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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 537 OF 1987.
T.A.O. No.

DATE OF DECISION 22-11-1988

SMT. ELANGELI VADIVEL Petitioner

MR. Y.V. SHAH 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. 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

(8)

Smt. Elangeli Vadivel,
C/o. Shri K.L. Singh,
P.W.I.(C),
Western Railway,
Jamnagar.

..... Petitioner.

(Advocate: Mr. Y.V.Shah)

Versus.

1. Union of India,
through the General Manager,
Western Railway,
Churchgate,
Bombay - 20.

2. Chief Engineer (C),
Western Railway,
2nd floor,
Station Building,
Ahmedabad - 2.

3. Mr. Iyenger or his
successor in the office,
Executive Engineer (C),
Western Railway,
Jamnagar - 8.

..... Respondents.

(Advocate: Mr.B.R.Kyada)

J U D G M E N T

O.A. NO. 537 OF 1987

Date: 22.11.88

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

The petitioner Smt. Elangeli Vadivel, has filed this application under section 19 of the Administrative Tribunals Act 1985, on 4.11.1987 for redressal of her grievances against retrenchment. It is averred by the petitioner that she was initially engaged as casual labourer on 2.5.1978 under P.W.I.(C) Rajkot and thereafter under P.W.I.(N) Jamnagar and worked there up to 20.9.1984. Later on, she was on maternity leave and after her hospitalisation when she attended the office of P.W.I., Jamnagar, she was not allowed to resume duty and her services

are terminated by oral orders from 10.9.1985. She has therefore, prayed that the impugned action of retrenching the petitioner from service be quashed and set aside, as it is arbitrary and violative of the Rules 76-A & C and 77 of the Industrial Disputes (Central) Rules 1957 in absence of Division-wise seniority list and in breach of the railway board's scheme. She has further prayed that all consequential benefits including back wages and seniority above her juniors be granted to her.

2. The respondents-railway administration in their counter denied the petitioners' allegation that her services were terminated by verbal orders passed on 10.9.1984. According to them, the petitioner was engaged on 20.5.1983 under P.W.I.(C) Jamnagar as a Female Beldar on daily rated basis and continued upto 31.12.1984 and thereafter, she herself left the service and as such, she is not entitled to the relief as prayed for.

3. When the matter came up for hearing we have heard Mr. Y.V.Shah and Mr. B.R.Kyada, the learned counsel for the petitioner and the respondents respectively, along with other cases of casual labourers wherein common questions of law were raised. But, we have not preferred to render a common judgment as each case represented different set of facts and circumstances. We have also perused and considered the materials placed on record.

4. The short question for our consideration is that whether the service of the petitioner has been terminated by oral orders on 10.9.1985 as alleged by her or she has abandoned the work at her own accord, as contended by the respondents.

5. It is the version of the petitioner that she was initially engaged on 2.5.78 and continued to work till 20.9.1984 and thereafter she proceeded on maternity leave. According to her, after her hospitalisation, she regularly attended the office of P.W.I. Jamnagar but she was not allowed to resume her duty. It is significant to note that she has not stated the date on which she reported for duty. However, in para 3, a bald statement has been made by the petitioner that her services were terminated by oral order of retrenchment on 10.9.1985. Her assertions are not borne out by the service card produced by her and the period of engagement shown therein run entirely counter to her assertions.

6. The stand of the respondent is that the petitioner was given fresh appointment on 25.7.1983 under P.W.I.(C) Jamnagar as Female Beldar on daily rated basis and she worked there upto 31.12.1984 and thereafter she did not report for duty and abandoned the job. It is borne out from the service card produced and relied upon by the petitioner that she was initially engaged on 2.5.78 as casual labourer, she worked upto 10.7.1978, thereafter she was again re-engaged on 28.11.1978, however she left her job on 11.8.1979 at her own accord. Again she worked as casual labourer from 26.10.1979 till 5.12.1979 for about more than one month but later on, she left the job at her own accord. The endorsement made in this regard in the service record testify this position. It is further revealed from the service card that nearly after an interval of four years, she was again engaged as casual labourer on 25.7.1983 under P.W.I.(C) Jamnagar and worked there upto 20.9.1984. As per the

last endorsement found in her service card she was shifted to P.W.I. Surendranagar. According to the version of the respondents the petitioner worked till 31.12.1984 and thereafter abandoned the work on her own accord. As per the version of the petitioner she last worked upto 20.9.1984 and thereafter she went on maternity leave. It is significant to note that there are no materials to support her say that she had sought any maternity leave and the same was granted by the respondents-railway authority. Even apart from it, there is no material even indicating that she was hospitalised for this or other purpose.

7. It is pertinent to note that the petitioner for the first time, has come out with the version in this application that her services were terminated by oral order on 10.9.1985. There is no material whatsoever to show that after the year 1984 she made any representation to the authorities ventilating her grievance on this count. She has come out with the plea that she has been orally retrenched from service on 10.9.1985. Presumably, she has come out with such a version merely to conceal her long absence since 31.10.1984, which is clearly indicative of the fact that she abandoned the employment voluntarily. A person like the petitioner can hardly afford to remain absent without being gainfully engaged elsewhere. Ordinarily, in case of difficulty or inability to attend, a casual labourer would either inform the higher authority or make any representation herself or through recognised Trade Union or approach competent Court or Tribunal for redressal of her grievance. Nothing of the sort seems to have been done by the petitioner in this case.

8. 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. (see Buckingham & Carnatic Co. V/s. Venkatiah & Anrs., A.I.R. 1964 S.C. 1272).

9. 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 31.12.1984. Thus, as petitioner has relinquished the service since the said date, she is not entitled to the relief as prayed for. 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