

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 670/93

~~1st NO.~~

DATE OF DECISION 10/5/1994

Shri Jay Jaysingh K Petitioner

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

Versus

Union of India & Ors. Respondent

Mr. Akil Kureshi Advocate for the Respondent (s)

CORAM

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

The Hon'ble Mr. K. Ramamoorthy : Member (A)

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 ?

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Shri Jay Jaysingh K.
At Village: Khimmat
Taluka Dhaner, Dist. Banaskantha
Pin: 385545

: Applicant

(Advocate: Mr. P. H. Pathak)

Versus

1. Union of India
Through:
General Manager,
Telecommunication Deptt.
Gujarat Circle,
Khanpur, Ahmedabad.
2. Telecom Dist. Engineer,
Gehatman Darwaja
Telecommunication Deptt.
Palanpur-385 001.
3. SDO (Telephone)
New Telecom Building /
Deesa, Dist. Banaskantha.

: Respondents

(Advocate: Mr. Akil Kureshi)

ORAL ORDER

In

O.A./670/93

Date: 10/5/1994

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

: Vice Chairman

The applicant, who was working as a casual labourer in the Telecommunications Department, challenges the oral order of the termination of his employment w.e.f. 4/1/1993 on the ground that the said order contravenes the provisions of Section 25-F of the Industrial Disputes Act inasmuch as his termination was not brought about by a notice of one month nor was he paid wages for one month in lieu of notice and he was also not offered any retrenchment compensation. The applicant has averred that he had worked for more than 240 days in the year preceding the date of

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termination of his employment i.e. 4.1.1993.

2. In the reply filed by the respondents, it is not admitted that the applicant had worked for 240 days or more in the year preceding the date of the termination of his employment, and it is contended that the provisions of Section 25-F of the Industrial Disputes Act were not attracted in this case. It may be stated here that when the matter came up for arguments, it was fairly ^{conceded} ~~considered~~ by Mr. Kureshi that, subsequent to the filing of the reply, further inquiry was made in the matter and it is now found that the applicant had in fact put in more than 240 days of work during the relevant year. It is, therefore, now not contested that, in order to bring about the termination of his employment in a legal way, it was necessary to give him one month's notice or to pay him one month's wages in lieu of such notice and also to offer him retrenchment compensation. There is no dispute about the fact that the termination of the employment of the applicant was brought about orally, and therefore, the conditions laid down by Section 25-F of the Industrial Disputes Act were not fulfilled.

3. In the reply, it is contended that Telecommunications Department is not an 'Industry' within the meaning of that ~~termination~~ as defined in 2(j) of the Industrial Disputes Act and, therefore, there is no question of the applicability of Section 25-F of the Industrial Disputes Act to the case of the applicant or, for that matter, to ^{any of} ~~the~~ employees of the Telecommunications Department. On this point Mr. Pathak, learned advocate appearing for the applicant, cited the famous case of Bangalore Water Supply and

Swerage Board versus Rajappa (1978 SCC (L & S) 215) and contended that all the three conditions mentioned in the said judgment to bring any particular activity within the sweep of ^{the} definition of the term 'Industry' are fulfilled in the present case. Mr. Pathak has produced a statement on 6.5.1994 detailing the activities undertaken by the Telecommunications Department which, inter alia, are establishment of Telephone Exchanges, providing telephone service to the citizens, etc. It is also mentioned in the statement that the Telecommunications Department levies charges from customers for providing these services. There cannot be any dispute that the Telecommunications Department undertakes these activities in an organised, systematic and continuous way and that the resultant service which is provided to the citizens, is provided by the cooperation between the employer and the employee. At the stage of arguments, Mr. Kureshi, for the respondents, did not contest the proposition that the activities undertaken by the Telecommunications Department satisfy the requirements mentioned in the Supreme Court's decision to bring such activities within the meaning of term 'Industry' as defined in the Industrial Disputes Act. Mr. Kureshi made this concession in view of the instructions circulated by the Assistant Director General (STN) by his letter dated 13th August, 1990, wherein all the offices of the Department are directed to follow the provisions of Section 25-F of the Industrial Disputes Act while terminating the employment of casual workman. It is also mentioned in the letter that 'appropriate Govt.' for the purpose of Clause (c) of Section 25-F is the Central

Government. In other words, Mr. Kureshi does not now dispute the proposition that Telecommunications Department is an 'Industry' within the meaning of Industrial Disputes Act and hence Section 25-F of the said Act is applicable in the matter of termination of the employment of casual workman.

4. In view of what is stated above, the conclusion, that the oral termination of the employment of the applicant without following the procedure prescribed in Section 25-F of the Industrial Disputes Act was illegal ab initio, is inescapable. The respondents must, therefore, be given a direction ^{to} reinstate the applicant and also to give him all consequential benefits including back-wages.

5. In the result, therefore, the application is allowed. The oral termination of the employment of the applicant is hereby quashed and set aside and the respondents are directed to reinstate the applicant, within a period of four weeks after receipt of a copy of this order, with continuity of service. The respondents are also directed to pay back-wages to the applicant from the date of termination of his employment till his reinstatement within a period of eight weeks after his reinstatement subject to the qualification that if the applicant has engaged himself gainfully during the ~~intervening~~ ^{necessary} period, the deductions will be made from the back-wages payable to him, to the extent of his gainful employment.

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(K. Ramamoorthy)
Member (A)

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(N. B. Patel)
Vice Chairman