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APRIL, 22, 1992

Applicant

Versus

Respondents

For the applicant

M/s. K. P. Nanda,
B. Pujari,
B. C. Panda,
Advocates

For the respondents

M/s.B.Pal,
O.N.Ghosh,
Standing Counsel
(Rly.Administration)

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C O R A M

HON' BLE MR .K.P .ACHARYA, VICE-CHAIRMAN

AND

HON'BLE MR. C. S. PANDEY, MEMBER (ADMINISTRATIVE)

1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? ^N
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

JUDGMENT

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K.P. ACHARYA, VICE-CHAIRMAN, In this application under Section, 19 of the Administrative Tribunals Act, 1985 the petitioner challenges the order terminating ~~his~~ services contained in Annexure-1 passed by the Divisional Personnel Officer, Khurda Road.

2. Shortly stated the case of the petitioner is that he was engaged as a substitute Bunglow Peon with effect from 19.11.1989 and according to petitioner he was discharging his duties faithfully and satisfactorily, but for no ~~rhymen~~ ~~or~~ reasons the Divisional Personnel Officer terminated the services of the petitioner vide order dated 9.9.1991 with retrpspective effect from 9.2.1991 and directed payment of wages for one month in lieu of notice of one month. This order is under challenge and sought to be quashed.

3. In their counter the opposite parties maintain that the order of termination is according to law and even on question of fact the petitioner has no ~~cause~~ to be retained any longer, therefore the case being devoid of merits is liable to be dismissed.

4. We have ~~heard~~ Mr.K.P.Nanda, learned counsel for the petitioner and Mr.B.Pal, learned Standing Counsel appearing for the Railway Administration. Mr.Pal contended that the order of termination contained in Annexure-1 is ^{not} liable to be struck down because the competent authority has ^{complied} with the law in the field ~~forming~~ subject matter of the Industrial Dispute Act by payment of one month's wage ~~in lieu~~ of one month notice. On the other hand Mr. Nanda

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learned counsel for the petitioner submitted that taking into consideration the provisions contained in para 2302(4), 2315 and 2318 (Chapter 23 of the Railway Establishment Manual) it cannot but be said that a substitutes can be conveniently ^{designated} as temporary railway servant and furthermore by virtue of the provisions contained under Section 25 F of the Industrial Dispute Act, before dispensing with the services of such an employee one month's pay was to be paid to the person affected along with the notice of termination. Mr. Nanda further submitted that, on a perusal of annexure-1 it would be found that no money was given to the petitioner towards his one month's pay, but it was directed that it may be paid. According to Mr. Nanda this is not at all in compliance of Section 25 F of the Industrial Dispute Act and hence annexure-1 is liable to be quashed. It was further submitted by Mr. Nanda that a person who has already worked for a particular period, his termination order cannot have a retrospective effect which is ^{apparent} ~~more~~ known from annexure-1.

5. On the other hand it was contended by Mr. Pal that Court should not take a technical view of the matter but from a reading of Annexure-1 it would appear that there has been a substantial compliance with the provisions contained in ~~Annexure-1~~ under Section 25 F by giving a direction for payment of one month's wages in lieu of the one month notice and therefore Annexure-1 containing

order of termination should be sustained.

6. We have given our anxious consideration to the arguments advanced at the Bar. Provisions contained in Section 25 F of the Industrial Disputes Act was intended to give prior notice to the person affected and that while terminating the services of a particular person, simultaneously his wages must be paid. This intention cannot be subverted or given a go by and if so done it would immensely affect the interest of the employee and the intention of the enactments. Therefore we find that there is substantial force in the contention of Mr. K. P. Nanda, learned counsel for the petitioner and hence we do hereby ~~quash~~ Annexure-1 terminating the services of the petitioner and direct his reinstatement with effect from the date of termination. Arrear salary to which the petitioner is entitled be paid by virtue of this order within 90 days from the date of receipt of a copy of this judgment. Thus the application stands allowed leaving the parties to bear their own cost.

MEMBER (ADMINISTRATIVE)

VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 22nd April/92, Sahoo

