

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 597/88
~~F.A. No.~~

DATE OF DECISION 8.10.1991

Shri Sukhdevsinh Prabhatsinh Jhala Petitioner

Mr. P.H. Pathak 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. K.J. Raman

: Administrative Member

The Hon'ble Mr. R.C. Bhatt

: Judicial Member

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?

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Shri Sukhdevsinh Prabhatsinh Jhala,
At & Po.Dudhrej,
Near Post Office,
Via : Surendranagar.

....Applicant.

(Advocate : Mr.P.H.Pathak)

Versus

1. Union of India & Ors.,
Notice to be served through
the General Manager,
Telecommunications Deptt.,
Near Gujarat High Court,
Ahmedabad.
2. The Asstt. Engineer,
X-Bar Installation,
Telecommunications Department,
Surendranagar.

....Respondents.

(Advocate : Mr.E.A.Samuel for
Mr.P.M.Raval)

CORAM : Hon'ble Mr.K.J.Raman : Administrative Member
Hon'ble Mr.R.C.Bhatt : Judicial Member

O R A L - O R D E R

Dated : 8th Oct.1991.

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

Heard Mr.P.H.Pathak, and Mr.E.A.Samuel, for
Mr.P.M.Raval, learned advocates for the applicant and
the respondents.

2. This application, under Section 19 of the
Administrative Tribunals Act, 1985, is filed by the
applicant, the casual labourer seeking the relief against
the respondents that the verbal termination of the applicant
with effect from 11th April, 1987, passed by the respondent
no.2, be declared as illegal, invalid and inoperative in
law and that the same be quashed and set aside. ^{And that the} the
respondents be directed to reinstate the applicant with
continuity of service and with full back wages. It is
also prayed by the applicant that the respondents ^{be} directed
to regularise the services of the applicant in light of

the judgment of the Hon'ble Supreme Court of India and the action of the respondents to continue the applicant as a dailywage employee for a long period amounts to unfair labour practice. It is the case of the applicant pleaded in the application that he was working as a casual labourer under the respondent no.2, The Asstt. Engineer, X-Bar Installation, Telecommunications Department, Surendranagar, since 1985. But his services were verbally terminated by the respondent no.2, with effect from 10th April, 1987, without following the due process of law. It is alleged in the application that the applicant's name was sponsored by the Employment Exchange for filling up the post of casual labourer, that the applicant was interviewed and was selected as a casual labourer and posted under the respondent no.2, vide the order dated 8.3.1985, at Annexure-A. It is alleged that thereafter the applicant reported for duty and till the date of his termination he was in continuous service and he was paid as a daily wager. It is alleged by the applicant that he was deprived of the benefits available to the regular employees of the department. It is alleged that the respondents have under the guise of a so-called daily-wager adopted a discriminatory and arbitrary exercise of powers in flagrant violation of Article 14 and 16 of the Constitution of India. It is also the case of the applicant that the action of the respondents in orally terminating his services without any ground is in violation of Section - 25-F of the Industrial Disputes, Act and hence the alleged ~~termination~~ termination is void. It is alleged by him that the applicant made representation after his verbal termination vide Annexure-A/1, dated 11th July, 1987, but no reply is given by the respondents.

3. The respondents have filed reply contending that the application filed by the applicant is at a very belated stage, that this Tribunal has no jurisdiction to entertain the dispute in question. It is contended that the applicant's appointment was for a specified period and for specified work at Surendranagar and on completion of the said work, the entire office was closed. It is contended that the post is not in existence from 20.3.1987. It is therefore, contended that the action on the part of the respondents was legal. They have denied that the termination of the service of the applicant amounts to retrenchment within the provisions of the Industrial Disputes Act. The respondents denied that the applicant is a workman and the respondent department is an industry and prayed that the application be dismissed.

4. The learned advocate for the respondents submitted that this application is barred by limitation as the applicant has not filed this application within one year from the date of his oral termination. The learned advocate for the applicant submitted that the applicant had made representation at Annexure A/1, dated 11th July, 1987 against the oral termination of his service but no reply has been given by the respondents. The learned advocate for the applicant submitted that the applicant waited for six months period as there was no reply to the representation made by the applicant and then the application was filed in Sept., 1988, before this Tribunal. He submitted that if there is delay in filing this application, it is the delay of not more than five months and the same be condoned. The facts of the case show that, the verbal termination of the service of the

applicant was in violation of Section 25-F, of the Industrial Disputes Act and there is also a point raised by the applicant about violation of Article 14 and 16 of the Constitution of India and having regard to these questions, we condone the delay in filing this application and treat it within time.

5. The other contention of the respondents in the reply is about want of the jurisdiction of this Tribunal. It is held in the larger Bench of the Administrative Tribunal in A. Padmavally's case that, a person seeking remedy under the Industrial Disputes Act, must ordinarily exhaust the remedies available under that Act. But at the same time there is guideline given in that judgment at para 38 and 39, that where the competent authority ignores statutory provisions or acts in violation of Article 14 of the constitution or from facts apparent on the face of the record, it is clear that there is statutory violation, it is open to the Tribunal to set aside the illegal order of termination and to this extent alternative remedy cannot be pleaded as a bar to the exercise of jurisdiction under Article 226.

6. In the instant case, it is not in dispute that the applicant was in continuous service from the date of his appointment i.e. from 1st April, 1985 till 10th April, 1987. It is also not in dispute that no notice contemplated under Section 25-F, of the Industrial Disputes Act was given to the applicant nor any retrenchment compensation, contemplated in that section was paid to the applicant at a time of his retrenchment. Thus from facts apparent on record it is clear that applicant was in continuous service for more than 240 days in a year preceding the date of his oral termination and therefore to terminate his services orally amounts to violation of Section 25(F) of the Industrial Disputes Act. We respectfully follow the guidelines

given in A.Padmavallye's case. Therefore, it would not be proper to direct the applicant to approach the forum of Industrial Tribunal or Labour Court under the Industrial Disputes Act. The respondents have also taken contentions in the reply that the applicant was not a workman and the respondents is not an Industry under the provisions of the Industrial Disputes Act. Learned advocate for the respondents has not pressed this contention because by now it is well settled by the decision of several Tribunals including Ahmedabad Bench, that the Telecommunication Department is an Industry and the person working under that Department is a workman under the provisions of the Industrial Disputes Act.

7. Learned advocate for the respondents submitted that though the applicant has worked continuously from 1st April, 1985, till 10th April, 1987, as a casual labourer with the respondents, the oral termination of the applicant by the respondent no.2, was legal and valid, because the applicant was appointed for a specified period and for specified work for installation of work under A.E.X Bar installation, Surendranagar. We have perused the appointment order at Annexure-A, which shows that the employment of the applicant was on casual and daily rated basis and not on regular establishment of the department and the employment will be as per the conditions laid in the interview letter. Examining the contents of the interview letter produced by the respondents at page, 23, it is found that the employment of the applicant was subject to the terms and conditions of the casual mazdoors within the P & T Department. Therefore, from these two documents, it can not be spelled that the respondents had employed the applicant only for a specified period as contended in the reply. Moreover the respondents can terminate the services of the applicant but

they have to undergo the procedure of Section-25-F of the Industrial Disputes Act, before terminating the services of the casual labourer. Admittedly in the instant case the procedure under Section-25-F is not followed and the oral termination is made by the respondents which is a complete violation of Section-25-F of the Industrial Disputes Act, and therefore, the impugned oral termination is illegal and ~~refers~~ ^{deserves} to be quashed and set aside.

8. The applicant has been working since 5 years ^{now}, therefore, to continue him on the daily wages is also a harsh. The respondents may consider the applicant's case for regularisation and according to the seniority and Rules applicable to the applicant. The applicant also, would be entitled to the reinstatement with full back wages. The applicant to produce the evidence before the respondents as to whether he was in employment at any time after his termination, till the date of reinstatement, because if the applicant was in any gainful employment during this intervening period, he ^{would be} ~~was~~ not entitled to the full back wages for that period, ^{Meaning thereby} that ~~that~~ ^{if} he ^{had} earn any amount by gainful service any where the said amount would be deducted from the total back wages.

9. Hence we pass the following order :

The order of oral termination passed by respondent no.2, with effect from 10th April 1987, is held illegal and hence the same is quashed and set aside. The respondents are directed to reinstate the applicant in service within one month from the date of ~~when~~ the receipt of this order

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and to pay all the back wages till the date of reinstatement within four months from the date of the receipt of the copy of this order. The respondents are also directed to consider the case of the applicant for regularisation as per his seniority and rules applicable to the applicant. We pass no order as to costs, Having regard to the facts of this case. The application is allowed to the above extent.



(R.C.Bhatt)
Judicial Member



(K.J.Raman)
Administrative Member

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