

*62*  
Versus

Shri Ranabhai Nathabhai  
B/h. Paradise Talkies,  
At & Post Porbandar. .. Respondent  
(Advocate - Mr. H.K. Rathod)

O.A./151/88

Union of India,  
Through,  
Aeronautical Communication  
Station,  
Aerodrome Rajkot,  
Rajkot Airport,  
Rajkot. .. Applicant  
(Advocate - Mr. J.D. Ajmera )

Versus

Sumar Mohmadbhai Joban,  
Kolithad  
Via. Gondal,  
Dist. Rajkot. .. Respondent  
(Advocate - Mr. M.K. Rathod )

CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman  
Hon'ble Mr. G.S. Nair .. Vice Chairman

ORAL - ORDER

Date : 19.3.1990

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

Heard Mr. J.D. Ajmera and Messrs Y.V. Shah  
& H.K. Rathod, learned advocates for the applicant  
and respondents respectively. After hearing the  
parties, the following main contentions are to be  
dealt with.

1. Does the Tribunal act in exercise  
of supervisor's jurisdiction over the subordinate  
forum in this case, the Industrial Tribunal? It  
is found that the plea of the learned advocate for  
the respondents Mr. Shah that by analogy it is the

16

63

exercise of article 227 powers that are in question in this case and we are restricted in that exercise by the evidence laid before the Industrial Tribunal and its findings and that interference with the findings of the Tribunal is warranted only in a limited manner has no weight because the application is filed under section 19 of the Administrative Tribunals Act, 1985 and in any case there is no exercise of powers by this Tribunal under Article 227 of the Constitution. So far as the application under section 19 of the Administrative Tribunals Act, 1985 is concerned, the powers of this Tribunal are not in any manner limited in arriving on the conclusion on the face of the pleadings in this case.

2. The second contention is whether there is any bar to considering a new question of whether the Civil Aviation Department is an 'Industry' because this bench in OA/57/86 had found that the Civil Aviation Department is not an 'Industry'. Learned advocates for the respondents have stated that this Tribunal came to the conclusion without examining any oral or documentary evidence while the Industrial Tribunal, Ahmedabad has come to the findings that it is an 'Industry' on the face of a detailed examination of the facts both orally and documentary produced. We cannot find that the judgment in OA/57/86 is not a reasoned order. Learned advocates have heavily relied upon the Supreme Court's judgment in the Bangalore Water Supply's case and we find that in that judgment in OA/57/86 the judgment of the Bangalore Water Supply has been specifically referred to. It is also stated therein that in arriving at the conclusion

2

2

that the Civil Aviation Department is not an 'Industry' the findings of the Central Government Industrial Tribunal, Bombay's order are relied upon. In that judgment the facts of the sovereign functions of the department and of the various functions of the Civil Aviation department have been discussed in detail and the following extract from it shows how that Tribunal decided that Civil Aviation department is not an 'Industry'. This reasoning found favour with this Bench in concluding that the Civil Aviation department is not an 'Industry'. The Industrial Tribunal, Ahmedabad sought to distinguish the facts of this case from the facts before it on the ground that the employees before the Bombay Industrial Tribunal were in fact employees of the International Airport authorities on deputation from the Civil Aviation department. We find that from the facts of this case there is nothing to cause any bar for a conclusion being formed that Civil Aviation department is not an 'Industry'. Had the employees in the cases before us were being employed in the International Airport authority it could have been stated that that authority has been distinguished from the Civil Aviation department and that authority not having been declared an 'Industry' there was room for argument that the employees could be regarded as 'workmen' in the 'Industry'. We are of the opinion that the distinction pointed out by the learned Industrial Tribunal is in fact not available and Civil Aviation department has been considered to be an 'Industry' by the Tribunal in the case referred to.

3. Learned advocate Mr. Shah has sought to rely

17

8

upon AIR 1985 SC 1128 in which the employee was engaged by Pan American Airlines. This case is not applicable to the applicants at all because that the Pan American Airlines as commercial Airline and cannot be compared to the Civil Aviation department. In 1987 GLH vol. VII 159 the consequential declaration of benefits are contemplated. In the facts of this case this circumstance also has no appreciation because if a new person was recruited after workman has been thrown out, the right of that workman has to be respected only if Civil Aviation department is regarded as 'Industry'. These basis is not available for the facts of this case.

In the result, therefore, we do not find that there is any ground for reconsideration of the judgment in OA/57/86 dt. 29.1.1987. Nothing stated or pleaded by the respondents shows why the conclusion of that judgment that the Civil Aviation department is not an 'Industry' for the reasons stated in the judgment and on the basis of the authorities relied upon in it requires any reconsideration. Accordingly, the awards passed by the learned Industrial Tribunal in Reference Nos. 3/85 dt. 22.11.1985, 3/85 on 17.8.1987, No. 4/85, 5/85, 6/85 and 8/85 on 26.8.1985 are quashed and set aside and the references are dismissed. No order as to costs.

Learned advocates for the respondents at the end of the orders pressed for interim relief earlier given to be continued for a period of

BB

eight weeks. On being asked whether the petitioners have been reinstated, they stated that the petitioners were not reinstated but that by way of interim relief, wages were ordered to be paid and that these wages were not paid. On consideration, there appears to be no ground for staying of the operation of the above orders for the period asked for enabling by ~~approaching~~ the petitioners to seek their remedy in a superior forum as the petitioners have not been reinstated and as payment of wages for the future cannot be allowed. So far as non-payment of wages for a period ~~of~~ previous to the above orders is concerned that is a matter of separate cause not to be mixed up with the stay of the operation of the order.

Sd/-

( G.S. Nair )  
Vice Chairman

Sd/-

( P.H. Trivedi )  
Vice Chairman

TRUE COPY

\*Mogera

1/13/48  
Section Officer  
Central Admin. & Civil Tribunals  
Ahmedabad Bench.