

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 331/1993

T.A. NO.

DATE OF DECISION

25.1.1995

Executive Engineer, CPWD

Petitioner

Mr. Akil Kureshi

Advocate for the Petitioner (s)

Versus

~~Union of~~ Ramtus singh Lalsingh
Thakor, C/o All India CPWD
Employees Union

Respondent

Advocate for the Respondent (s)

CORAM

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

The Hon'ble Mr. K. Ramamoorthy, Admn. Member

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
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

The Executive Engineer,
 Central Public Works Department,
 Jawahar Saw Mill Bldg.,
 Outside Shahpur Gate,
 Shahpur,
 Ahmedabad.

.. Applicant

(Mr. Akil Kureshi, Advocate)

Vs.

Shri Ramtusingh Lalsingh Thakor,
 residing at C/o All India C.P.W.D.
 Employees' Union,
 Jawahar Saw Mill Building.,
 O/S. Shahpur Gate,
 Shahpur, Ahmedabad-4.

.. Respondent

(Mr. Pathak, Advocate)

Dt. 25.1.1995

ORAL ORDER

O.A. No.331/1993

Per : Hon'ble Mr. N.B. Patel, Vice Chairman

The applicant, the Executive Engineer, Central Public Works Department (CPWD), Ahmedabad Central by Division, challenges the award passed the Industrial Tribunal, Ahmedabad in Reference (ITC) No.67 of 1991 whereby the Industrial Tribunal has declared the termination of the employment of the opponent Shri Ramtusingh Lalsingh Thakor, with effect from 1.7.1990, as illegal and void and for directing the Executive Engineer to reinstate the applicant in employment with continuity and all consequential benefits.

2. The opponent was employed from 26.5.1987 under what are described as "work orders" for attending to day-to-day complaints of masonry work in respect of the colonies under the maintenance of the CPWD, Ahmedabad. These work orders did not stipulate that

the employment of the opponent was made for a particular period or will come to an end on a particular date but they mentioned the amount for which the opponent was employed. It appears that the amount payable to the opponent was worked out by multiplying the number of working days in a month by an amount of Rs.22.65 being daily wages payable to the casual labourers. There was no dispute about the fact that right from 26.5.1987 till the date of termination i.e. 1.7.'90, the opponent had worked for at least 240 days in each year. There was also no dispute about the fact that if the opponent was treated as an employee or a workman, the oral termination of his employment was in contravention of Section 25F of the Industrial Disputes Act inasmuch as neither the necessary notice was given to the opponent nor any notice pay in lieu of notice was given to him as also that no retrenchment compensation was paid to him. The only controversy before the Industrial Tribunal was whether the opponent was a workman the termination of whose service or employment was as a result of the non-renewal of contract of employment or whether the contract was terminated under stipulation in that behalf contained therein. The question was whether the case was covered by Section 2(oo)(bb) of the Industrial Disputes Act or not. The Tribunal has said that the work which was given to the opponent was of a continuing nature and not merely required to be done for a temporary period or during some season. The work was not temporary or seasonal but it was work which the department was required to undertake on a permanent basis because the work was

relating to attending to complaints in regard to masonry work in the colonies maintained by the department. It is also clear that after the ~~Opponent~~ was terminated in 1990, one Jilubha was required to do that work. The question whether Jilubha was in the permanent employment of the department or otherwise is absolutely immaterial so far as the nature or duration of the work is concerned. Since somebody had to be employed to do this work on a permanent basis, the work cannot be said to be of a temporary or seasonal nature. The Tribunal ~~other~~ ^{also} has listed a number of circumstances and has come to the conclusion for very cogent and convincing reasons, that the applicant was not engaged to do any temporary or seasonal work. Similarly, the Tribunal has rightly held that the so-called work orders were issued with the intention of circumventing provisions of Section 25F and other provisions of the Industrial Disputes Act. Considering all the relevant circumstances of the case, the finding of the Tribunal that the device of employing applicant on work orders was employed only to avoid the opponent claiming benefit of the provisions of the Industrial Disputes Act. We may only mention ~~in~~ in brief ~~in~~ some of the circumstances on which the Tribunal has based its finding that the applicant was a workman employed by the department who could claim all the benefits of the provisions of the Industrial Disputes Act. The amount payable to the applicant as mentioned in the work order is worked out by multiplying the number of working days in the said period by an amount of Rs.22.65 which appears to be the amount of daily wages payable to a casual labourer doing such work. It is nowhere stated that even if the opponent did not do any work on a particular day, he would not be entitled to claim wages for that day. It is also clear, as rightly pointed out

by the Industrial Tribunal, that the applicant had to attend to his duties every day and the most important fact to be noted is that this work was of a permanent nature and the department had got to employ somebody or other to do this work on a permanent, continuous basis. We, therefore, find that the conclusion of the Tribunal that the case of the applicant was not covered by Section 2(oo)(bb) of the Industrial Disputes No Act is correct. ~~The~~ other contention was raised by the learned Additional Standing Counsel.

3. In the result, therefore, the relief granted by the Tribunal to the opponent cannot be interfered with. The OA is, therefore, dismissed. Stay is vacated. The opponent will be paid the remaining part of the back-wages as per the award of the Industrial Tribunal within a period of 6 weeks from the date of the receipt of a copy of this judgment. No order as to costs.


(K. Ramamoorthy)
Member (A)


(N.B. Patel)
Vice Chairman

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