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Terminated (Jud)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 169 1988

~~T.A. No.~~

DATE OF DECISION 2.7.1991

Bharath Gunvanthrai Bhatt Petitioner

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

Versus

Union of India & Ors. Respondent

Mr. M.R. Raval 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 ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal. No

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Bharath Gunvanthrai Bhatt,
Add. Slum Qrs. No. 85,
Jamnagar Road,
RAJKOT.

(Advocate : Mr. B.B. Gogia) ..... Applicant

VERSUS

1. Union of India
Through:
Secretary,
Telecommunications,
Government of India,
New Delhi,

2. Telecom District Manager,
Amruta Estate,
Near Girnar Cenema,
Jasani Building,
Rajkot.

3. Junior Engineer,
D Tax Installation
Deptt. of Telecommunications,
K.R. Exchange, 4th Floor,
Kasthurba Road,
Rajkot. ..... Respondents

(Advocate : Mr. M.R. Raval for
Mr. P.M. Raval)

J U D G M E N T

O.A./169/88

Date: 2.7.1991

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

1. The applicant has filed this application under section 19 of the Administrative Tribunals Act, 1985, for the declaration that the oral termination of his services by the respondents No. 3 dated 1st February, 1988, is illegal, ineffective, null and void and that he be continued in the services and the respondents be directed to reinstate him with full backwages and has further prayed that the respondents be directed to prepare the scheme as ordered by Hon'ble Supreme Court and the employment of the applicant be regularized. The applicant has alleged in the application that he was a casual labourer working in the Telecom.

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Department from 30th October 1986 upto the date of his oral termination as mentioned in para 6 of this application, that he was retrenched by respondents by oral order which was illegal and void in as much as it was in violation of the provisions of Industrial Disputes Act. It was alleged in the application that he was neither given one month's notice, nor the notice pay of one month at the time of termination of his services, nor was given retrenchment compensation. It is alleged by him that the telecom. Department is an "Industry" within the provisions of I.D. Act and he is the "Workman" as defined under section 2 (s) of the I.D. Act. It is alleged by him that the respondents have acted in statutory violation of the provisions of Section 25- F of the I.D. Act. The applicant has, therefore, alleged the action of the respondents in terminating his services by yarbal order is illegal and void.

2. The respondents have filed reply contending that this application is not maintenable in view of section 20 of the Administrative Tribunals Act. The respondents have denied that the applicant was discharged with oral order. It is contended by the respondents that the applicant was engaged only upto 31st March, 1988, and therefore autometically his services came to an end in terms of the appointment order dated 1st January, 1988, issued by the A.D.C.T. - D.T.A.C. Rajkot. It is contended that on completion of the period mentioned in that order, the services of the applicant was liable to be terminated. It is contended that the applicant was initially engaged for a period of one month only in terms of letter dated 31st August, 1987 and every month extension was given on condition, that he could be discharged at any

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time and accordingly his services, began only from 1st Sept. 1987. It is contended that the applicant was not engaged by respondents Nos. 2 & 3 before 1.9.1987 and contended the averments made by the applicant that he worked from 1-1-87 onward is not correct.

3. The respondents denied that the Telecom. Department is an "Industry" and the applicant "a Workman" under I.D. Act. It is contended that the appointment of applicant was for a specified period and therefore it could not be said, that the applicant was retrenched within meaning of I.D. Act. The respondents contended that the applicant did not work with the respondents for more than 240 days and therefore there is no question of following, the procedure of section 25- F of I.D. Act, even assuming that the provisions of I.D. Act, are applicable. It is contended that the applicant was engaged for a period of five months only, and therefore, the application should be dismissed.

4. The applicant has filed rejoinder controverting the statements made by respondents in reply. The applicant denied that the offices mentioned by respondents are different and denied the other statements made in reply. The applicant denied that he has not completed 240 days in a year.

5. The applicant has produced at Ann. A-2, the certificates from the respondents dated 30th Sept. 1987 and 6 Feb. 1988 to show the number of days that he worked as casual labour from 13th October, 1986 to 31st January, 1987. It shows that the applicant worked for 310 total days from the 13th October, 1986, to 31st August, 1987. Certificate dated 6th February, 1988 shows the number of days that he worked as casual labour from 1-9-1987 to 31-1-1988. Thus, according to the applicant,

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he has worked for 310 days, in a period from 13-10-1986 to 31st August, 1987 and for 153 days within period from 1st Septmber to 31st January, 1988 before his termination from services. The learned Advocate for the applicant submitted that as the applicant has worked for more than 240 days within a period of 12 calender months preceeding the date of his termination, the respondents were not entitled to terminate his services without following the statutory provisions of section 25-F of the I.D. Act.

6. The first contention of the respondents is that the Telecom. Department is not an "Industry" as defined in Section 2 (j) of the I.D. Act. There is not substance in this contention because this Tribunal has in many cases held that the Tele- communication Department is an "Industry". We, therefore, hold that present application is governed by the provisions of the I.D. Act, and the applicant being a casual labour is a "Workman"

7. The learned Advocate for the respondents also contended that the application is not maintainable as the applicant has not exhausted other remedys available under the act, under Section 20 of the Administrative Tribunal Act. The jurisdiction of the Administrative Tribunals with respect to the cases covered under the Industrial Disputes Act has been pronounced by the Central Administrative Tribunal consisting of five members in A Padmavally's & Anr's V/s C.P.W.D. Ors, reported in II (1990) C S J (CAT) 284 (FB). The law is laid down in paras 38- 39 of this judgment. According to this decision, when the competent authority has ignored statutory provisions or has acted in violation of Article 14 of the constitution, this Tribunal can exercise power under Article 226 to set aside the illegal order of termination and to direct ...

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reinstatement of the employee leaving it open to the employer to act in accordance with the statutory provisions. In this case, for the reasons which will follow, we are of the view that the respondents have acted in complete violation of the statutory provisions of the I.D. Act and this is fit case in which we should exercise our discretionary power to entertain this application of the applicant.

8. The respondents' learned advocate has submitted writen submissions in which it is mentioned that the notice was given on 1-1-1988 to the applicant vide R-1 and on expiry of the period of one month of the notice, the services of the applicant had come to an end by efflux of time as mentioned in the notice. Reading this notice dated 1-1-84, it appears clear that it is letter for the extention of one month period in the services of the casual labours mentioned in it including the applicant. It is also mentioned in that letter that the service of these casual labours will be terminated earlier if any regular majdoor would be posted at D. Tax, Rajkot. Therefore, this R-1 date 1-1-88 cannot be construed one month's notice as required under Section 25-F of I.D. Act. It is also contended in written submissions and reply that prior to 1-9-87, the applicant was engaged by the G.M. (Projects) and the payments were made by that office, which was entirely different authority and at the time of termination, the applicant was working with subordinate office of the G.M. Tele-communications only W.E. 1-9-1987 and not prior to that and therefore, the services rendered by the applicant with the G.M. (Projects) cannot be taken in to consideration for the purpose of computatition of 240 days and, therefore the applicant is not entitled to benifit of Section 25- F of I.D. Act. It may be noted at this stage that the two certificates

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given to the applicant are by the office of A.D.E.T. (D. Tax) Rajkot, Department of Tele- communication which show the number of days that the applicant worked in that department from 13th October, 1987 to 31-1-1988. Therefore, there is no substance in the contention of the respondents that the applicant was serving in entirely different authority before 1-9-87. The two certificate produced by the applicant sufficiantly show that he was working with the respondents in the entire period. If the authority under whom, the applicant worked prior to 9-1-87 was different from the one under whom he worked after 1-9-1987, the certificates would have been different. We are satisfied from the two certificates produced by applicant that he was working with the same authority. Assuming that the offices were different as contended by respondents, the fact remainsthat the applicant has for the entire period worked in the Tele- communication. Therefore, the total number of days that the applicant worked in that department should be considered. In the instant case, the documentary evidence produced by the applicant clearly proves the case of the applicantthat he was worked for more than 240 days during the period of 12 calander months preceding the date of his termination on 1-2-1988. The question therefore, arises as to whether the respondents were entitled to terminate the service of the applicant without following the provisions of Section 25- F of I.D. Act. According to Section 25- F of the Industrial Disputes Act, 1947, 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), of Section 25- F are fulfilled. The applicant is a workman as defined in Section 2 (s) of Industrial

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Disputes Act. It would be necessary to examine Section 25 (B) Clauses (1) and (2) of the Act. Clause 1 provides for uninterrupted services and clause (2) comprehends where a workman is not in continuous service. Sub- section (1) and (2) introduce a deeming fiction as to in what circumstances a workman could be said to be in continuous service for the purpose of Chapter V-A. Sub- section (2) incroporates 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 preceeding 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 satisfies the conditions in sub- Clause (a) of clause (2) The conditions are that commencing the date with reference to which the calculation is to be made, in case of retrenchment, the date of retrenchment, if in a period of 12 calendar months just preceding such date, 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 and Chapter V-A. In the instant case, the applicant has produced satisfactory evidence that he had worked for more than 240 days in a period of 12 months preceeding the date of the oral termination as mentioned in the certificates. In view of this evidence, it will have to be assumed that the workman is in continuous service for a period of one year and he satisfies the eligibility qualification enacted in Section 25-F. Thus,

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the applicant was entitled to a notice and also retrenchment compensation in this case. As pre condition for a valid retrenchment has not been satisfied, the termination of service is abinitio void, invalid and inoperative and he must, therefore, be deemed to be in continuous service, and would be entitled to reinstatement with full backwages.

9. The learned advocate for the applicant at the time of hearing has not pressed the relief prayed in para 7 (b) of the application and hence it does not survive.

10. The result is that the application is allowed to the extent that the termination of services of the applicant with effect from 1-2-88 is held illegal, void and inoperative and the respondents are directed to reinstate the applicant in service forthwith with all backwages and continuity of service. The respondents to pay all backwages within four months from the receipt of this judgement. We direct the respondents to pay cost of Rs. 300 to the applicant also within that period of four months. Application is disposed of accordingly.

(R.C. Bhatt)
Judicial Member

(M.M. Singh)
Administrative Member

*Kaushik