IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.701 of 1992

DATE OF JUDGMENT: 28th SEPTEMBER, 1992

BETWEEN:

The Management of Sub Divisional Officer, Phones, Tenali (A.P.) .. Applicant

AND

1. Shri M.M.K.Brahmaji

2. Industrial Tribunal (Central), Hyderabad. .. Respondents

COUNSEL FOR THE APPLICANT: Mr. N.R.Devaraj, Sr.CGSC

COUNSEL FOR THE RESPONDENTS: Mr. C.Suryanarayana for R1

CORAM:

Hon'ble Shri R.Balasubramanian, Member (Admn.)

Hon'ble Shri C.J.Roy, Member (Judl.)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE SHRI C.J.ROY, MEMBER (JUDICIAL)

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 by the Management of Sub Divisional Officer (Phones), Tenali claiming a relief to quash the Award passed in I.D.No.28 of 1989 by the Industrial Tribunal (Central), Hyderabad.

2. The facts that are necessary to determine the case are briefly as follows:-

The 1st respondent herein, Mr. M.M.K.Brahmaji, was appointed as Part-time Sweeper/Waterman in the office of the Sub Divisional Officer, Telecom, Tenali vide memo dated 4.2.1978 on a monthly wage of Rs.157=50 and he was expected to work for 6 hours a day. His appointment was purely part-time and is liable to be terminated at any time without assigning any reasons. He was subsequently shifted to Carrier Station, Tenali and later on was placed under the S.D.O.P., Tenali. The 1st respondent was absenting himself several time and had no interest in his employment. Despite cautioning several time, there was no improvement in devotion to his duty. He continued to be negligent and indifferent towards his work. He was absent continuously from duty from 2-4-1986 to 23-4-1986 without prior permission, intimation or leave. Hence, the 1st respondent was served one month notice of termination vide Memo dated 24-4-1986 of the S.D.O. Phones, Tenali. The 1st respondent absented again with effect from 25-4-1986 without permission. Having acknowledged

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the one month notice, the 1st respondent did not complain anything. As such, his services stood terminated with effect from 25-4-1986. Without preferring any representation or appeal, the 1st respondent approached the Labour Commissioner(C), Vijayawada raising an Industrial Dispute and the same ended in failure. Consequently, the matter was referred to the Chairman, Industrial Tribunal (C), Hyderabad (2nd respondent herein) by the Ministry of Labour, Govt. of India vide letter dated 27-3-1989 for adjudication and the same was registered as I.D.No.28/1989. The Industrial Tribunal passed an Award directing the applicant to re-instate the 1st respondent herein into service with back wages within one month from the date of publication of the Award, failing which the 1st respondent is entitled to realise the same with interest @ 12% per annum from the date of Award till the date of realisation. This Award has been published in the Gazette of India vide Notification dated 3-1-1992. Aggrieved by the Award given by the Industrial Tribunal, the applicant filed this O.A.

3. The 1st respondent filed a counter affidavit stating that the interim orders passed in this case suspending the orders of the Industrial Tribunal in I.A.No.28/1989 were not under his notice. ~~[illegible]~~ Lunch motion was permitted and ex-parte interim order was passed on 17.8.1992. The applicant is guilty of suppression of the mandatory provisions of Section 17-B of the Industrial Disputes Act,1947 and of obtaining the interim suspension of the orders of the Industrial Tribunal in I.D.No.28/89. The Industrial Tribunal thoroughly analysed the evidence on record and gave findings

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that it has not been established in the inquiry that the 1st respondent was in the habit of absenting himself frequently with or without permission and that there were a number of complaints against him. Moreover, the 1st respondent states that the applicant cannot rely upon any material which is extraneous to the evidence on record in I.D.No.28/89 i.e., Annexures A-5 to A-11 which have not been marked before the Industrial Tribunal and, therefore, the said Annexures are to be ignored.

4. The 1st respondent contends that the termination order is vitiated since it was by way of punishment without following the procedure laid down in the relevant standing orders or the rules. The averment of the applicant that he did not complain the termination notice is not correct. He challenged the termination notice as illegal for non-compliance with the mandatory provisions of Section 25-F of the Industrial Disputes Act. The averment of the applicant that the 1st respondent was given one month notice is also not correct since the notice was given on 24.4.1986 and his services were terminated from 25.4.1986. His termination was also not after completion of one month from the date of service of the termination notice but on the 30th day i.e., one day before the 30 days of notice period concluded. The failure of the case before the Labour Commissioner was because of the applicant who took a very wrong stand that the 1st respondent was not a Workman and the P&T Department

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was not an industry within the meaning of the Industrial Disputes Act. When the conciliation efforts of the ALC(C), Vijayawada failed, he made a reference of the matter to the Central Labour Ministry which referred it for adjudication by the Industrial Tribunal. The Industrial Tribunal analysed the evidence in detail and gave the findings that his alleged habit of absenting frequently without notice and it caused inconvenience to the Department, have not been established by any evidence. The Industrial Tribunal is entirely correct in directing reinstatement of the 1st respondent with full back wages declaring that he is a workman within the meaning of Section 2(s) of the Industrial Disputes Act and termination of his services amounts to retrenchment within the meaning of Section 2(oo) of the Act and that the retrenchment is illegal for non-compliance with the mandatory provisions of Section 25-F of the Act. Therefore, the 1st respondent states that the Award is fully justified and the application is liable to be dismissed.

5. By way of interim directions, the orders of the Industrial Tribunal in I.D.No.26/1989, dated 19.12.1991 were suspended till 1-9-1992, vide order of the Bench dated 17.8.1992.

6. We have heard the learned Senior Standing Counsel for the Applicant, Mr. N.R.Devaraj, and the learned counsel for the 1st respondent, Mr. C.Suryanarayana. The records were perused.

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7. The short point is whether the Award of the learned Chairman, Industrial Tribunal is right or wrong.

8. It may be noted that the applicant who is the respondent before the Industrial Tribunal in the I.D.No. 26/1989 have not let-in any evidence of documentary nature nor examined the concerned direct witnesses on the main point of absenting the respondent from duty.

9. The counter filed before the Industrial Tribunal by the applicant herein denying the allegations made by the 1st respondent herein in his claim statement, states that the 1st respondent was only working as Sweeper-cum-Waterman on part time basis and he was never appointed on regular basis. He being a casual labourer cannot have any right for regular employment. It is also stated that the 1st respondent was a chronic absentee and had no interest in the employment.

10. The counter also states that the termination of the 1st respondent was legal, valid and justified in the circumstances of the case.

11. The learned Chairman, Industrial Tribunal, has categorically stated, discussed and observed that the Department produced no documentary evidence like attendance registers, wage registers or any memos issued to the 1st respondent by the Department for his unauthorised absence during the period he worked in the Department.

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12. He has also held that, "in view of the fact that it was not mentioned in the appointment order that he was appointed as temporary or casual part-time worker or as contingent worker, it cannot be said that the WW1 (1st respondent herein) is not a workman as defined under Section 2(s) of the I.D.Act, particularly when nothing is stated in Section 2(s) about the definition of 'workman' distinguishing between the full time employee and part-time employee." Hence, the learned Chairman held that the 1st respondent would squarely come under the definition of 'workman' as defined under Section 2(s) of the Industrial Disputes Act.

13. The learned Chairman further observed that, "except issuing one month's notice in Ex.W16 no retrenchment compensation was paid to the petitioner (1st respondent herein) at the time of terminating his services, as per the termination order, which was admittedly not served on the petitioner on 24.5.1986, though it is stated by the Department that the petitioner blently refused to receive the termination order. The refusal of receiving the termination order by the petitioner and the endorsement of 'refusal' is not established by the respondent by examining the concerned officer, who attempted to serve the termination notice on the petitioner. It is admitted case of respondent and the department that except his wages, no other amount was paid to the petitioner at the time of termination. So it is clear that no terminal benefits are paid to the petitioner at the time of terminating his service as contemplated under Section

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25-F of the I.D.Act. It is not the case of the respondent that the services of the petitioner were terminated for want of vacancy. On the other hand it is clearly stated in Ex.M3 that "meanwhile DET-Guntur happened to appoint one regular sweeper under SDOP, Tenali vide DET-GTR letter No.G-25/Gr.D/84-85/XXIII/143, dated 25.4.86 with instructions to SDO Phones to remove Partime officials engaged ~~xx~~ after issuing one month notice." The learned Chairman therefore held that, "so it is clear that the petitioner was not removed for want of vacancy but to appoint another person as regular Sweeper by the order dated 25.4.1986 ie., from the next day of issue of termination notice to the petitioner and continuing the petitioner in service till the expiry of notice period i.e., 24.5.1986.".

14. Hence, the learned Chairman, in view of the facts and circumstances of the case, held that, "it is clear that the termination of the petitioner from service ~~x~~ amounts to retrenchment as defined in Section 2(oo) of the I.D.Act and the retrenchment without complying with the conditions laid down in Section 25-F of the I.D.Act is not valid. The reasons should be indicated in the one month's notice as contemplated under Section 25-F(a) but no reasons were assigned in the termination notice except stating that his services as part-time sweeper cum waterman are going to be terminated with effect from 24.5.1986, which amounts to arbitrary exercise of the power of the concerned authority and so I am of the opinion that Ex.W16 notice is not a valid notice under Law.".

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15. The learned Chairman with regard to the compensation payable under Section 25-F(b) of the I.D.Act, held that, "admittedly no compensation was paid to the petitioner at the time of retrenchment as contemplated under Section 25-F(b) of the I.D.Act. So it is clear from the evidence brought on record that the conditions laid down in Section 25-F of the I.D.Act are not complied with before retrenching the petitioner from service. So, in view of my above discussion, the retrenchment of WW1 is liable to be set-aside and the petitioner-workman is entitled for reinstatement into service with full back-wages."

16. In view of the observations made by the learned Chairman, Industrial Tribunal, we have to examine whether the 1st respondent is entitled for reinstatement with back wages with interest and whether there was enough material for the learned Chairman to come to such a conclusion.

17. We have perused the Exhibits filed before the learned Chairman, Industrial Tribunal. Exhibits W2, W3, W12, W13 and W15 are the service certificates filed by the 1st respondent herein. Ex.W6 is the appointment order of the 1st respondent as part time sweeper cum waterman. Ex.W7 is the Office Order providing duty hours to the 1st respondent. Exhibits W8 to W10, W12, W13, W15 and W16 were all issued by the S.D.O's office, Tenali that the 1st respondent was not regular in his attendance and absenting himself. Ex.M1 is the termination order. Ex.M2 is the letter addressed to the Sub Divisional Officer, Phones,

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Tenali on refusal of the termination notice by the 1st respondent. Exhibit M3 is the brief remarks of the termination case of the 1st respondent.

18. As per the record before the Industrial Tribunal, it is clear that no documentary evidence such as attendance registers, wage registers or any memos issued to the 1st respondent herein by the department for his unauthorised absence from duty. Hence, the learned Chairman, Industrial Tribunal basing on the documentary evidence before him i.e., Ex.M3 which was prepared on 8.8.1990 long subsequent to the issue of Ex.W16 termination notice and also long subsequent to the reference made to the Industrial Tribunal, properly held and passed the impugned Award directing the applicant herein to reinstate the 1st respondent herein forthwith with back wages together with interest.

19. We see no reason to interfere with the findings of the learned Chairman, Industrial Tribunal. We find that the learned Chairman has rightly came to the conclusion that, "in the result an award is passed directing the respondent to reinstate the petitioner-workman into service forthwith with full back wages. The respondent is further directed to pay the back wages to the petitioner within one month from the date of publication of this Award, failing which the petitioner is entitled to realise the same with interest at 12% per annum from the date of this Award till the date of realisation."

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20. We have also gone through the decisions reported in AIR 1964 SC 477 - Syed Yakoob Vs. Radhakrishnan and other; AIR 1988 SC 2168 - Calcutta Port Shramik Union Vs. The Calcutta River Transport Association and others; and 1962(2) LLJ 236 SC, Balwant Rai Chamanlal Trivedi Vs. M.N.Nagarashana.

21. In AIR 1964 SC 477, their lordships observed that, "A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal, the points cannot be agitated before a writ Court."

Their lordships further observed-

> "If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors of law apparent on the face of the

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> record. Whether or not an impugned error is an error of law and an error of law which is apprent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

22. In AIR 1988 SC 2168 the Hon'ble Supreme Court held that, "the object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to Tribunals for settlement is to bring abount industrial peace. Whenever a reference is made by a Government to an Industrial Tribunal, it has to be presumed ordinarily that there is genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the awards made by Industrial Tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the Tribunals by striking down awards on hyper-technical grounds."

23. In 1962(2) LLJ 236 SC, it was observed that-

> "Even if an order of an Award of the Tribunal is vitiated by certain defects the High Courts in their jurisdiction under Articles 226 and 227 may not interfere unless there is a gross miscarriage of justice or flagrant violation of law calling for intervention."

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To

1. The Management of Sub Divisional Officer,
   Phones, Tenali (A.P)
2. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
3. The Industrial Tribunal (Central), Hyderabad.
4. One copy to C.Suryanarayana, Advocate for R.1, CAT.Hyd.
5. One spare copy.

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24. In view of the observations supra, and the principles of rulings of the Hon'ble Supreme Court of India cited, we find no reason to interfere with the findings of the learned Chairman, Industrial Tribunal, Hyderabad.

25. Under these circumstances, we hold that the Award passed by the learned Chairman, Industrial Tribunal is proper. We direct the applicant herein that the relief granted to the 1st respondent in the Award i.e., "an award is passed directing the respondent to reinstate the petitioner-workman into service forthwith with full back wages. The respondent is further directed to pay the back wages to the petitioner within one month from the date of publication of this Award, failing which the petitioner is entitled to realise the same with interest at 12% per annum from the date of this Award till the date of realisation.", shall be given to the 1st respondent herein in accordance with the Award. The Award is confirmed. This exercise shall be completed within 2 months from this date of receipt of this Order.

26. With the above directions, the application is dismissed with no order as to costs.

(R.BALASUBRAMANIAN)
Member(Admn.)

(C.J.ROY)
Member(Judl.)

Dated: 28th September, 1992.

27/10/92
Deputy Registrar(J)

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CHECKED BY APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR.

AND

THE HON'BLE MR.R.BALASUBRAMANIAN:M(A)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY:
MEMBER(J)

AND

THE HON'BLE Mr.C.J. ROY : MEMBER(J)

Dated: 28-9-1992

~~ORDER~~ / JUDGMENT

R.A./C.A./M.A.No

in

O.A.No. 761/92

T.A.No. (W.P.Np)

Admitted and interim directions issued

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A.Ordered / Rejected

No orders as to costs.

pvm.