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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

NO  
Termination

O.A. No. 316/92  
T.A. No.

DATE OF DECISION 10th March 1993

Shri E.Y. Gandhi 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.B. Patel Vice Chairman

The Hon'ble Mr. V. Radhakrishnan Member (A) *AGL*

1. Whether Reporters of local papers may be allowed to see the Judgement ? *g. No.*
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 ?

E.Y. Gandhi  
 Navapara  
 Nr. Nathibhai Masjid  
 Jamnagar.

Applicant.

Advocate Shri P.H. Pathak

Versus

1. Union of India  
 Notice to be served through  
 Dy. Director  
 Ministry of Industry  
 Small Industrial Services Institutes  
 Harisiddh Chambers, 4th Floor  
 Ashram Road, Ahmedabad.
2. Assistant Director  
 Extension Centre (S.I.S.I)  
 Dwarkapuri Road  
 Ram Mandir's Dela  
 Jamnagar.

Advocate Shri Akil Kureshi

ORAL JUDGEMENT

In

O.A. 316 of 1992

Date :10-3-1993.

Per Hon'ble Shri N.B. Patel

Vice Chairman

The applicant was working as Helper in the office of the respondent no.2 since his selection for the said post in 1985 and pursuant to the appointment order dated 16-4-1985 issued to him. By order No. A.11011(5)/92/687 dated

July 16, 1992, the ~~respondent~~ Deputy Director of the Department has terminated the services of the applicant with effect from July 20, 1992 by offering him the sum equivalent to the amount of pay and allowances in lieu of one month's notice period, as also other amount of salary which may be due to him at that stage.

2. It is an undisputed position that, though the applicant was retrenched by this termination order, he has not been paid any retrenchment compensation as required by Section 25-F(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act). It is a well-established position that, in the case of an employee who has been in continuous service for not less than one year, there cannot be retrenchment until, the workman has, *inter alia*, been paid, at the time of retrenchment, compensation which is equivalent to 15 days' average pay for every completed year of continuous service or part thereof in excess of six months. There is no doubt about the fact that the applicant has been continuously in service right since 1985 i.e. for far more than one year and, therefore, he could not have been retrenched without being paid retrenchment compensation as contemplated <sup>by</sup> under Section 25 F(b) of the I.D. Act, apart from being given required notice or pay in lieu of such notice period. There is no denial by the respondents that no retrenchment compensation is paid to the applicant and hence his termination, is being in clear violation of the provision of Sec. 25F(b) of the I.D. Act, has got to be struck down as invalid. It may be mentioned that, in the application, the - applicant has challenged his termination on several

grounds, but, at the stage of arguments, Mr. Pathak, learned Advocate for the applicant, pressed only the aforesaid ground, namely, the contravention of the provision of Section 25 F (b) of the I.D. Act and contended that the termination of the applicant's service was illegal.

3. Since it is an undisputed position that no retrenchment compensation has been paid to the applicant, the purported termination of the applicant from service by order dated July 16, 1992 is illegal, void and of no effect. The application is, therefore, allowed and the termination of the applicant from service is declared as illegal and void and he is declared to be in ~~the~~ continuous service with all consequential benefits. It is clarified that it will be open to the applicant to claim the benefits of surplus scheme as may be available to him ~~accordingly~~. The respondents are directed to reinstate the applicant in service within four weeks <sup>a copy of</sup> of the receipt of ~~the~~ order by them and shall also pay all back-wages and other benefits available to the applicant on the basis of his termination being declared illegal. Such benefits will be paid to him within six weeks from the date of the receipt of this order by the respondents.

NO ORDER AS TO COSTS.

  
( V. Radhakrishnan)  
Member (A)

  
( N.B. Patel )  
Vice Chairman

E.Y. Gandhi  
 Navapara  
 Nr. Nathibhai Masjid  
 Jamnagar.

Applicant.

Advocate Shri P.H. Pathak

Versus

1. Union of India  
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2. Assistant Director  
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 Dwarkapurei Road  
 Ram Mandir's Dela  
 Jamnagar.

Advocate Shri Akil Kureshi

ORAL JUDGEMENT

In

O.A. 316 of 1992

Date :10-3-1993.

Per Hon'ble Shri N.B. Patel

Vice Chairman

The applicant was working as helper in the office of the respondent no.2 since his selection for the said post in 1985 and pursuant to the appointment order dated 16-4-1985 issued to him. By order No. A.11011(5)/92/687 dated

July 16, 1992, the respondent Deputy Director of the Department has terminated the services of the applicant with effect from July 20, 1992 by offering him the sum equivalent to the amount of pay and allowances in lieu of one month's notice period, as also other amount of salary which may be due to him at that stage.

2. It is an undisputed position that, though the applicant was retrenched by this termination order, he has not been paid any retrenchment compensation as required by section 25-F(b) of the Industrial Disputes Act, 1947 ( hereinafter referred to as the I.D. Act ). It is a well-established position that in the case of an employee who has been in continuous service for not less than one year, there cannot be retrenchment until, the workman has, inter alia, been paid, at the time of retrenchment, compensation which is equivalent to 15 days' average pay for every completed year of continuous service or part thereof in excess of six months. There is no doubt about the fact that the applicant has been continuously in service right since 1985 i.e. for far more than one year and, therefore, he could not have been retrenched without being paid retrenchment compensation as contemplated under Section 25 F(B) of the I.D. Act, apart from being given required notice or pay in lieu of such notice period. There is no denial by the respondents that no retrenchment compensation is paid to the applicant and hence his termination is being in clear violation of the provision of Sec. 25F(b) of the I.D. Act has got to be struck down as invalid. It may be mentioned that in the application, the applicant has challenged his termination on several

grounds, but, at the stage of arguments, Mr. Pathak, learned Advocate for the applicant, pressed only the aforesaid ground, namely, the contravention of the provision of Section 25 F (b) of the I.D. Act and contended that the termination of the applicant's service was illegal.

3. Since it is an undisputed position that no retrenchment compensation has been paid to the applicant, the purported termination of the applicant from service by order dated July 16, 1992 is illegal, void and of no effect. The application is, therefore, allowed and the termination of the applicant from service is declared as illegal and void and he is declared to be in the continuous service with all consequential benefits. It is clarified that it will be open to the applicant to claim the benefits of surplus scheme as may be available to him accordingly. The respondents are directed to reinstate the applicant in service within four weeks of the receipt of the order by them and shall also pay all back-wages and other benefits available to the applicant on the basis of his termination being declared illegal. Such benefits will be paid to him within six weeks from the date of the receipt of this order by the respondents.

NO order as to costs.

( V.Radhakrishnan)  
Member (A)

( N.B.Patel )  
Vice Chairman