

C.L. Termination
of Service
(No)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 341 of 1988.
~~T.A. No.~~

DATE OF DECISION 19.11.1991

Shri Pawankumar Ramraj Bhagat Petitioner

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

Versus

Union of India & Ors. Respondent

Shri P.M. Raval Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt Member (J)

The Hon'ble Mr. S. Gurusankaran Member (A)

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? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(2)

Shri Pawankumar Ramraj Bhagat,
C/o. Shri Shivshankar Prasad,
Technician,
Mafatia Para,
Madhapar, Nr. Railway Godown,
Rajkot.

.. Applicant

Versus

1. Union of India
Through : Secretary,
Telecom. Department,
Govt. of India,
New Delhi.
2. Telecom. Dist. Manager,
Rajkot District,
Jasani Building,
Nr. Girnar Cinema,
Rajkot.
3. Asst. Engineer - Cable
Construction,
Telecom. Department,
Rajkot.

.. Respondents.

O.A. No. 341 of 1988

O R A L - O R D E R

Dated : 19.11.1991.

Per : Hon'ble Shri R.C. Bhatt .. Member(J).

The applicant has filed this application under section 19 of the Administrative Tribunals Act, 1985 for the declaration that the oral termination of the applicant from his service on 13th August, 1987 by respondent No. 3 be declared illegal, ineffective, null and void and the applicant be continued in the service and the respondents be directed to reinstate the applicant with full back wages. The applicant has set out the days of his working with the respondents in para 6 of the application and according to him, he has worked for 353 days from July, 1986 to August, 1987 prior to his verbal termination. The applicant has produced the certificates from the concerned

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officers at Annexure A-1 at page 10,11 and 12 for this purpose. The respondents have in the reply contended that the applicant was engaged on casual basis for a specified project and on completion of the project, his services were liable to be terminated. It is also contended that the respondent No. 3 engaged the applicant only for 144 days from February, 1987 to June, 1987 and for the rest of the period the applicant worked under the construction officer, Telegraph Rajkot. The respondents contended that the unit of the construction officer Telegraph, Rajkot is a separate unit under the Area Manager, Telegraphs, Rajkot and not under respondents No. 2 and 3. The contention of the respondents cannot be upheld for the simple reason that the applicant was working with the Telecom department and the ^{Certificates} ~~services~~ have been given by the officers of that department, ^{me} May be by officer of other sub department, but it cannot be denied that the applicant was working in the telecom department. The documentary evidence produced by the applicant shows that he had worked for more than 240 days within 12 months prior to the date of his oral termination..

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2. It is not in dispute that the Telecom department is an 'Industry' and the applicant is a 'workman' under the Industrial Disputes Act. The main question which requires to be considered is whether the action of the respondents in orally terminating the services of the applicant was in flagrant violation of the statutory provision of section 25-F of the Industrial Disputes Act. Learned advocate for the respondents submitted that the termination of services of the

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services of the applicant would not attract the definition of retrenchment as defined in section 2-00 of Industrial Disputes Act because of the subsequent amendment in section 2-00 by which clause - BB was added which says that the retrenchment does not include termination of services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated, no stipulation in that behalf contained therein. In our opinion, the learned advocate for the respondents cannot take shelter under this sub-clause for the simple reason that there is no such written contract having a stipulation as envisaged under this amendment apart from other consideration.

3. In the instant case, the documentary evidence produced by the applicant definitely shows that the oral termination by the respondent was done without following the statutory provision of section 25-F of the Industrial Disputes Act because the applicant had worked for 240 days within a period of 12 months prior to the date of his oral termination. It is held by the larger bench of the Central Administrative Tribunal in A. Padmavalley & Anr. v. C.P.W.D. & Ors. reported in II (1990) C.S.J. (CAT) 284 (FB) in which in para 38 and 39 of the judgment, it is held that when the competent authority has ignored the statutory provision or has acted in violation of article 14 of the Constitution of India, this Tribunal can exercise the powers 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. In this

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case for the reasons which are narrated above that the respondents have ignored statutory provision of section 25-F of Industrial Disputes Act, this is a fit case in which we should exercise out discretionary power to entertain this application of the applicant. The respondents' action amounts retrenchment of the applicant without following section 25-F of the Industrial Disputes Act because it is an admitted affair that no notice of retrenchment nor any compensation has been given to the applicant before orally terminating his services. The evidence produced by the applicant shows that the applicant was in continuous service for a period of one year prior to the date of his oral termination and therefore, the respondents should not have terminated his services without following the provisions of section 25-F of Industrial Disputes Act. As the condition for valid retrenchment has not been satisfied the termination of service is void and illegal and in therefore the applicant must be deemed to be/continuous service and would be entitled to reinstatement with full back wages.

4. Learned advocate for the applicant at the time of hearing has not pressed at this stage the relief in para 7(B) of the application and hence it does not survive.

5. The result is that the application is allowed to the extent that the termination of the services of the applicant w.e.f. 13th August, 1987 is held illegal and inoperative and the respondents are directed to reinstate the applicant in service within 1½ month from the receipt of this order with continuity

of service and to pay all back wages within 4 months from the date of receipt of this judgment. The applicant shall have to give the details to the respondents if he has worked elsewhere during this period and if that is so, the respondents would be entitled to deduct the amount earned by him during this period. Having regard to the facts of the case, we pass no order as to costs. The application is disposed of accordingly.

S. Gurusankaran
19/11/1991
(S Gurusankaran)
Member(A)

R C Bhatt
(R C Bhatt)
Member(J)

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