

NO
Termination

B
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. O.A./324/90

~~XXXXXX~~

DATE OF DECISION 26.3.1993

Shri Raisang Mansang Jadhav Petitioner

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

Versus

The Union of India & Ors. Respondent

Mr. Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt

Member (J)

The Hon'ble Mr. V. Radhakrishnan

Member (A)

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 ?

Shri Raikang Mansang Jadhav

... Applicant

Vs.

1. Union of India,
Through:
The Chief Post Master General,
Navrangpura,
Ahmedabad.
2. Sub Division Inspector (Postal),
Limbdī Sub Division,
Limbdī- 363 421.

... Respondents

J U D G M E N T

O.A.No. 324/90

Date: 26.3.1993

Per: Hon'ble Mr. V. Radhakrishnan, Member (A)

1. Heard Mr. P.H. Pathak, learned advocate for the applicant and Mr. Akil Kureshi, learned advocate for the respondents.

2. The applicant was working under Respondent no. 2, Sub Division Inspector, (Postal), Limbdī Sub Division, Limbdī 363 421, since 30.10.1984 as casual labour/ outsider employee. He has filed this application under Section 19 of the Administrative Tribunals Act, 1985, for the declaration that termination of his services by the respondent no. 2 by verbal order with effect from 30.3.1988, as illegal, invalid and void ab-initio as it is in violation of mandatory provisions of the Industrial Disputes Act. He has stated that he should

..3...

be reinstated with full backwages. While the termination was effected from 30.3.1988, the applicant has filed this application on 29th September, 1989, due to the reasons, by stated him that he had approached the higher authority in the department and was hoping for reinstatement in his job. Ultimately when he failed in his affects he approached this Tribunal and the application for condonation of delay was admitted and delay was condoned.

3. It has been submitted on behalf of the applicant that he has worked continuously since appointment on 30.10.1984 and till 30.3.1988, i.e. the termination date, he was not given any notice as per Section 25^F of the I.D. Act. He was not given any compensation on his termination of his job. The applicant therefore, entitled to get the benefits of reinstatement with full backwages and entitled, to participate in the scheme of regularisation of services as he had completed more than 360 days of service as per the Hon'ble Supreme Court's Judgment.

4. The respondents^{have} filed the reply, wherein they have stated that the applicant was an outsider and he was working on purely adhoc basis arrangement at Mogidad, District Surendranagar. It is denied that he was working continuously and he was never appointed nor given any appointment order, that the applicant was engaged purely as an outsider with daily wages as admissible to outsider from time to time. They also denied that any false promises were given to the applicant

5. During the hearing, the learned advocate for the applicant Shri Pathak brought out the various Judgment of this Tribunal as well as the Hon'ble Supreme Court and also brought out that service of casual labourer who is a working in the Postal Department which is an "Industry" cannot be terminated without following provisions of Industrial Disputes Act, especially due to fact that the applicant had completed more than 240 days in the service during the year. Mr. Kureshi submitted that the applicant was not regularly appointed as he was not given any appointment order. The applicant was not permanent nor his work continuous and therefore, the applicant was not entitled to any benefits claimed by him under the Rules.

6. We have heard the both the counsels. From the facts of the case, it is apparent that the services of the applicant was terminated without following proper procedure. It may be pointed out in this connection that a division bench of this Tribunal had decided in M.A. Bukhari Vs. Union of India & Ors. that Post and Telegraphs Department is an industry covered by the Industrial Disputes Act. Hence, the worker could not be terminated without following the procedure under this Act. The respondents had not given any notice nor any retrenchment compensation paid as per the Section 25-F of the I.D. Act. From the annexure given by the respondent no. 2 themselves in their written statement, it is clear that the applicant had worked for 954 days during the period 1984 to 1988. It is also seen from the statement that he has worked for more than

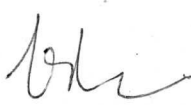
240 days during the period immediately preceeding the termination. It is to be noted that several such cases have been decided by the Hon'ble Supreme Court as well as the Tribunal in violative of Section 25 of the I.D. Act. It was held by the Hon'ble Supreme Court in Gammon India Limited Vs. Niranjan Dass that termination of service of the applicant which amounts to retrenchment would be ab-initio void and he will be entitled for reinstatement with full back wages along with all consequential benefits. In this case the applicant was issued a verbal order of termination without notice or retrenchment compensation to which the applicant was entitled. This is in clear violation of statutory provisions of Section 25-F of the I.D. Act. The termination of services being in violation of the Section 25-F of I.D. Act was ab-initio, void. In the fact and circumstances of the case, the application is allowed and impugned order of termination is quashed and set aside, and the respondents are directed to reinstate the applicant to duty. In so far as the question of backwages is concerned, taking to consideration the details which is given in the application by the applicant, we are awarding the backwages with effect from the date of application i.e. from 29.9.1989. The applicant should also be considered for regularisation in accordance with the scheme to be proposed by the department in pursuance of Hon'ble Supreme Court


direction in that respect, in the case of Daily Rated Casual Labour Employed under Post and Telegraph Department Vs. Union of India and Orthers 1988 (1) SLR 211. Hence, we pass the following order:

7.

ORDER

The application is allowed. The verbal order of termination issued by the respondents terminating the services of the applicant from 30.3.1988 is quashed and set aside. The respondent is directed to reinstate the applicant with full backwages after adjusting for any amounts he would have received from any other source during the period from the date of application is filed, i.e. 29.9.1989, within three months from the date of receipt of this order. The applicant should also be considered for regularisation in the scheme to be formulated by the Department in pursuance of Hon'ble Supreme Court's direction. No order as to costs.


(V. Radhakrishnan)
Member (A)


(R.C. Bhatt)
Member (J)