

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, BENCH AT
J O D H P U R.

Date of Order: 27.2.1996

O.A. No. 210/1995.

Jangal & 30 Others. ...Applicants.

V E R S U S

Union of India & Ors. ...Respondents.

Mr. J.K.Kaushik, Counsel for the applicants.

Mr. K.S.Nahar, Counsel for the respondents.

CORAM:

Hon'ble Mr. N.K.Verma, Administrative Member.

Hon'ble Mr. Rattan Prakash, Judicial Member.

PER HON'BLE MR. N.K.VERMA :

In this O.A. the prayer from Jangal and thirty other Casual Labourers whose services were terminated by the respondents on 12.10.1988 with forfeiture of past service, and were reinstated in the service as per this Tribunal's order in O.A. No. 782/1988 by an order dated 11.12.91 have now claimed the back wages for the period between the dates of termination and the reinstatement. In the Tribunal's order dated 11.12.91, a specific direction was given to reinstate

the applicants in that O.A. within a month of that order. "This will, however, not preclude them from (Lesbians) passing a fresh order after giving them opportunity to explain the incident of 23.7.88 or earlier incidents or confining their decision only to the strike on 12.10.88 and ensuring that there is no hostile discrimination against any employee in the absence of any distinguishing feature in his case vis-a-vis those whose services had not been terminated although they had also taken part in the strike".

Under the cover of the order of this Tribunal the applicants were reinstated and again came up with another O.A. No. 36/93 which was disposed of with the direction on 18.1.94 that the applicants must first exhaust the departmental remedies. Accordingly, the applicants made representations to the authorities on 1.2.94 but the same was rejected vide Annexure A/1, by which the respondents conveyed that as per the Ministry of Agriculture's letter dated 5.5.94 they could not be paid back wages.

2. The applicants have taken the stand that once the termination orders were quashed by the Tribunal as an illegal termination, the applicants were entitled to all the benefits including payment of back wages and continuance in service. It was not the applicants fault that they could not perform the duties during the interregnum between the termination and reinstatement and they cannot be penalised for no fault of their own.

3. The respondents in their written statement have brought to our notice that while ordering the reinstatement of the applicants there was no direction to allow them the back wages. The applicants had filed a contempt petition in this regard which was dismissed by the Tribunal vide order dated 19.10.92, wherein the Tribunal reiterated that the order passed earlier by it was only for reinstatement and not for payment of back wages. The applicants had not discharged any duties during this interregnum period and therefore, they are not entitled to any such claim regarding the back wages which is supported by the principle of no work no pay.

4. During the course of arguments, learned counsel for the applicants Shri J.K.Kaushik referred to the Ernakulam Bench decision in O.A. No. 459/1991, decided on April 21, 1992 in the case of C.S.Usha Kumari (Ms) Vs. Senior Superintendent of Post Offices Pathanamthitta Division and others cited at (1993) 23 A.T.C. 468, wherein the Tribunal had held that even in absence of a specific order of the Court to the effect that employee shall be paid back wages during the period between termination and reinstatement, the department was bound to pay back wages to that employee. The Tribunal in that case had held that the period so spent between the termination and reinstatement in the case of the applicant as duty for all purposes including pay and allowances and to pay the applicant

the arrears of salary for the above said period.

Shri J.K.Kaushik submitted that the same ratio should be applied in this case also. Shri K.S.Nahar, learned counsel for the respondents only reiterated the stand taken by the respondents in their written reply.

5. We have given anxious consideration to the submissions of Shri J.K.Kaushik in this case. On our query as to the status of the applicants when they were terminated, Shri Kaushik stated that they were Casual Labourers employed by the respondents for various lengths of time. But it was not established by him that these Casual Labourers were granted temporary status or were working against any sanctioned post. They were just Casual Labourers who had been engaged on casual basis by the respondents and thus there was no question of their having any case for regularisation against sanctioned post. The ratio of the judgement given by the Ernakulam Bench of the Tribunal could be applied only if the applicants were holders of the civil post even against a temporary post as was the case in that O.A. The ratio of that matter, therefore, cannot be applied in this present O.A. as the status of the applicants in this case is not that of holders of civil post in the Government of India for which they could be paid back wages if they were terminated illegally or irregularly. The Hon'ble Supreme Court in the two recent judgements have come down heavily against payment of back wages in case of termination as is

reported in the case of Deputy Commissioner of Police vs. Aklaq Ahmed decided on 3.1.94 ~~referred~~ at 1995 SCC (L & S) 897. The Hon'ble Supreme Court held that "even the payment of the half of the back salary as directed by the Tribunal is not justified, as the public money is not to be spent as a premium for such deviant conduct particularly the members of a disciplined force. We set aside that part of the order of the Tribunal and direct that back salary ~~whatever~~ shall now be payable to the respondents till the date of reinstatement notwithstanding the retrospective confirmation." The applicants in the instant case were also involved in the mass strike and they were reinstated only on the ground of hostile discrimination. In such circumstances, the order of the Hon'ble Supreme Court squarely applies to these applicants as well. The other judgement ~~of the~~ Hon'ble Supreme Court passed on 24.2.1995 in the case of Integrated Rural Development Agency vs. Ram Pyare Pandey, cited at 1995 (1) A.T.J. 512 also found that the ~~order~~ of the High Court granting reinstatement and back wages is not sustainable in law. The Hon'ble Supreme Court held that the relationship between the appellant - Integrated Rural Development Agency - and the respondent is based on contract and is purely a master and servant. It quoted certain judgements of English Courts wherein it has been said that "A contract of employment cannot ordinarily be enforced by or against an employer. The remedy is to sue for damages.....". "The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract....."

(13)

6. The applicants in this case are not covered by Article 311 of the Constitution as they were not holders of a civil post when their services were terminated. They were covered by Article 310 of the Constitution and their appointments were subject to the pleasure of the President/ respondents. Once their services were terminated the master and servant relationship also got extinguished and they cannot claim backwages thereafter till the master and servant relationships were restored after their reinstatement.

7. In view of these orders of the Hon'ble Supreme Court, the applicants have no case and the O.A. is dismissed accordingly. No Costs.

(Rattan Prakash)
Member (J)

(N.K. Verma)
Member (A)

CVR

Copy received
February 13/02

P1 (Copy)
05/28/02
PM/AB

Part II and III destroyed
in my presence on 21/5/02
Under the supervision of
Section Officer () as per
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Section Officer (Record)
J