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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
XX XXXX XXXX
AHMEDABAD BENCH

O.A. No. 290 OF 1988
~~XXXXXX~~

DATE OF DECISION 13-6-1991

Lilaben R. Trivedi & Ors. Petitioner

Mr. J.J.Yagnik Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. M.R.Rawal for Mr.P.M.Rawal Advocate for the Respondent(s)

CORAM :

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

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

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Ans*
2. To be referred to the Reporter or not ? *Ans*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Ans*

(11)

1. Trivedi Lilaben Ranchodhbhai,
2. Tripathi Dhanlaxmi Pradipkumar,
3. Makwana Tribhovan Kalidas,
4. Gautam Rashmikant Rathod,
5. Parmar Arithbhai Jethabhai,
6. Jadav Suresh Ratilal,
7. Parmar Vasantlal Shankerlal,
8. Parmar Nareshkumar Maganlal,
9. Makwana Hitendrakumar Nathalal,
10. Vyas Pankaj Madhusudan,
11. Galsar Laxman Khemchand,
12. Shahpara Girish Parshottam,
13. Vankar Rameshbhai Sendhabhai,
14. Parmar Girishbhai Muljibhai,
15. Vaghela Kiritkumar Laljibhai,
16. Parmar Renukaben Natvarlal,
17. Patel Rajendrakumar Baldevbhai,
18. Shaikh Habibbhai Rasulbhai.

All C/o, Shahpura Girish Parshottam,
Maruti Society No. 1,
Ghatlodia,
AHMEDABAD -61.

(Advocate : Mr. J.J. Yagnik)
None present for the applicants

: Applicants.

Versus

1. Union of India
(to be served through the
Secretary,
Ministry of Communication,
Dak Bhavan,
NEW DELHI.

2. The Post Master General,
Gujarat Circle,
Ashram Road,
AHMEDABAD.

3. Senior Superintendent of
Post Office,
Ashram Road,
AHMEDABAD.

: Respondents

(Advocate: Mr. M.R. RAWAL FOR
Mr. P.M. RAWAL)

J U D G E M E N T

O.A. No. 290 CF 1988

W
Date : 13-6-1991.

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

: Judicial Member

This application under Section 19 of the Administrative Tribunals Act, 1985, is filed by 18 applicants, working as members of Extra Departmental Staff challenging their termination order passed by the respondents dated 6th April, 1988. It is alleged in the application that the respondents have terminated the services of the applicants in violation of the provision of Section 25-F, 25-G, 25-H of the Industrial Disputes Act, 1947. It is the case of the applicants that they were discharging their duties as packers, stamp vendors, messengers etc., for months together, and that they were working as Extra Departmental Staff by virtue of their appointment, the copies of which are produced at Annexure A-1 dated 16th July, 1987/24th July, 1987. The applicants have prepared the statement of their period of work done as Extra Departmental Staff and the said statement is produced at Annexure A-2. It is the case of the applicants that they have rendered services of more than 240 days in the year preceding the date of their termination of service. The applicants have produced one circular of the Department of Post at Annexure A-3. It is alleged by the applicants that they are registered with the Employment Exchange. The applicants have produced at Annexure A-5(1), A-6 the circular of instruction regarding Extra Departmental Agents Rules. According to the applicants, the respondents have violated the provision of the Industrial Disputes Act, and the order of termination of their services dated 6th April, 1988 produced at Annexure A-8 is illegal.

2. The respondents have filed written statement denying the allegation made by the applicants in the application. It is contended by the respondents that there is no cause for the applicants to join in one application, that the application is not maintainable. It is also

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contended that the applicants were working as Extra Departmental Agents in short term vacancies. They have denied that they have violated the provisions of the Industrial Disputes Act, 1947, as alleged by the applicants, and further denied that they have terminated the services of the applicants in violation of the provision of any Act or Rules. It is contended that the applicants are governed by the Extra Departmental Agents (Condition of Services) Rules. The respondents have denied that the applicants have rendered services continuously as alleged in the application. It is contended that no regular appointment orders were issued in respect of 13 employees but they were engaged provisionally while for the rest of the five employees, no orders were issued. The respondents have denied that each of the applicants have completed 240 days of continuous services.

3. According to the respondents the orders of appointments of the applicants which were provisional clearly show that their services were liable to be terminated when the regular incumbents were available. It is contended that there is no question of retrenchment of the applicants. The respondents have produced at Annexure R-1, the appointment orders of the applicants. It is contended that as the appointments of the applicants were provisional they have been dis-continued when regular appointments were made. It is contended that the circular referred by the applicants have not bearing to the facts of the present case.

4. The respondents have also produced at Annexure R-2 the copies of Recruitment Rules, regarding Extra Departmental Agents.

5. The applicants have challenged the order of termination of their services, which according to them is violative of the provision of Section 25-F, 25-G, 25-H, of the Industrial Disputes Act, 1947. It is not in dispute that the applicants have not exhausted the remedy available to them before Industrial Tribunal or Labour Tribunal under the provision of Industrial Disputes Act and they have directly come before this Tribunal by filing this application under Section 19 of the Administrative Tribunals Act. The latest decision on the question of the jurisdiction of the Administrative Tribunal with respect to the case covered under the Industrial Disputes Act has been pronounced by a five members bench of the Central Administrative Tribunal in A. Padmavally & ors v/s C.P.W.D. & ors. reported in III (1990) CSJ (CAT) 384 (FB). The law is laid down in paras 38 and 39 of this judgement. They read as under.

"38. In the Rohtas Industries case the decision in Premier Automobiles case was cited with approval and it was held that if the I.D. Act creates rights and remedies it has to be considered as one homogeneous whole and it has to be regarded as unoflato. But it was made clear that the High Court interfere in a case where the circumstances require interference. This is clear from the following observation in regard to exercise of jurisdiction under Article 226:

"This court has spelt out wise and clear restraint on the use of this extraordinary remedy and the High Court will not go beyond those wholesome inhibitions except where the monstrosity of the situation or

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exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered."

In our view, one such situation would be where the competent authority ignores statutory provision or acts in violation of Article 14 of the Constitution. Further, where either due to admissions made or from facts apparent on the face of the record, it is clear that there is statutory violation, we are of the opinion, that it is open to the Tribunal exercising power under Article 226 to set aside the illegal order of termination and to direct reinstatement of the employee leaving it open to the employer to act in accordance with the statutory provisions. To this extent we are of the view that alternate remedy cannot be pleaded as a bar to the exercise of jurisdiction under Article 226."

"39. However, the exercise of the power is discretionary and would depend on the facts and circumstances of each case. The power is there but the High Court/ Tribunal may not exercise the power in every case. The principles of exercise of power under Article 226 have been clearly laid in the case of Rohtas Industries by Krishna Iyer, J. cited above. Issues No. 2 and 3 are answered accordingly."

Then follows the conclusions of the Larger Bench in para 40 of the judgment as under:

"(1) The Administrative Tribunals constituted under the Administrative Tribunals Act are not substitutes for the authorities constituted under the Industrial Disputes Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities in regard to matter covered by that Act. Hence all matters over which the Labour Court or the Industrial

Tribunal or other authorities had jurisdiction under the Industrial Disputes Act do not automatically become vested in the administrative tribunal for adjudication. The decision in the case of Sisodia, which lays down a contrary interpretation is, in our opinion, not correct.

(2) An applicant seeking a relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act.

(3) The powers of the Administrative Tribunal are the same as that of the High Court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of Rohtas Industries (Supra).

(4) The interpretation given to the term 'arrangements in force' by the Jabalpur Bench in Rammoo's case is not correct."

The larger Bench, while considering the various decisions of the different Benches of the Central Administrative Tribunal expressing and giving different judgements in past about the jurisdiction of the Central Administrative Tribunal with regard to the cases coming before them involving the provisions of the Industrial Disputes Act, observed that the Industrial Disputes Act is a complete Act provided for the investigation of the settlement of Industrial Disputes. It is also observed in this decision that the concurrent jurisdiction of this Tribunals and the machinery under the Industrial Disputes Act not only will shatter the machinery forget for the preservation on Industrial peace but will also lead to anomalous result.

It is also observed in this decision that the conflict of decision will occur and will remain if this Tribunal and the Industrial Disputes Machinery work side by side and if decisions are given on similar matters by both the forum, if the decision by the forum under the Industrial Disputes Act is not brought for ~~scutiny~~ before this Tribunal.

6. Thus in view of the decision of the larger Bench in Padmavally's Case (Supra), applicants before claiming relief under the provision of the Industrial Disputes Act must ordinarily exhaust remedies available under that Act and this Tribunal does not exercise concurrent jurisdiction with the authorities with regard to the matters covered by Industrial Disputes Act. The matters over which the lower court or the Industrial Tribunal or other authorities have jurisdiction under the Industrial Disputes Act do not automatically become vested in the Administrative Tribunal for adjudication. It is clear from the above decision that the jurisdiction of the Tribunal in challenges under I.D. Act is by direction to be conferred to such cases as may fall within the guidelines of para 38 and 39.

7. The next question is whether we should exercise our discretion in terms of the guidelines of para 38 of the Padmavally's judgement above. In the instant case, the applicants have produced Annexure A-2 prepared by them with regard to the number of days for which they have worked as Extra Departmental Agents. They have not produced their service card or other authentic evidence to show the period

for which they have worked. The respondents have seriously challenged the duration of 240 days work put by the applicants. The respondents have taken contentions that the appointment of the applicants was on contract basis till regular appointments were made, that the applicants were serving on different post viz., Messengers, Stamp Venders, Checkers, that the appointment of the applicant were provisional and they were governed by the provision of the Extra Departmental Agents Rules. Thus there are many disputed factual questions, which would require oral and documentary evidence of both the parties. In these circumstances, according to us, this is not a fit case in which this Tribunal should exercise discretion in terms of the guidelines of para 38 of the Padmavally's case (Supra).

8. In view of the above facts, we hold that the application before us is not maintainable as the applicants have not exhausted the remedies before the forum provided under the Industrial Disputes Act, 1947 as per the decision in Padmavally's Case (Supra). The result is that the application shall have to be dismissed as not maintainable.

9. The application is dismissed as not maintainable before this Tribunal with no orders as to costs.

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

Judicial Member

M. M. Singh
(M.M. Singh) 2/69/

Administrative Member