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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 298 of 1988
T.A.No.

Date of Decision : 30-10-91.

B. Prasada Reddy

Petitioner.

Advocate for the
petitioner (s)

Versus

Respondent.

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. S.P. Mukerji, Vice-Chairman

THE HON'BLE MR. A.V. Haridasan Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
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 ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

SPM

AVH

(27)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.298 of 1988

Date of order: 30-10-1991

Between

B.Prasada Reddy

... APPLICANT

A N D

1. The S.D.O. Telecom..
Jangareddigudem.
2. The Divisional Engineer,
Telecom., Eluru.
3. The DirectorGeneral, Telecom.
New Delhi (representing U.O.I.).

... RESPONDENTS

Appearance:

For the applicant : Shri C.Suryanarayana, Advocate
For the Respondents : Shri N.Bhaskara Rao, Addl.CGSC

CORAM:

The Hon'ble Shri S.P.Mukherji, Vice-Chairman (Admn.)
of Ernakulam Bench

The Hon'ble Shri A.V.Haridasan, Member (Judicial)
of Ernakulam Bench

JUDGMENT

(of the Bench delivered by the Hon'ble Shri S.P.Mukherji, V.C.)

We have heard the learned counsel for both the parties in this Application in which the applicant has challenged the notice and subsequent termination of his casual service with effect from 29-5-1987 as the same does not comply with the statutory obligation of the Respondents to give him retrenchment compensation in accordance with Sec.25(F) of the Industrial Disputes Act. The learned counsel

for the applicant brought to our notice the judgment of this Bench of the Tribunal dated 6-5-1988 in O.A. No.164/88 in which the applicant therein, whose services were similarly ~~dismissed~~ ^{terminated} with one month's notice by the same Telecom. Department, was directed to be reinstated ~~to duty "with all consequential benefits including~~ wages for which period he has been out of office till the date of his reinstatement." It was also directed that the applicant should be considered for regular appointment in accordance with ~~any scheme~~ ^{casual} which the Department may launch in pursuance of the orders of the Supreme Court in their judgment in AIR 1987 SC 2342.

2. The learned counsel for the Respondents ^{before us} argued that since at the time of the original recruitment i.e. on 1-8-1980 the applicant was admittedly more than 26 years old, he was overaged at that time and hence the question of his regular appointment does not arise. From the perusal of the record it is clear that the applicant had completed more than 240 days per year of service for several years of his ^{casual} ~~employment~~ during 1980-1987. The Posts and Telecom. Departments have been recognised to be an industry by several courts under Section 2(j) of the Industrial Disputes Act.

The ^{above-mentioned} judgment of this Bench of the Tribunal dated 6-5-88 also supports this contention. As regards the applicant being overaged at the time of his original recruitment, we find that for casual employment there being no upper age limit and since the question before us is ^{the legality} not of regularisation but ^{of} termination of casual service of the applicant, the applicant being overaged

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at the time of original recruitment cannot deprive him of the protection and benefits statutorily available to him as a workman under Chapter-V(A) of the I.D.Act with particular reference to Section 25(F) therein.

3. The learned counsel for the Respondents further argued that in accordance with the decision of the Full Bench of this Tribunal in A.Padmavally and others Vs. CPWD + Telecom (OA 279 of 1980 and bunch of cases of Hyderabad Bench, published from P334 of Full Bench judgements of the CAT(1989-91) Volume II, by Bahri Brothers Delhi), the Application does not lie with this Tribunal. We do not find ourselves in agreement with this view for several reasons. Firstly, the Application stood admitted as far back as on 29-4-1988 and thereafter till today the Respondents did not raise this objection about its admissibility. Secondly, the Full Bench decision clearly stated that where constitutional and statutory violations are discernible there is nothing to prevent the Tribunal to entertain an application. Thirdly, the Administrative Tribunals Act also does not totally preclude the Tribunal from entertaining an application even if all the statutory remedies have not been exhausted. We feel that in the interest of justice the application before us cannot be rejected 'ad limine' on that score. It is also clear that the impugned order of termination without any reference to the retrenchment compensation to which the applicant was entitled, 'ex-facie' is violative of the statutory provision of Sec.25(F) of the Industrial Disputes Act. In that light the Full Bench decision does not debar us from entertaining this Application. The termination of service being in violation of Sec.25(F) of the I.D.Act is ab initio void. ^{on the} _{in the aforesaid case} Further, ^{on the} _{in the aforesaid case} the Full Bench held that where services are terminated contrary to law it amounts to violation article 14 of the constitution and the employee can seek the less expensive and effective remedy under article 32 or 226 of the Constitution.

The learned counsel for the Respondents, Shri N. Bhaskara Rao brought to our attention, another judgment of this Bench of the Tribunal dated 27-3-1991 in O.A. 336/88 and batch of cases, to urge that back wages should not be paid to the applicant before us in line with that judgment. The operative part of that judgment relatable to back wages reads as follows:

"Since we have not gone into the question whether orders of termination are illegal, the question of granting back wages does not arise."

Since we have done nothing ~~as~~ but going into the legality ~~as~~ preclude us from granting the back wages as has been allowed by the same Bench in their judgment dated 6-5-1988 in O.A. No. 164/88 referred to earlier. We are fortified further by the judgment of the Supreme Court in Narokh Chopra Vs. Presiding Officer, Labour Court and another [1988(4) SLR 388] wherein the Hon'ble Supreme Court in ^{that} the case of termination of service in violation of Section 25(F) of the I.D. Act, allowed "reinstatement with full back wages and other allowances."

4. In the ^{construction} construction of the facts and circumstances, we allow the Application, set aside the impugned notice of termination and direct the Respondents to reinstate the Applicant to duty forthwith with all consequential benefits including wages for ^{the} period he has been ⁱⁿ out of office, till the date of his reinstatement. However, this will not preclude the Department to take such action as they consider necessary in accordance with the law and with the provisions of the I.D. Act.

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We would also make it clear that the Applicant should also be considered for regular absorption in accordance with the scheme which the Department has promulgated in accordance with the Supreme Court's direction in that respect. There will be no order as to costs.

S.P.M.
(S.P.Mukerji)
Vice-Chairman

A.V.Haridasan
(A.V.Haridasan)
Member (J)

(Dictated in open court)

mhb/-

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Dy.Registrar(Judl.) 8119

Copy to:-

1. The S.D.O. Telecom.,
Jangareddigudem.
2. The Divisional Engineer,
Telecom., Eluru.
3. The Director General, Telecom.
New Delhi (representing Union of India)
4. One copy to Shri. C.Suryanaryana, 1-2-593/50,
Srinilayam, Sri Sri Marg, Hyderabad.
5. One copy to Shri. N.Bhaskar Rao, Addl.CGSC, CAT, Hyd.
6. One spare copy.
7. Copies to all reporters as per the Standard list of C.A.T.

Rsm/-

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