

Terminal PPN
(1/2d)

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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

NEW DELHI

O.A. No. 324 1988
~~XXX~~

DATE OF DECISION 28-6-1991

Mr. H. M. Solanki

Petitioner

Mr. P. H. Pathak

Advocate for the Petitioner(s)

Versus

Union of India and Others

Respondent

Mr. Jayant Patel

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. S. Santhana Krishnan : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *By*
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*

Solanki Hirabhai Mithabhai,
Harijanvas, At Post : Mahij,
Ta. Mendabad -387 120

: Applicant

versus

Union of India,
Notice to be served through

1. The General Manager,
Ahmedabad Telephones,
Khanpur,
AHMEDABAD.
2. Assistant Engineer CC-I
Telephone, 37, Exchange,
Jamalpur,
AHMEDABAD

: Respondents

J U D G E M E N T

Date : 28-6-1991

O.A./324/88

Per : Hon'ble Mr. S.Santhana Krishnan : Judicial Member

The applicant who has filed this application under Section 19 of the Administrative Tribunals Act, 1985, claims in this application that he was working as a casual labourer under the respondent from 1983 onwards and that he had completed 360 days of service. The Assistant Engineer CC-I, directed him to report from 5.12.1987 before the second respondent as per the letter dated 5.12.1987. When he reported to the second respondent he refused to take him on duty stating that the Assistant Divisional Engineer has not sent the seniority number of the applicant and so he will not allow him to resume duties. When he approached the Assistant Engineer (M) Vasana, he informed him that he had completed all formality and he has relieved him and the applicant should ask the respondent No.2, to take him on duty. Inspite of his best efforts he was not given duty from 6.12.1987. The respondent department is an industry and the applicant as a workman is entitled to ^{draw} the benefit of Section 25 F of the I.D. Act, 1947. The respondents action in not giving the applicant work will amount to retrenchment and as such his retrenchment without complying with the provisions of Section



(3)

25 F of the I.D. Act is not valid. His juniors who have joined the service after him are continued in services. This violates Rule 77 of the I.D. Rules. The respondents have not prepared the seniority list. He has also made representation to the respondents, but he was not given any work. Hence this amounts to oral termination and as such he has come forward with this application for a declaration that the oral termination from 26.12.1987 is invalid and he should be given back employment with consequential benefits.

The respondents claim in their reply that the applicant is not a workman and the respondents is not an industry. It is admitted that the applicant was working as a casual labourer from 1.6.1985, but was only working on a casual basis for a seasonal work. When he was instructed to report for duty to ~~the~~ IIInd respondent on 5.12.1987, he failed to approach the IIInd respondent. He failed to report for duty from 1.12.87 till today. The applicant will have to prove that he had completed 360 days of service. As the applicant was engaged purely on temporary basis and that too for seasonal work he cannot claim any benefits under provision of the Industrial Dispute Act. As the applicant himself has stopped from attending the duty on his own there is no necessity to give any notice. Hence they pray for the dismissal of the application.

2. The applicant in his rejoinder denies the contentions raised by the respondents in their reply.

3. Mr. P.H. Pathak learned counsel for the applicant contends that the applicant was working as a casual labourer under the respondent from the year 1983. He fails to produce any record to prove the same. Annexure-A shows that the



applicant was working as a casual labourer under the respondents from 1.6.1986 onwards. This is admitted by the respondents in their reply. The applicant also produced his muster roll to show that he was working continuously from 1.6.1985 till 30.11.1987. Though the respondents claim that the applicant was only working on casual basis for seasonal work they failed to produce any record to substantiate their claim. The applicant produces Annexure A-1, whereby he was asked to report for duty before II nd respondent with effect from 5.12.1987. It is admitted that the name of the applicant is shown wrongly here. The applicant claims that when he went for duty before the IIInd respondent he was not allowed to join duty on that day. Subsequently he also sent an application marked as Annexure A-2, claiming his seniority list. He has also sent his representation through Union as per Annexure A-4.

4. Though the respondents claim that the applicant failed to report for duty from 1.12.1987, they have not chosen to issue any notice to the applicant. The respondents also failed to produce any record to show that the applicant failed to report for duty before IIInd respondent. If really the applicant failed to appear before the IIInd respondent on 5.12.1987, he would have certainly informed Assistant Engineer, Vasna about the same. No such letter is produced by the respondents. The contention of the respondents that the applicant is not a workman and the respondents is not an industry cannot be ~~accepted~~ in view of the decision relied on by the applicant namely the judgement of this Tribunal in OA/518/88 dated 19.9.1990. If the applicant failed to appear on 5.12.1987 before the IIInd respondent, nothing prevented him from producing his record to show that the applicant failed to report for duty and hence he was shown absent on the Muster Roll. The burden is on the respondents to prove that the applicant abandoned the work as contended

[Signature]

(X)

by them.

(LAW)

5. Regarding the contention of the respondents his juniors are allowed to continue his services the applicant failed to produce the name of the juniors and any seniority list whereby his juniors are allowed to continue in service. Hence there is no basis in this contention. As the applicant has established that he had worked under the respondents as a casual labourer for more than 360 days, and the respondents without issuing any notice to him orally terminated his services with effect from 6.12.1987, he is entitled to claim that the oral order of termination is invalid. In view of the above said discussion we find no difficulty in holding that the oral order of termination is invalid and as such the applicant is entitled to claim reinstatement with back wages. Hence we hereby order that the oral order of termination is invalid and hence we direct the respondents to reinstate the applicant, in service with all consequential benefits within three months from the date of the receipt of this order. No order as to costs.


(S. SANTHANAN KRISHNAN)
Judicial Member
28/6

R. H. Singh
28/6/87
(M. M. SINGH)
Administrative Member