

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 682 OF 1993.

~~**T.A. NO.**~~

DATE OF DECISION 24-3-1995.

Sureshbhai Dahyabhai Thakor & **Petitioner s**
Namlabhai Ranchhodbhai Patel.

Mr. R.K. Mishra, **Advocate for the Petitioner (s)**

Versus

Union of India & Ors. **Respondent s**

Mr. Akil Kureshi, **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.

1. Sureshbhai Dahyabhai Thakor,
At & Post - Kharwel,
Tal. Dharampur,
District - Valsad.
2. Namlabhai Ranchhodbhai Patel,
Village - Ranpada,
Post - Barsol,
Taluka - Dharampur,
District - Valsad.

..... Applicant.

(Advocate: Mr. R.K. Mishra)

Versus.

1. Union of India,
Ministry of Communication,
Department of Telephones,
(to be served through the
Director General),
Door Sanchar Bhavan,
Sansad Marg,
New Delhi.
2. District Manager (Telephones),
District Telecom,
District - Valsad.

..... Respondents.

(Advocate: Mr. Akil Kureshi)

ORAL ORDER

O.A.No. 682 OF 1993

Date: 24-3-1995.

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

Permission granted to delete sub-para 5 of
para VI ^{of the O.A.} as requested by Mr. Mishra.

2. After hearing the arguments of both the learned advocates, we find that there are circumstances in the case which prima facie indicate that the so-called settlement, between the applicants-employees and the respondents-employer before the Conciliation Officer, was no settlement at all or was at least not a fair and amicable settlement so far as the applicants employees are concerned. We, therefore, feel that this is a fit

..... 3/-

case in which Conciliation Officer i.e., Assistant Labour Commissioner (Central) Ahmedabad, on being formally moved by the applicants should consider on the merits of the case whether there was a genuine and fair settlement and if ^{he} ~~we~~ find^s that there was no such settlement, he should reopen the conciliation proceedings and take appropriate action in the matter. We may once again repeat that our own prima facie feeling is that the settlement was not a fair one, even though the applicants were represented by some Union and an advocate. However, it will be for the Conciliation Officer to consider and take decision on this question. Mr. Mishra for the applicants states that the applicants are prepared to make an application to the Conciliation Officer for reopening the case and the applicants will be satisfied at this stage, if the Conciliation Officer is directed to take decision in the matter within a fixed time-limit. If the applicants make an application to the Conciliation Officer within a period of four weeks from today, the Conciliation Officer i.e., Assistant Labour Commissioner (Central) Ahmedabad is directed to deal with that application in the light of our above observations within a period of eight weeks from the date of the receipt of the application by them. We hope that if and when the Conciliation Officer is moved by the applicants and the matter is examined by the Conciliation Officer, the department will not take a technical and rigid stand. In view of these

directions, Mr. Mishra seeks permission to withdraw
the O.A. O.A. stands disposed of as withdrawn.
No order as to costs.



(K. Ramamoorthy)
Member(A)



(N.B. Patel)
Vice Chairman

vtc.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

Serial No. 127

Register No. 4

Page No. 68

Date: 17/6/05

Respectfully submitted:

~~Hon'ble Vice Chairman,~~

Hon'ble Member (J)

Hon'ble Member (A)

Hon'ble Member ()

Certified copy of order dated 27/4/2005 in C.A./
10497, 10518, 10427, 10429,
Special C.A. No. 10425 of 2002 passed by the
Hon'ble Supreme Court / Hon'ble High Court against the
Judgment / Oral Order passed by this Tribunal in Original
Application No. 682 & 656/1993 placed for perusal please.

Dealing Clerk

S.O. (J)

Position of this Case is:

1. Confirming CAT Order. The above
2. Partly allowed. SCA arose against
the Tribunal & award
3. Reversing CAT Order. etc. or passed by

Registrar

~~Hon'ble Vice Chairman,~~

Hon'ble Member (J) H.O. A. 7/6/05

Hon'ble Member (A) have a copy

~~Hon'ble Member ()~~

Industrial Tribunal Surat
CA Nos. 682 & 656/93 were
disposed by this Bench on
24-3-1995 as withdrawn
by the Counsel for the
Applicants.

Credited
7/7/05

COMMON WRIT

URGENT

Decree Despatch No.
Date

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 10425 of 2002
(Under Article(s) 226 of the Constitution of India)

1. TELECOM DISTRICT MANAGER VALSAD DIST.
Vs
1. NAMLABHAI RANCHHODHBHAI PATEL

Petitioner

Respondent

To

1. THE MEMBER
INDUSTRIAL TRIBUNAL,
AT SURAT.
[REF: 9ITC0 NO. 1/96 TO 5/96]
2. THE MEMBER
CENTRAL ADMIN. TRIBUNAL .
OPP. SARDAR PATEL STADIUM
ASHRAM ROAD. AHMEDABAD. [REF:
O.A.NOS. 682 AND 656/1993]

Upon reading the petition of the above named Petitioner presented to this High Court of Gujarat at Ahmedabad on 09/10/2002 praying to grant the prayers and etc...

And whereas upon the Court ordered 'Rule' to issue on 11/10/2002

And Whereas Upon hearing
MR YASHWANT S BARDI for the Petitioner no. 1
NOTICE SERVED for the Petitioner no. 1
MR PK SHUKLA for the Respondent no. 1
RULE UNSERVED for the Respondent no. 1

Court passed the following order :-

CORAM: SHARAD D.DAVE, J.
DATE : 27/04/2005.

SPECIAL CIVIL APPLICATION NO. 10425 OF 2002
WITH
SPECIAL CIVIL APPLICATION NO. 10427, 10429 &
10497 OF 2002.
WITH
SPECIAL CIVIL APPLICATION NO. 10818 OF 2002

CAV COMMON JUDGEMENT

"1. As all these petitions are based on
Contd.....2



....Rule discharged. Ad-interim relief granted earlier stands vacated. No order as to costs."

[COPY OF THE CAV COMMON JUDGEMENT IS ATTACHED HEREWITIH]

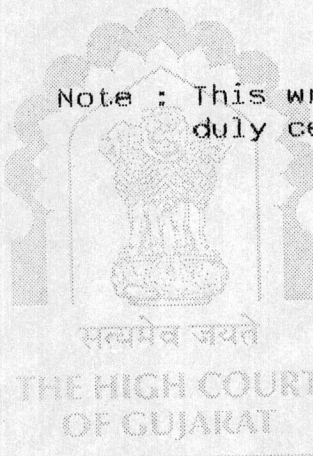
Witness BHAWANI SINGH, Esquire Chief Justice at Ahmedabad
aforesaid this 27th day of Apr, 2005.

By the Court

Sm. Dm
For Deputy Registrar
This *14th* day of ~~May~~ *June* 2005

Note : This writ should be returned
duly certified within 2 weeks.
(712) 270520

NATIONAL INFORMATICS CENTRE



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No. 10425 of 2002

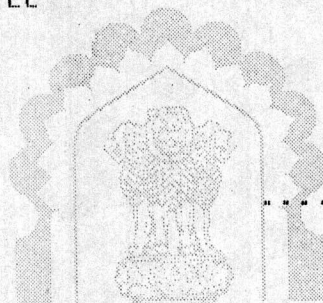
1. TELECOM DISTRICT MANAGER VALSAD DIST.
B.S.N.L. VALSAD,
AT EKTA APARTMENT,
TITAL ROAD,
VALSAD.

.....Petitioners

Versus

1. NAMLABHAI RANCHHODBHAI PATEL
RANPADA,
POST BARSOL,
TAL.DHARAMPUR,
DIST.VALSAD.

.....Respondents



सत्यमेव जयते

THE HIGH COURT
OF GUJARAT

APPEARANCE ON RECORD

MR YASHWANT S BAROT for Petitioner no. 1
NOTICE SERVED for Petitioner no. 1
MR PK SHUKLA for Respondent no. 1
RULE UNSERVED for Respondent no. 1

CORAM: MR.JUSTICE SHARAD D.DAVE

Date of Decision : 27/04/2005

ORAL JUDGEMENT (Per : MR.JUSTICE SHARAD D.DAVE)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No. 10427 of 2002

1. TELECOM DIST.MANAGER VALSAD DISTRICT
B.S.N.L. VALSAD,
AT EKTA APARTMENT,
TITAL ROAD,
VALSAD.

.....Petitioners

Versus

1. DIPAKBHAI I THAKORE
AT & POST KHARVAD,
TAL.DHARAMPUR,
DIST.VALSAD.

.....Respondents

APPEARANCE ON RECORD

MR YASHWANT S BAROT for Petitioner no. 1
NOTICE SERVED for Petitioner no. 1
MR PK SHUKLA for Respondent no. 1

CORAM: MR.JUSTICE SHARAD D.DAVE

Date of Decision : 27/04/2005

ORAL JUDGEMENT (Per : MR.JUSTICE SHARAD D.DAVE)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No. 10429 of 2002

1. TELECOM DIST.MANAGER
B.S.N.L. VALSAD,
AT EKTA APARTMENT,
TITAL ROAD,
VALSAD.

VALSAD DISTRICT

.....Petitioners

Versus

1. NITINKUMAR H SHASTRI
HARI OM NIWAS, ALKAPURI SOC.,
NEAR SNEH PARK,
POST KAPRADA,
DIST.VALSAD.

.....Respondents

APPEARANCE ON RECORD

MR YASHWANT S BAROT for Petitioner no. 1
NOTICE SERVED for Petitioner no. 1
MR PK SHUKLA for Respondent no. 1

CORAM: MR.JUSTICE SHARAD D.DAVE

Date of Decision : 27/04/2005

ORAL JUDGEMENT (Per : MR.JUSTICE SHARAD D.DAVE)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No. 10497 of 2002

1. TELECOM DISTRICT MANAGER VALSAD DIST.
B.S.N.L. VALSAD,
AT EKTA APARTMENT,
TITAL ROAD,
VALSAD.

.....Petitioners

Versus

1. SURESHBHAI AMBALAL DAVE
RBL-II/119,
KAPROLI ROAD,
AMBAJI ROAD,
TAL.PARDI, DIST.VALSAD.

.....Respondents



APPEARANCE ON RECORD

MR YASHWANT S BAROT for Petitioner no. 1
NOTICE SERVED for Petitioner no. 1
MR PK SHUKLA for Respondent no. 1

CORAM: MR.JUSTICE SHARAD D.DAVE

Date of Decision : 27/04/2005

ORAL JUDGEMENT (Per : MR.JUSTICE SHARAD D.DAVE)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No. 10818 of 2002

1. TELECOM DISTRICT MANAGER
B.S.N.L.VALSAD,
EKTA APARTMENT,
TITAL ROAD,
VALSAD.

.....Petitioners

Versus

1. BALVANTBHAI KODHABHAI VANKAR
AMINPUR,
POST PALACHAR,
TAL.PRANTIJ,
DIST.S.K.

.....Respondents

APPEARANCE ON RECORD

MR YASHWANT S BAROT for Petitioner no. 1

NOTICE SERVED for Petitioner no. 1

MR PK SHUKLA for Respondent no. 1

RULE SERVED for Respondent no. 1

CORAM: MR.JUSTICE SHARAD D.DAVE

Date of Decision : 27/04/2005

ORAL JUDGEMENT (Per : MR.JUSTICE SHARAD D.DAVE)

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SPECIAL CIVIL APPLICATION No 10425 of 2002

with

P.S. TO THE HON'BLE JUDGE
HIGH COURT OF GUJARAT.

SPECIAL CIVIL APPLICATION No 10427, 10429 & 10497 of 2002

with

SPECIAL CIVIL APPLICATION NO. 10818 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

sd/-

1. Whether Reporters of Local Papers may be allowed :
to see the judgements?

17/04/05

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy :
of the judgement?

4. Whether this case involves a substantial question :
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

17/04/05

5. Whether it is to be circulated to the concerned :
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

TELECOM DISTRICT MANAGER

VALSAD DIST.

Versus

NAMLABHAI RANCHHODHBHAI PATEL

Appearance:

1. Special Civil Application No. 10425 of 2002
MR YASHWANT S BAROT for Petitioner No. 1
NOTICE SERVED for Petitioner No. 1
MR PK SHUKLA for Respondent No. 1
RULE UNSERVED for Respondent No. 1
2. Special Civil Application No. 10427 of 2002
MR YASHWANT S BAROT for Petitioner No. 1
MR PK SHUKLA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 27/04/2005

CAV COMMON JUDGEMENT

1. As all these petitions are based on common question
of facts and law, they are disposed of by this common
judgment.

2. Special Civil Application No. 10425 of 2002 is filed under Article 226 and 227 of the Constitution of India praying for quashing and setting aside the judgment and award dated 20.07.2002 passed in Reference No. ITC/2/96 by the Industrial Tribunal, Surat, directing the petitioner to reinstate the respondent in his original post and to pay all consequential benefits available to him pursuant to the reinstatement and to pay salary at the rate of Rs.800/per month from the date of termination from 05.04.1992 till reinstatement and to pay Rs.1000/by way of cost.

3. Special Civil Application No. 10497 of 2002 is filed under Article 226 and 227 of the Constitution of India praying for quashing and setting aside the judgment and award dated 20.07.2002 passed in Reference No. ITC/1/96 by the Industrial Tribunal, Surat, directing the petitioner to reinstate the respondent in his original post and to pay all consequential benefits available to him pursuant to the reinstatement and to pay salary at the rate of Rs.800/- per month from the date of termination from 05.04.1992 till reinstatement and to pay Rs.1000/by way of cost.

4. Special Civil Application No. 10818 of 2002 is filed under Article 226 and 227 of the Constitution of India praying for quashing and setting aside the judgment and award dated 20.07.2002 passed in Reference No. ITC/3/96 by the Industrial Tribunal, Surat, directing the petitioner to reinstate the respondent in his original

post and to pay all consequential benefits available to him pursuant to the reinstatement and to pay salary at the rate of Rs.800/- per month from the date of termination from 11.09.1992 till reinstatement and to pay Rs.1000/by way of cost.

5. Special Civil Application No. 10429 of 2002 is filed under Article 226 and 227 of the Constitution of India praying for quashing and setting aside the judgment and award dated 20.07.2002 passed in Reference No. ITC/4/96 by the Industrial Tribunal, Surat, directing the petitioner to reinstate the respondent in his original post and to pay all consequential benefits available to him pursuant to the reinstatement and to pay salary at the rate of Rs.800/- per month from the date of termination from 05.04.1992 till reinstatement and to pay Rs.1000/by way of cost.

6. Special Civil Application No. 10427 of 2002 is filed under Article 226 and 227 of the Constitution of India praying for quashing and setting aside the judgment and award dated 20.07.2002 passed in Reference No. ITC/5/96 by the Industrial Tribunal, Surat, directing the petitioner to reinstate the respondent in his original post and to pay all consequential benefits available to him pursuant to the reinstatement and to pay salary at the rate of Rs.800/ per month from the date of termination from 05.04.1992 till reinstatement and to pay Rs.1000/by way of cost.

7. The brief facts of the petitioner's case are such that:

The respondents were engaged on purely daily wages at Vapi for doing casual type of work as casual labourer on different dates. As no casual work was available, they were not called for duty for which they raised Industrial Dispute before the Asst. Labour Commissioner (Central) II at Ahmedabad and at the time of conciliation, conciliation agreement was entered into by the parties and it was agreed that the workman will be allowed to work casually in the same sites as casual labourer on the basis of the work available in the local unit at Vapi and that the management will inform in writing to the workman as and when required for doing casual nature of the work and in case of permanent vacancy in the department, workman can also apply as per the recruitment rules of the petitioner from time to time. Thereafter, in the year 1995 as some work of casual nature was available, the petitioner, as per the conciliation agreement, informed the respondents by communication dated 24.04.1995 to attend the office of the Sub-Judicial Officer, Vapi if they desire to work under SDO (Phones), Vapi. It seems that as they were not desirous to work, they did not attend the work and instead approached the Assistant Labour Commissioner for raising industrial dispute alleging that the conciliation was not explained to them and they did not opt for it. Thereafter, the respondents approached the Central Government for referring the dispute to the Industrial Tribunal challenging the action of the management of the

Telecom District Manager, Valsad in denying the employment to him and the Ministry of Labour vide its order dated 30.05.1996 passed an order referring the dispute to the Industrial Tribunal, Surat to determine whether the action of the management of Telecom District Manager, Valsad in denying the employment to the petitioner is illegal and unjust and if not, what relief workmen are entitled to. Thereafter, the case was referred to as references and the respondents herein submitted their statement of demand, challenging the alleged termination contending that the conciliation agreement before the Asst. Labour Commissioner (C) dated 20.08.1993 is not correct agreement and it is contrary to law and they are not reinstated. It was contended on behalf of the respondents that they had worked for more than 240 days and their services have been terminated without following due procedure u/s 25F of the Industrial Disputes Act and therefore termination is illegal. After hearing the parties, the Industrial Tribunal passed the judgments and awards in respective references as stated above. It is against these judgments, the present petitions are filed.

3. At the time of arguments, Mr. Barot, learned advocate for the petitioner in all the petitions submitted that it is not open for the respondents to raise industrial dispute when conciliation proceeding was already dropped in view of the conciliation agreement arrived at between the parties before the Assistant Labour Commissioner (Central) - II. He further submitted that in view of the conciliation agreement dated

30.06.1993, second reference itself is not maintainable and the respondents cannot have raised industrial dispute again and in view of the conciliation agreement, when the respondents were called to attend duty at Vapi and when he did not resume duty, the Industrial Tribunal ought not to have partly allowed the reference by directing the petitioner to reinstate the respondents to their original post. He further submits that the respondents were engaged on purely daily wages basis at Vapi for doing casual work of labour and he worked on different days in different months and was called for duty as and when the work was available and as there was no work in 1992, he was not called for duty. Therefore, there is no question of following the procedure u/s 25F of the Industrial Disputes Act. He also submitted that though it was specifically mentioned in the conciliation agreement that the respondents shall be called as and when work is available and also they were called for work on 24.04.1995, but they failed to attend their duty and therefore there is no question of following procedure u/s 25F of the Industrial Disputes Act.

9. Against the aforesaid submissions, Mr. Shukla learned advocate for the respondents submitted that the petition under Article 227 of the Constitution of India seeking to quash and set aside the judgment and award passed by the Industrial Tribunal is not maintainable. He submitted that the respondents were working at Vapi as daily wage casual labourer from August 1990 till March 1992, when their services came to be terminated without following any procedure and that they worked with the

petitioner for more than 240 days. The SDO (Telephones) Vapi, District Valsad has also admitted that the respondents had worked for more than 240 days in the preceding years. He further submitted that no retrenchment compensation under Section 25F of the Industrial Disputes Act, 1947 was paid to the respondent and it is a settled principle of law that if retrenchment compensation is not paid under Section 25-F, the workman is entitled to reinstatement with full back wages. He submitted that in spite of repeated representations made by the respondents, the petitioner has not permitted the respondents to resume duty. With regard to the settlement dated 30.06.1993 arrived at between the parties, he submitted that the settlement is not exhibited before the Labour Court and it is produced before this court for the first time and therefore the same cannot be taken into consideration in any manner. He also submitted that the settlement is not recorded in accordance with the provisions of Section 18(1) of the Industrial Disputes Act read with Rule 58.

In support of his submissions, the learned advocate for the respondents has relied on the following authorities :

i. Mohd. Yunus V.s Mohd. Mustaqim and others reported in AIR 1984 SC 38.

2. Daily Rated Casual Labour employed under P & T Department Through Bhartiya Dak Tar Mazdoor Manch V/s Union of India and others reported in (1988) 1 SCC 122.

3. Mohan Amba Prasad Agnihotri and others V/s Bhaskar Balwant Aher (D) Through Lrs. reported in (2000) 3 SCC 190.
4. State of Gujarat V/s Maniben Viraji reported in 2003(4) GLR 3322.
5. Chief Officer, Keshod Municipality V/s Chandrakant Harilal Rakholiya reported in 2003(2) GLR 1755.
6. Gujarat Water Supply & Sewerage Board, Amreli V/s S.K.Rayjada & Anr. reported in 2003(4) GLR 3381.
7. Executive Engineer V/s Vadansingh Madansinh Parmar reported in 2005(1) GLH 205.
8. Union of India V/s Bachu Badia reported in 2000(1) GLH 254.
9. State Trading Corporation of India V/s Sushila Premjibhai Majithiya & Anr. reported in 2000(4) GLR 3412.
10. Adamji M Badri and others V/s Labour Officer and another reported in 1981 LLJ 367 (Gujarat).
11. (M/s) Bharat Textile Works V/s Workmen of (M/s) Bharat Textile Works and another reported in 1994(2) GLH 38.

12. The Management, The Co-operative Store Ltd. V/s Ved Prakash Bhambri reported in 1989 Lab I.C. 289.

13. Workmen of M/s Delhi Cloth General Mills Ltd. V/s The Management of M/s Delhi Cloth and General Mills Ltd. reported in AIR 1970 SC 1851.

14. Keltron Controls V/s Workmen of Keltron Controls and others reported in 2004-II-LLJ page 167.

10. Heard the learned counsel for the parties and perused the authorities cited by the learned advocate for the respondents.

11. The learned advocate for the respondents has mainly raised three contentions : (1) that the respondents have completed 240 days in the preceding years, (2) the respondents are terminated without retrenchment compensation under Section 25-F of the Industrial Disputes Act and (3) the alleged settlement is not recorded in accordance with the provisions of Section 18(1) of the Industrial Disputes Act and Rule 58 of the Industrial Disputes (Central) Rules, 1957 and therefore the settlement is not binding to the workmen respondents herein.

12. As against this, the learned advocate for the petitioner submitted that the settlement was arrived at in the conciliation proceedings on 30.06.93 in Reference No. 1 of 1996 and the respondent workman has signed the same in presence of the advocate and also signed by the

petitioner - Telecom District Manager, Valsad. Therefore, now it is not proper for the respondents to back out from the settlement arrived between the parties. So far as the contention regarding following the procedure of the Industrial Act is concerned, the learned advocate for the petitioner submitted that as per the settlement, the respondents were called to attend the office of the Sub-Judicial Officer, Vapi, if he desired to work so under SDO (Phones) Vapi by communication dated 24.04.1995. However, he did not join duty and raised industrial dispute. Therefore, the question of following procedure under Section 25-F does not arise as the respondents himself have not attended the duty.

In the case of Mohd. Yunus (supra), in para 7 stated as under : "A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art.227. The supervisory jurisdiction conferred on the High Courts under Art.227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority." and not to correct an error apparent on the face of the record much less an error of law. In exercising the supervisory power under Art.227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

In the case of Daily Rated Casual Labour (supra), in para 9 as stated as under :

"Unless a sense of belonging to the organization engaged in production arises in a workman, he will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment at the whim of the management. It is for that reason that as far as possible security of work should be assured to the employees so that they may contribute to the maximization of production. It is again for this reason that managements and the governmental agencies in particular should not allow workers to remain as casual labourers or temporary employees for an unreasonably long period of time. The employees belonging to skilled, semi-skilled and unskilled classes can be shifted from one department to another even if there is no work to be done in a given place. Our wage structure is such that a worker is always paid less than what he produces, and if any worker remains idle on any day, the country loses the wealth that he would have produced during that day. It is against this background that non-regularisation of temporary employees or casual labour for a long period can be said to be not a wise policy. The respondents are, therefore, directed to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the Posts and Telegraphs Department.

In case of Mohan Amba Prasad Agnihotri (supra), it is
w held in para 5 as under :

"The jurisdiction of the High Court under Article 227 is not appellate but supervisory. It cannot interfere with a finding of fact recorded by a lower court / tribunal unless there is no evidence to support the finding or the finding is perverse."

In case of Maniben Viraji (supra), in paras 66 to 69, it is held as under :

"The view taken by the Apex Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union & Anr., reported in 2000 SCC (L&S) 471, the Apex Court has held that while exercising the powers under Arts.226 and 227 of the Constitution, interference with pure finding of fact and re appreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Art.226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of Sugarbai M.Siddiq & Ors. v. Ramesh S.Hankare, reported in 2001 (8) SCC 477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower Court / Tribunal but with its decision-making process. High Court must ascertain whether such Court or Tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise not."

67. Recently also, the Apex Court has considered the scope of Art.226 and 227 of the Constitution of India in case of Ouseph Mathai & Ors. v. M.Abdul Khadir, reported in 2002(1) SCC 319. The relevant observations in paras 4 & 5 are quoted as under :

"4. It is not denied that the powers conferred upon the High Court under Arts. 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Art.227 confers a right of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said Article as a matter of right. In fact power under this Article casts a duty upon the High Court to keep the inferior Courts and Tribunals within the limits of their authority and they do not cross the limits, ensuring the performance of duties by such Courts and Tribunals in accordance with law conferring powers within the ambit of the enactments creating such Courts and Tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this Article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate Courts and Tribunals resulting in grave injustice to any party.

5. In Warayam Singh v. Amarnath this Court held that power of superintendence conferred by Art.227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bora v. Commr. of Hills Division & Appeals. In Babhutmal Raichand Oswal v. Laxmibai Tarte this Court held the High Court could not, in the guise of exercising its jurisdiction under Art.227 convert itself into a Court of appeal when the legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in R. v. Northumberland Compensation Appeal Tribunal, ex p Shaw (All ER at 128), this Court in Chadavarkar Sita Ratna Rao v. Ashalata S.Guram held (SCC page 460 para 20):

"20. It is true that in exercise of jurisdiction under Art.227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of the fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Arts.226 and 227 of the Constitution look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a findings are perverse and not based on any material evidence or it resulted in manifest injustice (See : Trimbak Gangadhar Telang). Except to the limited extent indicated above, the High Court has no,

jurisdiction. In our opinion, therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limit of jurisdiction under Art.227 of the Constitution. On the first point, therefore, the High Court was in error."

68. Recently also, the Apex Court has considered the scope of Art.226 and 227 of the Constitution in case of Roshan Deen v. Preetilal, reported in 2002 (1) SCC 100. Relevant observations in para 12 are quoted as under:

"12. We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned single Judge in a case where judicial mind would be tempted to utilise all possible legal measure to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non-suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Art.227 of the Constitution. Time and again, this Court has reminded that the power conferred on the High Court under Art.226 and 227 of the Constitution is to advance justice and not to thwart it (vide State of U.P. v. District Judge, Unnao). The very purpose of such

constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court, is therefore, not merely to pick out any error of law through an academic angle, but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law, the High Court is not expected to erase such justice in the name of correcting the error of law."

69. Recently also, the Apex Court has examined this question in reported decision in the case of *Essen Deinki v. Rajiv Kumar*, 2003 SCC (L&S) 13. Relevant paragraphs are as under :

"2. Generally speaking, exercise of jurisdiction under Art.227 of the Constitution is limited and restrictive in nature. It is so exercised in the normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the Courts below. The finding of fact being within the domain of the inferior Tribunal, except where it is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the Article is not called for."

3. The observations above, however, find affirmance in the decision of this Court in Nibaran Chandra Bag v. Mahendra Nath Ghughu. In Nibaran this court has been rather categorical in recording that the jurisdiction so conferred is by no means appellate in nature for correcting errors in the decision of the subordinate Courts or Tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority. More recently, in Mani Nariman Daruwala v. Phiroz N.Bhatena this Court in a similar vein stated :

"In the exercise of this jurisdiction the High Court can set aside or ignore the findings of fact of an inferior Court or Tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the Court or Tribunal who (sic.) has come or in other words it is a finding which was perverse in law. Except to the limited extent indicated above the High Court has no jurisdiction to interfere with the findings of fact."

4. Needless to record that there is total unanimity of judicial precedents on the score that error must be that of law and patently on record committed by the interior Tribunal so as to warrant intervention - it ought not to act as a Court of appeal and there is no dissension or even a contra-note being sounded at any point of time till date. Incidentally, the illegality, if there be any, in an order of an inferior Tribunal, it would, however, be a plain exercise of jurisdiction under

the Article to correct the same as otherwise the law Courts would fail to subserve the needs of the society since illegality cannot even be countenanced under any circumstances.

5. In this context reference may also be made to a still later decision of this Court in the case of Savita Chemicals (P) Ltd. v. Dyes & Chemical Workers' Union, wherein this Court in para 19 of the Report observed :

"Under Art. 227 of the Constitution of India, the High Court could not have set aside any finding reached by the lower authorities where two views were possible and unless those findings were found to be patently bad and suffering from clear errors of law."

In case of Chandrakant Harilal Rakholiya (supra), in para 15 it is held that "Unless and until it is successfully pointed out that the Labour Court has acted without jurisdiction or that the findings recorded by the Labour Court are contrary to record or are perverse, this Court cannot interfere with the findings recorded by the Labour Court while exercising the extraordinary powers under Arts. 226 and/or 227 of the Constitution of India.

In the case of Gujarat Water Supply & Sewerage Board (supra), it is held in para 5 as under :

"5. Oral as well as the documentary evidence of the respondent was examined by the Labour Court, and has come to the conclusion that since 1984 both the workmen are

working on the post of driver continuously without any break and the evidence of the workmen had remained unchallenged, the same was believed by the Labour Court. The entire award made by the Labour Court perused and no procedural irregularity committed by the Labour Court. Upon perusal of the impugned award, the Labour Court has not committed any jurisdictional error which would require interference of this Court in exercise of the powers under Arts. 226 and/or 227 of the Constitution of India. While granting relief in favour of the respondents-workmen, the Labour Court has taken care to the effect that though direction has been issued to make the workmen permanent with effect from 1.1.1991, they were ordered to be considered permanent on notional basis with effect from 1.1.1991 till the date of the award i.e., for the period from 1.1.1991 till the date of the award, the petitioner has not been directed to make payment of any monetary benefits, and therefore, according to the Court it is just and fair award made by the Labour Court and the petitioner has not been saddled with any financial liability for the period from 1.1.1991 till the date of the award. (the petitioner has not been directed to make payment of any monetary benefits, and therefore, according to the Court it is just and fair award made by the Labour Court and the petitioner has not been saddled with any financial liability for the period from 1.1.1991 till the date of the award.) There is no error committed by the Labour Court while passing such

A award."

In case of Vadamsingh Madansingh Parmar (supra), it is held in para 4 as under :

" In Mohan Lal V/s The Management of M/s Bharat Electronics Ltd. (AIR 1981 SC 1253) the Supreme Court has specifically held that where pre-requisite for valid retrenchment as laid down in Section 25F has not been complied with, retrenchment bringing about termination of service is ab initio void. Recently also, in Krishna Bahadur and M/s Purna Theatre and others [2004 (103) FLR 146], the Apex Court has held that the provisions of Section 25F of the ID Act, 1947 are imperative in character and it postulates the fulfillment of three conditions. It was observed by the Apex Court as under in para 10 of the Judgment :

"It is neither in doubt nor in dispute that the provision of Section 25-F(b) is imperative in character. The provisions postulates the fulfillment of the following three conditions :

(i) One month's notice in writing indicating the reasons for retrenchment or wages in lieu of such notice ;

(ii) Payment of compensation equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months; and

(iii) Notice to the appropriate Government in the prescribed manner.

The requirement to comply with the provision of Section 25-F(b) has been held to be mandatory before retrenchment,

of a workman is given effect to. In the event of any contravention of the said mandatory requirement, the retrenchment would be rendered void ab initio.

In Workmen of Sudder Workshop of Jorehaut Tea Co.Ltd. Vs. The Management [1980(40) FLR 474 (SC)], whereupon the reliance has been placed by the Division Bench this Court held :

"That apart, if there be noncompliance with Section 25-F, the law is plain that retrenchment is bad..."

In case of Sushila Premjibhai Majithiya & Anr. (supra), it is held in para 9 as under :

"9. Now in respect to the second contention that the respondents-workmen being daily wagers, they are not 'workmen' within the meaning of Sec.2(s) of the Act, learned advocate Mr.Thakkar has placed reliance upon the decision of the Apex Court in the matter between Himanshi Kumar Vidhyarthi V. State of Bihar reported in AIR 1997 SC 3657. In the said decision, the Apex Court has held that daily wage employee appointed on the basis of need of work, his termination of service cannot be construed to be retrenchment within the meaning of Sec.25F of the I.D.Act. But, there is another decision of the Apex Court in the matter of Ratansinh V. Union of India, reported in 1997(11) SCC 396 wherein, the Apex Court has held that even daily-rated employees are entitled to the benefit of Sec.25F of the I.D.Act and they are 'workman',

within the meaning of Sec.2(s) of the Industrial Disputes Act, 1947. Subsequently, the Apex Court in the matter of Municipal Corporation of Delhi V. Praveen Kumar Jain, reported in 1998(2) LLJ 674 has also considered the very same question that daily-rated workman discharged their service without complying the provisions of Sec.25-F of the Act are entitled to the protection of said Sec.25-F of the Act. Even thereafter, in another decision of the Apex Court in the matter of All India Radio V.Santosh Kumar, reported in 1998 (78) FLR 814 wherein also the question of casual workers of All India Radio has been examined by the Apex Court and considering this aspect, it has been held that even in respect to the daily wager casual labour also, Sec.25-F is required to be followed and if it is not followed and it is violated, then the order of termination is required to be set aside and reinstatement with all benefit is required to be granted. Similarly, Division Bench of this Court has also considered the same issue in the matter of Rajniben Prabhatbhai V. Executive Engineer, Unja Irrigation Project Division, reported in 1998(2) GLH (UJ) 16 wherein also, the question of daily wager has been examined by the Division Bench and relying upon the unreported judgment of this Court in Special Civil Application No. 813 of 1994 came to the conclusion that if daily-wager has completed 240 days continuous service, then provision of Sec.25-F is required to be followed, which is mandatory in nature. There is another decision of Madhya Pradesh High Court, rendered by the Hon'ble Chief Justice Shri D.M.Dharmadhikari, reported in 1998(80) FLR 54

* [M.P.Textool Corporation V. Krishnakant Pancholi]

wherein, it has been held that even if employee engaged for meeting rush or overload of work or contingency, even then the provision of Sec.25-F would be attracted and termination of service of such an employee without payment of retrenchment compensation would be void ab initio. In the said decision, it has been further held that provision of Sec.25-F are applicable to all cadres of employees, including those employed on daily-rated basis or for seasonal work or intermediate nature. All cadres of employees putting in more than 1 year of continuous service are entitled to payment of retrenchment compensation as a condition precedent for their retrenchment under Sec.25-F of the Industrial Disputes Act, 1947."

In case of Adamji M Badri (supra), it is held that "The question whether a settlement was obtained by fraud is not outside the scope of the Act and it is not necessary to refer the matter to a civil Court. The definition of Industrial Dispute in S.2(k) is wide enough to embrace within its sweep any dispute or difference between an employer and his workmen connected with the terms of their employment. A settlement between the employer and his workmen affects the terms of their employment. If such a settlement was obtained by fraud or force it would adversely affect the terms of employment of workmen. Therefore, prima facie, the definition of industrial dispute in S.2(k) will embrace within its sweep the investigation of the fraudulent and involuntary character of settlement."

In case of (M/s) Bharat Textile Works (supra), "As a result of the consideration of the above referred judgment, it can be easily seen that though a written notice terminating the settlement is necessary before an Industrial Dispute can be referred for adjudication, there is no insistence on any formal or prescribed mode of termination. If there is any correspondence from which termination can be culled out with reference to a particular date, that can be treated as a notice terminating the settlement. Such termination can even be an advance termination issued before the expiry of the settlement. It can be simultaneous or as a part of charter of demand and it can be culled out even from subsequent correspondence as was done in the Western India Match Company's case. In that case also there was no notice of termination and a simple charter of demand as issued and when an objection was raised by the employer on the absence of termination of the previous settlement, the Union had given a reply that the charter of demand be treated as termination of settlement. The Supreme court upheld that letter as the notice terminating the settlement."

In the case of Ved Prakash Bhambri (supra), it is held in paras 7 and 9 as under :

"7. Where in a reference of the dispute to the Industrial Tribunal though there is no plea taken by the workman in challenging the settlement on the score that it did not comply with R.58 of the Industrial Disputes (Central) Rules, (1957), the Tribunal has jurisdiction to

hold the settlement invalid on that score. Because the question whether the settlement was arrived at in accordance with the statute and the rules is a question of law and such a question can always be raised during even the course of arguments. There is no necessity of taking any plea by the workman in his pleadings in this respect that the settlement being not in accordance with law was invalid."

"9.R.58 of the Industrial Disputes (Central) Rules (1957) and Form 'H' have to be strictly followed before a settlement which has been arrived at between the employer and the workman otherwise than in the course of conciliation proceeding could be considered valid."

In case of Workmen of M/s Delhi Cloth General Mills Ltd. (supra) in para 15 and 17 it is held as under : "The Management and the Union cannot, when a dispute is referred to the Conciliation Officer, claim absolute freedom of contract to arrive at a settlement in all respects binding on all workmen, to which no objection whatsoever can ever be raised by the workmen feeling aggrieved. The question of a valid and binding settlement in such circumstances is governed by the statute and the rules made thereunder. In the light of definition of 'settlement' in section 2(p) and the provisions of section 18(1), it is clear that section 18(1) does not vest in the Management and the Union unfettered freedom to settle the dispute as they please and clothe it with a binding effect on all workmen or even on all member workmen of the Union. The settlement,

has to be in compliance with the statutory provisions. Hence, where there is non-compliance with Rule 58(4) the settlement is invalid. It is incumbent in such a case on the Tribunal to satisfy itself that the settlement relied upon by the management in support of the plea of legality of settlement, which vitally affected its jurisdiction, was in accordance with the provisions of Industrial Disputes Act and the statutory rules.

13. From the aforesaid binding judgments, I am of the opinion that the respondents- workmen have completed 240 days and they were discharged without giving the benefits of Section 25-F of the Industrial Disputes Act. So far as the settlement is concerned, the decisions of the Hon'ble Apex Court and this Court are favouring the respondents and therefore I am of the opinion that the settlement cannot be said to be a binding settlement in the eye of law. Also, under Article 227 of the Constitution of India, this Court has limited jurisdiction to interfere with the order of the lower court. In view of the above, all these petitions deserve to be dismissed and accordingly they are dismissed. Rule discharged. Ad-interim relief granted earlier stands vacated. No order as to costs./

sd -
[S.D. Dave.]

TRUE COPY

Assistant Registrar
The 14th day of June 2005

By order of the Court

for Deputy Registrar

10/5/05
14/05/05
4/5/05

50/5/05
28/5/05

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH


Application No. 04/682/93 of
Transfer Application No. _____ of

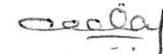
CERTIFICATE

Certified that no further action is required to be taken and
the case is fit for consignment to the Record Room (Decided).

Dated : ~~08~~ 06.04.95

Countersign :


Section Officer.


Signature of the Dealing
Assistant

INDEX - SHEET

VERSUS

U. O. I. 2021

[illegible]

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

Submitted :

C.A.T./Judicial Section.

Original Petition No 682

of 1993

Miscellaneous Petition No -

of -

Shri S.D. Thakore & Aves. Petitioner(s)

versus

UOI & Aves. Respondent (s)

This application has been submitted to the Tribunal by

Shri R.K. Mishra. Adv.

Under Section 19 of the Administrative Tribunal Act, 1985.

It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules 1985.

The application has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant advocate may be asked to rectify the same within 14 days/draft letter is placed below for signature.

ASSTT. ☒ 1. File size envelopes not supplied with spare copy set.

☒ 2. In OA DPPI. No. 1 not signed.

For orders please.

S.O.(J)

K.Patel
10/11/83
WSC

S.O.(J) Obj. may be notified on notice board.

D.R.(J)

Chagan
11-11-93

Submitted

DR/J Prady
11-11-93

The above obj have been removed; today matter may be placed before Justice Bench

K.Patel
24/11/93
WSC

S.O.(J) 24/11/93
DY Reg/(J)

Prady
30-11-93

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
AHMEDABAD BENCH AT AHMEDABAD.

M.A. OF 1993

IN

O.A. OF 1993

1. Sureshbhai D.Thakor.
2. Namlabhai R.Patel. ... Petitioners.

Versus

1. Union of India.
2. District Manager(Telephones). ... Respondents.

APPLICATION FOR JOINT REPRESENTATION

1. It is respectfully submitted that since the action on the part of the respondents is same, the respondent-authorities are same, cause and causal in respect of the petitioners is also same and further that the petitioners being unemployed and very poor poor persons, they approach by the aforesaid joint application on the grounds that the cause of action is similar, therefore the petitioners pray;

(A) Your Lordships may be pleased to permit the petitioners to agitate their grievance by joint petition.

Dated: ^{2 November} October, 1993.

Place: Ahmedabad.

(R.K. Mishra)

Advocate for Petitioners

Filed by: R.K. Mishra
Learned Advocate for Petitioners
with second set of 100 copies
copies copy served/not served to
other side

Di-2/1/93/ Dy.Registrar C.A.T(U)
Ahmedabad Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT
AHMEDABAD BENCH AT AHMEDABAD.

ORIGINAL APPLICATION NO.

682

OF 1993

Sureshbhai D.Thakor & another.

...Petitioners

Versus

Union of India & another.

...Respondents.

I N D E X

Annex.	Particulars.	Page No.
-	Memo of Petition.	1 to 8
A/1.	Attendance record of petitioner no.1 showing the number of days worked by him.	
A/2.	Settlement dated 30.6.93. (in respect of petitioner no.1)	
A/3.	Attendance record of petitioner no.2 showing the number of days worked by him.	
A/4.	Settlement dated 30.6.93 in respect of petitioner no.2.	

Dated: ^{November} October 2, 1993.

Place: Ahmedabad.

(R.K.Mishra)

Advocate for Petitioner

1

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH AT AHMEDABAD.

ORIGINAL APPLICATION NO.

OF 1993

1. Sureshbhai Dahyabhai Thakor,
At & Post- Kharwel,
Tal. Dharampur,
District- Valsad.
2. Namlabhai Ranchhodbhai Patel,
Village- Ranpada,
Post- Barsol,
Taluka- Dharampur,
District- Valsad.

...Petitioners.

Versus

1. Union of India,
Ministry of Communication,
Department of Telephones,
(to be served through the
Director General),
Door Sanchar Bhavan,
Sansad Marg,
New Delhi.
2. District Manager(Telephones),
District Telecom,
District- Valsad.

...Respondents.

- I. DETAILS OF THE PETITIONERS: As per the cause title.
- II. PARTICULARS OF THE RESPONDENTS: As per the cause title.
- III. PARTICULARS OF THE ORDER/ACTION UNDER CHALLENGE:

This petition is directed challenging the action on the part of the respondent-authorities in terminating the services of the petitioners in a flagrant violation of Section 25(F) of the Industrial Disputes Act and also the action is further challenged on the ground of section 25(H) of the Industrial Disputes Act and also the petitioner challenges the settlement dated 30.6.1993 reached under section 12(3) of the Industrial Disputes Act.

IV. JURISDICTION :

The petitioners submit that the subject matter of this petition falls within the jurisdiction of this hon'ble Tribunal.

V. LIMITATION :

The petitioners state that the present petition is within the time limit and is not barred by delay and laches.

VI. FACTS OF THE CASE :

1. The case of the petitioner no.1 i.e. Shri Sureshbhai Dahyabhai Thakor is this that he has been appointed as a Class-IV employee on 24.11.91 and without any break, the petitioner has rendered the service as such upto 15.4.92. In all, he has completed 431 days without any break. The attendance record showing the number of days worked by the petitioner is annexed hereto and marked as annexure-A/1. That goes to show that the petitioner has worked continuously for more than 240 days. Working of 240 days without any break is computed to be one year's service under the provisions of section 25(B) of the Industrial Disputes Act, 1947 based on which a worker becomes entitled to protection of Section 25(F) of the Industrial Disputes Act. Since the statutory embargo has provided ~~under~~ section 25(F). The termination of the petitioner's services from 16.4.92 came to be challenged. The petitioners in order to raise the industrial dispute, made complaint that ~~with~~ the Assistant Labour Commissioner (Central) and Conciliation Officer, Ahmedabad and challenged the action on the part of the respondent-authorities in terminating the services without following the procedure as provided under section 25(F). The said

Annex.A/1.

Annex.A/2.

Conciliation Officer has compelled the petitioners to sign the settlement dated 30.6.93 which is annexed hereto and marked as annexure-A/2, and the petitioners were verbally communicated that they should report for job on the next day and the authorities will take them on job. The petitioners, however, without knowing the contents had signed the settlement which is under challenge on the ground that the same is based on misrepresentation and the same is contrary to the provisions of law.

2. The petitioners submit that they had been asked by the Conciliation Officer to report the respondent-authorities for job and accordingly the petitioners had reported the respondent-authorities at the place wherefrom their services had come to an end but the said respondent-authorities told them that in the settlement there is no such terms that the petitioners will be taken on job. It was further told to the petitioners that as and when the work is available, they will be called for.

Annex.A/3

3. The case of the petitioner no.2 i.e. N.R. Patel is this that he has been taken as a Casual Worker on 5.1.91 and ~~when~~ without any break he has worked as a daily rated Mazdoor upto 4.4.92. In all, he has put up 403 days of service without any break. The statement showing the number of days worked by the petitioner no.2 in each month right from the January 5, 1991 till April 4, 1992 is annexed hereto and marked as annexure-A/3. The petitioner no.2's services came to an end on 14.4.92. Therefore, he lodged the complaint in order to have recourse under the provisions of labour laws and accordingly, the Assistant Labour Commissioner(C) and Conciliation

Officer issued the notices and had under misrepresentation and inducement concluded the proceedings by an eye wash settlement on 30.6.93 in respect of the petitioner no.2 also as has been the case in respect of the petitioner no.1. The said settlement of the Conciliation Officer dated 30.6.93 is annexed hereto and marked as annexure- A/4.

Annex.A/4.

Since the petitioner has completed 240 days of services uninterruptedly under section 25(B), he is entitled to the benefit of one year's services and accordingly, ~~under~~ section 25(F) of the Industrial Disputes Act, 1947 comes into play automatically.

Whereby the services cannot be terminated except by way of one month's notice and on payment of dues, as available under the law before the services of a workman are brought to an end.

4. The petitioners submit that they had been reporting for job as it was told by the learned Conciliation Officer that the respondent-authorities had agreed to take the petitioners on job, but on reporting for duty to the concerned authorities at the place from where their services came to an end, they were told that there is no such settlement to provide them the job and take them on duty. However, the petitioners were told that as and when there is work they will be called and given the work. At this stage, the petitioners came to know that they had been induced by the concerned authority who had powers under the statute. Therefore, it is submitted that the settlement reached is absolutely contrary provisions of law. The petitioners were not given the show cause notices nor in lieu thereof,

the payment of one month's salary and other dues were paid before the services of the petitioners were brought to an end. There cannot be a settlement contrary to the position. ~~which~~ Further, the petitioners had attained the older age and they were working uninterruptedly and that there is a job. The nature of the work of petitioners' was of class-IV employees in the telephone department/exchange of the second respondent-authority herein that they were doing the labour work in the A/C plant, telephone exchange, power plant and that the said nature of work is perriniel in the nature and that the persons those who worked alongwith the petitioners are continued in the job when the new persons have been engaged and they are continued into the services.

5. The petitioners submit that the settlement was reached under the coercion and inducement. They were induced to put the signature under the guise that the respondent authorities would provide them the work and that the petitioners have never been provided with the work. Therefore, they approach this hon'ble Tribunal challenging the settlement to be unfair, unjust, against the settled position of law, it is based on inducement and coercion at the hands of learned Assistant Labour Commissioner(C)/ Conciliation Officer. It is submitted that the petitioners were provided the work on all days of calender month, then how it can be said that the respondent authorities do not have the work and that they would give the work as per their sweet will.

6. The petitioners submit that the persons who were taken into the services alongwith the petitioners are still continued in the services, they are; Ramanbhai, Shaileshbhai, another Ramanbhai, Sureshbhai etc. There are other workers whose names are not known to the petitioners but they are continued into the services and provided the work all throughout. The petitioners submit that four new persons have also been taken on job after the termination of the petitioners whose names are not known to the petitioners because the petitioners are not allowed to enter the premises of the telephone exchange.

VII. RELIEFS:

On the grounds stated above and those that may be urged at the time of hearing of this petition, the petitioners prays :

- (A) Your Lordships may be pleased to hold and declare that the action on the part of the respondent-authorities of orally terminating the services of the petitioner is in contrast to the provision of Section 25(F) of the Industrial Disputes Act, therefore, the same is illegal, unconstitutional and, therefore, null and void.
- (B) Your Lordships may be pleased to hold and declare that the settlement at annexure-A/2 dated 30.6.93 is not a fair, rational and legal settlement, but it is a settlement in which the signature of the petitioner has been obtained under the coercion by inducing the petitioner to take him on job, the following

day onwards. Therefore, the same may be declared to be against the provisions of law.

(C) Your Lordships may be pleased to direct the respondent-authorities to re-instate the petitioners into the services with full back-wages and to afford ^{them} ~~him~~ the consequential benefits of continuity of services and all such benefits deeming as if the petitioners were continuing into the services.

7. Pending hearing and final disposal of the petition, Your Lordships may be pleased to direct the respondent-authorities to provide the work to the petitioners and to pay them the salaries in accordance with the law.

8. The applicant/petitioners have not filed any other petition in any other court including the Hon'ble Supreme Court of India ~~with~~ regard to the subject matter of this petition. The petitioners have no other alternative remedy available except to approach this hon'ble Tribunal by way of this petition.

9. PARTICULARS OF THE POSTAL ORDER:

- A) No. of Postal Order : 801247882
- B) Amount of the Postal Order : Rs 50/-
- C) Date of Postal Order : 2/11/93
- D) Name of the Postal Office : H/C Narayanpur

And for this act of kindness, the petitioners as in duty bound shall for ever pray.

Dated: October 2, 1993.

Place: Ahmedabad.

R.K. Mishra
(R.K. Mishra)

Advocate for Petitioners

VERIFICATION

We, Sureshbhai Dahyabhai Thakor and Namlabhai Ranchhodbhai Patel, aged about 22 & 22 respectively, residing at Kharvel and Barsol, occupation-service herein, do hereby solemnly affirm and state that what is stated hereinabove in this petition is true to the best of our knowledge, belief and information and We believe the same to be true. The annexures are true copies of the documents of which they purport to be original.

Solemnly affirmed on this 2 day of
~~October~~ November, 1993 at Ahmedabad.

સુરેશભાઈ દાહ્યાભાઈ થાકોર

દાહ્યાભાઈ થાકોર

અનંતભાઈ નામલાભાઈ પટેલ

Identified by the clerk
to the advocate Shri
R.K.Mishra.

- : C E R T I F I C A T E : -

This is certify that Shri Thukor Suresh bhui
 son of Sh. Deyhuy bhui is being working in my
 office at G.I.D. Vapi (AUTO EXCHANGE INSTALLATION) since
24-11-90 To 15-4-92 as casual labour. His attendance record
 as per our attendance register is given below.

Attendance record.

Statement showing the no. of days worked on MR etc in the following
 year.

SL. No.	No. of days worked in each of the following months.	Years					
		89 90	90 91	91 92	92 93	93 94	
01.	April			27	15		
02.	May			27	.		
03.	June			24			
04.	July			25			
05.	Aug.			27			
06.	Sept.			27	-		
07.	Oct.			27			
08.	Nov.		07	28			
09.	Dec.		24	25			
10.	Jan.		26	25			
11.	Feb.		23	27			
12.	March		22	25			
	Total		102	314	15		431

C.T.C.
 P.S.
 A.S.

Annexure A-2 - 10

MEMORANDUM OF SETTLEMENT under Section 12(3) of the Industrial Disputes Act, 1947 arrived at on 30.6.1993 before the Assistant Labour Commissioner (C), Ahmedabad between the Management of District Telecommunications, Valsad (Gujarat) and their workman Shri Thakore Sureshbhai Dahyabhai, Post Kharwel, Ta.Dharampur, Dist.Valsad.

PRESENT

On behalf of the Management.

1. Shri A.B.Sharan,
Asth.Engineer (Admn.)
o/o.The Telecom District Manager,
Valsad (Gujarat)

Authorised representative of T.D.M. Valsad.

On behalf of the Workman :

1. Shri Sureshbhai Dahyabhai Thakore,
Post Kharwel,
Tal.Dharampur,
Dist.Valsad. (workman himself)

SHORT RECITAL OF THE CASE.

WHEREAS Shri Sureshbhai Dahyabhai Thakore raised an industrial dispute against the Asst.Engineer (Phones) Cross Bar Exchange, New Telephone Exchange, GIDC, Vapi-396 193, under control of T.D.M.Valsad (Gujarat) demanding for the reinstatement of his services in the office of Astt.Engineer (Phones), Vapi, vide his representation dated 22.2.1993 which was received in the office of Astt.Labour Commissioner (C), Ahmedabad on 23.2.1993. A copy of the said representation is at Annexure-I.

WHEREAS on 24th May, 1993 the office of the Astt.Labour Commissioner (C), Ahmedabad issued conciliation notice vide their letter No.AH/ALC-II/ID/8(16)/93 to the parties requesting them to attend the joint discussion/conciliation proceedings on 24.6.1993 in the office of the T.D.M. Vapi. Both parties attended. Conciliation proceedings held on 25.6.1993 & 30.6.1993 in details. Various suggestions were made to the both parties.

WHEREAS eventhough the department of Telecom has banned the employment of casual labour in the Department, some times due to exigencies of work, casual labour on daily wages for particular jobs for a period not warranting liability on the department is resorted to. However, both parties have agreed to settle this issue on the following terms and conditions.

1. The workman will be allowed to work casually in the same status 'as a casual labour' on the basis of as and when ~~work is available~~ exchange premises) on daily wages as fixed by DOT time to time without entailing any liability on the department.
2. The management will inform in writing to the workman as and when required for doing the casual nature of work, They will leave their correspondence address with S.D.O.P Vapi.

cont d.....2.

Handed
30/6/93

23221 new service/112
A.B. Sharan
30/6/93

etc
nd
adv

3. In case of permanent vacancy in the department, workman can also apply if eligible for any post as per recruitment rules and instructions of DOT New Delhi from time to time.
4. The workman will have no right to claim the wages, etc. for the past period. Also they have agreed that they will not file any complaint regarding their wages and other benefits before any authority/court/land of law in future.

In view of above, the workman have withdrawn the dispute raised before Astt.Labour Commissioner (C) Ahmedabad.

On behalf of the Management

On behalf of the workman.

A.B. Sharan
(A.B.SHARAN) 30/6/93
Astt.Engr.(Admn.)
O/o.The T.D.M.Valsad.

23221000/5421000/SH/2
(SURESHBHAI DAHYABHAI THAKORE)

Witnesses :

Suresh V.K.
1. (SURESH.V.K.)
Stenographer
o/o.The R.L.C.(C)
Ahmedabad.

M.Iqbal A. Shaikh
2. (M.IQBAL A.SHAIKH)
Advocate
B/h.Relax Hotel,
Opp.Advance Cinema,
Jan Saheb Gali, Lal Darwaja,
Ahmedabad.

G.L. Tandel 30.6.93
3. (G.L.TANDEL)
District Secretary,
NUTEE Class Union,
Balsad (Gujarat).

Place : Ahmedabad
Date : 30.6.1993.

Before me

G.B. Pandit
(G.B.PANDIT)
Astt.Labour Commissioner (C)-II
Ahmedabad
&
Com iliation Officer.

etc
me
add

- : C E R T I F I C A T E : -

Annexure-A-3

12

This is certify that Shri Namrabbhai Patel
 son of Ranchhodhbhai Patel is being working in my
 office at G.I.D. Vapi (AUTO EXCHANGE INSTALLATION) since
27 Th Jun 1991 as casual labour. His attendance record
 as per our attendance register is given below.

Attendance record.

ACU

Statement showing the no. of days worked on MR etc in the following
 year.

SL. No.	No. of days worked in each of the following months.	Years					
		89 90	90 91	91 92	92 93	93 94	
01.	April			25	04		
02.	May			31			
03.	June			31			
04.	July			29			
05.	Aug.			28			
06.	Sept.			30			
07.	Oct.			27			
08.	Nov.			27			
09.	Dec.			22			
10.	Jan. 1991		05	31	Jan 1992		
11.	Feb.		28	29			
12.	March		25	31			
	Total		58	341	04		403 Days

CTL
 200
 Adh

Annexure-A-4 13

MEMORANDUM OF SETTLEMENT under section 12(3) of the Industrial Dispute Act, 1947 arrived at on 30-6-1993 before the Asstt. Labour Commissioner(Central), Ahmedabad between the Management of District Telecommunications, Valsad(Gujarat) and their workman Shri Namlabhai Ranchhodbhai Patel, Valsad.

PRESENT:

On behalf of the Management.

1. Shri A.B. Sharan,
Asstt. Engineer(Admn.)
o/o The Telecom District Manager.
Valsad(Gujarat)

Authorised representative of T.D.M. Valsad.

On behalf of the Workman.

1. Shri Namlabhai Ranchhodbhai Patel,
C/O Nitinkumar H. Shastri
Naran Chobi's Vadi
At & Post Vapi,
Pin: 396 191, Tal: Pardi,
Dist: Valsad

SHORT RECITAL OF THE CASE

WHEREAS Shri Namlabhai Ranchhodbhai Patel raised an Industrial dispute against the Asstt. Engineer(Phones) cross Bar Exchange, New Telephone Exchange, GDC, Vapi-396 193, under control of T.D.M. Valsad(Gujarat), demanding for the reinstatement of his service in the office of Assistant Engineer(Phones), Vapi vide his representation dated 22-6-1992 which was received in the office of Assistant Labour Commissioner(Central), Ahmedabad on 23-6-1992. A copy of the said representation is at Annexure-I.

WHEREAS on 28th August, 1992 the office of the Assistant Labour Commissioner(Central), Ahmedabad issued conciliation notice vide their letter No. AH/ALC-II/D/8(33)/92 to the parties requesting him to attend the joint discussion/conciliation proceedings on 12-10-1992. Accordingly the workman was present and Management was absent. Further both parties were requested to attend conciliation proceedings on various dates i.e. 22-12-92, 5-2-93, 8-4-93, 24-6-93, 25-6-93 & on 30-6-1993. Joint discussion/conciliation proceedings held in length. Various suggestions were made to the both parties.

WHEREAS, even though the department of Telecom has banned the employment of casual labour in the Department, some times due to exigencies of work, casual labour on daily wages for particular jobs for a period not warranting liability on the department is resorted to. However, both parties have agreed to settle this issue on the following terms and conditions.

1. The workman will be allowed to work casually in the same status 'as a casual Labour' on the basis of as and when work is available in local unit at Vapi (other than exchange premises) on daily wages as fixed by DOT time to time without entailing any liability on the department.
2. The Management will inform in writing to the workman as and when required for doing the casual nature of work. They will leave their correspondence address with S.D.J.P. Vapi.

CTC
S.D.J.P. Vapi
Contd.....

3. In case of permanent vacancy in the department, workman can also apply if eligible for any post as per recruitment. rules and instructions of of DCT New Delhi from time to time.
4. The workman will have no right to claim the wages etc. for the past period. Also they have agreed that they will not file any complaint regarding their wages and other benefits before any authority/court/land of law in future.

In view of above, the workman have withdrawn the dispute raised before Asstt. Labour Commissioner(Central), Ahmedabad.

In behalf of the Management

In behalf of the workman

(A.B.SHARAN)
Asstt. Engineer(Admn.)
O/o.The T.D.M.Valsad

PUTEL. K. M. B. B. R.
(NANLABHAI RANCHHODHAI PATEL)

Witnesses

(J.B.Marwadi)
L.D.C.
O/o The R.L.C(C), Ahmedabad

2. (M.Iqbal A.Shaikh)
Advocate
B/h Relax Hotel, Opp.Advance Cinema ,
Jan Saheb Gali, Laldarwaja,
Ahmedabad.

Place : Ahmedabad(Gujarat)

Date : 30-6-1993

Before me

(G.B. Pandit)
Asstt. Labour Commissioner(C)-II,
Ahmedabad
&
Conciliation Officer

Ly. N. M. B. B. R.
D.C. NUT. E.B. Day
V.M. L. D. 30-6-93

CTC
MP
Adv

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

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ORIGINAL APPLICATION NO. 682 OF 1993

Shri Sureshbhai D.Thakor and Anr.Applica
nt

V/s.

The Union of India & ors.Respondents

Written Reply on behalf of
the respondents.

I, B. S. Dhimor working
as A.E. (Admin) Vahad with respondent No. 2
herein do hereby state in reply to the above applica
tion as under:

1. That I have perused the relevant papers
and files pertaining to the above application
and I am conversant with the facts of the case
and I am authorised to file this reply on behalf
of the respondents.

2. At the outset I say and submit that
no the application is misconceived, untenable
and requires to be rejected.

Presented by the
Reps. Admin. Secy. Vahad
to day 20-1-94. Before
the case on
20-1-94

Presented by
Mr. Akil Kureshi
As

2+0=2

3. At the outset I say and submit that no part of the application shall be deemed to have been admitted by the respondents unless specifically stated so herein. All the statements, averments and allegations contained in the application shall be deemed to have been denied by the respondents unless specifically admitted by me herein.

4. In reply to para-III of the application, I say that according to the settlement, they were clearly informed that management will inform in writing to the workman as and when required for doing the casual nature of work in local unit at Vapi (other than exchange premises) and that they may leave the address for correspondence with the SDOP Vapi. As such the question of violation of Section 25F of the Industrial Disputes Act does not arise. However, now as per the policy of the Department all the external works are being carried out by the contractors.

5. In reply to paras-IV and V of the application, I say that this Hon'ble Tribunal has no jurisdiction to entertain the present application. I deny that the application is filed within the period of limitation.

6. In reply to para-VI of the application I say that the settlement took place between the

management and the applicants were clearly conveyed in writing. The contents of the settlement were clearly understood by all the applicants in the regional language through their lawyer as also through their representatives who were witnessed by the Assistant Labour Commissioner, Ahmedabad and the terms of the settlement were agreed to by the applicants also. I say that the applicants have also given names of casual labourers that they have been given job, but in this matter it is confirmed from SDOP Vapi that so far no casual labourers were engaged by him as external works are being carried out by the contractor according to the existing policy of the department.

7. In view of what has been stated above I say and submit that the application is totally misconceived, untenable and the applicant is not entitled to any relief, either interim or final, and this Hon'ble Tribunal be pleased to reject the application forthwith with costs.

Ahmedabad,

Dt. 20-1-1994.

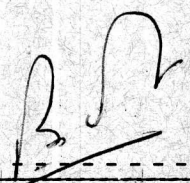
AE (Adm)
Vubad

Verification

I, B. S. Shiwani
working as A. E (Admin) Valsad
with respondent No. 2 herein, do hereby verify
and state that what is stated above is true to
my knowledge, information and belief and I believe
the same to be true. I have not suppressed any material
facts.

Ahmedabad,

Dt 20-1-1994.



A. E (Admin)
Valsad