

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
NEXXWXXXXXXKXWXI

CAT/11/12

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O.A. No. 6090096 679

198

DATE OF DECISION

11/6/91

Shri Bijalvira

Petitioner

Mr. P.H. Pathak

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. B.R. Kyada

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

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Shri Bijalvira
at village Gajana
Post- Lalpur,
Dist. Jamnagar.
(Advocate: Mr.P.H. Pathak)

..... APPLICANT

VERSUS

1. Union of India
through
The General Manager (W.R.)
Church Gate, Bombay.

2. Permanent way Inspector, (C)
Kanalus.
C/o Executive Engineer (c)
Western Railway,
Near Ervine Hospital
Jamnagar.

..... RESPONDENTS

(Advocate: Mr.B.R.Kyada)

J U D G M E N T

O.A. No. 679 OF 1988

11/6/91.

Date :

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

1. This application under section -19 of the Administrative Tribunals Act, 1985, is filed by the casual labourer- applicant serving under respondent No. 2 P.W.I. Kanalus, Western Railway, praying that the termination of his services from 1-1-86 ^{u/b} respondent No. 2 be declared as illegal, invalid and inoperative in law and that the same be quashed and that the respondents be directed to grant benefits of the approved scheme as per the decision in Inderpal Yadav's case, and the respondents be directed to reinstate the applicant in service with full back wages.

2. The case of the applicant pleaded in this application is that he was working as casual labourer under the respondent No. 2, since 7-7-80 till the date of his termination on 2-8-86. The applicant has produced the copy of his service card at Ann. "A". It is alleged by the applicant that the respondent No. 2 under the guise of completion of project has terminated his services without following the provisions of Industrial Disputes Act, 1947 and Rules 76 and 77 of Industrial Disputes (Central) Rules 1957. According to the applicant, no notice was given to him before termination of his services, but the applicant was told that his arrears of wages were sanctioned and under that wrong impression, his thumb impression was obtained by respondent No. 2 and he was verbally told that he was retrenched due to ~~the~~ completion of work and would be taken back if in future work arose. It is alleged by the applicant that he is deprived of regularization which he is entitled to under the scheme contemplated as per the decision of Hon'ble Supreme Court in Inderpal Yadav's case. It is further alleged that many juniors to the applicant are continued in service and thus, the respondent No. 2 has acted arbitrarily and in violation of Articles 14 and 16 of constitution of India and therefore also the impugned illegal oral termination be quashed.

3. No reply is filed by the respondents and hence we proceed to dispose of the case on the basis of the material produced before us and the law applicable to the

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facts of this case.

4. Learned Advocate Mr. Kyada for the respondents submitted that the applicant ~~was~~ ^{has} made suppression of the material facts and has made averments in the application contrary to what is mentioned in his service card Ann. "A" He submitted that in para 6 (1) of the application, the applicant has alleged that the date of his termination was 2-8-1986, and in para 7 (A) the date of his termination is mentioned as 1-1-86, while the service card Ann "A" shows that he was retrenched on 30-12-85. Therefore, according to the Learned Advocate for respondents the applicant has no cause of action to file this application and there is no order of retrenchment dated 1-1-86 or 2-8-86 and hence no question of quashing such order arises. It is further submitted by him that as per para 3 of the application, it is the verbal order of termination of 1-1-86 by respondent No. 1 which is under challenge while in para 6 (3) he says that the impugned notice of termination was dated 1-1-86. Thus, according to the respondents learned advocate, there are lot of contradictions and inconsistent averments made in the application which is against the service card mark "A" and the application deserves to be dismissed on those grounds alone. While it is true that the applicant has made contradictory and inconsistent averments in the application, that itself would not be the sole ground to throw away the application. The other submission of learned advocate for

the respondents was that the Executive Engineer (Construction) is the only authority who can appoint and who can remove the casual labourer, but the applicant having not joined that authority as party this application should be dismissed. Learned advocate for the applicant submitted rightly that the respondents having not filed reply and the fact that the order in the service card is signed by respondent No 2, it is not necessary to join Executive Engineer (Construction) as party respondent. In the instant case, Union of India and P.W.I. Kanalus are joined as respondents, which are necessary parties. The respondents have not filed reply. We do not entertain the technical contention of respondents' learned advocate, that the application should be dismissed as Executive Engineer is not joined as party. Even otherwise, no application can be dismissed on the ground that proper party is not joined as respondent.

5. Now examining the merits of the case, the learned advocate for the applicant submitted that this Tribunal, while examining similar cases of the casual labourers in Sukumar Gopalan and others vs Union of India (W. Rly.) & others (O.A. 331/86 decided on 16-2-87) has quashed the order of illegal termination/ retrenchment being violative of 5, 25F, 25G, 25B etc of I.D. Act and Rule 77 of I.D. (Central) Rules 1957 and for the failure of Railway

Administration is not preparing seniority list as envisaged. However recently there is a decision of larger bench of Central Administrative Tribunal consisting of five members in A Padmavally and another vs C.P.W.D. III (1990) CSJ (C.A.T.) 384 F.B. in which it is held in para 38 that when the competent authority ignores statutory provisions or ^{in re} acts violation of Article 14 of the constitution, it is open to the Tribunal exercising power under Article 226 to set aside the illegal order of termination and to direct reinstatement of the employee leaving it open to the employer to act in accordance with the statutory provisions.

The conclusions are in para 40 of the Judgment which read as under.

"The Administrative Tribunals constituted under the Administrative Tribunals Act are not substitutes for the authorities constituted under the Industrial Disputes Act and hence the Administrative Tribunals does not exercise concurrent jurisdiction with those authorities to regard to matters covered by that Act. Hence all matters over which the Labour Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act do not automatically become vested in the Administrative Tribunal for adjudication. The decision in the case of Sisodia, which lays down a contrary interpretation is, in our opinion, not correct.

(2) An applicant seeking a relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act.

(3) The power of the Administrative Tribunal are the same as that of the High Court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles



laid down in the case of Rohtas Industries (Supra).

(4) The interpretation given to the term 'arrangements in force' by the Jabalpur Bench in Rammoo's case is not correct".

Thus this Tribunal now has to decide cases like the present one as per the guidelines given in A Padmavally's case (Supra) and therefore the decision relied upon by the applicant in O. A. 331/86 and others decided on 16-2-87 in which the Tribunal has decided the cases under I. D. Act 1947 will not help the applicant.

6. Now in the instant case, the allegation of the applicant is that juniors to the applicant are continued in service and, therefore, the action of respondents in terminating service of applicant is arbitrary and discriminatory and violative of Articles 14 and 16 of the constitution of India. The applicant has not mentioned in the application the name of any person junior to him being continued and in absence of specific pleading on that point, it cannot be presumed that the action of respondents is violative of Articles 14 and 16 of Constitution of India. We hold that the applicant has failed to establish that allegation.

7. So far the question of alleged violation of the provisions of I.D. Act and Rules made there under is concerned the learned advocate for the respondents

submitted that the applicant has suppressed the material facts. He submitted that the compensation of rupees One thousand Six hundred Seventy and Twenty paise were paid to the applicant when he was retrenched on 30-12-85 as shown in his service card Ann. A as per provision of S.25 F, of I.D. Act. He submitted that no complaint was made by him till the filing of this application on 3-10-88 that his thumb impression was taken by respondent No. 2 wrongly on the basis that his arrears of wages were sanctioned. He, submitted, that there was no relationship of employee and employer between parties after 30-12-85 and the principle of promissory Estoppel will apply. The conduct of the applicant in not raising any such disputed for more than two and half years, would show that this allegation is and after thought and is so vague that no reliance could be placed on such allegation. Moreover, as observed earlier, the contradictions and inconsistent averments made in the application about the date of the termination of the services of the applicant and about impugned notice being and not written or oral show that no conclusion can be arrived at from such allegations in absence of reliable materials on record that the termination of services of the applicant is in statutory violation of the provisions of I.D. Act and Rules made thereunder. The allegation that he is not given the benefit of the approved scheme framed as envisaged as per decision of Hon'ble Supreme Court is also absolutely vague

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and cannot be accepted.

8. In short, having carefully considered the averments made in the application and the document Ann. "A" service card on record which was the only document produced by applicant and having considered the submissions of learned advocates of the parties, we find that there is ^{not} enough and reliable material placed on record by the applicant to entitle him to get the relief as prayed for. We may observe, that it would be open for the applicant to exhaust his remedies available under I.D. Act before the labour Tribunal or Industrial Tribunal as per the decision in A Padmavally's case (Supra).

9. The result is that the application fails and it is dismissed with no orders as to case. Application is disposed of.

R. C. Bhatt

(R. C. Bhatt)

Judicial Member

M. M. Singh
(M. M. Singh)

Administrative Member