

*No. 1
C.V. Termination*

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

CAT/J/12

O.A. No. 515/1988

~~XXXXXX~~

DATE OF DECISION 12-09-1991

Tanujaben Hiralal Dave Petitioner

Mr. Girish Patel Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. P.M. Raval 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*

Tanujaben Hiralal Dave,
 Fadel Vas, Besides Binbai Tower,
 Mirzapur,
 Ahmedabad.

.... Applicant.

(Advocate: Mr. Sharad Pandit for
 Mr. Girish Patel)

Versus.

1. Union of India, through
 The Sr. Superintendent of Post
 Ahmedabad City Division,
 Ahmedabad-1.

2. The Post-Master General
 (A & P Section),
 Gujarat Circle,
 Ahmedabad - 380 009.

3. The Medical Officer,
 I/C, P & T Dispensary,
 Usmanpura, Ahmedabad.

.... Respondents.

(Advocate: Mr. M.R. Raval for
 Mr. P.M. Raval, absent)

J U D G M E N T

O.A. 515 OF 1988

Date: 12-09-1991

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

1. This application is filed by the applicant under section 19 of the Administrative Tribunals Act, 1985, praying that services of the applicant terminated by the respondents from 28th October, 1987, be held illegal, improper, unjust and in violation of principles of natural justice, and the respondents be directed to reinstate, the applicant on her original post with full backwages. The applicant was appointed as a Sweeper by the respondent Postal Department initially for the period from 14th December, 1983 to 17th December, 1983 in the leave arrangement of one Smt. C.M. Vaghela in the Dispensary - respondent No. 3 vide order dated 18th January, 1984, produced at Annexure 'A', that thereafter the applicant was

appointed as a Female Attendant from 16-1-84 to 31-1-84 by the respondents by order dated 22nd February, 1984, produced at Annexure A-1. It is alleged by the applicant that her employment period was extended from time to time by respondent No.1 on daily wages of Rs.8-70 ps. It is alleged by the applicant that she had gone on maternity leave from 25th August, 1987 to 27th October, 1987 which was orally sanctioned by the Medical Officer at the time of taking such leave. It is alleged that after completion of such leave when she came to resume her work on 28th October, 1987 she was not taken on work. The applicant then gave application to respondent No.2 and requested to take her on duty but no reply has been given. It is alleged by the applicant that P & T Dispensary is an 'Industry' within the meaning of Section 2-J of the I.D. Act, 1947 and the applicant is a 'Workman' within the meaning of Section 2-S of the I.D. Act. It is alleged that she has completed 240 days in service, that the action of the respondents in terminating her service therefore amounts to retrenchment, that the respondents having not complied with Section 25 F of the I.D. Act. It is alleged that the oral termination of the applicant is illegal and invalid. The applicant has amended the application praying that the oral termination of applicant by respondents be declared as illegal, null and void and the applicant be reinstated in service.

2. The respondents have filed reply contending that the applicant was not regularly appointed as a Female Attendant either by the Senior Superintendent of Post Office or by P & T Dispensary, Usmanpura, Ahmedabad, but the applicant had worked as an unapproved outsider in the vacant post of Female Attendant at P & T Dispensary, Ahmedabad. It is contended that the

applicant had worked for 250½ days in 1984, 252½ days in 1985, 258½ days in 1986 and 150½ days in 1987. It is contended that there were many breaks in each of the years, the respondents produced at Annexure A-1 the statement showing the days on which applicant did not come to resume duties apart from Sundays and holidays.

3. The respondents have contended that the applicant had not given any application stating that she was going on maternity leave from 25th August, 1987 to 27th October, 1987, as alleged and it is denied by the respondents that the alleged leave was orally sanctioned by the Medical Officer at the time of taking such leave. The respondents have denied that applicant had resumed duty on 28th October, 1987, as alleged. It is contended that the applicant did not come for duty of her own and one Ramilaben had been engaged on a Daily Wage basis from December 1987. It is contended that the applicant herself stopped coming and therefore another employee has already been engaged and applicant no right to continue in service.

4. The applicant filed rejoinder controverting the averments made by the respondents in their reply.

5. Learned counsel for the applicant submitted that the services of the applicant, who was working as a Sweeper in the respondent No. 3's department has been orally terminated on 28th October, 1987 without complying the provisions of Section 25 F of I.D. Act. The respondents have not produced before us, the muster roll of the relevant years, though they were directed to produce the same. However, there is the statement produced showing details of the break in service of applicant yearwise from 1984 to 1987. It is the same as Annexure A-4. The alleged oral termination was made on

28th October 1987, therefore, the relevant period for considering Section 25 B of I.D. Act for a continuous service of one year would be 28th October, 1986 to 28th October, 1987. If the absence is counted, it is found that the applicant was not present in respondent No.3 Dispensary for in all 109 days during the working days during this period. She was absent for 31 days between 28th October, 1986 to 10th August, 1987 and she has remained absent from 10th August, 1987 onwards as per this statement i.e., for 78 days upto 28-10-87 which makes the total absence of 109 days. Adding 52 Sundays of one year, the total absence would be of 161 days out of 365 days. Therefore, the total period of presence during this period would be 204 days. Learned advocate for the applicant submitted that the maternity leave for two months in 1987 should be added as the period of leave. He submitted that applicant had given an application in writing for sanctioned maternity leave to respondent No.3, but respondent No.3 returned the application. He submitted that the respondent No.3 has not filed any reply, that no such application for leave was given and therefore the applicant's version should be believed.

6. In the instant case, though the respondent No.3, has not filed separate reply, the reply is filed by respondent No.1 Senior Superintendent of Post Offices, Ahmedabad, in which it is contended that the applicant has not given any application that she was going on maternity leave for 25th August, 1986 to 27th October, 1987. The applicant has also failed to produce even copy of alleged application nor any averments about such application found in the representation of the applicant produced at Annexure A-3. The applicant in her rejoinder has stated that the Medical Officer, respondent No.3

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returned her application stating that it was not necessary to give such written application and that the respondent No. 3 orally granted Maternity Leave as applied for by her. It is not possible to believe such averments of the applicant that the respondent No. 3 returned an application for maternity leave given by the applicant and it is not possible to believe her also that respondent No. 3 orally granted maternity leave to the applicant. No such sanction of leave like the present one would be given by the Govt. Deptt. No rule is shown to us by learned advocate for applicant by which such leave can orally be sanctioned under these ~~not~~ circumstances, there is no reason to believe the respondents' reply that no such application was given by applicant and no such oral sanction as alleged was given.

7. In the instant case, the applicant has totally failed to establish her case under Section 25 B of the Industrial Disputes Act. It is not established that she had worked for 240 days in a year prior to the day of alleged oral termination and hence even if the applicant is relieved from the service by respondents as alleged there was no violation of Section 25 F of the I.D. Act as there is no retrenchment. The applicant fails to establish her case.

8. The result is that the application is dismissed. No order as to costs. Application is disposed of.

R.C. Bhatt
(R.C. Bhatt)
Judicial Member

M. M. Singh
(M.M. Singh)
12/9/41
Administrative Member