(11)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~[illegible]~~

AHMEDABAD BENCH

O.A. No. 518 OF 1988.
~~T.A.No.~~

DATE OF DECISION 19-9-1990.

VILJIBHAI K. SOLANKI & ANRS. Petitioners

MR. P.H. PATHAK Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents.

MR. J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. SINGH, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N.R. CHANDRAN, 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? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
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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CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

PRESENT

The Hon'ble Shri M.M.Singh,
Administrative Member;

and

The Hon'ble Shri N.R.Chandran,
Judicial Member.

ORIGINAL APPLICATION NO. 518 of 1988

1. Viljibhai Karsanbhai Solanki
2. Mohanbhai Chunabhai

Applicants

vs

1. Union of India through
Chief Post Master General,
Ahmedabad.
2. Medical Officer in-charge,
P&T Dispensary II, Mani Nagar,
Ahmedabad-8.

Respondents

Mr. P.H. Pathak ... Counsel for applicants

Mr. J.D.Ajmera ... Counsel for respondents

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O R D E R

(Pronounced by the Hon'ble Shri N.R. Chandran, Judicial Member)

The two applicants herein who belong to the Scheduled Caste, joined as Peon and Sweeper respectively under the 2nd respondent. While the first applicant is working as Peon from 6-7-1986, the second applicant is working as Sweeper from February, 1986, as daily wagers. The applicants have averred in the application that though they are working in permanent posts, they are being paid only on daily wage basis. When the services of the first applicant were sought to be terminated with effect from 1-8-1988 verbally to accommodate another employee, the above application was filed challenging the verbal order of termination of Applicant No.1 and for regularising the services of

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Applicants 1 and 2 on the basis of the rulings of the Supreme Court and the Central Administrative Tribunal. This Tribunal by its order dated 16-8-1988 granted interim stay of the verbal order of termination and directed the respondents to continue the first applicant in service till further orders.

According to the applicants, they are continuously working as Peon and Sweeper from 1986 and had completed more than 360 days of service. Hence the verbal order of termination would be contrary to the provisions of the Industrial Disputes Act and therefore it would be invalid. The respondents did not prepare a seniority list under Rule 77 of the Industrial Disputes Act which compels the employer to prepare a seniority list of workmen in the particular category from which retrenchment is

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contemplated and also requires that the same should be exhibited. According to the applicants, no such seniority list has been prepared and that the respondents are not following the principle of 'last to come first to go' while retrenchment is resorted to. The applicants have averred that they having worked for more than the statutory period continuously, their services should be regularised. Accordingly they have prayed that the relief as prayed for in the application be allowed.

On the other hand, according to the respondents, the applicants were not sponsored by the employment exchange and they had not undergone the regular process of selection. Since one N.M.Shirmali, LDC in the P.M.G's office died in harness, to accommodate his dependent, the first applicant respondent had to be terminated. The respondents have also averred that the respondents'

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organisation will not come under the definition of 'industry' and therefore the protection under Section 25F of the Industrial Disputes Act would not be applicable to the applicants. They have however conceded that no seniority list of casual labours has been prepared. In view of these averments, the respondents have prayed that the application be dismissed.

Shri P.H.Pathak, the learned counsel for the applicants mainly rested his contentions on the legal issues raised since admittedly there is no dispute that the applicants have been continuously working in the respondents' organisation as claimed in the application. The counsel for the applicants submitted that the verbal order of termination of the first applicant would be illegal. He relied upon the following decisions to substantiate his contention:

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Firstly he relied upon a decision of this Tribunal in OA 570 of 1988. In that decision, this Tribunal following the earlier decision in the case of Kunjan Bhaskaran and others vs. Sub Divisional Officer, Telegraphs, Chenganassery (1983 LIC 135) held that the Postal Department is an 'industry' and if there is a termination, even if it is oral, it cannot be done without regard to Section 25F of the Industrial Disputes Act. He then relied upon the case of Mohan Lal vs. The Management of M/s Bharat Electronis Ltd. (AIR 1981 SC 1253). In that case it was held that any termination of service in respect of cases not covered by any exception in Section 2(oo) would amount to retrenchment. According to the learned counsel for the applicants, in view of this decision, the oral order of termination would be retrenchment. It is not necessary to multiply the case laws cited by the applicants' counsel and it is sufficient if a reference is made to a

latest decision of the Supreme Court in the case of Punjab Land Development and Reclamation Corporation Ltd., Chandigarh etc. and several others vs. Presiding Officer, Labour Court, Chandigarh etc. and several others (1990(II) LLJ 70). In that case it was argued on behalf of the management that the earlier decisions starting from the case of State Bank of India vs. Shri N. Sundara Money (1976-I-LLJ 478) are decisions per incurium and they do not lay down the correct law and therefore the law laid down in that judgement would be contrary to the earlier rulings of the Bench. This contention was negatived by a Five Judges Bench of the Supreme Court and it has been laid down therein that the expression 'retrenchment' as defined in Section 2(oo) of the Industrial Disputes Act means termination of the services of the workman

for any reason whatsoever, other than those expressly excluded by Section 2(oo). Thus, the law has been restated by a Five Judges Bench of the Supreme Court in 1990-II-LLJ-70 (supra) and it is not necessary to refer to any other decision. Section 2(oo) and the exceptions contained therein read as follows:

> 2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reasons whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the service of a workman on the ground of continued ill-health.

Admittedly in this case the exceptions mentioned in Section 2(oo) are not attracted. Hence the order of termination of the first applicant would

be illegal. But the applicant No.1 is continuing in work by the orders of the Court and hence the order of termination in respect of applicant No.1 had not been given effect to. In any event, since it is admitted by the respondents that the services of the first applicant had been terminated, the order of termination is hereby set aside.

The other limb of the argument of the learned counsel for the applicants is that the applicants are entitled to be absorbed since they have been working on daily wage basis from 1986. The applicants' counsel relied upon a number of decisions to substantiate his contention that the applicants would be entitled to be absorbed as a regular measure because of their long period of service as daily wagers. This was resisted by the learned counsel for the respondents on the ground that the applicants were not sponsored by the employment exchange and that they had not

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not gone through the regular process of selection. The learned counsel for the respondents even suggested that the applicants came to the department through back-door. Hence such persons could not be given a permanent status and no indulgence should be shown to them.

The learned counsel for the applicants relied upon the following decisions:

1. (1985)4 SCC 201 (H.D. Singh v. Reserve Bank of India and others)
2. 1988(1)S.L.R. 349 (The General Secretary ot Bhiar State Road Transport Corporation, Patna v. The Presiding Officer, Industrial Tribunal, Patna and others)
3. 1988(2) L.L.J 100 (Gainda Ram and others v. M.C.D. and others)
4. (1990)1 SCC 361 (Bhagwati Prasad v. Delhi State Mineral Development Corporation)

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5. (1990)13 ATC 250 (M.M.Unnikrishnan v. Superintendent of Post Offices and others)

6. A.I.R.1990 SC 883 (Dharwad District PWD Literate Daily Wages Employees Association and others v. State of Karnataka and others)

7. 1988(1) S.L.R. 353 (Union of India v. All India Service Pensioners Association and another)

8. 1988 Lab I.C.1094 (Prem Chand and others v. State of Himachal Predesh and another) and

9. A decision of this Tribunal in O.A. 644 of 1987 (Mayavan Alagamuthu and 113 others v. Union of India and others).

Let us consider the scope of the above decisions. The Supreme Court has held in H.D.Singh's case (1985)4 SCC 201) that if a worker is working continuously for not less than 240 days in a year, striking off his name from the rolls would amount to retrenchment. Therein the Supreme Court has also criticised a confidentialdepartmental circular directing inter alia that only non-matriculate Tikka Mazdoors may be considered for inclusion in List, II. The applicant

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therein was a Tikka Mazdoor from 1974 and he was not given any work after July, 1976. When the matter was referred to the Supreme Court, the Supreme Court held that the applicant had been terminated in violation of the mandatory provision Section 25F and held that the order of termination would be illegal. The Supreme Court also observed that creating artificial breaks to deprive the workman of the benefits available to him under the Industrial Disputes Act would be an unhealthy labour practice. Ultimately they allowed the application and directed the respondents to enlist the appellant therein as a regular employee, to reinstate him and pay him his back wages up-to-date. This decision is relied upon by the learned counsel for the applicant because in paragraph 15 thereof the Supreme Court has directed regularisation of the appellant therein.

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Similarly in this case also the applicant who has put in continuous service from 1986 and in any case more than 240 days, he should also be regularised. In 1988(1)SLR 353, relied upon by the learned counsel for the applicants, the Supreme Court has passed the following Order:

> "Having regard to the facts and circumstances of the case we deem it just and proper to set aside the order of termination of service made on 28th December, 1981. Since the appellant was appointed in 1976 and acted there for more than 5 years, we direct the respondents to reinstate the appellate and regularise his service within two months from today. Leanred counsel for the appellant states before us that he will not claim back wages. The appeal is accordingly allowed but there will be no order as to costs."

In 1988(1)S.L.R. 349 (supra), the Supreme Court directed the Bihar State Road Transport Corporation to prepare a reasonable scheme for regularisation of the casual labourers. The Supreme Court has observed in that case as below:

> "Since it is admitted that a large number of people have been working as casual labourers for a long number of years, the question whether they were initially appointed regularly becomes immaterial for purposes of the question involved in this case. The Court has in a

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number of decisions already rendered by it directed regularisation of casual labourers wherever it found that such labourers had been working for a number of years vide Daily Rated Casual Labour Employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch v. Union of India and others (1987)2 Scale 844, U.P. Income Tax Department Contingent Paid Staff Welfare Association v. Union of India and others (Writ Petition 1870 of 1986 decided on December 4, 1987) and Delhi Municipal Karmchari Ekta Union (Regd) v. Shri P.L.Singhla (Civil Appeal No.3921 (NL) of 1987 decided on December 7, 1987)."

In 1988 (2) LLJ 100 cited by the learned counsel for the applicants, in case of Clinic Beldors working against sanctioned posts, the Supreme Court directed regularisation. Similarly, in the latest decision reported in AIR 1990-SC-883, the Supreme Court themselves framed a scheme in respect of casual employees and directed the State of Karnataka to absorb them "in the State". In 1988 Lab.IC.1094, the Himachal Pradesh High Court also observed that the action of the State Government in employing persons on daily wage basis for over 7 to 10 years would not be in conformity with the concept of fair play and justice. In view of these

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decisions, the learned counsel for the applicants pressed for the relief prayed for in the application. Otherwise, it would be unfair and arbitrary. In this context the counsel for the applicants also met the objection of the learned counsel for the respondents that the applicants had not been sponsored through the employment exchange and that they had not gone through the regular process of selection. The Supreme Court has taken the view in (1990)1 SCC 361 that if the casual labours are working for a considerable period and had gained experience, that would be sufficient for confirmation without insisting upon the requisite qualification. In the recent decision reported in AIR 1990-SC-883 the same view was expressed that only the physical infirmity shall/be mainly the test of suitability and that there shall not be any examination since the applicants had been working there for a considerable period.

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In view of these decisions, the learned counsel for the applicant stressed that the respondents cannot now throw them out or refuse to regularise them, merely on the ground that they had not not been sponsored by the employment exchange and that they had not gone through the regular process of selection. In (1990)13 ATC 250 cited by the learned counsel for the applicants, the Ernakulam Bench of the C.A.T. clarified that a casual employee even though not sponsored by the employment exchange, should also be absorbed. In that case, pursuant to the decision of the Supreme Court in AIR 1987 SC 2342, the Postal Department framed a scheme and the applicant therein was not regularised on the ground that he was not sponsored through the employment exchange. The Ernakulam Bench of the C.A.T. rejected the same and directed the regularisation of the applicant therein even though he had not been sponsored by the employment exchange. The relevant

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observation of the Bench is as follows:

> "From the above it is clear that what weighed with the Hon'ble Judges of the Supreme Court for regularisation of casual workers is the principle that for better management and better utilisation of human resources, the workers should be given security of work so that they contribute to maximising production. They felt that workers should not remain as casual labourers for an unreasonable long period of time and that it is possible for big department like Posts and Telegraphs Department to absorb the casual workers in the regular cadre for any of the several types of works which the department was undertaking on a large scale. The emphasised part of the extract from the judgement indicate that the scheme of absorption of casual labourers is not qualified by the term 'eligible casual labourers much less only those casual labourers who are sponsored by the Employment Exchange. The directions issued by the Director General, Postal Department or the Department of Personnel also nowhere indicated that the casual workers who have not been sponsored by the Employment Exchange should be kept out of the scheme of regularisation."

The learned counsel for the applicants also relied upon an unreported decision of this Tribunal in OA 644 of 1987 (Mr. Mayavan Alagamuthu & 113 others v. Union of India and others) in which this Tribunal itself has directed absorption since the applicant therein had been working for a long time. The learned counsel for the applicants therefore prayed that in this case also the applicants should be absorbed.

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In view of the decisions of the Supreme Court, Himachal Pradesh High Court and of this Tribunal which we have analysed above, we are of the view that the applicants are entitled to the relief asked for. We have already held that the order of termination of the first applicant has been passed in violation of Section 25F of the Industrial Tribunals Act. The fact that the applicants have been working continuously since 1986 has not been denied by the respondents as also the fact that they are working against permanent posts and that they are being paid on daily wage basis. Hence in view of the various decisions cited above, the applicants have acquired a right for regularisation. Accordingly we hold that the claim of the applicants for regularisation is sustainable. Therefore, the applicants are bound to succeed. It is conceded in the Reply Statement that the

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respondents have not prepared a seniority list of casual employees as per Rule 77 of the Industrial Disputes Act. In view of this statement, we have no option but to direct the respondents to absorb the applicants as regular employees. We further direct that the respondents shall pass such an order within a period of two months from to-day. We have also set aside the order of termination of the first applicant. Since the first applicant is continuing on duty pursuant to the interim stay order of this Tribunal which is now made absolute, we are not giving any direction for his reinstatement.

The O.A. is allowed as above.

(N.R. CHANDRAN)
JUDICIAL MEMBER

19/2/90

(M.M. SINGH)
ADMINISTRATIVE MEMBER

Index: Yes **/***

s.v.