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Termination

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

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O.A. No. /516/88
~~Ex No~~

DATE OF DECISION 09/10/1992

Shri Alisha Idusha Fakir

Petitioner

Mr. P. H. Pathak

Advocate for the Petitioner(s)

Versus

Union of India & others

Respondent

Mr. Akil Kureshi.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N. V. Krishnan
Vice Chairman

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

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✗

Shri Alisha Idusha Fakir,

Muslim, Adult, Occupation : At present NIL

C/o. Shri D.D.Chhaya,

Milan Society, Kalawad Road,

RAJKOT.

...Applicant

(Advocate : Mr.P.H.Pathak)

VERSUS

1. The Union of India,

Owning & Representing,

Department of information &

Broadcasting- Doordarashan,

Through its Secretary, Sansad Marg,

NEW DELHI.

2. The Station Engineer,

Doordarashan Kendra,

T.V.Relay Centre,

Dwarka- 361 335.

...Respondents

(Advocate : Mr.Akil Kureshi)

O R A L O R D E R

O.A./516/88

Date : 09/10/1992

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

Member (J)

1. Two questions arise in ~~this~~ ^{in the} application filed by the applicant working Doordarashan at Dwarka, under section 19 of the Administrative Tribunal Act. The first question, which arises for consideration, is whether the provisions of the

Industrial Dispute Act, apply to the facts of the present case and whether the oral termination of the applicant on 7th August, 1987 by the respondents was bad in law.

2. The applicant's case as pleaded in the application is that he was engaged as a Casual Fitter under the respondent no.2 on 1st March, 1985 to 26th May, 1985 vide certificate 26th May, 1985 Annexure A. Thereafter, the respondents no.2 vide letter dated 8th May, 1986 called the applicant for the interview of post of helper on 15th May, 1986 vide Annexure C. Thereafter, he was engaged as Casual Labour/ watchman on daily wages under the respondent no.2 on 1st November, 1985 to 8th September, 1986 vide certificate Annexure B. The applicant has alleged that he was working under the respondent no.2 for more than two years as found in the certificate Annexure D 10th April, 1987 issued by respondents. The case of the applicant is that the respondents all of a sudden orally terminated his services on 7th August, 1987, without issuing any notice. Thus, according to the applicant, action on the part of the respondents in orally terminating his services was in clear violation of Statutory Provision Section 25 F of the Industrial Disputes Act, and it amounts to retrenchment. It is, therefore, submitted by the applicant that the oral termination dated 7th August, 1987 be held illegal and bad in law being in flagrant violation of the provision of S 25 F of The Industrial Disputes Act, and the respondents be directed to reinstate him in service with full back wages and continuity of service.

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3. The respondents contentions in the written reply are that the applicant was engaged on Daily Wages and that this applications not maintainable. The respondents denied the other allegations of the applicant and they^{also} denied that the applicant was a 'workman' and the respondents an 'industry', according to the provisions of the Industrial Disputes Act, hence, the applicant was not entitled to any notice nor his termination amount to retrenchment as alleged.

The applicant has filed rejoinder controverting the contentions taken by the respondents in the reply.

4. Learned advocate for the applicant submitted that the applicant has produced at Annexure A/3 the documentary evidence a certificate dated 10th April, 1987 given by Station Engineer of the respondent no.2 which shows that he was working as a helper on a temporary work charge basis for the last 2 (two) years. He submitted that applicant was paid the wages for the period as shown in the certificate Annexure I given if the period as shown in the certificate Annexure A/3 is taken into consideration, The applicant had worked for 240 days in a year, preceding the date of oral termination. Learned advocate for the respondents has today ~~xx~~ produced before us the statement signed by the Director, Doordarashan Kendra, Ahmedabad which shows that the applicant has worked for more than 240 days within a period of one year preceding the date of his oral termination. Therefore, now there is no dispute that the applicant had worked for more than 240 days within the period of one year immediately

preceding the date of his oral termination.

5. The important question to be considered ^{is}

whether

the applicant is ~~xxx~~ a 'workman' and the respondents
 2 ⁱⁿ an 'industry' as defined in the Industrial Disputes

Act,. Learned advocate for the respondents submitted that the Doordarashan is not an industry and the applicant engaged as a helper is not a workman as defined in Industrial Disputes Act. Learned advocate for the applicant has submitted that the applicant has in rejoinder categorically stated that the work carried on by the respondent's Department is an industry within the meaning of Section 2 (j) of Industrial Disputes

inasmuch as it

2 Act, satisfies the 3 (three) tests namely, employer - employee, relationship, co- operation between employer and employee and rendering the services to the society.

He submitted that in view of the decision in Bangalore water supply case and sewerage Board, the present respondent would be an 'industry'/. As no decision on the point that Doordarashan is an industry or not is cited before us by either side, we have ~~dx~~ to decide on material before us whether Doordarashan is an Industry or not. As per the ratio of ~~xx~~ the decision in Bangalore water supply case 1978SCC (L & S)P.215 where there is

(i) systemetic Activity

(ii) organised by co-operation between employer and employee and

(iii) for the production and or distribution of goods and services calculated to

satisfy human wants and wishes, the Institution as prima facie an industry.

The frue forcus is functional and the decisionve test in the nature of the

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of the activity with special emphasis on the employer - employee relations. So far the present case is concerned, we are of the view that there is an employer - employee relationship, co-operation between employer and employee, ^m and they render services to the society. We are therefore, satisfied that Doordarashan is an industry and the applicant working with Doordarashan was a workman as defined under the provisions of Industrial Disputes Act. Therefore, the provisions of the Industrial Disputes Act would apply to the facts of this case.

6. In view of the undisputed fact that the applicant has worked for more than 240 days within the period of one year immediately preceding the date of his oral termination, the applicant could be said to be in continuous service and therefore, as defined in S. 25 (B) of the Act and the oral termination of applicant amounts to retrenchment and the same being in violation of S.25 F of the Industrial Disputes Act, this Tribunal has jurisdiction to decide this case in view of the decision in ~~MPadmvalliz~~'s case decided by the larger Bench of the Tribunal.

7. It is also the case of applicant that one junior to him, whose name is P.K.Ashwar is continued by the respondents while the applicant was terminated and this action on the part of the respondents is violative to Article 14 of the constitution of India.

8. Having heard learned advocates, we find that the applicant is on a stronger ground regarding termination of his services being made

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by the respondents in violation of provisions of section 25 F of the Industrial Disputes Act, and therefore, we do not propose to go in to the other contention of the applicant about his junior being continued. It is sufficient to hold that the oral termination of the applicant dated 7th August, 1987 by the respondent no.2 being in clear violation of section 25 F of the Industrial Disputes Act, the same requires to be quashed and set aside and the respondents shall have to be directed to reinstate the applicant in service as helper with full back wages. Hence, we pass the following order.

9.

+ O R D E R +

The application is allowed. The oral termination of the applicant dated 7th August, 1987 by respondent no.2 is quashed and set aside and the respondents are directed to reinstate the applicant in service as helper within the period of 2 months from the receipt of this order and respondents are further directed to pay all back wages deducting any gainful ^{earning from} ~~employment~~ ^{ne} made by applicant during this period, to the applicant till he is reinstated in service within 3 months from the date of receipt of this order with continuity of service. No order as to costs. Application is disposed of as above.

R.C. BHATT

(R.C. BHATT)

MEMBER (J)

N.V. KRISHNAN

(N.V. KRISHNAN)

VICE CHAIRMAN