NO
C.L. Retrenchment

(4)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A./443/88
O.A. No/445/88
T.A. No.

DATE OF DECISION 26-08-1991

Mumtaj Jumma Malek & Anrs. Petitioner

Mr. C.D. Parmar Advocate for the Petitioner(s)

Versus

Executive Engineer (C) & Anrs. Respondent

Mr. B.R. Kyada 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

MGIPRRND –12 CAT/86—3-12-86—15,000

(5)

O.A./443/88

Mumtaj Jumma Malek
C/o Jumma I. Malek,
District Jamnagar,
To, Okha.

O.A./445/88

Naseem Jumma Malek
C/o. Jumma I. Malek,
District Jamnagar,
To, Okha. : Applicants

(Advocate: Mr. C.D. Parmar)

Versus

1. Executive Engineer(C)
Western Railway,
Jamnagar-8.

3. Executive Engineer(C)
Western Railway,
Rajkot.

(Advocate: Mr. B.R. Kyada)

1. The General Manager,
Western Railway,
Churchgate, Bombay.

2. Chief Executive Engr.(C)
W.Rly., Railway Station
Ahmedabad.

: Respondents

J U D G M E N T

Date: 26-08-1991

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

1. By consent of learned advocates for the parties, both these applications are heard together and are being disposed of by common judgment.

2. The facts of both these applications are almost identical. Both the applicants in these two cases were, according to them, initially appointed as casual labour F.B. on 24.10.1983 at PWI(C) Dwarka then at PWI(C) Morvi and last till their retrenchment on 10.9.1985 at Porbandar PWI(C) PBN. It is the case of the applicants that the respondents have illegally retrenched them by the notice dated 9th August, 1985 by which their services were terminated from 10th September, 1985. It is the case of the applicants that such retrenchment orders were quashed by this Tribunal in O.A./331/86 and others

...3....

dicided on 16.2.1987 and in one other case 1987 (4) ATC page 179 decided on 22nd May, 1987. It is alleged by the applicants that they had made representations to PWI (C) Jamnagar. It is alleged that there was sufficient cause for not making the application before this Tribunal in prescribed period of limitation under Section 21 of the Administrative Tribunals Act, 1985 and the delay be condoned under Section 21 (3) of the Administrative Tribunals Act, 1985. The applicants have prayed that the termination of their services be declared as illegal invalid and in violation of Section 25G and H of the Industrial Disputes Act and the notice Annexure A/2 produced in each case be quashed and set aside and the applicants be reinstated in service on the permanent employee's post with full back-wages and continuity of service.

3. The respondents have filed reply contending that the applications have not been filed within the prescribed period of limitation as provided under Section 21 of the Administrative Tribunals Act 1985 and that there is no sufficient cause for condonation of delay for more than three years and the applications deserved to be dismissed on the ground of limitation. They have also denied that the termination of the services of the applicants was either illegal or bad in law. They have contended that the applicants were excess labour force and hence they were relieved after following due process under the Industrial Disputes Act and rules w.e.f. 10.9.1985. It is also contended by the respondents that the applicants have to produce their service record to enable the respondents to give correct reply and the applicants having not given particulars of the service record, the respondents are not in a position to give reply on the allegations which are baseless and without support of evidence. The respondents have, therefore, prayed that the applications be dismissed.

4. The applicants have filed rejoinder in both the applications.

5. So far as the contention about the limitation by the respondents is concerned, it is important to note that this Tribunal vide order dated 14.6.1988 has condoned the delay in filing these applications and the matters were admitted. Hence, now it is not necessary to consider this contention of the respondents again as it does not survive.

6. The main ground on which these two applications are filed is as per para 6(C) of the applications that the retrenchment orders against the casual labourers in OA/331/86 decided on 16.2.1987 and in another case (1987) 4 ATC page 179 decided on 22.5.1987 were declared null and void by this Tribunal and the casual labourers in those cases were reinstated with full backwages. It is submitted, that therefore, in these cases also, the termination of the services of these applicants by the respondents should be declared as null and void and in violation of Section 25G & H of the I.D.Act. The learned advocate for the applicant submitted that in Sukumar Gopalan and Ors. vs. Union of India (Western Railway) and Ors. in OA/331/87 and Ors. decided on 16.2.1987, the termination of services of the casual labourers were held illegal and invalid considering the provisions of I.D.Act and Rule 77 of the Industrial Disputes(Central) Rule, 1947 and the applications of the casual labourers in those cases were allowed and the termination orders were set aside and the backwages were paid. He also submitted that in Narayan Ala and Ors. v. Union of India and Ors (1987) 4 ATC 179 also this Tribunal quashed the order of termination of the services of the applicant casual labourers of those cases and they were reinstated in service with backwages and after reconsidering Section 25 F and 25 G of I.D.Act and 2501 2512 and 2514 of Indian Railway Establishment Manual. These are the two decisions on which reliance was placed by

the applicants in the applications filed by them and these are the same decisions which are being relied upon by the learned advocate for the applicants at the time of arguments. The learned advocate for the applicant at the time of hearing also relied on the other decision in Suryakant Raghunath Darole and Ors. v. The Divisional Railway Manager, Central Railway (Bombay) ATR 1988 (1) C.A.T. 158 in which the C.A.T., New Bombay Bench held that as the respondents in that case had not followed the requirement of Section 25F of the I.D.Act, the termination of the services of the applicants in that case was bad in law and they were reinstated in service with full backwages. He also relied on the decision in Narottam Chopra vs. Presiding Officer, Labour Court and Ors. 1989 Supp (2) SCC 97 in which the Hon'ble Supreme Court held while considering Section 25F of I.D.Act that the Labour Court erred in awarding only one month's pay in lieu of notice of retrenchment and compensation, and the Hon'ble Supreme Court directed that the appellant in that case was entitled to be reinstated with full backwages. We respectfully agree with the ratio laid down by the Hon'ble Supreme Court in that case. Learned advocate also relied on the decision in Madhu Dola and Ors. vs. Union of India and Ors. ATR 1989 (1) C.A.T. 115 in which it was held that the casual labourer who has attained temporary status has to be given a notice before discharge and the the termination of such a casual labour by giving verbal intimation is illegal. Both the applicants, in their respective rejoinder, have contended in para 8 that in view of the decision in Ram Kumar vs. Union of India 1989 (i) SLJ 101 the casual labourers treated as temporary are entitled to all the rights and privileges admissible to temporary railway servants as laid down in Chapter XXVII of the Indian Railway Establishment Manual, in view of para 2511 of the Indian Railway Establishment Manual.

Now if the case of the applicants is that they have acquired temporary status and, therefore, they are entitled all the rights and privileges of a temporary railway servant, then the question arises as to whether the termination of services of the applicants by the respondents was legal and proper. Para 2302 of the Railway Establishment Manual reads as under:-

> "2302. TERMINAT ON OF SERVICE AND PERIOD OF NOTICE:
> (1) Service of a temporary railway servant shall be liable to termination on 14 days notice on either side provided that such a railway servant shall not be entitled to any notice of termination of his service.-
>
> (1) If the termination is due to the expiry of the sanction to the post which he holds or the expiry of the officiating vacancy or to his compulsory retirement due to mental or physical incapacity or to his removal or measure after compliance with the provisions of clause (2) of Article 311 of the Constitution of India.
>
> (2) When he is deemed to have resigned the his appointment and ceased to be in railway employee in the circumstances detailed under note 2 below Exception II to Rule 732 (1) of the Indian Railway Establishment Code, Volume I.
>
> (2) In lieu of the notice prescribed in this paragraph it shall be permissible on the part of the railway Administration to terminat the service of a railway servant by paying him the pay for the period of notice.
>
> (3) The notice of termination of service under this paragraph should be given by an authority not lower than the appointing authority.
>
> (4) In the case of railway servant or apprentice to whom the provisions of the Industrial Disputes Act, 1947, apply, he shall be entitled to notice or wage in lieu thereof the accordance with the provisions of that Act".

It is not in dispute that notice of termination of one month's period is given to both the applicants. It is an admitted fact as appears from the Annexure A/2 produced by the applicants that the respondents had given notice of

..7...

termination of service dated 9th August, 1985, to the applicants and their services were terminated w.e.f. 10.7.85 and it is mentioned in these notices that the same be treated as one month's notice. Thus, if the applicants claimed their right as a casual labourers having acquired temporary status and having rights and privileges as per para 2511 of the Indian Railway Establishment Manual as temporary railway servant, then they have no cause to file this application challenging their termination of services because admittedly their services were terminated by respondents after giving one month's notice though para 2302 of the Indian Railway Establishment Manual Provides the notice of 14 days only. Therefore, the applicants have no case against respondents on the basis that they have acquired temporary status, because they have been terminated by one month's notice which is a full compliance of para 2302 of the Indian Railway Establishment Manual.

7. The learned advocate for the applicants also relied on the decision in Rita Sarkar Vs. Union of India and Ors. 1(1991) CSJ (CAT) 12 (SN). It is held in this decision that judgment pronounced in a case should be applicable to other similar situated employee. The learned advocate for the applicant submitted that the benefit which has been given in the decision in Ahmedabad Bench O.A./331/86 and Ors. to the casual labourers in those cases should be given to the applicants.

8. Therefore, whether the decision which has been given by this Tribunal in Ahmedabad Bench O.A./331/86 and Ors. in the case of Sukumar Gopalan and Ors. (Supra) would be applicable to these cases? On this point, it is important to note that the larger Bench of the Central Administrative Tribunal consisting of five Members in A. Padmavalley and Anrs. Vs. CPW and Ors. reported in III (1990) CSJ (CAT) 384 (FB) has considered the previous decisions given by Central Administrative Tribunals about the jurisdiction

....8....

(11)

of the Central Administrative Tribunal with respect to the cases governed under the I.D.Act. The applicants have alleged in their respective applications that their termination of services by the respondents should be declared illegal and invalid and in violation of Section 25 G & H of the I.D.Act. It is held in A.Padmavally's case (supra) that all matters over which the Labour Court or the Industrial Tribunal or the other authorities had jurisdiction under the I.D.Act do not automatically become vested in the Administrative Tribunal for adjudication, and the applicants having relief under the provisions of the I.D.Act must ordinarily exhaust the remedy available under that Act. The said decision, however, in paras 38 and 39 says that where the competent authority ignores statutory provisions or acts in violation of Article 14 of the Constitution or where either due to admissions made or from facts apparent on the face of the record, it is clear that there is statutory violation , 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 accodance with the statutory provisions and to that extent the alternative remedy cannot be pleaded as a bar to the exercise of jurisdiction under Article 226 of the Constitution of India. It is, held in para 39 that 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/or the Tribunal may not exercise the power in every case. In view of this latest judgment, we have to follow the guide line shown by this judgment and not the decisions in Ahmedabad Bench OA/331/86 and Ors.and Narayan Ala v. Union of India & Ors. (1987) 4 ATC 179 on which reliance is put by the applicants. We do not agree with the submission of the learned advocate for the applicant that the benefit of the said two decisions should be given to the applicants. As observed above, we have now to follow the guideline given in A.Padmavally's case (supra).

9. Thus, as per guideline in A.Padmavally's case (Supra) we have to find out from the facts of this case as to whether the respondents have ignored the statutory provisions or acted in violation of Article 14 of the Constitution of India and where either due to admissions made or from the facts apparent on the face of the record, is it clear that there is statutory violation ? If the answer is in the affirmative this Tribunal exercising power under Article 226 can set aside the illegal order of termination and can direct reinstatement of the employee leaving it open to the employer to act in accordance with the statutory provisions. Even the exercise of this power is discretionary and would depend on the facts and circumstances of each case and the Tribunal may not exercise the power in every case. The applicants in order to claim all the benefits under Section 25 F of the I.D. Act have first to establish that they have been in a continuous service for a period of 240 days in a year previous to the date of termination of their services as per Section 25 B of the I.D.Act. Both the applicants have produced their service card which only show that from 24th October, 1983 to 30th August, 1984, they were as casual labourer FB transferred to PWI (C) and then to Morvi. There is also an endorsement in that record that from 3rd September, 1984 to 25th April, 1985 transferred to PWI (C), Dwarka then 13.6.1985 to - (blank) transferred for XEN/C/Jamnagar and then the endorsement is - (blank) to 10.9.85 vide notice dated 29th August, 1985. Therefore, from these particulars in the service record of the applicants, it is not established that the applicants have worked for 240 days in a year previous to their date of termination of service on 10th September, 1985 meaning thereby that these particulars do not show that they have worked for 240 days in a period from 10th September, 1984 to 10th September, 1985. The respondents have categorically contended in para 7 of their reply

...10...

that the applicants have to give their service record so that the respondents can reply and without giving better particulars of their service records, the respondents are not in a position to give reply of allegations which are baseless and without support of piece of evidence. The applicants have filed rejoinder but they have not filed any further documents to show these important particulars about their days of working in a year previous to the date of termination of their services. Therefore, it cannot be concluded that the respondents have acted in statutory violation of Section 25 F of the I.D.Act. Moreover, the respondents have contended that the applicants were appointed on 24th October, 1983 under the PWI (C) Western Railway Dwarka on daily wages till the completion of Viramgam-Okha-Porbandar Conversion Works Phase II i.e. from Jamnagar to Okha and Porbandar and the applicant was taken only for specified period i.e. till completion of the above project Phase II under the agreement, that their services were purely casual for the period from 24.10.1983 to 10.4.1984 without any notice or payment of any lieu. It is contended in the reply by the respondents that the applicants worked upto 30.8.1984 under PWI (C), Western Railway, Dwarka and after the completion of the project in the middle of 1984 and even under the service agreement with the applicants, after completion of the said project, the services of the applicants ought to have been terminated but many casual labourers had approached the High Court of Gujarat by filing various Special Civil Applications against the retrenchment and in many applications the High Court of Gujarat has made a suggestion to give work to the applicants and other such casual labourers where it was available instead of retrenching them. It is contended that, therefore, the cases of these applicants were also considered on this line and the respondents have tried to find out work in other deptts.

of the railway administration and after finding the said work, the surplus staff was diverted to other divisions or deptts. where work was available and the casual ~~xxx~~ labourers willingly accepted the said work. The applicants were directed under Rajkot division, as Rajkot division needed the casual labourers in unit of Maintenance and other work and other casual labourers were directed under PWI (C) Western Railway, Morvi and the applicants started work there. It is contended by the respondents that VOP project Phase II was completed and therefore, the respondents were not in a position to absorb the applicants and other casual labourers but they willingly accepted to join the Rajkot division and according to the position of Rajkot division, the applicants were juniormost and therefore, the department under whom the applicants were working would have passed order on 26.4.1985 for transferring them. It is contended that the excess labour force which was directed to Rajkot division were relieved after following due process under the Act w.e.f. 10th September, 1985. The applicants in rejoinder have contended that the agreement on which the respondents relied on was against law and not a valid agreement and they have also controverted the other contentions taken in the reply.

10. The learned advocate for the respondents submitted that the services of the applicants were terminated according to the provisions of the Act. He submitted that the notice under Section 25 F was given to the applicants and according to him the compensation was also paid to the applicants. He submitted that it was only after the period of three years that the applicants have now come to this Tribunal challenging their termination and till that date they kept silence nor any representations were made for non-payment. He invited our attention to the rejoinder filed by the applicant in which in para-6 the applicants have stated for the first time that they have not received the full amount which was due to

(13)

them as per law and I.D. Act. He submitted that the applicants did not make such averments in the applications and conceded initially the true facts of receipt of compensation. This is also a disputed fact which requires the detailed oral evidence and documentary evidence from both the parties and in absence of such evidence, we cannot hold that the respondents have acted in statutory violation of ~~x~~ Section 25 F of the I.D. Act. The applicant should have produced the evidence about the quantum of amount received by them and then could have shown that the said amount was not sufficient compensation as provided in Section 25 F of the I.D. Act. No explanation is furnished as to why they have not produced such evidence. The applicants have also not produced any copy of the representations made by them alleging that the full retrenchment compensation was not paid to them.

11. The learned advocate for the respondents submitted that the seniority list was published in 1987 and no junior to the applicants is kept in service. The applicants have not made any averments in the applications by giving the name of any junior retained by the respondents. The applicants have even prima facie not shown that their juniors are kept in service and the applicants' services were terminated.

12. In view of the aforesaid facts, namely absence of satisfactory evidence about the applicants having worked for 240 days in a year previous to the date of the termination of services on 10th September, 1985, failure on the part of applicant to show the quantum of amount of compensation received by them, absence of allegation that the juniors of the applicants are retained by the respondents, and the evidence about the agreement arrived

...13...

(16)

at between the parties at the time when the applicants were taken as casual labourers, we cannot come to the conclusion that the action of the respondents in terminating the services of the applicants is a statutory violation of Section 25 F or Section 25 G of I.D. Act. Thus, having regard to the facts and circumstances of the case, it is not possible to exercise powers under Article 226 of Constitution to grant any relief to the applicants as prayed for.

13. The result is that both the applications fail and are dismissed. No orders as to costs.

(R.C. Bhatt)
Judicial Member

(M.M. Singh)
Administrative Member