

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

C.P. /16/1997 in
O.A.NO. /725/1993
~~T.A.NO.~~

DATE OF DECISION th 7 August 1998

Kishanbhai G. Parmar Petitioner

Mr. P.H. Pathak Advocate for the Petitioner [s]
 Versus

Mr. S.N. Sahu, Telecom Dist. Engineer Respondent

Mrs. P. Safaya Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan Vice Chairman

The Hon'ble Mr. Laxman Jha Member (J)

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 ?

Kishanbhai G. Parmar
26, Krishnapark Society
Surendranagar.

App Complainant

Advocate: Mr. P.H. Pathak

Versus

Mr. S.N. Sahu
Telecom Dist. Engineer
or his successor in office
New Telecom Building
Nr. Alankar Cinema
Surendranagar- 363001.

Respondent

Advocate: Mrs. P. Safaya

ORDERS

IN

C.P./16/1997

in

Dated 7th August 1998

O.A. /725/1993

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The present contempt petition has been filed alleging that the respondents had not carried out the directions of the Tribunal given in OA/725/93.

2. The present complainant who was an employee as casual labourer in the Telecommunications department had challenged the oral termination of his employment alleged to have been effected on 15.10.88 before the Tribunal in OA/725/93. The O.A. was disposed of on 28.3.94 with the direction to reinstate the applicant as a casual labourer with some benefits. Paras 6 and 7 of the order are reproduced below:-

"6. The applicant must, therefore, be given the relief of reinstatement with continuity of service

However, the question is as to whether the applicant should be awarded any back wages. As already mentioned, the employment of the applicant is terminated on 15.10.1988 and thereafter he has filed the present O.A. on 10.12.1993, and after filing of the present O.A., he has filed M.A./117/94 on 10.2.1994 for condonation of delay. In these circumstances, we hold that this is a fit case where the applicant should not be awarded any back wages.

7. In the result, the application is allowed. The oral termination of the applicant's employment is hereby quashed and set aside as being illegal and void ab initio and the respondents are directed to reinstate the applicant as casual labourer within two weeks thereof with all consequential benefits except back wages till the date of this order".

It is alleged in the present contempt petition that while the complainant has been reinstated, he has not been granted continuity of service which according to him is the consequential benefit available to him. The respondents however have stated that they have granted temporary status to the complainant w.e.f. 17.12.93 by order dated 14.8.97.

3. We have heard Mr. Pathak for the complainant and Mrs. Safaya for the respondents.

4. Mr. Pathak says that the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme promulgated by the department in November 1989

came into force w.e.f. 1.10.89 and it says that temporary status will be conferred on all the casual labourers working as employees and who have rendered continuous service of atleast one year out of which they must have been engaged on work for a period of 240 days. He also submits that the complainant's employment was terminated on 15.10.88 and this oral termination was set aside by the Tribunal as being illegal and void ab initio. He should therefore be taken to have been in service in October/November 1989 and was entitled to temporary status from that date and not from December 1993.

5. The respondents have stated that the complainant was engaged subsequent to 30.3.85 as a casual labour and as such was not covered under the original scheme of 1989. The department issued a further letter on 17.12.⁹³~~89~~ which gave some benefits to casual labourers engaged during the period from 31.3.85 to 26.2.1988. According to them this is a new decision and as the complainant was engaged after 30.3.85 he cannot be granted temporary status from an earlier date. They brought out that the complainant was reinstated on 11.5.94 and he was paid wages from the dated 28.3.94 which is the date of the Tribunal's order till 11.5.94 which is the date of the engagement. In this connection, we may reproduce para 4 of the Respondent's

reply dated 21.11.97 which reads as follows:-

"4. xxx xxx xxxx I say that earlier department of Telecom had scheme for grant of temporary status and regularisation of casual labourers called Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989. This scheme was applicable to those casual labourers who were engaged prior to 30.3.1985 and who were still in service on that date. The present applicant did not fulfil these requirements and he was thus not covered under the said scheme for grant of T.S. and for regularisation. However, subsequently by O.M. dated 17.12.1993 it was provided that all those casual ~~xx~~ mazdoors who were engaged by the Circles during the period from 31.3.1985 and 22.6.1988 and who are still continuing for such works be brought under the scheme subject to certain conditions laid down therein. A copy of the said O.M. dated 17.12.93 is produced at Annexure-R1. It is submitted that the applicant was not covered under the earlier scheme of 1989 and is entitled to be considered for temporary status only under the new O.M. dated 17.12.1993. It is for the first time by the said O.M. dated 17.12.1993 the applicant and such other similarly situated casual labourers have been brought under the scheme for ~~xxx~~ consideration for grant of T.S. The applicant is therefore entitled to be considered for temporary status w.e.f. 17.12.93 and not earlier as prior to 17.12.93 there was no scheme for grant of T.S. applicable to the applicant. The applicant's demand for grant of T.S.

earlier than 17.12.1993 is not justified for the reason that it was for the first time by circular of 17.12.93 that he was brought under the scheme for consideration for grant of T.S. and there is nothing in the said circular to suggest that any retrospective effect is to be given by predating the temporary status".

6. Mr. Pathak submits that this action is not regular as once the order of 17.12.93 was issued persons who were engaged after 30.3.85 but prior to 28.2.88 should be placed on the same footing as those engaged earlier to 30.3.85 and that they also come within the purview of the 1989 scheme and on completion of 240 days they were entitled to grant of temporary status. He has also referred to para 5(i) of the 1989 scheme which refers to casual labours currently employed.

7. So far as the reference to "currently employed persons" is concerned we find that the scheme has been forwarded by letter dated 7th Novr.1989. Para 3(2) of this letter reads as follows:-

"3.2 In view of the above instructions normally no casual labourers engaged after 30.3.85 would be available for consideration for conferring temporary status. In the unlikely event of there being any cases of casual labourers engaged after 30.3.85 requiring consideration for conforment of temporary status, such cases should be referred to the Telecom. Commission with relevant details and particulars

regarding the action taken against the officer under whose authorisation/approval the irregular engagement/non-retrenchment was resorted to".

The scheme has therefore to be read alongwith the covering letter and not in isolation.

8. We find that this issue has been raised in another OA before this Tribunal (OA/508/97) S.P.Zala vs. UOI. The applicant in that OA had also secured similar orders and the Department initially granted him temporary status with effect from 2.10.89. However, later on they held it to be a mistake and modified the date of conferment of temporary status to 17.12.93. This action of postponing the date of temporary status has been challenged in that OA. The Tribunal by its interim order had restrained the Department from modifying the date of grant of temporary status but the main issue regarding the date on which such persons would be eligible for grant of temporary status is still to be adjudicated.

9. In the circumstances, we hold that the Department has conferred temporary status to the complainant in the manner they have understood the provisions of the order dated 17.12.93, and there is no wilful disobedience of the orders of this Tribunal. However if the Tribunal comes to a finding in OA/508/97 or in any other similar application that such persons are entitled to be conferred with temporary status not necessarily with effect from 17.12.93 but from an earlier date, the benefit of any such order shall be extended to the present complainant within two months from the date

on whichs such orders are received by the Department.

10. In the light of this position, we dismiss the contempt application and discharge the alleged contemnners.

Laxman Jha
(Laxman Jha) 7.8.98
Member (J)

V. Ramakrishnan
(V. Ramakrishnan)
ViceCChairman

pmr