

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**O.A.NO.** /136/1992**T.A.NO.**DATE OF DECISION 8th August 2000K.C. Patel

Petitioner

Mr. P. H. Pathak

Advocate for the Petitioner [s]

Versus

Union of India and another

Respondent

Mrs. P. Safaya

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr.

V. Ramakrishnan, Vice Chairman.

The Hon'ble Mr.

A. S. Sanghavi, Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? *m*
- 2, To be referred to the Reporter or not ? *no*
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? *no*

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Kanchanlal Chimanlal Patel
Vadi, Daliya Pole
Vadodara- 390 017.

Applicant

Advocate: Mr. P.H.Pathak

Versus

1. Union of India
Notice to be served through
Director
Directorate of Census Operations
Opp: V.S.Hospital, Ellisbridge
Ahmedabad-6.

2. Deputy Director of Census Operation
(Gujarat)
Gitanjali Hall
Kachhia Patel Wadi
Sheeya Bag
Vadodara.

Respondents

Advocate: Mrs. P. Safaya

JUDGEMENT

IN

Dated 8th Aug. 2000

O.A./136/1992

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:

The applicant a retired employee of the Baroda Municipal Corporation was engaged by the Deputy Director of Census Operations, Gujarat in Baroda as a Complier for a short duration in connection with temporary posts created for 1991 census operations. Such an engagement was on contract basis. The terms of the contract provided that the engagement was for a period of one year subject to the other provisions in the contract including a provision which gives a right to the

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parties to terminate the contract even before the period of one year. He is aggrieved by the fact that his services were terminated immediately after six months namely on 3.9.91 without any notice, by an order dated 3.9.91 as at Annexure A-3 without continuing him for one full year.

2. We have heard Mr. Pathak for the applicant and Mrs. P. Safaya for the respondents.

3. Mr. Pathak submits that the intention was to engage the applicant for a period of one year from March 1991 but even when the work was still pending his services were terminated. According to him, this has been done with a view to victimize the applicant who had given a notice claiming H.R.A. City Allowance etc. It is submitted that on receipt of such a notice on 3.9.91, the impugned order was issued. The learned counsel submits that any administrative action should conform to minimum requirement of natural justice whereas the action of the department is entirely arbitrary. The applicant's services were terminated without giving him an opportunity and this is in violation of principles of natural justice. Mr. Pathak submits that termination of service was made without any notice and such unilateral powers cannot be granted or exercised. It is also stated that the applicant had been working from 1.3.91 and had completed more than six months service and accordingly he was

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entitled to one month's notice prior to terminating his services which was not given. There is also a contention that condition 3(v) of the contract is unconstitutional as it is unilateral and violative of Section 74 of the Contract Act and it should be quashed.

4. Mrs. Safaya submits that this is not a case of a normal Government employee. The applicant was admittedly a retired employee of the Municipal Corporation and the census operations are seasonal which call for intensive work for a short period and it became necessary to engage a number of such retired persons purely on short term basis. There was a provision to grant a consolidated salary of Rs.900 per month to such employees and the stipulation of a period of one year of engagement was subject to the other provisions contained in the contract and Clause 3 (v) of the contract gives right to both parties to terminate the contract without assigning any cause. As the applicant's service had not exceeded six months, his services were terminated without any notice and this is as per the provisions of the Contract. Mrs. Safaya also draws attention to the decision of the Tribunal in OA/180/92 where in an identical situation the Tribunal had held that there is nothing illegal in acting on the terms of the contract in such situations. She submits that

the same principle should be followed in the present case also.

5. We have carefully considered the submissions of both the sides. The applicant was admittedly engaged on a contract basis and both sides would be governed by the terms of the contract. He cannot claim that he should be placed on an identical footing as a serving Govt. employee. He is a retired Govt. employee and is drawing pension and has entered into the contract voluntarily. As the Census Department required the services of a number of people purely on short term basis his services were engaged. He cannot claim the same privileges as a serving Government employee nor is he entitled to any opportunity of being heard before his services were terminated. We find that Mrs. Safaya's reliance on Tribunal's decision in OA/180/92 is well taken as the principle involved is identical in that case also. We have only to see whether the terms of the contract have been properly followed in this case while issuing the impugned order.

We find from the Contract (copy at Annexure A-1) that the Clause (1) provided for engagement for a period of one year subject to the other provisions in the contract. Clause 3 deals with the issue regarding termination. Clause 3(v) reads as follows:-

" 3(v) By one calendar month's notice in writing given at any time during service under the agreement (except during the first six months thereof) either by him/her to the Government or by the Government or their authorised officer to him/her without cause assigned.

Provided always that the Government may in lieu of any notice herein provided for, give the party of the first part a sum equivalent to the amount of his/her consolidated salary for one month or shorter notice than one month if they pay him a sum equal to the amount of his/her salary for the period by which such notice falls short of one month".

It is clear from this that there is a reciprocal right available to both the parties namely the employee and to the Government to terminate the agreement without any notice if the period of service is less than six months. The assumption that it gives unilateral power to the Government is misconceived as such a right is equally available to the employee also.

The employee has voluntarily entered into the contract and has to abide by its terms. However the power to terminate services without any notice is available only during the first six months. Where it exceeds six months, the Government has to give one month's notice or sum equivalent to the amount of consolidated salary per month. In the present case there is a controversy as to whether the period of service exceeded six months or not. The department has claimed that as the engagement was from 4.3.91 and the termination order is dated

12

3.9.91, it is within the first six months. The applicant has however submitted that he had started working from 1.3.91 onwards and 1st March was a working day. We note that clause (1) of the contract provides for a period of service from 4.3.91 which has been signed by the applicant but all the same he has now raised a doubt regarding the service and claims that he has started working from 1.3.91.

Apart from this controversy, we also note that the respondents waited till the very last date acting at eleventh hour on that day and issued the impugned order. If they felt that the services of the applicant were not required for whatever reason, they need not have waited till the last day for issuing such an order. This would give an impression that this has been done only to evade issuance of one month's notice or payment of salary in lieu thereof.

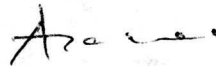
6. In the facts and circumstances of the case, we hold that while the department as also the applicant has a right to enforce the terms of the contract but in view of the doubt regarding whether the applicant had started performing duties prior to 4.3.91, it would be just and equitable to go on the basis that department ought to have acted on the terms of proviso of Clause 3 (v). We accordingly direct the respondents to pay to the

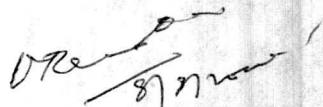
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applicant a sum of Rs.900 which is the amount of his consolidated salary for one month as per the contract. This should be done within three months from the date of receipt of a copy of this order.

7. The O.A. is finally disposed of with the above direction without any orders as to costs.


(A.S. Sanghavi)
Member (J)


(V. Ramakrishnan)
Vice Chairman

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