

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

No Oral Argument

O.A. No. 97/89
T.A. No.

DATE OF DECISION 7-12-1992

Ms. Lilavatiben Thakar Petitioner

Shri P.H.Pathak Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Shri 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?

(1)

Lilavatiben Hargovinddas Thakar,
At & Post Juval Rupavati
Taluka Dholka
District Ahmedabad.

Applicant

Advocate Shri P.H.Pathak

Versus

1. Union of India
Notice to be served
Through The Post Master General
Gujarat Circle, General Post Offices,
Ahmedabad.
2. The Superintendent of Post Offices
Gandhinagar Circle, Gandhinagar.

Advocate Shri Akil Kureshi Respondents

ORAL JUDGEMENT

In

O.A. 97 of 1989

Date : 7-12-1992.

Per Honble Shri R.C. Bhatt Member (J)

1. This application is filed by the Extra-Departmental Postman who was serving at Village Juval Rupavati under the respondent no.2, the Superintendent of Post Offices, Gandhinagar Circle, ~~because~~ ^{against} the verbal order of the respondent No.2 ~~directed~~ ^{ing} her to hand over the charge to respondent no.2 after completion of her leave period. The applicant has prayed that the said verbal order being illegal and in contravention

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of section 25 F of the Industrial Dispute Act, be quashed and set aside and the applicant be reinstated in service with full back wages etc., The case of the applicant is that she was appointed by the respondents by an order (Annexure A-) dated 30th July 1986 and she was working continuously with respondent no.2, but when she met respondent no.2 for sanctioning her leave for a week for personal work, One week prior to this application, she was directed by respondent no.2 that after completion of her leave she should hand over her charge to the respondent no.2 or the officer who was to visit Juval Rupavati where the applicant was working. It is the case of the applicant that the intention of the respondent was to implement that verbal order on expiry of her leave and terminate her services without any reasons and hence the same is illegal and in violation of provision of section 25 F of the Industrial Dispute Act.

2. The contention of the respondent found in the reply is that as the applicant was given provisional appointment, she was not entitled to make this application and she cannot claim to be ~~accounted~~ ^{in continued} in service. It is contended that her appointment was made by way of stop gap arrangement. The respondents had requested the employment exchange to send the names of the qualified persons and that by letter dated 8/10-6-1988 ^{Employment} ~~8-20~~ the exchange sent the names of 5 candidates out of whom one Natvarbhai A. Parmar belonging to Schedule Caste was found suitable and the respondent decided to give him appointment. It is contended that the respondents ^{then} ordered that the said Parmar be given the charge of the post. It is contended by the respondents that the applicant was knowing

the facts that said Parmar was appointed, ~~while~~ with
~~and~~ a view ~~of~~ to ~~effect~~ the handing over the charge, she
went on leave upto 13th March 1989. The respondents
have also taken other contentions in the reply.

3. It is not disputed before us at the time of final hearing that the applicant ~~was~~ since the date of appointment on 30th July 1986 ~~she~~ was working with the respondents up to the date of expiry of her leave i.e. 13th March 1989 and she was ready to work thereafter also but it was the respondent no.2 who told the applicant to hand over the charge. The learned Advocate for the Applicant submitted that the applicant is workman and the respondent is an industry within the meaning of the provisions of the Industrial Dispute Act. The respondents have denied in their reply that the applicant is workman or the respondent is an industry as per the provisions of the Industrial Act. It is now decided by this Tribunal and other Tribunals as well in various decisions that the department of Post is an industry and the person of the type of the applicant a workman, working thereunder as EPM as defined in the provisions of the Industrial Dispute Act. Therefore, we reject the contention of the respondents that the applicant is not workman and the respondents not an industry as defined under the provisions of the Industrial Dispute Act.

4. The applicant has been in continuous service with the respondents upto 13th March 1989, when she was asked orally to hand over the charge to respondent No.2 or to Mr. Parmar the new incumbent as contended by the respondents. Therefore The applicant had worked for more than

Employer

240 days immediately preceding the date of oral termination
 The applicant would therefore, be entitled to protection
 of section 25 F of the Industrial Disputes Act. The
 learned Advocate for the respondents submitted that this
 case would fall under section 2 (00) (bb) of the Industrial
 Disputes Act, because appointment order shows that her
 appointment was in the nature of contract. The respondents
 have not produced any written contract entered into between
 them and the applicant. The learned Counsel for the respondents
 submitted that this appointment order itself should be
 construed as a contract. We cannot construe this appointment
 order as contract because it does not speak about the period
 of contract and therefore, it cannot be said that there was
 a contract. Even if the literal meaning of contract is taken
 it does not define any period, then it will not attract
 section 2 (00) (bb) of the Industrial Disputes Act, because
 the termination of the services of the applicant ~~should be~~ ^{is not made}
 as a result of non-renewal of the contract of employment
 between employer and the workman concerned on its expiry
 We do not find anything from this provisional appointment
 as to when this contract of employment between employer
 and the workman concerned has expired, the learned Advocate
 for the respondents ~~has~~ ^{her} produced any material before us to
 show that the contract has expired. The learned Advocate for
 the respondents submitted that the applicant's services can
 be terminated by order ~~in written~~ ^{in writing}. It is true that if the
 order in writing is given in furtherance of a stipulation
 in a contract ~~that the same would~~ ^{by which the services are to} be terminated then that
 order in writing would operate, but as said above, there is
 no contract in writing produced before us nor this provision-
 al appointment can be treated as contract nor any order is
 produced before us by the respondents to show that Mr. Parmar

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was appointed, the applicant was terminated in pursuance
of stipulation contained in this respect in the contract.

Therefore, the arguments of the Learned Advocate for the respondents that section 2 (oo) (bb) of Industrial Dispute~~s~~ Act apply, cannot be accepted.

5. We have gone through the documents produced before us and the records of this case and we are satisfied that this a case where the applicant would be entitled to the protection of section 25 F of the Industrial Dispute~~s~~ Act. Admittedly, no notice has been given by respondents to the applicant before terminating her services as required under section 25 F of the Industrial Dispute~~s~~ Act and hence the oral order of the respondent no.2 directing the applicant to hand over the charge, either to him or to Mr. Parmar the new incumbant, was illegal and in contravention of section 25 F of the Industrial Dispute~~s~~ Act and hence the same is quashed and set aside.

6. The learned Counsel for the applicant does not press at this stage for the regularisation of the services of the applicant because according to him the applicant would make a separate application as per law to the respondents. Therefore, in this case, in view of our findings above, the oral termination of the applicant shall have to be quashed and set aside and the respondents no.2 shall have to be directed to reinstate the applicant in service with full back wages. Hence we pass the following order.

ORDER

7. The application is partly allowed. The oral

termination of the applicant dated 13th March 1989 is quashed and set aside and the applicant is deemed to be in service of the respondents and we declare accordingly.

The respondents are directed to pay the back wages to the applicant from 14th March 1989 onwards. The respondents are at liberty to take whatever actions ~~in~~ according to law is permissible against the applicant. The respondents to pay back wages to the applicant within three months from the date of receipt of this order and should pay the usual wages admissible to the applicant as per rules. The respondents would be at liberty to deduct the amount from the back wages of the applicant if the applicant has earned from the gainful employment during the above period

8. Application is disposed of as above. No order as to cost.

Resd.

(R.C. Bhatt)
Member (J)

N.V.Krishnan
Vice Chairman

*AS.