(16)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. No. 898/91. Dt. of Decision : 7-10-94.

Md. Mohamood .. Applicant.

Vs

Manager, Canteen Stores Department,
Government of India,
T/1/1-9, I.R.S.D-Megadripeta,
Kancharapalem Post,
Visakhapatnam-8. .. Respondent.

Counsel for the Applicant : Mr. P.B. Vijaya Kumar

Counsel for the Respondent : Mr. N.V.Ramana, Addl.CGSC.

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

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O.A.No.898/91 Dt.of decision:7-10-1994

ORDER

(As per the Hon'ble Sri A.V. Haridasan, Member (J))

The applicant who was engaged as a Daily Rated Casual Mazdoor from 7-3-86 to 23-8-88 with artificial breaks under the Canteen Stores Department (for short CSD) is aggrieved by the abrupt termination of his services after 23-8-88 without following the mandatory provisions of the Sec. 25 F of the I.D.Act. He moved the Labour Court on 19-7-89 but the Labour Court refused to adjudicate the question on the ground that the name of the Presiding Officer had not been notified in the Central Gazette, and as such he had no power to adjudicate the question. This order was dt.13-5-1991. It is under these circumstances that the applicant had filed this application U/s 19 of the A.T.Act seeking to declare the retrenchment of the applicant in valid in as much as it was made in controversion of the provisions of the Sec. 25 F of the I.D. Act with consequential benefits.

2. The respondents in their reply contend that the CSD not being an industry the provisions of the I.D.Act have no application. At the same time raising a contention that the applicant should have first exhausted his remedy before the forum prescribed under the I.D.Act, if he is aggrieved on account of the violation of any of such provisions. The factual allegation that the applicant had been engaged from 7-3-86 to 23-8-88 with intermittant breaks is not controverted. On the ground

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that the CSD is not an industry and that the remedies prescribed under the I.D.Act have not been resorted to by the applicant, the respondents contend that the application is liable to be summarily rejected.

3. We have perused the material on record and have heard the learned counsel for both the parties. The embargo contained in the Sec.20 of the A.T.Act is for admission of an application before the aggrieved person has exhausted the remedies prescribed in the service rules or before any other statutory forum. Even that bar is not an absolute bar. The Section only lays down that Tribunal ordinarily shall not admit an application unless the remedy prescribed in the relevant rules have been exhausted. Once the application is admitted and that too way back in the year 1991 it is not proper to refuse to adjudicate on merits. Therefore, in this case, as the case had been admitted in 1991 itself, we are of the view that we have to adjudicate the issue on merits. The contention of the respondents that the CSD is not an industry cannot stand the test of the principles laid down by the Supreme Court in Bangalore Water Supply and Sewerage Board V/s A. Rajappa (AIR 1978 SC 548). We are not convinced that the employees of the CSD are performing any sovereign functions. Hence the contention of the respondents that the provisions of the I.D. Act do not apply to the employees of CSD like the applicant has no merit.

4. Now the further question is by virtue of the decision of Full Bench in Padmavalli's case, this Tribunal can entertain an application from an employee

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who claims to have been retrenched in violation of the provisions of the I.D.Act before moving the forum prescribed under that Act. Though this question had already been dealt with in part by us supra, it is to be mentioned that in this particular case, it is not a case where the applicant did not resort to that remedy also, but it was the Labour Court which refused to adjudicate the question for some technical reasons. However, whether the applicant was right in approaching the Labour Court directly or not, if thisTribunal after admitting the application in 1991 again direct him to raise an industrial dispute, now, we are of the considered view that, that would be highly unfair. Under these circumstances, we shall examine as to whether the termination of the services of the applicant who admittedly had performed casual service continuously with intermittant breaks between 7-3-86 and 23-8-88 even without issuing a notice to him is valid in law. Even in a case where a person does not qualify to be called a worker under the I.D.Act, having extracted work from him for a considerably long period, it is not just or proper to throw him out uncermoniously without even giving him a caution that his services would not be needed in future. There is no doubt that the applicant was engaged as a casual labourer. Hence he comes within the definition of "Workman" as defi defined in the I.D.Act. Since we have held that the CSD cannot claim to be outside purview of the I.D.Act and as the pleadings in this case disclose that the applicant having ~~been~~ worked for nearly two years has been removed from service without giving him a notice and retrenchment compensation U/s 25 F of the

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I.D.Act, the termination has to be set aside as illegal.

5. Though the normal consequence of a declaration that the termination of services of a workman without complying with the provisions of Sec.25 F is invalid is that the Workman would be deemed to be in continuous service and entitled to wages for the whole periods. But in view of the long delay and the peculiar circumstances of the case, we are of the considered view that the interest of justice will be met if the applicant is reinstated in service as a casual labourer forth-with, without paying him any back wages.

6. In the result, the application is disposed of directing the respondents to reengage the applicant forthwith and continue him in casual engagement ~~and~~ as long as the work is available in preference to freshers or persons with lesser service than him. The orders as aforestated shall be complied with within a month from the date of communication of a copy of this order, The applicant is not entitled to get back wages for the period he was kept out of service. There is no order as to costs.

(A.B. Gorthi)
Member (A)

(A.V. Haridasan)
Member (J)

Dictated in Open Court

7-10-1994

DEPUTY REGISTRAR(J)

kmv

TO
1. Manager, Canteen Stores Dapartment, Govt. of India, T/1/1-9,I.R.S.D.Megadripeta, Kancharapalem Post, Visakhapatnam.
2. One copy to Mr.P.B.Vijaya Kumar,Advocate,CAT, Hyd.
3. One copy to Mr.N.V.Ramana,Addl.CGSC,CAT,Hyderabad.
4. One copy to Library, CAT,Hyd.
5. One spare copy.

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5th page
25/10/94.

TYPING 25/10

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR.A.V.HARIDASAN : MEMBER(J)

AND

THE HON'BLE MR.A.B.GORTHI : MEMBER(A)

Dated: 7.10.94.

ORDER/JUDGMENT.

M.A./~~R.P/C.P/No.~~

in
O.A.NO. 898/91

T.A.NO. (~~W.P.NO.~~)

Admitted and Interim Directions Issued.

Allowed.

Disposed of with Directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

YLKR

25/10/94