IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 367 1989
~~I.A. No.~~

DATE OF DECISION 30.4.91

C. Thulasi Applicant (s)

Mr. K. Ravikumar Advocate for the Applicant (s)

Versus

The Director General of Civil Aviation, R.K.Puran, New Delhi and others Respondent (s)

Mr. N N Sugunapalan, SCGSC 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? Yes
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 grievance of the applicant is that she was not reinstated in service as Safaiwala after correctly calculating her days of work pursuant to the directions in the earlier judgment.

2. The applicant in this case was interviewed by the second respondent on 26.2.81 and appointed as Safaiwala as per Annexure A-1 order dated 4.1.81. But her service was terminated by Appendix-I dated 23.6.82 without assigning any reason or complying with the statutory requirements. Hence she filed O.P. No. 6489/82 before the High Court of Kerala for reinstatement in service

as Safaiwala in the Airport. The said O.P. was heard and disposed by Annexure A-II judgment dated 21.10.82 with the following direction after finding that the applicant is entitled to be treated as workman under the I.D. Act, 1947:

> "... whether she was entitled to the benefits of section 25F of the Industrial Disputes Act would depend on the question whether she had one year's continuous service, which in turn requires an investigation as to whether she had worked for 240 days in the establishment during a period of 12 calender months preceeding the termination. This is not a matter which can easily be determined in proceedings under Art. 226 I, therefore, direct the respondents to examine the petitioner's case and pass appropriate orders, having due regard to the provisions of Chapter-VA of the Industrial Disputes Act."

3. The respondents' writ appeal filed against the judgment of the learned Single Judge was dismissed in limine. After the dismissal of the writ appeal when the applicant approached the respondents with representations for reinstatement in service she was not allowed to join duty and her representation was also not disposed of as directed by Annexure A-II judgment. The applicant again approached the High Court by filing O.P. 8613/84 against Annexure A-III which was xxxxxxxxxxxxxxxxxx passed on 13.12.84 stating that the applicant is not working in a regular capacity and hence she is not entitled to reinstatement. This case was later transferred to the Tribunal and disposed of as per Annexure A-IV judgment observing that the mandate given by the High Court in Annexure A-2 judgment had not been complied with as directed therein. The observations in the judgment read as follows:

> "In view of the mandate given by the High Court of Kerala in the judgment in OP No. 6489/82 it behoved the second respondent to consider the case of the applicant with respect to the provisions of

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Chapter V A of the Industrial Disputes Act. Since that has not been done we are constrained to refer the matter once again to the respondents for a proper examination of the question in accordance with the judgment of the High Court. As the determination of the question will have essentially to depend on the actual number of days the applicant had worked under the second respondent, before disposing of the matter the 2nd respondent shall afford an opportunity to the applicant to make available the evidence if any with her on this matter. Of course it is open to the 2nd respondent to make use of the available material with him also. After taking into account the relevant material the 2nd respondent will dispose of the matter expeditiously, at any rate within a period of two months from the date of receiptof a copy of this order."

4. After the Annexure-IV judgment the applicant submitted that Annexure A-V representation. She sought for reinstatement in the light of the direction of the Tribunal. This was rejected as per Appendix-II and/III taking the view that she has not completed 240 days in a calender year preceeding the date of termination. The applicant is challenging Appendix-I to III in this case filed under section 19 of the Administrative Tribunals' Act, 1985.

5. In the light of the pleadings and the contentions raised by the applicant, the only question to be considered is whether the applicant has put in 240 days within 12 calender months before the termination w.e.f. 23.6.82 (Annexure-I).

6. Immediately after the termination from the service when the applicant approached the High Court of Kerala, the court after examining the contentions found that the applicant is a workman coming under section 2 (s) of the I.D. Act, 1947. But the court disposed of the case after directing the respondents to examine with reference to the

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documents maintained by them whether the applicant has worked for 240 days in the establishment during the period of 12 calender months before the termination w.e.f. 23.6.82 so as to decide the issue under the provisionsof Chapter-VA. The direction in the judgment should have been complied with by the respondents by calculating the days of actual engagement of the applicant in the establishment. This was not done as directed by the High Court. Hence, the applicant was forced to approach the High Court again for the second time. When this case was transferred and received by the Tribunal, we considered the matter and found that the respondents had not complied with the directions in Annexure A-II judgment. Hence, the case was disposed of with the direction to comply with the direction which has been given by the High Court. It appears that even now the respondents have failed to discharge their duty as directed in the first judgment. From the documents Annexure R-1 produced along with the counter affidavit(same statement was filed by the applicant also along with the verified statement dated 20.2.90) it is clear that the applicant has put in 281 days for calculation and computation under section 25-B in Chapter V-A of the I.D. Act. So it is an admitted case that the applicant has worked in the establishment for 240 days before her termination as per Annexure-I. But the respondents did not appoint her as Safaiwala because of the following statement in Appendix-III:

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"She was found not fit person for appointment in a Government of India office."

This finding has been rendered by the respondents without giving the applicant an opportunity of being heard and this cannot stand in the way of respondents in implementing the directions in Annexure A-II and A-IV judgment particularly when the statement in R-1 about the days of work rendered by the applicant had been accepted by the respondents without any modification.

7. Immediately after the first judgment if the respondents had verified Annexure R-1 statement with reference to office records and taken a decision in accordance with law they could have avoided the delay and the applicant would not have been compelled to approach the court or this Tribunal. However, considering the facts and circumstances of the case, we are of the view that the applicant is entitled to succeed in the light of Annexure R-1 statement and she is to be reinstated in service. The attempt of the learned counsel for the respondents to point out that the applicant had no continuity in service and that she had not completed 240 days for getting the benefit of the provision of the I.D. Act failed because, of the statement Ext. R-1 is very clear on this aspect and the respondents had accepted the same. The learned counsel for the respondents further submitted that in view of the letter dated 13.12.85 Appendix-II and the statement thereof that the applicant was found not a fit person to be appointed in Government service,

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she cannot be reinstated in service as directed in the earlier judgments. According to him there was some report about the applicant's character and antecedents and the Govt. has decided that the applicant is not a fit person to be appointed in Government service. First of all this is a matter pertaining to the appointment of the applicant in a regular vacancy; secondly this aspect should have been brought to the notice of the Tribunal when the second case filed by the applicant was disposed of by Annexure A-IV judgment. The failure of the respondents to do so resulted in a specific direction which they are bound to comply with unless they seek a review of Annexure A-IV judgment. No such review has been filed. Even under the first judgment Annexure A-II there is a direction that the applicant's actual days of work had to be computed and she should be given the benefit of Chapter V-A. This was again reiterated in Annexure A-IV. Under these circumstances, we are of the view that the directions had not been complied with so far. Hence in our view this application will have to be allowed with the limited direction to the extent of taking the applicant back and reinstate her in the original post of Safaiwala in which she was working while Annexure-I order was passed and we do so. With regard to her further appointment to any new or regular post, we make it clear that the respondents can consider her appointment to a regular post in accordance with law after notifying to her the statement contained in Annexure A-III.

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8. Regarding the back wages to be given to the applicant as a consequence of her reinstatement as Safaiwala, we have examined the matter in detail and heard the learned counsel of respondents. None appeared on behalf of the applicant. We have called for the Registers kept in the office of the respondents from 1981 onwards. The learned counsel for the respondents was kind enough to produce them for our perusal. It is seen that some of the juniors like M/s. Thulasi, Sulochana and Chellamma were given work continuously from 1981 onwards without any break. If respondents had not passed Annexure-I order which was not upheld in Annexure A-II judgment because of the finding that the applicant is a workman coming within the perview of I.D. Act, entitled to protection thereof the applicant would have worked along with her juniors mentioned above. Even after the directions in Annexure A-II judgment the respondents did not comply with the same without any further delay. Had they examined Annexure R-1 statement pursuant to the direction in the first judgment issued by the High Court and passed an order in accordance with law, they could have come to the conclusion that the applicant had put in 240 days of work and she should have been reinstated as Safaiwala. It is only because of the failure of the respondents to take a decision according to the law pursuant to the direction of the first judgment that the applicant was forced to approach the High Court and the Tribunal

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repeatedly. The default of the respondents resulted in loss of earning days to the applicant. She is entitled to be compensated. However, the applicant too did not show sufficient vigilance when the Annexure-II judgment was not complied within a reasonable time. She could have taken some steps for expediting decision by the respondents. Instead she waited and filed another O.P. No. 8613/84. She did not challenge Appendix-III order before the High Court. That was done only after the case was transferred to the Tribunal. Under these circumstances, taking into consideration the long period of absence from work by the applicant and also her latches, we are satisfied that the interest of justice will be met if we direct the respondents to give her 20% of full back wages had she been reinstated in service from the date of her termination of service as directed by the High Court in the first judgment in time. In this view of the matter, we direct the respondents to calculate the wages which should have been earned had she been worked as Safaiwala continuously from the date of Annexure-I termination order till her actual reinstatement with reference to her juniors who worked as Safaiwala continuously from the date and pay her 20% of the total amount. This shall be done by the respondents within three months from the date of receipt of a copy of this order.

9. In the result, the application is allowed to the extent indicated above. There will be no order as to costs.

20.4.'91.

(N. DHARMADAN)
JUDICIAL MEMBER

30/4/91

(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER

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