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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW YORK~~

O.A. No. 519
~~Ex No.~~

1987

DATE OF DECISION 15-2-1991

Shri Vijaykumar Naginaprasad Petitioner

Mr. R.V. Sampat Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

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

CORAM :

The Hon'ble Mr. M.M. Singh : Administrative Member

The Hon'ble Mr. R.C. Bhatt : 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*

(V)

Shri Vijaykumar Naginaprasad,
C/o.Ram Bachchanprasad,
L.M.P., Telephone Exchange,
Jetpur.
(Adv: Mr.R.V.Sampat)
Versus

: Applicant

1. Union of India
Through:
Telecom District Engineer,
(T.D.E.), Genda Agad Road,
Junagadh.
2. The Sub-Divisional Officer(T)
S.D.O.T., Office,
Gandhisadan, Porbandar.
(Adv.: Mr.P.M.Raval)

: Respondents.

O.A. No.519/87

JUDGMENT

Date: _____

Per: Hon'ble Mr. R.C.Bhatt

: Judicial Member

¶. This original application is filed by
Shri Vijaykumar Naginaprasad, was recruited as a daily
wager (casual labour) on or about 1.4.1985 in the office
of Respondent No.2. It is alleged in the application that
the applicant worked for more than 497 days right from
1.4.1985 to 4.7.1987 has borne out from the certificate
produced by the applicant with the application. This
certificate also shows that the applicant worked for more
than 240 days during the last 12 months preceding the
date of 4.7.1987 when he was orally discharged from the
service. Thereafter the applicant served statutory notice
dated 27.7.1987 under Section 80 of the C.P.Code on the
respondents calling upon him to reinstate ~~him~~ with backwages
in the capacity of labourer and to confer upon him with all
benefits of regularisation. It is further alleged in the
application that the provisions of P & T Manual Vol.IV
inter alia lays down that the daily wage earner labourers
are to be regularised and have to be absorbed to the
permanent establishment. The applicant has alleged in the
application that the statutory notice issued on behalf of

R.C.B.

(A)

the applicant to the respondents has remained uncomplied with and un replied to and hence this application is filed which by/ the applicant has challenged the respondent's action. The applicant has prayed in this application that the respondents be ordered to forthwith reinstate the applicant as casual labourer with backwages and to place him in the regular pay scale of Rs.196-232 and the oral order of discharge of the applicant dated 4.7.1987 be declared as illegal, void and inoperative.

2. None of the respondents have filed reply to this application.

3. It is urged before us by the learned advocate for the applicant that this matter is governed by the provisions of the Industrial Disputes Act, 1947 herein-after referred to as the Act. The learned advocate for the respondents has not disputed this proposition. The learned advocate for the applicant, at the time of arguments, showed us the letter dated 25.1.1988 by which the respondent No.2 intimated the applicant to report for duty as casual labour immediately, that the applicant received it on 6.2.1988 and he reported for duty immediately. The learned advocate for the respondents has not disputed this fact about the receipt of letter by the applicant and the fact that he reported for duty immediately. The learned advocate for the applicant submitted that as the applicant is now reinstated, he would not press the relief for reinstatement as it does not survive, but the relief of payment of backwages from 4.7.1987 i.e. the date of oral discharge or termination of applicant with continuity of service, will survive. The learned advocate for the applicant, therefore, submitted that the said relief be given to the applicant.

4. An attempt was made by the learned advocate for the respondents to urge before us that there was break in

service of the applicant as he has remained absent for the period from 5th May, 1987 to 6th February, 1988. In our opinion, there is absolutely no merit in this submission because no reply ^{is} filed by the respondents, in this case contraverting the allegations made in the application nor any documentary evidence is produced even at this stage by the respondents to show that the applicant was called upon to report for duty at any time earlier to the letter dated 25.1.1988. In this view of the matter, it cannot be said that there was any break in service of the applicant.

5. It is not disputed before us by the respondents that the respondents' department is an Industry as defined under Section 2(J) of the Act. The applicant is thus a workman as defined under Section 2(S) of the Act. The documentary evidence produced by the applicant also shows that he has served for a period of 240 days during 12 months of his service preceding the date of his oral discharge or termination. The mandatory provisions of Section 25 F of the Act not having been complied with by the respondents before orally terminating the service of the applicant, the impugned discharge or termination was per se in violation of law and ~~pressed~~ realising ^{re} this position of law, the respondents by letter dated 25.1.1988 called upon ~~the~~ ^{the applicant} ~~the respondents~~ to report for duty immediately and have reinstated the applicant.

6. So far as the claim of backwages is concerned, once the Tribunal comes to a conclusion that the termination of services of the workman was not justified and there is no evidence on record to show that the workman was gainfully employed during the period he remained out of service, full backwages cannot be denied.

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Learned advocate for the respondents on this point submitted that the applicant has not anywhere mentioned in the application that he has not worked at all during the period he remained out of service or that he had worked for certain days during that period and therefore according to the learned advocate for the respondents in absence of the proof about the work done by the applicant during this period for some time or for no time, the applicant is not entitled to full backwages. Learned advocate for the applicant submitted before us that the applicant would furnish the detailed statement about any work if done by him during this period before the respondents.

7. Now that the applicant is reinstated, the said relief is not pressed and infact it does not survive now. In the result, we shall have, therefore, to allow this petition to the extent that the order of oral discharge or termination of the applicant dated 4.7.1987 by the respondents is declared illegal, void and inoperative and the applicant is entitled to all backwages from 4th July, 1987 till 6th February, 1988 i.e. till the date of his reinstatement less the amount if any earned by him during that period for which the applicant shall furnish detailed statement to the respondents. The applicant will also be entitled to all the benefits of continuity in service.

8. In the result we pass the following orders:-

(i) The order of the oral discharge or termination of the applicant dated 4.7.1987 passed by the respondents is declared illegal, void and inoperative.

9. The respondents are directed to pay full backwages to the applicant from 4.7.1987 till 6.2.1988 i.e. till the date of his reinstatement deducting the amount earned by the applicant, if any, during

that period for which the applicant shall furnish detailed statement to the respondents.

(III) The respondents are directed to give all the benefits of continuity in service of the applicant.

Petition allowed accordingly. Having regard to the facts of this case, we pass no order as to costs.

R.C.Bhatt
(R.C.Bhatt)

Judicial Member

M.M.Singh
(M.M.Singh)
Administrative Member