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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 459/88
~~XXXXXXXX~~
~~xTAxxxxxx~~

DATE OF DECISION 11-09-1991

Shri R.M. Makwana & Others ____ Petitioner

Mr. P.H. Pathak ____ Advocate for the Petitioner(s)

Versus

Union of India & Ors. ____ Respondent

Mr. Jayant Patel ____ 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

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(16)

1. Shri R.M.Makwana

2. Bhartiya Telephone Employee Union, line staff & Group D through its Area Secretary, Shri N.N.Dave
Both are addressed to 186, Ghashiram's Pote, Khadia, Ahmedabad. : Applicants

(Advocate: Mr.P.H.Pathak)

Versus

1. Union of India
Through:
The General Manager,
Ahmedabad Telephones,
Khanpur, Ahmedabad.

2. Divisional Officer(Phones)
Naroda Exchange,
Ahmedabad. : Respondents

(Advocate: Mr.Mukesh Patel for Mr.Jayant Patel)

J U D G M E N T

O.A./459/88

Date: 11-09-1991

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

1. This application is filed by one Shri R.M.Makwana a casual labourer and one Bhartiya Telephone Employees Union working under Respondent No.2, under Section 19 of the Administrative Tribunals Act, 1985 for a declaration that the termination notice dated 27.5.1988 issued by the respondents as illegal, invalid and inoperative and for direction to the respondents to regularise the services of the applicants and to make equal pay for equal work and for a declaration that the respondents adopted unfair labour practice by keeping applicants as daily wager.

2. The applicant No.1 is a casual labourer working under Respondent No.2, while the applicant No.2 has joined this application as a Trade Union , registered under the Trade Union Act, 1926 for public interest litigation in a representative capacity in case of casual labourers whose names are mentioned at Annexure-A. There are in all 9 casual

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labourers shown in Annexure-A including applicant No.1. It is alleged by the applicants in the application that the respondents, Ahmedabad Telephones have exercised the powers in total arbitrary manner with a view to deprive the applicants of the benefits of regularisation as per the directives of the Hon'ble Supreme Court of India and further the respondent No.2 has issued a termination notice to all the casual labourers. The applicants have produced the copy of the said notice at Annexure-2, according to which the services of the casual labourers shown in Annexure-A were terminated. According to the applicants, the said notice of termination of service of the casual laboures is illegal, invalid and inoperative. It is alleged by the applicants that the respondents is an 'Industry' under the provisions of the Indutrial Disputes Act and the applicants are the casual labourers under the said Act. It is alleged that the respondents have started terminating the services of the senior most labourers who are working since 3 to 5 years in the department of the respondents and the respondents avoid the compliance of the Hon'ble Supreme Court's order regularising the applicants. It is alleged that the applicants have completed the services of more than 360 days, even then the respondents without following the provisions of Section 25F, Section 25B, and Section 25 G of the I.D.Act have terminated the services of the applicants. It is alleged that no departmental inquiry is conducted by the respondents against any of the applicants and hence the respondents have no right to issue such termination notices to the applicants. It is alleged that there is no rational classification made by the respondents and they have exercised arbitrary powers in terminating the services of the applicants which action of the respondents is violative of Article 14 and 16 of the Constitution of India.

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3. The respondents have filed their reply contending that the casual labourers are engaged purely on temporary basis and they are retrenched after one months notice as per the Departmental Rules. It is contended that the applicants are not the 'Workman' and the respondents' department is not an 'Industry' within the meaning of the Industrial Disputes Act 1947 and therefore the provisions of Industrial Disputes Act, 1947 do not apply to the present case. It is also contended that CCA (Conduct) Rules, 1965 are also not applicable to casual labourers. The respondents have further contended that the casual labourers whose names have been mentioned in the application might be working in the department from different dates but they have break in service for more than six months without any intimation to the department and in that case it is to be taken as discontinuation or break in attendance/work. It is contended that the applicants be called upon to give all the necessary details regarding their service. The respondents have denied that with a view to avoid the directions as per the judgment of the Hon'ble Supreme Court, the respondents have adopted unfair labour practice and denied that the power exercised by them is discriminatrory and violative of Article 14 and 16 of the Constitution of India and prayed that the application be dismissed.

4. The applicants have filed rejoinder controverting the contentions taken by the respondents in their reply. They have denied that the casual labourers are engaged purely on temporary basis and for a seasonal work. They have denied that they are not the 'Workman' and the respondents' department not an 'Industry' within the meaning of Industrial Disputes Act, 1947 and denied that the provisions of I.D.Act are not applicable to the present case.

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It is contended that as and when the applicants remained absent on their own accord or on their medical ground, they have submitted their detailed representations with appropriate certificate.

5. It is contended by the respondents that the respondents' Telecom Department is not an 'Industry' and the applicants are not 'Workman' and hence the provisions of the Industrial Disputes Act do not apply in this case. The learned advocate for the respondents has put reliance on the decision in Union of India vs. Labour Court, Jellundur and another (1984 II L.I.N. page 577) in which it is held that Posts and Telegraphs Department is not an 'Industry' and the clerk therein is not 'Workman'. He, therefore, submitted that the present case is not governed by the provisions of Industrial Disputes Act. In this connection, it is necessary to mention that this Tribunal and other Tribunals in number of judgments held that Telecom Department and Post and Telegraphs Department is an 'Industry' as defined in Section 2(J) of the Industrial Disputes Act and the casual labourers working in that department are the 'Workman' under the Industrial Disputes Act. We may, refer here the decisions in G.K.Aparnathi vs. Union of India in TA/69/87 decided on 10.12.1987 and Viljibhai Karsanbhai Solanki vs. Union of India in OA/518/88 decided on 19.9.1990 by the Ahmedabad Bench and the third decision is an earlier decision in the case of Kunjan Bhaskaran and Ors. vs. Sub Divisional Office, Telegraphs, Chenganassery (1983 LIC page 135). In this view of the matter, we do not accept the contentions of the respondents that the respondents' department is not an 'Industry' and the applicants are not the 'Workman' under the I.D.Act.

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6. The applicants have produced one month's notice given to one of the applicants vide Annexure A/2 dated 27.5.1988 by which the services of one of the applicants was terminated. It is mentioned in this notice that the applicant had remained absent for some days after March, 1985 namely for the period from May, 1985 to January, 1986 and hence his services stood terminated after one month from the date of the notice. Identical notices of termination are served to all the casual labourers who are shown in Annexure 'A'. The casual labourers shown at Sr.No.1, 3, 5, 6 seem to have been working with respondents since 1982, the casual labourers shown at Sr.No.4 since 1983, casual labourers shown at Sr.No.2 and Sr.No.8 since 1984 and casual labourers shown at Sr.No.7 and 9 since 1985. The service card of each of these casual labourers collectively is produced at Annexure A/1 which show that all of them have worked for more than 240 days before the notice of termination given to them on 27.5.1988. These are the notices which are challenged by the applicants being violative of Section 25F of the Industrial Disputes Act. It is very apparent from the service card of all these casual labourers that they had worked for more than 240 days within one year prior to the date of the impugned notices. In this view of the matter, they can be said to be in continuous service for a period of one year prior to the date of the termination as per Section 25 B of the Industrial Disputes Act. Section 25F of I.D.Act says that no 'Workman' employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice, (b) the workman has been paid, at the time of retrenchment,

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compensation which shall be equivalent to 15 days' average pay for every completed year of continuous service or any part thereof in excess of six months and (c) notice in the prescribed manner is served on the appropriate Govt. In the instant case though one month's notice is given to the applicants, the compensation as per Clause (b) of Section 25F has not been paid to the applicants at the time of retrenchment nor notice in the prescribed manner is served on the appropriate Govt. as per Clause (C) of Section 25(F) of I.D.Act. The learned advocate for the respondents submitted that the provisions of the I.D.Act do not apply to this case. We do not agree with him because we held that the respondents' department is an 'Industry' and the applicants are the 'Workman' as per the provisions of I.D.Act. Moreover, they have fulfilled the condition of Section 25 B of I.D.Act and therefore the respondents were duty bound to comply with the conditions of Section 25F of I.D.Act before retrenching the applicants' from the service and as they have failed to comply all the conditions of Section 25F, the impugned notices given to the casual labourers shown in Annexure A are bad in law and therefore, the termination of the casual labourers on the strength of those notices dated 27.5.1988 deserve to be set aside.

7. Learned advocate for the applicants submitted that the respondents could not have even terminated the services of the applicants on the ground of the alleged absence of the applicants as mentioned in the respective notices. He submitted that it was open for the respondents to start departmental inquiry for the said absence of the applicants and the respondents ought to have heard the applicants before giving them these notices of termination, but the respondents did not choose to do so and straight away issued the notices which action was bad in law. He submitted

that there was non application of mind on the part of the respondents and the action of the respondents in giving such notices was an arbitrary action of power and against principles of natural justice. He submitted that if on the ground of absence, the workman is to be terminated the rule of natural justice has to be followed. The learned advocate for the applicants on this point relied on the decision in K.Ravikumar vs. Inspector of R.M.S. and Ors (1991) 15 ATC page 603 and Babulal vs. State of Haryana and Ors. (1991) 16 ATC cases page 481. It is held in these decisions that provision for automatic cessation of service as a result of absence of leave or otherwise for over 180 days as per Rule 5 of P & T Extra Departmental Agents (Conduct and Service) Rules, 1964 is unconstitutional. It is also held that if simple order of termination is found to be a camouflage for a punitive action, order is liable to be set aside. Learned advocate for the respondents submitted that when the applicants remained absent from work for more than six months without intimation to department, it is to be taken as discontinuation or break in work. Learned advocate for the applicants, in view of the above two decisions, submitted that such a rule is unconstitutional and void and in any case the respondents cannot take this view without following the principles of natural justice and without hearing the applicants. We agree with the learned advocate for the applicants on this point.
In the instant case, the respondents without hearing the applicants about their alleged absence as mentioned in the notices had terminated the services of the applicants on that ground which is against the principles of natural justice. The learned advocate for the applicants also relied on the decision in Shridhar Vs. Nagar Palika,

Jaunpur and Ors. (1991) 15 ATC page 851. It is held in this decision by the Hon'ble Supreme Court of India that it is an elementary principle of natural justice that no person should be condemned without hearing. He submitted that in the instant case, the respondents have taken unilateral decision of terminating the services of the applicant without giving any opportunity to the applicants being heard on the ground of their alleged absence. The learned advocate for the applicants has also relied on Jai Shanker Vs. State of Rajasthan ATR 1966 S.C. page 492, in which it is held that the removal of a Government servant from service for overstaying leave is illegal even though it is provided by the service Regulation that any individual who absents himself without permission after the end of his leave would be considered to have scarificed his appointment and may be reinstated only with the sanction of the competent authority. He, therefore, on this anology submitted that even if there was any rule with the respondents to consider the automatic termination of the services of the applicants without giving any opportunity to show cause the same was illegal. In the instant case, it is not in dispute that no opportunity was given to the applicants of being heard about their alleged absence before notices of termination of their services on that ground was given and hence such action on the part of the respondents was liable to be challenged on the ground of violation of principle of natural justice.

8. The learned advocate for the respondents submitted that as the work was not available, the applicants could not be continued in service. He relied on the decision in Satyanarayan Sharma and Ors. vs. National Mineral Development Corporation and Ors. (1990) 4 SCC 163. It is held in this decision that the principle of regularisation of daily rated workman and payment to him of the pay equal to that of a regular workman arises only when the daily rated workman

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is doing the same work as the regular workman and there being a vacancy available for him, he is not absorbed against it or not even paid the equal pay for the period during which the same work is taken from him. Learned advocate for the respondents submitted that if there are any vacnacy or no work available for the applicants then they cannot be continued and they cannot be even regularised. Learned advocate for the applicants submitted that the respondents have not terminated the services of the applicants on the ground that there is no vacancy available for the applicants or there is no work available for the applicants in the respondents' department but the termination is only on the ground of the absence of the applicants for a period mentioned in the notice of termination and therefore, this decision will not help the respondents. We agree with him that in the instant case, the notice of termination given to the applicants are not based on the ground of absence of work or absence of vacancy and hence the respondents cannot press in to service the above decision of the Hon'ble Supreme Court.

9. The learned advocate for the applicants further submitted that the applicants must be regularised in the service by the respondents because some of them work since 1982, some from 1983, and others from 1984 and 1985. He put reliance on the decision in the General Secretary, Bihar State Road Transport Corporation, Patna vs. Presiding Officer, Industrial Tribunal, Patna and Ors. 1988 (1) SLR Page 349. The Hon'ble Supreme Court in this case on the admitted facts that a large number of pepple had been working as casual labourers for a long number of years directed the respondents Corporation to prepare a reasonable scheme for regularisation of the casual labouers who have been working for more than one year. The other decision relied on

is viljibhai Karsanbhai Solanki vs. Union of India & Ors. decided in O.A./518/88 on 19.9.90 by the Ahmedabad Bench. The Ahmedabad Bench having considered the facts of the case and the period of work put by the casual labourers in that case directed the respondents to absorb the applicants as regular employees. The next decision relied on is Shushilaben Meshvania vs. Union of India and Ors. O.A./298/88 decided on 15.2.1991 by the Ahmedabad Bench in which the termination of services of the applicant was quashed. The learned advocate for the applicants, therefore, submitted that in the instant case also the respondents be directed to regularise the services of the applicants and respondents be directed to pay equal pay for equal work. Learned advocate for the respondents submitted that in view of the decision in Sataynarayan Sharma and Ors. vs. National Mineral Development Corporation Ltd. and Ors. (1990) 4 SCC 163, the service of the applicants need not be regularised. We have observed earlier that this decision will not help the respondents because the respondents have not terminated the services of the applicants on the ground of absence of vacancy of absence of availability of work in the respondents' department.

10. Having heard the learned advocates at length and having perused the documents on record and having considered the decisions relied on by the learned advocates, we are satisfied that the impugned notices of termination of services given by respondents to the casual labourers shown in Annexure A were violative of Section 25 F of the I.D. Act and therefore, the impugned notices require to be set aside.

11. In the result, we pass the following orders

The impugned notices of termination dated 27.5.1988

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issued by respondents against the casual labourers shown in Annexure A/1 are held illegal and are therefore set aside and the respondents are directed to reinstate all of them in service within one month from the date of receipt of this judgment and to pay them all backwages within three months from the date of the receipt of this judgment. The respondents are directed to consider applicants' case for appointment on regular pay within three months in accordance with seniority list of casual labourers. The application is allowed to that extent. No orders as to costs. Application is disposed of accordingly.

(R.C. Bhatt)
Judicial Member

(M.M. Singh) 16/9/97
Administrative Member