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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXXXXXX~~

M.A. NO. 136 OF 1990

IN

O.A. No. 135 OF 1988 ~~xxx~~
~~xxxxxxx~~

DATE OF DECISION 19-9-1990.

DANUBHA RAMSANG & ANRS. Petitioners.

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.M. SINGH, ADMINISTRATIVE MEMBER.

The Hon'ble Mr. N.R. CHANDRAN, 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? *Yes*
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? *Yes*

(H) (4) (SAC)

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

PRESENT

The Hon'ble Shri M. M. Singh,
Administrative Member;

and

The Hon'ble Shri N. R. Chandran,
Judicial Member.

ORIGINAL APPLICATION NO. 135 of 1988
and M.A.136 of 1990

1. Danubha Ramsang
2. Agarshih Paragji
3. Annopsinh Baneshinh ... Applicants

vs

1. Union of India through the
General Manager, Western
Railway, Churchgate, Bombay.
2. Chief Engineer (C), IIfloor,
Railway Station, Ahmedabad.
3. Permanent Way Inspector (C),
C/o Executive Engineer (C),
Western Railway,
Jamnagar.
... Respondents

Mr.P.H.Pathak

Counsel for
applicants

Mr. B.R.Kyada

Counsel for
respondents

O R D E R

(Pronounced by the Hon'ble Shri N.R.Chandran,
Judicial Member)

The above applications have been filed by the three applicants challenging the orders of termination as and from 23-8-1984. The applicants were working as casual employees under the Permanent Way Inspector, Bhatia, viz., the first respondent. It is the case of the applicants that they were transferred to work under Assistant Engineer, Valsad, in the Bombay Division. The applicants state that they protested against the transfer and therefore their services were terminated.

Shri P.H.Pathak, the learned counsel for the applicants submitted that the casual employees cannot be transferred and hence the order of transfer would be illegal. The ^{advocate} learned ^{even} would further contend that/if the order of transfer had not been obeyed, it would not be open to the respondents to have straightaway terminated the services of the

applicants, which would be illegal. He finally submitted that the order of termination would be a retrenchment as defined under Section 2(oo) of the Industrial Disputes Act and therefore the order of termination passed without following the safeguards laid down under Section 25F of the Industrial Disputes Act would render the said orders of termination void ab initio. On instructions from the applicants, the counsel for the applicants submitted that the applicants are not pressing for back wages and hence the respondents cannot raise the plea of limitation, and that the applicants would be satisfied with the relief of reinstatement on the orders of termination being quashed.

The learned counsel for the respondents, on the other hand, submitted that the transfer of the applicants had been

necessitated because of the completion of work in Viramgam, Okha, Porbandar conversion work on phase II and the Bombay Division required labour force and under the circumstances, the counsel contended that the orders of transfer were valid and legal.

The other submission of the learned counsel for the respondents was that the applicants never turned up for duty after their transfer and therefore the question of their termination did not arise. He concluded by stating that the several legal questions posed by the applicants do not arise and prayed for the dismissal of the application.

We have heard the rival contentions.

It is admitted that the applicants had worked for more than 240 days in a calendar year before 23-8-1984 when they were stopped from work. The learned counsel for the applicants

relied upon the decision of this Tribunal in O.A.159 of 1986. That related to casual labourers working in the same project viz., Viramgam-Okha-Porbandar Gauge Conversion Project. In that case this Tribunal held that since the respondent did not prepare a seniority list as contemplated under Rule 77 of the Industrial Disputes (Central) Rules, 1957 for effecting retrenchment on the basis of 'last to come first to go', the non-compliance of the said rule would be fatal to any retrenchment. The other decisions cited by the learned counsel for the applicants are O.A.335 of 1987 (Shri Dineshbhai Bhavanbhai v. Union of India) and O.A.1/1986 (Jivi Chaku v. Union of India & others). In OA 335/1987 this Tribunal held that a casual labour is not liable to be transferred as transfer is not a condition of their service and accordingly

quashed the consequential order of retrenchment. In O.A. 1 of 1986 this matter was considered in great detail by this Tribunal and after quoting Rule 2501 of the Indian Railway Establishment Manual, held that a casual labourer is not liable for a transfer. Rule 2501 of the Indian Railway Establishment Manual reads as follows:

"Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour."

This Bench in O.A.1/1986 also referred to L.Robert D'souza's case (AIR 1982-SC-854) and held that a casual labourer cannot be transferred. The learned counsel for the applicants also submitted that assuming the applicants had not obeyed the orders of transfer, then it would be necessary for the respondents to have taken action for absence

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and they should not have straightaway terminated the applicants. This position is supported by the decision reported in (1989) 9 ATC 158 (G. Krishnamurthy vs. Union of India and others) where the Madras Bench of the C.A.T. took the view that non-compliance of a direction by the casual labour can only be a subject matter of disciplinary proceedings. It is admitted by the respondents that the applicants have been working as casual labourers for long periods, the first applicant from 1979 and the 2nd and third applicants from 1983. Therefore, they have acquired a temporary status and their services can be dispensed with only by following the procedure prescribed under the rules. Apart from the safeguards laid down in the Railway Establishment Manual, the applicants being workmen, would be entitled to protection under Section 25F of the Industrial Disputes Act.

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Therefore, the learned counsel for the applicants rightly contended that their termination would be illegal. He relied upon several decisions to substantiate his contention that the termination without satisfying the conditions under Section 25F of the Industrial Disputes Act would render the order of termination invalid.

In view of the latest pronouncement of the Supreme Court in the case of Punjab Land Devt. and Reclamation Corporation Ltd., Chandigarh etc. and others v. Presiding Officer, Labour Court, Chandigarh and others (1990-II-LLJ-70) it is not necessary to refer to any other decision. It has been held by a Bench consisting of Five Judges, after considering the entire case law on the subject, that ^{an} ~~no~~ order of termination not falling within the exceptions contained in Section 2(oo) of the Industrial Disputes Act would be a retrenchment. In this

case admittedly the terminations would not fall within the exceptions mentioned in Section 2(oo) and therefore the terminations would be invalid. Therefore, the applicants are bound to succeed and the respondents are bound to take them back to duty. The decision cited by the learned counsel for the applicants clearly laid down that the applicants cannot be transferred. Even if the respondents could justify the orders of transfer, for not obeying such orders, there cannot be any termination straightaway without following the procedure contemplated under the rules. In any event, the respondents ought to have followed the safeguards laid down in Section 25F of the Industrial Disputes Act. All these infirmities highlighted above make the order of termination illegal and void.

At this stage, the learned counsel for the respondents submitted that the orders of termination of the applicants were as early as 31-7-1984 and hence the application is not maintainable at this stage. It is to be noted that the counsel for the applicants at the time of arguments had given an undertaking that he would not insist upon back wages. In similar circumstances, in OA 257 of 1987 (Shri Jivan Govind vs. Union of India and others) this Tribunal has taken into account the factor of delay and refused back wages, while allowing the application. Since in this case the applicants themselves have given an undertaking that they would not claim back wages, the respondents cannot raise the plea of delay to defeat the rights of the parties. As a matter of fact, after this application has been numbered and entertained as OA 135/1988, the applicants have filed MA 136/90 for condonation of delay. In view of the undertaking of the counsel for the applicants that they would

not insist upon back wages, we are of the view that MA 136/90 filed for condonation of delay is unnecessary.

For the reasons stated above, the order of termination of the applicants are set aside and the respondents are directed to reinstate the applicants in service within four weeks from the date of this order.

The applicants should file an affidavit before this Tribunal within four weeks from the date of this order that they would not claim back wages as a result of quashing of the orders of termination.

The O.A. is allowed as above.

N.R. Chandran
(N.R. CHANDRAN)
JUDICIAL MEMBER

M.M. Singh
(M.M. SINGH)
ADMV. MEMBER

Index: Yes **

s.v.