

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 156/92
~~T.A. No.~~

DATE OF DECISION 06/10/93

Shri Bhimcharan Janrav Vankheda Petitioner

Mr. K.K. Shah Advocate for the Petitioner(s)

Versus

Union of India Respondent

Mr. Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.B. Patel : Vice Chairman

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 ?

No.

: 2 :

Shri Bhimcharan Janrav Vankheda,
Amdabad Sarav,
Kamdar Sangh,
92 Rupapari, Dariapur,
Ahmedabad-1.

: Applicant

(Advocate: Mr.K.K.Shah)

Versus

Union of India, notice to be
served through General Manager,
Ahmedabad Telephones,
Nr.High Court of Gujarat,
Ahmedabad-9.

: Respondent

(Advocate: Mr.Akil Kureshi)

ORAL JUDGMENT

IN

O.A.156/92

Date:6/10/1993

Per: Hon'ble Mr.N.B.Patel

: Vice Chairman

By filing the present application, the applicant has prayed for quashing and setting aside the award passed by the Industrial Tribunal dated 4.10.1990 in Reference (ITC) No.30/89 in as much as the Tribunal, while declaring the termination of the applicant's employment as a casual labourer as illegal and void, has not granted him relief of reinstatement and has also not granted him back-wages except for a period of two years from the date of the termination of his employment.

2. The case of the applicant was that he was employed as a casual labourer in the Telecommunication Department w.e.f. 1.4.1985 and he had completed 240 days of employment during the year preceding 1.6.1987 on which date, according to him, his employment was orally terminated. The Tribunal has clearly held that the applicant was employed as a casual labourer w.e.f. 1.5.1985 and further that his employment was orally terminated w.e.f. 1.6.87 though he had completed 240 days of service during the year preceding the date of the termination of his employment i.e. preceding 1.6.1987. There

was no dispute before the Tribunal about the fact that the applicant's employment was terminated without complying with the provisions of Section 25(F) of the Industrial Disputes Act inasmuch as no notice or notice-pay or retrenchment compensation was given to him. The Tribunal having found that the applicant had completed 240 days of employment as a casual labourer preceding the date of the termination of his employment, i.e. 1.6.1987, has clearly held that the termination was illegal and void. This finding of the Tribunal could not be ^{assailed} ~~asserted~~ before us by Mr. Kureshi appearing for the respondents. The only question is whether ⁱⁿ the face of this finding, the Tribunal could have denied the relief of reinstatement to the applicant. We find that once the order of termination is struck down as void, it has to be treated as non-est in law and the moment it is so held that the necessary corollary would be an order of reinstatement of the concerned employee with all consequential benefits as if there was no termination of his employment. Therefore, there cannot be the slightest of ~~any~~ doubt that the award of the Tribunal, in so far as ~~xxx~~ reinstatement is not granted to the applicant, has got to be reversed and the respondents have got to be directed to reinstate the applicant in service, and, that too, with continuity of service. So far as back-wages are concerned, the Tribunal has awarded only two years' wages as retrenchment compensation though the termination was ~~granted~~ from 1.6.1987 and the Tribunal has given its award on 4.10.1990. We see no reason why the applicant should not have been awarded back-wages for the entire period from the date of his termination till the date of his reinstatement. The only question which we think it

necessary for us to seriously consider is, whether in the peculiar facts and circumstances of this case, we should award full backwages to the applicant.

Mr. Shah, for the applicant, vehemently submitted that the applicant should have been and should be awarded full backwages for the entire period. However, taking into consideration the possibility that the applicant must have at least partly gainfully employed himself during the relevant period and must have earned at least 30% of the wages which he was earlier earning, we think ^{it} reasonable and just to order payment of 70% of the back-wages to the applicant from the date of his termination till the date of his reinstatement.

3. Accordingly, we allow the application. The award of the Tribunal in so far as it refuses the grant of reinstatement to the applicant is set aside, and the respondents are directed to reinstate the applicant in service, within a period of two weeks from the date of the receipt of a copy of this judgment, with continuity of service and all consequential benefits except ~~that~~ ^{that he} backwages will be payable to him, from the date of termination (1.6.1987) till the date of reinstatement, at the rate of 70% of the wages payable to him. The amount of two years' wages, if paid to the applicant pursuant to the order of the Industrial Tribunal, may be adjusted against the amount payable to the applicant at the above ^{rate} ~~date~~ stipulated by us. If the applicant is not actually reinstated within the aforesaid stipulated period of two weeks, he will be entitled to backwages at the rate of 100% on the expiry of the said period. So far as payment of back-wages is

concerned, the respondents are directed to make it within a period of three months from the date of the receipt of a copy of this judgment by them. No order as to costs.

4. Records and proceedings of the Industrial Tribunal, Gujarat (Ahmedabad), be transmitted back to the said Tribunal as early as possible.



(V. Radhakrishnan)
Member (A)



(N. B. Patel)
Vice Chairman

a.a.b.