services are terminated by verbal orders dated 25.7.1982. According to him he was initially engaged in the year 1975 and worked till his services were terminated. It is alleged that his services are terminated without following any rules or procedure for retrenchment. He has therefore, prayed that impugned order of termination be quashed and set aside and the respondents be directed to reinstate him with full back wages. He has further prayed that the respondents be directed to grant him

the benefits of the Scheme framed by the Railway Board in terms of the directions of the Supreme Court in the case of Indrapal Yadav (1985 (2) A.I.S.L.J. p.58).

2. The respondents-railway administration in their counter, have categorically denied the petitioner's assertions that his services were terminated by verbal orders. According to them, the plea of the petitioner is concocted one, and the allegations are baseless, as he has left the job w.e.f. 10.8.1982 on his own accord and as such he is not entitled to the reliefs as prayed for, and his claim is also barred by limitation.

3. The petitioner and the respondents are represented by their learned counsels Mr. P.H. Pathak and Mr. B.R. Kyada respectively. When the matter came up for hearing both of them waived oral hearing and sought permission to file their written submissions, which was accordingly granted. In terms thereof, they have filed their written submissions and the same has been taken on record. In light of the points raised in the written submissions, the only short point for our determination is whether the services of the petitioner has been terminated by oral order as alleged or he has left his services on his own accord.

4. The petitioner in support of his case has relied on the service card Annexure-A and one typed copy of the undated letter Annexure-B, purported to have been addressed to the Executive Engineer. It is borne out from the service card that the petitioner was initially engaged on 21.5.1973 and worked as Chain-man

upto 20.7.1975, and later on worked as watchmen from 21.7.1975. No subsequent entries are shown therein. The petitioner has raised a specific plea in his application that his services were terminated by verbal orders passed on 25.7.1982. By producing Annexure-B (undated letter), an attempt has been made to show that some representations were made on behalf of the petitioner. No acknowledgment-postal or otherwise is produced. The respondents have contended that Annexure-B is a concocted one and it is pointed out that there is a reference of one person Jamal Sidi, whereas the petitioner's name is Jamal Haji. It is significant to note that the date i.e. "28.7.1982" is shown therein as the date on which verbal orders were issued in respect of termination.

5. The stand of the respondents is that the petitioner was working as a casual labourer on V.O.P. project and left the service w.e.f. 10.8.1982. The respondents have totally denied the version of the petitioner that his services were terminated by verbal orders on 25.7.1982. It is rather pertinent to note that the petitioner changed his stand in his rejoinder and came out with an allegation that his services were terminated from 10.8.1982 i.e. in total contradiction of the version made in the application. Thus, the plea of the petitioner that his services were terminated by verbal orders passed on 25.7.1982, is found totally baseless and untenable and seems to have been made with a view to support his false claim, when he had left the job on his own accord w.e.f. 10.8.1982.

6. It is thus quite evident that the petitioner last worked upto 10.8.1982. Now, it is significant to note that it is not the case of the petitioner that his services are terminated by any order of retrenchment in writing. At the same time it is not the defence of the respondents that the name of the petitioner was struck out on the ground of unauthorised absence. The petitioner has come out with the plea that he is orally retrenched on 25.7.1982. Presumably, he has come out with such a version in order to make out a case of retrenchment. As a matter of fact there is no action of retrenchment on the part of the respondents in the case of the petitioner.

7. The word "Retrenchment" has been defined under section 2 (00) of the 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 a 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) I.L.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 (00) has unequivocally stated "retrenchment" means discharge of surplus labour or staff by the employer for any reason whatsoever. In the instant cases, the petitioner's services have neither been terminated nor he has been discharged or removed from service.

8. It is true that under common law an inference that an employee has abandoned or relinquished the 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. (See Buckingham and Carnatic Co., v/s. Venkatiah and others, (AIR 1964, SC 1272). 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 10.8.1982. Thus,

as the petitioner has relinquished the service since the said date, he is not entitled to relief as prayed for.

9. More over there are grounds to believe that the grievance if any in the case of the petitioner has arisen 3 years prior to 1.11.1985. The right to file an application under section 19 cannot be divorced from the provision as to limitation. We can not ignore section 21 of "The Act" 1985, which specifically imposes a fetter on the Tribunals, power to entertain the application filed belatedly (see Shri S.C. Bose v/s. Union of India and Ors. A.T.R. 1986 (2) C.A.T. 642). Now with regard to the petitioner's request to direct the respondent to grant benefits of the scheme prepared by the railway-board, it may be stated that such benefits are admissible to such casual labourer on project whose services are terminated and those who fulfill the requirement as required therein. However the task of verifying the claim of such persons is entrusted to the administration under the scheme. We, therefore, do not express any opinion regarding the merits of the petitioner's claim for the benefit of the scheme. The petitioner does not seem to have preferred such a claim to avail of the benefit of the scheme. He will be free to register his claim if any in this regard. We have no doubt when such a claim, is preferred by the petitioner, the competent authority of the railway administration shall consider the same in accordance with law. There is however no justification in granting any reliefs or the directions as prayed for by the petitioner.

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10. 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 liable to be dismissed. The application therefore, stands dismissed with no order as to costs.

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

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