Retrenchment - (Dis)

Jud.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXX~~

AHMEDABAD BENCH

~~O.A. No.~~ / ~~T.A. No.~~ ~~19XX~~

O.A.No.446/88, OA/447/88
& O.A./448/88

DATE OF DECISION 21.6.1991

1. Shri Swaji Popat
2. Shri Mulji Dadu
3. Shri Ramesh Bijal

Petitioners

Mr.C.D.Parmar

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

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

O.A./446/88

1. Shri Sawji Popat
   Okha,
   District - Jamnagar.

2. O.A/447/88
   Mulji Dadu,
   Okha,
   District- Jamnagar.

O.A. 448/88

3. Shri Rakesh Bijal,
   Okha,
   District- Jamnagar.
   (Advocate Mr. C.D. Parmar) .....Applicant

VERSUS

Union of India
Owning and representing
Western Railway Through:

1. The General Manager,
   Western Railway,
   Churchgate,
   BOMBAY- 400 020.

2. Chief Executive Engineer (Const.)
   Western Railway,
   Railway Station,
   Ahmedabad.

3. Executive Engineer (Const.)
   Western Railway,
   Kothi Compound,
   Rajkot 360 001.

4. Executive Engineer (Const.)
   Western Railway,
   Jamnagar.
   (Advocate Mr. B.R. Kyada .....Respondents

J U D G M E N T

O.A./446/88
O.A./447/88
O.A./448/88

Date: 21.6.1991

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

1. These three applications under section 19 of the Administrative Tribunal Act, 1985, are heard together by consent of the learned advocates of the parties as they invlove identical issues, and are being disposed of by common judgment.

2. The applicant in each application has alleged that

he was working as a casual labourer since 1983 in Western Railway, that he was initially appointed as a casual labourer M.B. on 15th October 1983 at P.W.I. (c) Dwarka, then P.W.I. (c), Morvi, and till his retrenchment on 10th September 1985 at Porbandar P.W.I. (c) P.B.N. It is alleged by the applicant in each case that he is Medically fit employee. The applicant in each case has produced his service card at Ann. A- 1 and copy of the retrenchment notices dated 6.8.1985 at Ann. A-B given by respondents. It is alleged by the applicant that the applicant is a permanent Railway employee, and his services can not be terminated without following provisions of law. The applicant, therefore, has prayed that the termination of the applicant's services be declared illegal, invalid and inoperative and in violation of section 25-F, 25-H, 25-G, of I.D. Act and the respondents be directed to reinstate the applicant in services with full backwages with continuity of service.

3. The respondents have filed identical reply in each application contending that the applicant was appointed on 15th October 1983 on Daily Wages till completion of Virmgam Okha- Porbandar conversion work of phase II i.e. from Jamnagar to Okha, and Porbandar and the applicant was taken for specified period for the above project from 15th October 1983 to 10th April 1984 and the services of each applicant was liable to be terminated on 10th April 1984 without any notice or any compensasion. The respondents have produced the copy of the agreement entered between the applicant and respondents for the above period at R-I. It is contended by the respondents that this Tribunal has no jurisdiction to entertain this application.

4. It is further contended by the respondents in their reply that applicants worked upto 20th September 1984 under the P.W.I. (c) Western Railway, Dwarka and after the completion

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of the above project in the middle of the year 1984, and even under the service agreement, the services of the applicants ought to have been terminated on completion of the project, but, during that year, many casual labourers approached Gujarat High Court by filing various special Civil application against their retrenchment and in many applications the High Court of Gujarat made suggestion to give work to the casual labourers where it is available insted of retrenching them and, therefore the cases of the applicants was also considered on this line, and the respondents tried to find out work existing in other departments of Railway and after finding the said work, the surplus staff was diverted to other Division of department where work was available. The respondents have contended that at the time of shifting or transfering to other projects or work, it was made very clear that if after completion of V.O.P./ project phase II, if the applicants are not ready to go to other place where work is available, in that cases, they have to face retrenchment after following due process of law. It is contended by the respondents that the applicants and others were directed where work was available, that the applicantwas directed under Rajkot Division as the Rajkot Division demanded the casual labourers in unit of maintenance and other work and the applicants started work under the P.W.I. (c) Western Railway, Morvi, It is contended that the V.O.P. project is completely closed and, therefore the respondents were not in a position to absorb the applicants, and ultimately the excess labour force which was directed to Rajkot Division was relieved after following due process under the Act and Rules there under with effect from 10th September 1985.

5. The respondents have denied the averments made by the applicants in para 6 of the application. It is contended that the applicants have to give the service record and that without giving better 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.

6. It is contended by respondents that the application is barred by being provisions on limitation contained in the Administrative Tribunals Act, 1985. It is also contended that the applicant has not exhausted alternative remedy available to him, and the application be dismissed.

7. The applicant in each case filed rejoinder contending that the order of termination was without following procedure under I.D.Act, and hence null and void as held by this Tribunal in the case of O.A. No.331/86 dated 16th February, 1987. The applicants have denied that the agreement was made between them and respondents as contended by respondents and the effect of the agreement was also against law itself. The applicants have denied that their services were only for V.O.P. phase II. It is contended that the applicants have not received the full amount that was due from respondents and was not given to them as per law, and I.D. Act.

8. The respondents' learned advocate contended that these three applications are barred by limitation, but, this contention does not now survive because this Tribunal by order dated 14th June, 1988 has condoned the delay in filing these applications and the applications were admitted.

9. The learned advocate for the applicants submitted that this Tribunal should quash the retrenchment of applicant dated 10th September, 1985 as the respondents have terminated services of applicants without following the provisions of I.D.Act. The respondents' learned advocate submitted that the applicants were relieved after following provisions of the I.D.Act. The applicants, in rejoinder, have challenged the agreement R.I. and also contended that they have not received the full amount, which was due as per law and I.D.Act. The notice dated 8.8.85 produced at Annexure A-2 by applicants shows that the respondents have served applicants with notice under Section 25-F (a) of I.D. Act. The learned advocate for the applicants submitted that respondents have not complied with all clauses of section

25- F of I.D. Act The applicant in the application has not alleged that the compensasion under section 25- F was not paid to him, but it was only in rejoinder a contention was taken that the full amount was not paid to him. The applicants have not alleged as to what was the full amount payable to him and how much amount was paid to him at the time of retrenchment. Thus, reading the averments made in the application coupled with reply of respondents, it can not be concluded that the respondents have acted in violation of section 25- F of the I.D. Act. The learned advocate for applicant has relied on decision of Ahmedabad Bench in Sukumar Gopalan and ors V/s Union of India and ors.(Western Railway and ors. O.A. 331/86 and others) decided by this Tribunal on 16 February 1987. But now there is the latest decision on the question of jurisdiction of the Administrative Tribunal with respect to the case covered under the Industrial Disputes Act which has been pronounced by the Central Administrative Tribunal consisting of five members in A. Padmavally & Anrs V/s. C.P.W.D. & ors. reported in III (1990) CSJ (CAT) 384 (FS). The law is laid down in paras 38 and 39 of this judgment. 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 could 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 sithation or exeeptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered."

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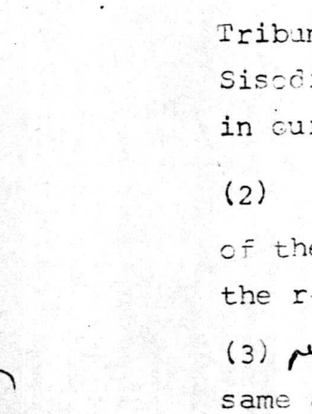
"In our view, one such situation would be where the competent authority ignore statutory provisions or acts in violation of Article 14 of the Constitution. Further, where either due to admissions made or from facts apparent on the face of the record, it is clear tat there is statutory violation, we are 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 emplyee leaving it open to the employer to act in accordance with the statutory provision: To this extent we are of he 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 hve been clearly laid in the case of Rohtas industries by Krishna Iyer, J cited above. Issues No. 2 and 3 are answered accofdingly."

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 mattere 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 he 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 Rphtas Industries (Supra).

(4) The interpretation given to the term

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'arrangements in force' by the Jabalpur Bench in Rammoo's case is not Correct."

It is clear from the above 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.

10. Thus, in view of the latest decision in Padmavally's case (Supra), the earlier decision cited by the learned advocate for the applicant can not be pressed in to service. It is not in dispute that the applicants seek relief under the provision of I.D. Act, and it is not in dispute that the applicants have not exhausted the remedy available under that act before Industrial Tribunal or labour Court. Thus, this Tribunal having no concurrent jurisdiction in regard to matter over which Industrial Tribunal or Labour Tribunal has jurisdiction, these applications will not be maintainable before this Tribunal.

11. The next question, is whether we should exercise our discretion in terms of the guidelines of para 38 of the Padmavally's judgment aove. As observed earlier, in the instant cases, admittedly the notice under section 25- F (a) of the I.D. Act. was given to each applicant, that the respondents have in terms contended that the agreement RI was entered into between the parties and also that the applicants have been relieved after following provisions of I.D. Act. It was only in rejoinder that the applicant raised dispute that the applicants have not been paid full amount of compensation. This is a matter of detailed calculation about compensation received by applicants because they have neither in the application nor in the rejoinder stated how much amount of compensation was paid to them and how much amount of compensation they were entitled to receive. The evidence produced by the applicant is so scanty that it is not possible to conclude that the respondents have acted in violation of I.D. Act There are disputed questions of fact

in these cases which require detailed evidence which is not before us. Under these circumstances, these are not the fit cases in which this Tribunal should exercise [illegible] discretionary power under Article 226 of the constitution of India.

12. The applicants would be at liberty to exhaust the remedy available to them under the I.D. Act, before the forum under that Act.

13. Result is that the applications are dismissed as not maintainable. No orders as to costs.

Sd/-
(R.C.Bhatt)
Judicial Member

Sd/-
(M.M.Singh)
Administrative Member

Prepared by : 26/06/91
Compared by :

TRUE COPY 26/6/91
26/June/91
Section Officer (J)
Central Administrative Tribunal,
Ahmedabad Bench