

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 259

J. A. No.

199 0

DATE OF DECISION 26.4.91

The Executive Engineer(Elect.) Applicant (s)

Mr. A A Abul Hassan, ACGSC Advocate for the Applicant (s)

Versus

Regional Secretary, CPWD Respondent (s)
Mazdoor Union & another

Mr. M R machandran Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *NO*
3. Whether their Lordships wish to see the fair copy of the Judgement? *NO*
4. To be circulated to all Benches of the Tribunal? *NO*

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant is the employer, the Executive Engineer (Elect.) CPWD, Trivandrum. He is challenging Annexure-I Award passed by the Central Industrial Tribunal, Quilon answering the reference, in favour of the worker represented by the first respondent, the Regional Secretary of the union.

2. The question referred to by the Government of India as per Memo No. L-42012/128/86 D.II(B) dated 7.10.87 for adjudication ~~XXXXXX~~ reads as follows:

"The issue involved as per the schedule is:
Whether the action of Executive Engineer (Elec.) Trivandrum, Central Electrical Division, CPWD Trivandrum in terminating Sri Gangadharan, NMR Khalasi from service with effect from 18.11.1985 is legal justified? If not, to what relief the workman is entitled?"

..

3. The second respondent, the Industrial Tribunal considered the question after taking evidence and answered the reference with the following conclusions:

"In the result, an award is passed declaring that the action of the Executive Engineer of the management in terminating the services of Sri Gangadharan is illegal and unjustified. Hence Sri Gangadharan is entitled to get reinstatement with backwages and other service benefits."

4. The award is challenged by the applicant on the ground that the same has been passed without jurisdiction and that the employee, Shri Gangadharan, is not a workman who completed 240 days for getting reliefs under the I.D. Act, 1947. It is further contended that Annexure-I award is perverse and illegal.

5. We have carefully gone through the award and the files. The learned counsel on both sides were also heard. The Industrial Tribunal considered the questions raised before us in the light of the evidence and entered the findings thereof which appear to be unassailable.

6. The applicant has not stated the reason for lack of jurisdiction of the Industrial Tribunal to deal with the matter. This is a case of termination of Sri Gangadharan, who was appointed by the applicant to the post of Electrical Khalasi w.e.f. 23.11.83 after interviewing him when his name was sponsored by the Employment Exchange. His name has been included in the Muster Roll. He had been paid wages treating him as a workman by the employer. The certificates issued by the Management also indicate that this workman, Sri Gangadharan, was working continuously upto 19.11.85. According to the union though the workman reported for duty on 19.11.85, he was not given work thereby his service was terminated which is

illegal and unsustainable and against the provisions in Chapter V-A of the I.D. Act. Hence at the instance of the union an industrial dispute arose which resulted in the present reference by the Central Government to the Industrial Tribunal, Quilon, the second respondent.

7. From the records and available evidence in this case we can only uphold the finding of the second respondent that the management has terminated the service of Sri Gangadharan and the case of abandonment has not been proved.

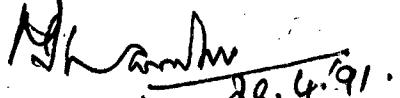
xxxxx A question of termination of an employee working in an industrial establishment xx can be decided by the Industrial Tribunal. Moreover the applicant had not raised the jurisdiction question as a preliminary issue objecting the very reference order passed by the Central Government. Under these circumstances, we are not in a position to go along with the applicant and hold that the award has been passed by the Industrial Tribunal without jurisdiction. We uphold the the finding of the Industrial Tribunal in this behalf. The contention raised by the learned counsel for the applicant on this issue is without any force and we reject it.

8. The next contention that the worker has not completed 240 days and that he is not a workman entitled to the protection under Chapter V-A of the I.D. Act, is also without any substance. It is seen from the award that the MW-1, witness of the management has admitted that Ext. MW-3 to W-5 certificates are issued by the management stating that Shri Gangadharan has completed 240 days continuously. This evidence along with the statements on the side of the worker have been duly considered by the Industrial Tribunal. It found that Sri Gangadharan was working under the applicant and the management terminated his service without following the procedural formalities provided under

Chapter V-A of the I.D. Act. This finding based on evidence available in this case cannot be held to be perverse or unsustainable as contended by the learned counsel for the applicant.

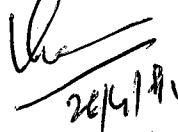
9. No other contentions were urged before us for attacking Annexure A-1 award.

10. In the result we see no merit in this application. It is only to be dismissed. Accordingly, we dismiss the same. There will be no order as to costs.


(N. DHARMADAN)

JUDICIAL MEMBER

26.4.91.


(N. V. KRISHNAN)

ADMINISTRATIVE MEMBER

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