IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 509/93
T.A. No.

DATE OF DECISION 8/11/93

Shri Vania Keshavbhai Govindbhai Petitioner

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

Versus

Union of India& Anr. 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 ? 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 ?

Shri Vania Keshavbhai Govindbhai
At Post- Sevka
Ta.Limbdi, Dist.Surendranagar. : Applicant

(Advocate: Mr.P.H.Pathak)

Versus

1. Union of India
Through:
Chief General Manager,
Telecommunications Deptt.
Khanpur, Ahmedabad.

2. Telecom Dist.Engineer
New Telecom Building
Nr.Alankar Cinema
Surendranagar-363 001. : Respondents

(Advocate: Mr.Akil Kureshi)

ORAL JUDGMENT

IN

O.A.509/93

Date:8/11/93

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

The applicant challenges the legality of the oral order of termination of his employment as a casual labourer in the Telecommunications Department. The impugned order terminating the employment of the applicant is of 1.7.1986. The present application is filed on 1.9.1993 together with delay condonation application being Miscellaneous Application No.586/93. The said Miscellaneous Application is allowed and delay in filing the O.A. is condoned on condition that the applicant shall not claim and shall not be awarded back wages till the date of his reinstatement, if the same is ordered.

2. The undisputed facts of the case are that the applicant was engaged as a casual labourer in the Respondents' Department in June, 1984 and his services

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have been terminated orally w.e.f. 1.7.1986. The case of the applicant is, and there is absolutely no dispute about it, that he had completed more than 240 days of employment during the cruicial period i.e. from 1.7.85 to 1.7.86 and, therefore, his retrenchment could not have been validly effected otherwise than in accordance with the provisions of Section 25 F of the Industrial Disputes Act. There is no dispute about the facts that the applicant's termination is not brought about after giving him a notice as envisaged by Section 25 F of the Industrial Disputes Act or after offering to him pay in lieu of notice. It is also not in dispute that the applicant is not paid any compensation for bringing about his retrenchment.

3. One of the contentions raised in the reply filed by the respondents is that the Respondent Department is not an "industry" within the meaning of that term under the Industrial Disputes Act and, therefore, the provisions of the Industrial Disputes Act, including the provision of Section 25 F of the said Act, are not applicable and, hence, even though the termination of the applicant is oral, the termination cannot be struck down as illegal. However, Mr.Kureshi could not quarrel, at the bar, with the proposition that, so far as this Tribunal is concerned, it is a well-established position, as at present, that the Respondent Department is an 'industry' within the meaning of the Industrial Disputes Act and the provisions of Section 25 F of the Industrial Disputes Act are applicable to the case of retrenchment of any employee of the Respondent Department. That being so,

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it cannot be questioned that unless a notice as required by Section 25 F of the Industrial Disputes Act is given to the employee or he is paid wages in lieu of notice and that he is also paid compensation as required by Section 25 F of the Industrial Disputes Act, the termination of his employment would be void and illegal. In the present case, there is no dispute about the fact and it is clear from Annexure A-1 certificate, that the applicant had completed more than 240 days of employment during the year preceding the date of termination of his employment i.e. preceding 1.7.1986. This being so, there cannot be any question about the application of Section 25F of the Industrial Disputes Act to the case of the applicant. Since no notice was given to the applicant nor was any notice pay offered to him and also since retrenchment compensation was not offered and paid to the applicant at the time of bringing about his retrenchment, the termination of the employment of the applicant must be held to be void ab initio. The applicant is, therefore, entitled to claim reinstatement in service with continuity. The only question is about back wages. Since the applicant has approached this Tribunal about 7 years after his retrenchment, delay in filing the application is condoned on condition that he will not claim back wages till the date of his retrenchment. Hence the following order.

ORDER

The application is allowed. The oral order dated 1.7.1986 by which the applicant's employment

as a casual labour is terminated, is held to be illegal and void and is hereby quashed and set aside. The respondents are directed to reinstate the applicant on the same terms as before, within a period of three weeks from the date of receipt of a copy of this judgment. The applicant's claim for back-wages is rejected. However, if the respondents ~~did~~ do not actually reinstate the applicant within the aforesaid stipulated period, they are directed to pay wages to the applicant from the date next to the expiry of the said period. After his reinstatement, it will be open to the applicant to make a representation for regularisation and if he found to be entitled, to be regularised as per the relevant provisions in that behalf, the respondents are directed to pass appropriate orders in that connection. No order as to costs.

(V.Radhakrishnan)
Member(A)

(N.B.Patel)
Vice Chairman

a.a.b.