

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXX XXXXXXXX XXXX~~

O.A. No. 509 of 32 1987

WITH
O.A. No. 524 of 1987

DATE OF DECISION 27.3.1991

Mr. Lavji Kanabhai _____ Petitioner
and

Shri Bharat B. Pandya

Mr. B.B. Gogia _____ Advocate for the Petitioner(s)

Versus

Union of India & Ors. _____ Respondent

Mr. P.S. Champaneri for _____ Advocate for the Respondent(s)
Mr. P.M. Raval

CORAM :

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

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?

(3)

O.A. No. 509 of 1987

Mr. Lavji Kanabhai,
C/o. Mr. B.B. Gogia,
Advocate,
10, Junction Plot,
Rajkot.
(Advocate - Mr. B.B. Gogia)

.. Applicant

Versus

1. Union of India,
Through :
Secretary,
Dept. of Telecommunication,
Govt. of India,
New Delhi.

2. Dist. Engineer(Telephones),
Telecommunication Deptt.,
Rajkot.

3. Asst. Engineer Cable,
Construction,
Dept. of Telecommunication,
Rajkot.

(Advocate - Mr. P.S. Champaneri
for Mr. P.M. Raval)

.. Respondents

O.A. No. 524 of 1987

Shri Bharat B. Pandya,
Bhakrinagar Station Plot,
Seri No. 11,
Sardarao House (Near)
Bhaktinagar,
Rajkot.
(Advocate - Mr. B.B. Gogia)

.. Applicant

Versus

1. Postmaster General,
Gujarat Circle,
Ahmedabad.

2. Postmaster,
Bhaktinagar, Post Office,
Bhaktinagar,
Rajkot.

(Advocate - Mr. P.S. Champaneri
for Mr. P.M. Raval)

.. Respondents

J U D G M E N T

Dated :

Per : Hon'ble Mr. P.H. Trivedi .. Vice Chairman

In these cases, the applicants, under section 19

the Administrative Tribunals Act, 1985, has sought relief for declaring oral termination from 25.9.1987 as illegal and claim salary including weekly off days. The grounds of relief claimed are based upon alleged failure of respondents to observe the conditions under section 25(f) of the Industrial Disputes Act. The respondents- Telecommunication Departments and Postal Department are contended to be an 'Industry' and the protection of safeguard of section 25 (f) of the Industrial Disputes Act is based upon the applicant's contention that he is a 'workman' entitled to the notice under the said Act of the basis of his continuous employment for the number of days which requirement he has fulfilled. While I am in agreement in so far as the respondent department is declared to be in 'Industry' and while I do not differ with the conclusion that the applicant has rights under Industrial Disputes Act on the basis of this claim for having worked for the number of days which qualify him to it, I respectfully differ regarding this Tribunal granting him relief for reasons stated below.

2. The scope for the forum of this Tribunal being resorted to by those who are 'workmen' under the Industrial Disputes Act and who are also Government Servant for their service conditions under the Administrative Tribunals Act and for their rights under Industrial Disputes Act has been comprehensively examined and analysed in A. Padmavelly & Ors. v. C.P.W.D. & Ors. The law emerging from this decision is best summarised in the words of the judgement in para 40 of it as under :

40. To sum up our conclusions are as follows :

(1) The Administrative Tribunals constituted under the Administrative Tribunals Act are not substitutes for the authorities constituted under the Industrial Disputes Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those

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authorities in regard to matter covered by the Act. Hence all matter over which the Labour Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act do not automatically become vested in the Administrative Tribunal for adjudication. The decision in the case of Sisodia, which lays down a contrary interpretation is, in our opinion, not correct.

- (2) An applicant seeking a relief under the provision of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act.
- (3) The power of the Administrative Tribunal are the same as that of the High Court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of Rohtas Industries (supra)."

3. The intervention by this Tribunal is clearly limited to the exercise of powers under Article 226. Exercise of this power is discretionary and would depend upon the facts and circumstances of each case. The entire case of the petitioner is based upon his plea and that he enjoys the status of the 'workman' and the respondents are 'industry' as defined in the Industrial Disputes Act and that he qualifies for the safeguard of section 25(f) by virtue of putting in the required number of days. On the other hand, the respondents have pleaded that the petitioner was engaged as a casual labourer for specified work and on completion of said work he was terminated. No junior to the applicant has been retained according to the respondents at the time of his discontinuance and that other persons who were juniors have been already discontinued. The petitioner was verbally told a month before his termination that he was to be terminated and the notice was affixed on the Notice Board.

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4. It is clear that the rival contentions of the parties need to be inquired into for deciding questions of facts. The industrial or labour courts are the proper forum for deciding such disputes of questions of facts. The Industrial Disputes Act provides an efficacious forum for such disputes. It is also clear that there is no other questions relating to a service matter raised in this case which requires a decision. The petitioner has not stated why he has not approached the Industrial Court for this purpose. In such circumstances if this Tribunal is used for obtaining relief it will be tantamount to giving the petitioner a choice of forums, and making itself a forum of concurrent jurisdiction.

5. No doubt the decision in Padmavelly leaves room for invoking discretionary powers of Article 226. The test of the scope of decision in Rohtas Industries requires a *prima facia* conclusion of the *ab initio* void nature of the impugned decision or action to be formed. Such a conclusion must therefore require the impugned order to be so manifestly illegal as not to need any preceding detailed examination of facts. In this case, the number of days for which the petitioner is employed, the nature of his employment being related to a specified period or a specified job and the nature of notice given to him are all question of facts requiring examination. In my view therefore, exercise of powers under Article 226 in this case is not justified or warranted.

R. H. Thivedi
(P.H. THIVEDI)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
~~MAXXXDXDXH~~OAH 509/8
andO.A. No/524
~~XXXXXX~~

1987

DATE OF DECISION 27/3/91

Shri Bharat B. Pandya

Petitioner

Mr.B.B.Gogia

Advocate for the Petitioner(s)

Versus

Post Master General & Another

Respondent

Mr.P.M.Raval.

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.H.Trivedi

: Vice Chairman

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?
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Shri Bharat B Pandya,
Bhaktinagar Station Plot,
Seri No.11,
Sardarao House (Near)
Bhaktinagar.
(Advocate: Mr.B.B.Gogia)

: Applicant

Versus

1. Postmaster General
Gujarat Circle,
Ahmedabad.
2. Postmaster,
Bhaktinagar Post Office,
Bhaktinagar,
Rajkot.

: Respondents

(Advocate: Mr. P.S.Chapaneri
for Mr.P.M.Raval)

JUDGMENT

O.A./524/87

Date: 27.3.1991

Per: Mr.R.C.Bhatt

: Judicial Member

This Original Application is filed by Mr.Bharat B.Pandya who was employed as a Casual Postman by the Postmaster, Bhaktinagar, Post Office, Bhaktinagar, Rajkot in the year 1982. It is alleged by the applicant that he has been working as a Casual Post Man since four to five years on casual basis upto 9th August 1987. It is alleged that the Respondent No.3 orally terminated the services of the applicant on 9th August, 1987. It is alleged that the respondents had neither given any notice nor paid notice pay in lieu of the notice nor was he given any retrenchment compensation before the oral termination and hence, the action of the respondent is violative of Section 25 (F) of the Industrial Disputes Act with the result that the termination order is void ab initio and inoperative. It is alleged that no reasons were given about the termination of his service. It is further alleged by the applicant that he is also entitled to be regularised in service. The applicant has prayed that the oral termination order w.e.f. 10.8.1987 be declared as illegal, inoperative and the applicant be reinstated in service with full backwages and the respondents

also be directed to consider the case of the applicant for regularisation of his service or as a regular Mazdoor as required in accordance with the rules from the due date.

2. The respondents have filed written statement contending that the applicant was engaged against short term leave vacancy on daily wages and by doing casual work, the applicant does not get any right. It is contended that the applicant was engaged as outsider Postman/Group D at Rajkot Bhaktinagar Post Office during 1982^{to}87 in short term leave vacancies as daily wages. It is contended that the applicant had no claim for regular absorption because as soon as regular employee returns to his duty, the engagement of outsider is automatically terminated and no notice pay was necessary to be paid. It is further contended that there is no post of casual Postman in the respondents' department. It is contended that the applicant is not a 'workman' within the meaning of Industrial Disputes Act. It is contended that the applicant has not been recruited as per the Departmental rules and procedure as/he was merely engaged on daily wages in place of the postman of Group D in their casual leave arrangement. It is contended that the termination order passed by the respondents is just, legal and proper and that there is no violation of any of the provision of the I.D. Act, 1947.

3. The applicant filed rejoinder controverting the averments made by the respondents in their written statement contending that the applicant is entitled to reinstatement in service with backwages and is also covered by the rules for regularisation.

4. It is not disputed before us that the Postal Department is an industry as defined in Section 2 (J) of the I.D. Act but the learned advocate for the respondents submitted that the applicant is not a casual labour but was doing casual work as a Postman and therefore he is not a workman as defined in I.D. Act. There is no substance in this submission of

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the learned advocate for the respondents because section 2 (S) of the I.D. Act shows that a person employed in any industry to do any manual, unskilled, skilled technical, operational, clerical or supervisory work for higher or reward, whether the terms of employment be expressed or implied, he is also a workman. In this even if view of the matter, / the applicant was engaged as an outsider postman on casual work, it cannot be said that he is not workman as defined in Section 2(S) of the I.D. Act. He might have been engaged against short term leave vacancy on daily wages but he does not cease to be a workman and the provisions of the I.D. Act will apply.

5. The question which requires to be considered by us is whether the oral termination order of the respondents is violative of Section 25 (F) of the I.D. Act and have so if it is / what is its fact.

6. The respondents have produced with the written statement, a list of engagement of an applicant as an outsider ~~postman~~ of Group D at Annexure A which shows that the applicant had actually worked for 274 days within 12 calendar months prior to oral termination dated 9th August, 1987. It shows that from 9th August, 1986 to 9th August, 1987 the applicant has worked for 274 days. Section 25(F) requires to be considered in this case. As per Section 25 (F), no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the requirements of Clause A, B and C of Section 25 (F) are fulfilled by the employer. There is a relationship ~~bf~~ employer and the employee between the applicant and the respondents. It is not in dispute that no notice in writing indicating the reasons for retrenchment nor any notice paid for compensation in lieu of retrenchment was paid before the oral termination.

Section 2 (00) of the I.D. Act says that retrenchment means the termination by the employer of the service of a workman for any reason whatsoever otherwise as a punishment inflicted by way of disciplinary action, but it does not include the excepted category mentioned in Sub-Clause A, B, ~~and~~ BB and C of Section 2 (00) of the Act. It is not the case of the respondents that the applicant's service is terminated as a punishment nor the applicant's case falls under any of the excepted categories. Therefore, the question ^{is} whether the retrenchment of the applicant without compliance Section 25 (F) of the Act was legal and valid. Now in order to consider as to whether the applicant was in a continuous service for not less than one year before his oral termination, it is necessary to examine Section 25(B) of the Act. It is not in dispute before us and it is also borne out from the Annexure-A to written statement produced by the respondents that the applicant has actually worked under the respondents for 274 days, for a period of one year prior to his oral termination. Therefore Section 25 (B) Sub-Clause (2) of the I.D. Act will be attracted which says that the workman shall be deemed to be in continuous service under an employer for a period of one year, if the workman during the period of 12 calendar months just preceding the date with reference to which the calculation is to be made has actually worked under the employer for not less than 240 days. Therefore, provision of Section 25 (F) will be attracted in this case, and the respondents having retrenched the applicant without complying with the conditions of Section 25 (F), the oral order of termination would be ab initio, void and inoperative. The impugned termination order was ~~in~~ in violation of law and therefore it requires to be set aside and the applicant is entitled to be reinstated in service in his original post.

7. So far as the claim of backwages is concerned, once the Tribunal comes to a conclusion that the termination of service of the workman was not justified and there is no evidence of record to show that the workman was gainfully employed during the period he remained out of service, full backwages cannot be denied. In this view of the matter, the applicant would be entitled to all the backwages also. The applicant has also prayed that the respondents be directed to consider the case of the applicant for regularisation of his service in accordance with the rules from the due date. The respondents have contended in the written statement that the applicant was not working as a casual labourer and that the applicant cannot be regularised as he has not been selected by the regular departmental procedure. However, as the applicant is now reinstated in the service, the respondents are directed to consider his case for regularisation in accordance with the rules applicable to the applicant.

7. The result is that the application having and merits is allowed. The oral order of termination dated 9th August, 1987 of the respondents No.3 is declared void, ~~ab initio~~ and is set aside and the respondents are directed to reinstate the applicant at once and are directed to pay all the backwages within three months and are also directed to consider the case of the applicant for regularisation of his service provided he satisfies the rules applicable to him regarding regularisation. The application is allowed accordingly. Having regard to the facts of this case, ~~we pass no~~ no orders as to costs.

R.C.Bhatt

(R.C.Bhatt)
Judicial Member

(P.H.Trivedi)
Vice Chairman

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
NEW DELHI

O.A. No. 809

1987

T.A. No.

with

6A/524/87

DATE OF DECISION 27.3.1991

Mr. Lavji Kanabhai,

Petitioner

Mr. B.B. Gogia

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. P.M. Raval

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi

: Vice Chairman

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?
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Mr. Lavji Kanabhai,
C/o. Mr. B.B. Gogia,
Advocate,
10, Junction Plot,
Rajkot.
(Advocate: Mr. B.B. Gogia)
Versus

: Applicant

1. Union of India
Through:
Secretary,
Dept. of Telecommunication,
Govt. of India,
New Delhi.
2. Dist. Engineer(Telephones)
Telecommunication Deptt.,
Rajkot.
3. Asst. Engineer Cable
Construction,
Dept. Telecommunication,
Rajkot.

: Respondents

(Advocate: Mr. P.S. Capaneri
for Mr. P.M. Raval.)

JUDGMENT

O.A./509/87

Date: 27.3.1991

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

In this application under Section 19 of the Administrative Tribunals Act 1985, the applicant has challenged the validity of the oral order of termination by Respondent No. III dated 25th September, 1987. It is alleged in the application that the applicant was employed as a casual labour by Assistant Engineer, Cable, Construction Rajkot in December, 1985 that his period of working as certified by the Respondent No. III dated 24th February, 1987 was as per Annexure A/1 i.e. 374 days from December, 1985 to December, 1986, that the applicant was further continued from January, 1987 and worked up to May, 1987 as certified by the Respondent No. III on 2.7.1987 produced at Annexure A/2 which shows the working of 137 days from January, 1987 to May, 1987; that thereafter also the applicant worked in June 1987 for all the 30 days except one leave that he was transferred to the Maintenance

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Department where he worked in the Maintenance side of the Telecommunication Department. Both the branches are under the Respondent No.II. It is the case of the applicant that he was orally informed that his services were terminated; that the applicant was neither served with notice nor was paid any wages in lieu of the retrenchment notice nor he was paid retrenchment composition. The applicant has thus challenged the action of the respondents on the ground that the action of the respondent is violative of Section 25 (F) of the Industrial Disputes Act. It is alleged in the application that the applicant has worked for more than one continuous year as defined under the provision of the I.D. Act and therefore while terminating his services, the respondents were bound to follow the provisions of Section 25 (F) of I.D. Act but the same are not followed and therefore the termination order is void ab initio and inoperative. He has therefore, prayed that the act of oral termination of the services of the applicant w.e.f. 25.9.1987 by Respondent No.III be declared as illegal and inoperative and the respondents be directed to reinstate the applicant in the service with full backwages and has also prayed that the respondents be directed to pay the salary of the applicant for weekly offs from December 1985 till the date when his services were terminated.

2. The respondents have filed written statement to this application contending that the respondents have not violated any condition of the service of the applicant; that the applicant was engaged for a specified purpose for installation of the N.E.C. Telephone Exchange, Kasturba Road, Rajkot, as a casual labour and on completion of the said work, his services were terminated and that therefore the termination was legal and valid. It is contended that the applicant was orally told before a month of his termination and a notice was also affixed on the notice Board that

the applicant's service would be terminated after the completion of the said work order. The respondents ~~had~~ denied that the applicant is a workman or the Respondent Department is an industry. It is contended that as the applicant was discontinued on completion of the specified period of work, the said discontinuance ^{not} could be treated as retrenchment within the meaning of the provisions of the Industrial Disputes Act. It is further contended that it is policy of the department that those who have been engaged on or after 30th March, 1985 should be terminated. It is contended that the applicant was orally informed that his service should be terminated after one month as there was no work since the work of telephone exchange was completed during that period and hence the application be dismissed.

3. The applicant has filed rejoinder controverting the averments made by the respondents in the written statement and has specifically denied that the applicant was employed for a specifica work only and that on completion of the said work his services were terminated. He also denied that he was told orally before a month of his termination or that notice was affixed on the notice board that his ^{alleged} services would be terminated after ^{the} completion of the said work order. In the alternative, he has stated that even such procedure on the part of the respondents was a violative of Section 25 (F) of the I.D.Act. He has stated that as the applicant had already worked for more 240 days in a year ^{as} contemplated as 'continuous service' under Section 25 (B) of the I.D.Act, compliance with Section 25 (F) before terminating service ^{as} was a mandatory pre-condition. He denied that he ^{is} not a workman or that the respondent is not an industry.

4. At the time of hearing of his application, the learned advocate for the applicant has not pressed the relief prayed in para 7 (b) of the application. Therefore, the only point which ~~requires~~ ^{to} be considered is whether the oral termination of the applicant ~~awarded~~ ^{by} the respondents w.e.f. 25th September, 1987 was violative of Section 25 (F) of the I.D. Act and if it is so, whether the applicant is entitled to be reinstated with full backwages.

5. The first contention of the respondents is that the Telephone Department is not an industry as defined in Section 2 (J) of the Industrial Disputes Act. In this connection, the learned advocate for the applicant has relied on the decision in Tapan Kumar Jana and General Manager, Calcutta Telephones and others reported in LLN Vol.2 1980 page 334 in which it is held that Telephone Department is an industry as defined in Section 2 (J) of the I.D. Act. Reasoning given in this decision is that "Calcutta Telephones is an industry in view of the fact that the activity habitually undertaken by it is for rendering material services to the community at large or a part of such community with the help of employees and the services rendered by the Calcutta Telephones is in the nature of public utility service". The other decisions of this Tribunal in this connection are G.K.Aparnathi vs. Union of India in TA/69/87 decided on 10th December, 1987 and Viljibhai K.Solanki & Anr. vs. Union of India and Others in OA/518/88 decided on 19th December, 1990. In these two decisions of this Tribunal, the reliance was placed on the earlier decision in the case of Kunjan Bhaskaran and Others vs. Sub-Divisional Office, Telegraphs Changanassery (1983 LIC.135) in which it was held that the P & T Department is an industry and if there is a termination even if it is oral, it cannot be done without

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regard to Section 25 F of the Industrial Disputes Act. In view of these decisions, we find no substance in the contention of the respondents that P & T department is not an industry and we hold that the present applicant is governed by the provisions of I.D.Act. There is also no substance in the contentions of the respondents ~~is~~ that the applicant is not a workman. Having regard to the definition of Section 2 (S) of the I.D.Act we hold that the present applicant who was working as a casual labour at Rajkot in the respondent's department is a workman as defined in that Act. Now the main question is whether the respondents have violated the provision of Section 25 (F) of the I.D.Act. Termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment except in cases excepted in Section 2 (00). The excepted or excluded cases are where termination is by way of punishment inflicted by way of disciplinary action, voluntary retirement of the workman, retirement of the workman on reaching the age of superannuation if the contract of the employment between the employer and the workman concerned contains a stipulation in that behalf, and termination of the services of a workman on the ground of continued ill health.

6. The contention of the respondents ~~has~~ found in the written statement is that as the applicant was engaged for a specific purpose for installation of the N.E.C. Telephone Exchange, Kasturba Road, Rajkot as casual labourer and as the said work is completed the applicant was orally informed about the same that his services would be terminated after one month as there was no work, since the work of Telephone Exchange was completed during that period. The applicant has in terms in rejoinder denied that he was employed for a specified work and that on completion of the said work his services ~~were~~ terminated. The respondents have not produced any documentary evidence in support of

their contention that the applicant was engaged for a specified period of work and that as the work is completed ~~he is discontinued~~ his continuity from the service. Therefore, the contention of the respondents cannot be accepted. It is also the contention of the respondents in the written statement that a notice was affixed on the notice board that the applicant's services ~~would~~ be terminated after alleged completion of the work order and the applicant was also orally informed that his services would be terminated after one month as there was no work. The applicant in rejoinder also on this point has specifically denied that he was told orally before a month about his termination or the notice was affixed on the notice board as contended by the respondents. The respondents ~~had~~ on this point have also not produced any documentary evidence in support of their contention. Hence, the said contention also fails.

7. According to Section 25 (F) of the I.D. Act 1947, no workman employed in any industry who has been in continuous service for less than one year under/employer shall/retrnchned by that employer until the requirements of Clause A, B and C of Section 25 (F) are fulfilled. The applicant is a workman as defined in Section 2 (S) of I.D. Act. In order to consider whether the applicant was in a continuous service for not less than one year under an employer as mentioned in Section 25 (F) of the Act, it is necessary to examine Section 25 (B) Clause (1) & (2) of the Act. Clause (1) provides uninterrupted services and Clause (II) provides where a workman is not in continuous service. Sub-Section (1) & (2) introduce a deeming fiction as to in what circumstances a workman ~~should~~ be said to be in continuous service for the purpose of Chapter V-A. Sub-Section (2) incorporates another deeming fiction for an entirely different situation. It comprehends a situation where a workman is not in continuous service within the meaning of Sub-Section (1) for a period of one year or six months, he shall be deemed to be in

continuous service under an employer for a period of one year or six months as the case may be if the workman, during the period of 12 calendar months just preceding the date with reference to which the calculation is to be made, has actually worked under that employer for not less than 240 days. In such a case, he is deemed to be in continuous service for a period of one year if he satisfied the condition of Sub-clause (iii) of Clause (2)(a) of §25 (B). The conditions are that commencing the date with reference to which the calculation is to be made, in case of retrenchment, if in a period of 12 calendar months just preceding such date of retrenchment, the workman has rendered service for a period of 240 days, he shall be deemed to be in 'continuous service' for a period of one year for the purpose of Section 25(B) in Chapter V-A. In that instant case, the applicant has produced satisfactory evidence by producing Annexures A-1, A-2 and A-3 that he had worked for 284 days in a period of 12 months preceding the date of his oral termination dated 25.9.1987. In view of this evidence, it will have to be concluded that the workman is in continuous service for a period of one year and he has satisfied the eligibility qualification enacted in Section 25(F). In this case, the act on the part of the respondents of oral termination of the services of the applicant is nothing but a retrenchment as defined in Section 2(00) of the I.D.Act and before the retrenchment could be made, it was mandatory on the part of the respondents to comply with the provisions of Section 25(F) of the I.D.Act. But the respondents have not complied with that provision by giving a requisite notice and compensation, etc. As pre condition for a valid retrenchment has not been satisfied, the termination of service is ab initio void, invalid and inoperative. In this view of the matter, the respondents having violated the provision of 25 (F) of I.D.Act and the oral termination being held ab initio void, invalid and inoperative, the respondents are bound to reinstate the applicant.

8. The next question would be whether the applicant is entitled to full backwages in view of the oral termination being held as void and invalid. It is held in Mohan Lal vs. Bharat Electronics Ltd. (1981) 3 SCC 255 that in case of illegal termination of service, worker is deemed to be continuing in service and is entitled to reinstatement with full backwages. No case is made out for departure for this normally accepted approach of the Court and Tribunals in the field of social justice and we do not propose to depart in this case.

10. In the result, the application shall have to be allowed to the above extent and the oral order of termination of the respondent No.3 dated 25.9.1987 is held ab initio void and inoperative. Hence the relief prayed in para 7(a) shall have ~~be~~ be granted. The respondents are directed to reinstate the applicant at once and to pay full backwages of the applicant within three months. The relief in terms of para 7 (b) ~~does~~ not survive as it is not pressed. ~~We pass~~ ^{an} No order as to costs, having regard to the facts and circumstances of the case.

Renu

(R.C.Bhatt)
Judicial Member

(P.H.Trivedi)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCHwith O.A. No. 509/87
O.A. No. 524/87~~EX-NK~~DATE OF DECISION 21.08.1991

Mr. Lavji Kanabhai & Ors. Petitioner

Mr. B.B. Gogia Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. P.M. Raval Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G. S. Nair : Vice Chairman

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement?
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O.A. No. 509 of 1987

Mr. Lavji Kanabhai,
C/o. Mr. B.B. Gogia,
Advocate,
10, Junction Plot,
RAJKOT.

: APPLICANT

(Advocate : Mr. B.B. Gogia)

VS.

1. Union of India, through
Secretary,
Dept. of Telecommunication,
Govt. of India,
NEW DELHI.
2. Dist. Engineer (Telephone)
Telecommunication Dept.
RAJKOT.
3. Asst. Engineer Cable
Construction,
Dept. of Telecommunication,
RAJKOT.

: RESPONDENTS

(Advocate : Mr. P.M. Raval)

O.A. No. 524 of 1987.

Shri Bharat B. Pandya,
Bhakrinagar Station Plot,
Seri No. 11,
Sardarao House (Near)
Bhaktinagar,
RAJKOT.

: APPLICANT

(Advocate : Mr. B.B. Gogia)

VS.

1. Postmaster General,
Gujarat Circle,
AHMEDABAD.
2. Postmaster,
Bhaktinagar, Post Office,
Bhaktinagar,
RAJKOT.

: RESPONDENTS

(Advocate : Mr. P.M. Raval)

O R A L - O R D E R

O.A. No. 509 of 1987

with

O.A. No. 524 of 1987

Date : 21.8.1991

Per : Hon'ble Mr. G.S. Nair

: Vice Chairman

(20)

These applications were finally heard by a division Bench of this Tribunal, and in view of ^{the} difference of opinion between the Members, reference was made to the Hon'ble Chairman under Section 26 of the Administrative Tribunals Act.

2. The application in Original application No.509 of 1987 was a Casual Labourer in the Telecommunication Department while the applicant in Original application No.524 of 1987 was a Casual Postman in the Postal Department. The grievance of the former relates to the termination of his service on 25.9.1987, while the latter complained about the termination of his service ^{alleged} on 9.8.1987. Both of them held that they are 'workmen' and are entitled to benefits of ^{the} provision of Industrial Disputes Act. It was specifically urged that the termination is violative of Section 25 (F) of the Industrial Disputes Act, and as such is void in law. The applications were resisted by the respondents ^{who} contended that the applicants are not 'Workmen', and that the provisions of the Industrial Disputes Act do not apply to them.

3. By the final order dated 27.3.1991 it was held by the Hon'ble Judicial Member, that, applicants are 'Workmen' entitled to the benefits of the Industrial Disputes Act and that the order of termination is void. Accordingly it was set aside and the respondents were directed to reinstate the applicants in service. The Hon'ble Vice Chairman, ~~who~~ who was sitting as Adminsitarative Member of the Bench, agreed that the respondents department is 'Industry' and that the applicants have right ^{under} in the Industrial Disputes Act. ^{However} Further placing reliance on the decision of ^{the} Tribunal in Padmavelley's case, he took the view that the exercise of power by this Tribunal under Article 226 of the Constitution

(2)

of India is not justified or warranted.

4. ~~X~~ I have heard advocate Mr. B. B. Gogia on behalf of the petitioner and Mr. E. A. Samuel for Mr. P. M. Raval on behalf of the respondents and have perused the records. I am of the view that ~~in~~terference by the Tribunal is justified, and that the applicants are entitled to the relief as proposed in the order of the Hon'ble Judicial Member.

5. At the out set it has to be pointed out that the decision in the Padmavelley's case was delivered in the ~~exxxex~~ year 1990. These applications were ~~by~~ admitted by the division Bench of the Tribunal in 1987. The question of rejecting ^{an} original application on account of the applicants not having availed of all the remedies available to him ~~xx~~ the relevant ~~xxxix~~ service Rules for the redressal of his grievance arises ~~Sub. Section~~ only under (1) of Section 20 of the Adminisitrative Tribunal Act. ~~Even there~~, there is not ~~total~~ ^{total} prohibition with respect to the admission even in case were alternative remedy if not exhausted. Before the decision in Padmavelley's case there were number of decision of this Tribunal including the Full Bench decision in Sisodia's case holding that the jurisdiction of this Tribunal and of the Tribunal ^{the} under ~~the~~ Industrial Disputes Act ~~are~~ concurrent in respect of service matters. Though by ~~the~~ decision in Padmavelley's case this proposition was over-ruled, it was also held that the powers of the Adminisitrative Tribunal are the same of that of the High Court, under Article 226 of the Constituiton and the exercise of that discretionary power would depehd upon the facts and circumstances ~~and~~ of ^{each} ~~xxx~~ case and on the well recognised principles in this respect. Of course it was also held that the applicants seeking relief under the provision of the Industrial Disputes Act must ordinarily exhaust the remedy available under that Act.

6. The question is whether these applications are to be

2-5-

(G.S.)

dismissed ~~as~~ as the applicants have not pursued the relief before the Industrial Tribunal. I have no hesitation to hold that the answer has to be in the ~~negative~~ . As stated earlier the concept of rejecting the application for not pursuing the remedy under the Service Rules arises at the stage of admission of the Original Application or immediately after the respondents enter~~s~~ appearance, and raise the question as ~~the~~ ^a preliminary objection. When these applications have been admitted without reservation, and were pending for the last four years, after arriving at the conclusion that the applicants are really 'Workmen' entitled to the benefits of the Industrial Disputes Act, it will not be in the interest of justice to dismiss the applications on the short ground of the applicants not having approached the Industrial Tribunal.

7. In the result I hold that the applicants in these two applications are entitled to be allowed the reliefs as proposed in the final order delivered by the Hon'ble Judicial Member on 27.3.1991.

(M.M.SINGH)
Member (A)

21-8-1991
(G.S.NAIR)
Vice Chairman

B
SG

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. 509 OF 1987

~~TAX NO.~~ with

O.A. No. 524 OF 1987

DATE OF DECISION 2-4-1992.

1) Mr. Lavji Kanabhai, & Petitioners

2) Mr. Bharat B. Pandya,

Mr. B.B.Gogia, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. P.M. Raval, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. R. Venkatesan, Admn. 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?

(3P)

Mr. Lavji Kanabhai,
Mr. Bharat B. Pandya, Applicants.

V/s.

Union of India & Ors. Respondents.

ORAL ORDER

O.A.No.509/87

with

O.A.No.524/87

Date: 2-4-1992.

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

This two matters are put before us for pronouncement of judgment. These two matters were originally heard by the Division Bench of this Tribunal consisting of Hon'ble Mr. P.H. Trivedi, the then Vice Chairman of this Tribunal and one of us (i.e., Hon'ble Mr.R.C.Bhatt, Judicial Member).

Both the members deferred and hence the reference

was made by the Hon'ble Chairman of the Tribunal to refer the matter to the third Member late Shri G.S.

Nair, the then Vice Chairman of the other bench.

The Hon'ble the then Vice Chairman of the other Bench

of Tribunal Mr. G.S.Nair passed the following oral order in both the matters as under :

"In the result, I hold that the applicants in these two applications are entitled to be allowed the reliefs as proposed in the final order delivered by the Hon'ble Judicial Member on 27th March, 1991."

(b)

The opinion ~~judgment~~ of one of us i.e. Mr.R.C.Bhatt, Judicial Member on 27th March, 1991 in O.A. 509/87 was as under :-

"10. In the result, the application shall have to be allowed to the above extent and the oral order of termination of the respondent No.3 dated 25.9.1987 is held ab initio void and inoperative. Hence the relief prayed in para 7(a) shall have to be granted. The respondents are directed to reinstate the applicant at once and to pay full backwages of the applicant within three months. The relief in terms of para 7(b) does not survive as it is not pressed. No order as to costs having regard to the facts and circumstances of the case."

The ~~final~~ order in another matter i.e. O.A.No.524/87 as per the opinion of the Judicial Member Mr.R.C. Bhatt was as under :-

"7. The result is that the application having merits is allowed and the oral order of termination dated 9th August, 1987 of the respondent No.3 is declared void ab initio and is set aside and the respondents are directed to reinstate the applicant at once and are directed to pay all the backwages within three months and are also directed to consider the case of the applicant for regularisation of his service provided he satisfies the rules applicable to him regarding regularisation. The application is allowed accordingly. Having regard to the facts of this case. No orders as to costs."

This was also dated 27th March, 1991.

2. In view of the opinion of the Hon'ble Vice Chairman Mr. G.S. Nair agreeing with the opinion of the Judicial Member Mr. R.C. Bhatt on the reliefs proposed in the final order by the Judicial Member, the opinion of the majority of the members of the Tribunal is pronounced today in view of Section 26 of the Administrative Tribunals Act, 1985.

3. Thus, according to the majority opinion the relief granted in para 10 of O.A. No. 509/87 by the Judicial Member Mr. R.C. Bhatt and also in O.A. No. 509/87 in para 7 also by the Judicial Member Mr. R.C. Bhatt in O.A. 524/87 on 27th March 1991 becomes the judgments of this Tribunal. Therefore, the ~~in judgement~~ majority is pronounced accordingly as per the reliefs granted in the two above applications, ~~as observed~~ ~~above~~.

R Venkatesan

(R. Venkatesan)
Member (A)

R C Bhatt

(R.C. Bhatt)
Member (J)