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IN THE CENTRAL ADMINISTRATIVE TRIAUNAL

AHMEDABAD BENCH

O.A. No. 153 OF 1990.
~~T.A. No.~~

DATE OF DECISION 28-9-1993

Babubhai Laljibhai Macwana, Petitioner

Mr. J.G. Chauhan, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent s

Mr. Akil Kureshi, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

The Hon'ble Mr. M.R. Kolhatkar, Admn. 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 ? ✗

Babubhai Laljibhai Macwana
100, Santok Nagar Society,
Channi Road,
Baroda - 390 002. .... Applicant.

(Advocate: Mr. J.G. Chauhan)

Versus.

1. Union of India
Director General
Dept. of Post
Sanchar Bhavan,
Parliament Street,
New Delhi.

2. Director of Postal
Services (South Zone)
RMS Bhavan, Pratapgunj
Vadodara.

3. Sr. Supdnt. of Post
Western Division
Vadodara.

4. Postmaster
Pratapgunj H.O
Vadodara. ..... Respondents.

(Advocate: Mr. Akil Kureshi)

J U D G M E N T

O.A.No. 153 OF 1990

Date: 28-9-1993.

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

Heard Mr. J.G.Chauhan, learned advocate for the applicant and Mr. Akil Kureshi, learned advocate for the respondents.

2. This application under section 19 of the Administrative Tribunals Act, 1985, is filed by the applicant, who was serving with the Postal Department, seeking the relief as under :

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"7. Relief sought:

Under the circumstances, your applicant prays as under:-

(a) That, the impugned oral order of the respondent No.4 of retrenchment/dismissal of the your applicant is bad in law and to be set aside.

(b) That the said applicant be reinstated with effect from 17.3.89 as outsider Casual workers with temporary status and to be absorbed in regular post in future.

(c) That, the said applicant be awarded back-wages with effect from 17.3.89 by way of compensation for unjustified mental and other agony caused to your applicant.

(d) The cost of this application may please be awarded by allowing this application.

(e) Any other relief as your Honourable Tribunal may deem fit and proper in the interest of justice be awarded."

3. It is the case of the applicant that he joined the postal department from 1987, that he has completed the prescribed period of 240 days of actual working in a year either in the year 1987-88-89, that he was appointed as outsider to do work of respondent No.4 Postmaster, Vadodara and under the control of respondent No. 3 & 2. It is alleged by him that he was paid basic daily wages at the rate of Rs. 39 to 40 per day depending upon number of days of the month. He has prepared a rough statement of actual working days upon his recollection produced at Annexure A-1 in which he has mentioned that he has worked for 246 days in 1987-88 and for 242 days in 1988-89. It is alleged by

him that the respondent No.4 has terminated his sergices without following provisions of Industrial Disputes Act, that the respondent No.4 terminated his services with effect from 17th March, 1989 and this action on the part of the respondent No.4 is arbitrary and violative of Articles 14, 16 & 311(2) of the Constitution of India and also against the provisions of Industrial Disputes Act.

4. The respondents have filed reply contending that the applicant has not been given any appointment order and there is no question therefore, to give written termination order. The respondents have denied that the applicant had completed 240 days continuous work in 12 calendar months as alleged by him and have denied that the impugned action is arbitrary as alleged. It is contended that the applicant is not governed by the provisions of the I.D.Act. It is contended by the respondents that the applicant was engaged as outsider substitute and he was paid remuneration prescribed by the Government from time to time. It is contended that the applicant has worked for 124 days from 9th June, 1987 to 30th January, 1988, 154 days from 3rd February, 1988 to 31st October, 1988 and for 88 days from 1st December, 1988 to 18th March, 1989. It is denied that the

respondent No.4 has exercised his power vindictively as alleged to engage his favourite person. The respondents have denied the other allegations made in the application.

5. The first question which arises for our consideration is whether the applicant is 'a workman' and the respondents 'an industry' within the provisions of I.D.Act. The applicant, according to the respondents was appointed as outsider substitute in the Postal Department. This Tribunal has held in the case of Viljibhai K. Solanki & Anrs. V/s. Union of India & Ors., in O.A. 518/88 decided on 19th September, 1990 that this Tribunal in O.A. 570/88 following the earlier decision in the case of Kunjan Bhaskaran & Ors. V/s. 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 can not be done without regard to Section 25 F of the I.D.Act. In this view of the matter, we hold that the respondents is an industry and the applicant a workman and the provisions of the I.D.Act apply to the facts of this case. The learned advocate for the applicant submitted that the applicant has worked for 242 days within the period of 12 calendar

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month from 17th March, 1988 to 16th March, 1989. During the course of arguments, the applicant has produced the xerox copy of the attendance register maintained by the respondents and the learned advocate for the respondents has endorsed no objection for production of this document . The learned advocate for the applicant submitted that as the applicant had continuously worked for more than 240 days during the period of 12 calendar month preceding the date of his termination, he can be said to have in continuous service within the meaning of Clause I of Section 25B of I.D. Act and therefore, the respondents could not legally terminate his service without following the provisions of Section 25F of the I.D.Act. He submitted that admittedly the respondents have not complied with the provisions of Section 25F of the I.D.Act and hence the termination of the service of the applicant amounts to retrenchment which is not legal.

6. The learned advocate for the applicant has relied on the decision in Netrapal Singh & Ors. V/s. Union of India & Ors. Vol.III (1990)CSJ (CAT) p.274, in support of his submission, in which also it is held that the Industrial Dispute Act, 1947 applies to the

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P & T Department and consequently P & T department is an 'industry' and the employees of P & T department are 'workmen' within the meaning of the said enactment. It is held in this decision in para 7 as under:

> "7. The consequences which follow from the applicability of the protection of the Industrial Disputes Act, 1947 to the workmen are that such a workman who has actually worked for a period of 240 days, is entitled to the protection of Section 25-F and that for the purpose of computing the period of 240 days in a year, Sundays and other paid holidays could also be included (see also H.D.Singh v. Reserve Bank of India, 1985 SCC(L&S) 975). The contention of the applicants in these cases is that their cases for regularisation should be considered in the light of the decision of the Supreme Court in the case of Daily Rated Casual Labour employed under the P & T Department and that in computing the period of 240 days in a year, Sundays and other paid holidays should also be included in view of the interpretation of the Industrial Disputes Act by the Supreme Court in H.D.Singh's case".

The learned advocate for the applicant submitted that while calculating 240 days in a relevant period the applicant has added Sunday for every six continuous days of his actual work. He submitted that in calculating 242 days, the applicant had added 29 Sundays of such weeks in which the applicant has worked from Monday to Saturday, while according to the respondents, the applicant has worked for 220 days including holidays. The learned

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advocate for the respondents submitted that the applicant has actually worked for 211 days excluding Sundays. The attendance register produced by the applicant is not very clear on this point and it is not possible to know exactly as to how many Sundays are considered or whether any Sunday is considered or whether paid holidays are considered in the attendance. However, the question which is important is that what is the ratio of the decision of the Hon'ble Supreme Court in H.D. Singh V/s. Reserve Bank of India, 1985 SCC(L&S) 975 on which the Central Administrative Tribunal, New Delhi has relied in a case referred to by the Tribunal. Before the Hon'ble Supreme Court in H.D.Singh's matter, the Tikka Mazdoor had among other contentions had contended in his affidavit that he had worked for 202 days from July 1975 to July 1976 and according to him, if 52 Sundays and 17 holidays are added the total number of days on which he worked would come to 271 days. The appellant Mazdoor charged the bank i.e., employer with having tempered with the records. The first respondent bank had not produced its record to contradict the appellant's case, though the appellant wanted the relevant records to be filed. The attendance register was required to be produced before the Industrial Tribunal where the matter was originally heard, but the bank had filed an affidavit that the attendance register has been destroyed. The Hon'ble Supreme Court held that in absence of any evidence

to the contrary, the necessary inference is drawn that the workman had worked for more than 240 days from July 1975 to July 1976. Therefore, in this matter, the main question whether the paid holidays or Sundays or other holidays should be counted or not was not decided, but the decision was given by the Hon'ble Supreme Court relying on the affidavit of the applicant and in absence of evidence to the contrary produced by the respondent bank. The question whether the Sundays and holidays should be taken into account while considering the phrases "actually worked ..... for not less than 240 days" as per Section 25B of the Industrial Disputes Act, 1947 came for consideration in the other case of Workmen of American Express International Banking Corporation V/s. Management of American Express International Banking Corporation, reported in 1985 SCC (L&S) 1940. In para 2 of the said judgment, the Hon'ble Supreme Court has observed as under:

> "The difference between the two computations is due to the circumstance that the workman has included and counted Sundays and other paid holidays as days on which he "actually worked under the employer", while the employer has not done so. The question for consideration is whether Sundays and other holidays for which wages are paid under the law, by contract or statute, should be treated as days on which the employee actually worked under the employer for the purposes of Section 25-F read with section 25-B of the Industrial Disputes Act."

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The Hon'ble Supreme Court in para 5 of the judgment observed as under:

> "The expression which we are required to construe is actually worked under the employer. This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc."

The Hon'ble Supreme Court further observed in that para as under :

> "If the expression "actually worked under the employer", is capable of comprehending the days during which the workman was in employment and was paid wages - and we see no impediment to so construe the expression - there is no reason why the expression should be limited by the explanation."

Therefore, the Hon'ble Supreme Court has considered this point in this decision that the expression actually worked under the employer comprehend all those days during which the workman was in the employment of the employer and for which he has been paid wages either under express or implied contract of service or by compulsion of statute, or by standing orders etc. The Hon'ble Supreme Court also has in this decision taken into consideration the provisions of Delhi Shops and Establishment Act, 1954 which provided for closed days, weekly holidays and wages with the holidays.

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7. The learned advocate Mr. Akil Kureshi for the respondents submitted that the casual employees are not entitled to wages for days they do not work and he has relied on the decision in Union of India & Ors. V/s. Rajendra Kumar Sharma, AIR 1993 SC page 1317. It is observed by the Hon'ble Supreme Court in para 5 of this decision as under:

> "5. We are of the opinion that the matter should go back to the Tribunal for a decision afresh. Neither the decision of this Court in Daily Rated Casual Labour nor the proceedings of the P & T Department issued on February 10, 1988 say that the casual labourers are entitled to be paid even on the days they do not work. The approach of the Tribunal that since the aforesaid proceeding of the P & T Department does not provide otherwise, the respondent is entitled to be paid even for the days he did not work (i.e., Saturdays, Sundays and Gazetted Holidays) does not appear to be sound. Whether there is any other basis upon which the respondent is entitled to such payment has not been examined by the Tribunal."

8. In the instant case, the learned advocate for the applicant submitted that he has added 29 Sundays of weeks where the applicant worked continuously for six days in a week from Monday to Saturday even though the applicant has not worked on that Sunday and is not paid for that Sunday. He has included these 29 Sundays in computing 242 days work within the relevant period of twelve Calender Months. He also submitted

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that the applicant was also entitled to be paid on holidays also and thus the total number of days comes to 242 days, while according to the respondents, the applicant has actually worked for 211 days excluding Sundays. According to learned advocate for the respondents, there is no rule or there is no circular in P & T Department that the casual labour is entitled to be paid even on the day he does not work i.e., for Saturday or Sunday and gazetted holidays and he has relied on the above decision of the Hon'ble Supreme Court in Union of India & Ors. V/s. Rajendra Kumar Sharma (supra). In the present case, we have no complete material to hold that the applicant has actually worked for not less than 240 days as provided under section 25-B of the I.D.Act taking into consideration all the above decisions and hence it is not possible for us to give the relief of reinstatement and backwages as prayed by the applicant and therefore, we deem just and proper to dispose of this application by giving directions to the respondent No. 2,3 & 4 as under:

9. The respondents are directed to calculate the number of days for which the applicant actually worked as provided under Section 25-B of the I.D.Act considering (1) the days where the applicant has

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physically worked during the relevant period of 12 calendar months prior to the date of his termination, (2) the days where he has not physically worked, but the days on which he had been paid wages either under express or implied contract of service or by compulsion of statute standing orders etc. If after considering these above points, the applicant is found to have worked for not less than 240 days in the relevant period, the respondents shall reinstate him in service within two months from the date on which they come to the conclusion that the applicant has worked for not less than 240 days and also shall pay the backwages within three months thereafter. The respondents to comply with the above directions of calculating the number of days as directed by us and should pass order within two months from the receipt of this order and if they decide in favour of the applicant then further order of reinstatement and payment of backwages should follow as per our above directions. The applicant be informed about the speaking order arrived at by the respondents and if the applicant feels aggrieved by the decision of the

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respondents he would be at liberty to approach the Tribunal according to law. Application is disposed of accordingly with no order as to costs.

(M.R. Kolhatkar)
Member(A)

(R.C. Bhatt)
Member(J)

vtc.