

(90)

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

Original Application No.585/1996

Dt. of decision: 30-5-1996

Between:

1. Venkatarajam
2. P. Rama Murthi
3. L.Koteswara Rao
4. A. Srinivasa Rao
5. B. Srinivas
6. E. Venkatesh

.. **Applicants**

and

1. Chief Personnel Officer,
S.C.R., Secunderabad.
2. Divisional Railway Manager (P)
S.C.R., B.G.Division,
Secunderabad.
3. Sr. Divisional Engineer/
Co-Ord/B.G., Secunderabad.
4. Divisional Engineer, West,
B.G. Secunderabad
5. Asst. Engineer,
S.C.Railway, B.G. Bidar.
6. Jr. Engineer, (Permanent Way)
S.C. Railway, Parli.

.. **Respondents**

Counsel for the applicants : Sri P. Krishna Reddy

Counsel for the respondents: Sri V. Rajeshwar Rao

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Hon'ble Mr. Justice M.G.Chaudhari : Vice Chairman

Hon'ble Shri H. Rajendra Prasad : Member (A)

(28)

O.A.No.585/96

JUDGEMENT

(Oral Order as per Hon'ble Mr.Justice M.G.Chaudhari, Vice Chairman)

Heard the learned counsel for both the sides at some length. The respondents have filed a reply in which they have contended that this Tribunal has no jurisdiction to entertain the subject matter as it falls within the ambit of jurisdiction of Labour Court and consequently the interim order passed on 16-5-1996 may be vacated and the O.A. may be dismissed.

2. It is now the settled position in law under the decision of the Hon'ble Supreme Court in the case of Krishan Prasad Gupta v/s Controller, Printing and Stationery, 1995 (2) SC Service Law P.467, Judgements that inspite of Sec.14 of the Administrative Tribunals Act, the jurisdiction of the Industrial Tribunal, Labour Courts or other Authorities, under the Industrial Disputes Act or Authority created under any other Corresponding Law remains unaffected.

3. The applicants who were appointed as casual labour (fresh faces) by order issued by the D.R.M.(W), B.G.Office, S.C.Railway, Secunderabad dt.6-7-95, the appointment was not for any specific period and would ordinarily continue. It is admitted fact that the applicants have been conferred temporary status. Thus they are 'casual labour with temporary status' under the railway establishment. However, by order dt.13-5-96, issued by the Asst. Engineer at Bidar the services of the

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applicants have been terminated with immediate effect and their names are directed to be struck off the Muster Roll on the ground that there was no provision to retain them in service further. This order is sought to be challenged in this O.A.

4. The applicants although have joined ~~in the unit~~ together in this O.A. only one order of termination of service relating to Venkata-rajam has been produced and it is stated that similar order has been passed in respect of other applicants. We therefore proceed tentatively on the assumption that similar is the position in respect of applicants 2 to 6.

5. It is well established that the jurisdiction to entertain an application ~~will have to be~~ is determined by reference to the averments made in the plaint. The applicants have made the following categoric averments. ~~in the Application~~

" All the applicants are workmen as defined U/s 2(5) of the I.D.Act and their services were terminated by the impugned order dt.13-5-96, even though the order is named as termination order it is infact an order of retrenchment as defined U/s 2 (00) of the Act. As all the applicants roughly have put in more than 240 days of service ~~and also~~ 280 days all of them are entitled for the benefit of retrenchment benefits as laid down U/s 25(F) of the Act. The Hon'ble Supreme Court and all the High Courts and Tribunals in the country are pleased to hold that any order passed in violation of Sec. 25(F) of the Act, is void and in-operative..."

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"The services of the applicants were terminated under the impugned order without giving one month notice and without giving any reason whatsoever. The applicants submit that failure to give notice of retrenchment and non-payment of retrenchment compensation under order of retrenchment void. Hence the applicants are entitled to continue as CMR Gangmen under the 6th respondent."

6. The averments as above squarely relate to a dispute being raised under the Industrial Disputes Act. That is the thrust of the application in as much as they contend that the impugned order is in fact an order of retrenchment and also claim that they are denied payment of retrenchment compensation. They also complain violation of Sec. 25(F) of the I.D. Act. In view of these averments, we hold that this Tribunal has not got jurisdiction to entertain the instant application and the proper forum for the applicants to agitate their grievance would be the appropriate Labour Court. Consequently we are inclined to return the OA to the applicants for lack of jurisdiction with liberty to them to approach the appropriate forum.

7. The respondents have not confined their reply only to the point of jurisdiction but have raised contentions on merits which involve several questions needed to be gone into on merits. Since we are of the opinion that the Tribunal has no jurisdiction to entertain the O.A. we refrain from making any reference to those averments and the reply stands filed. It is made clear that the respondents ~~will~~ not be entitled to rely on this reply in the Labour Court but they will be at liberty to contest that application on merits and will be also at liberty to raise the same contentions raised in the reply, if they are so advised, so that the applicants will have full opportunity to deal with the same.

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8. Although the O.A. is not entertained by us on merits for want of jurisdiction yet as we are satisfied that the applicants have approached the Tribunal in an erroneous view of jurisdiction and that was a bona fide ~~error~~ issue on their part, in order to secure the ends of justice the interim order deserves to be extended for a reasonable period to enable the applicants to approach the Labour Court and seek interim order for otherwise the cause of the applicants may be frustrated. This is thus a fit case to call in and our inherent powers and extend the interim stay for a limited duration as indicated in the order below.

9. In the result the following order is passed:

- (1) The O.A. is ordered to be returned to the applicants for lack of jurisdiction with liberty to them to file a dispute on the same cause of action before the Labour Court appropriate in respect of the impugned order.
- (2) The interim order dt.16-5-96 is extended to enable the applicants to move the Labour Court for interim relief, on the following terms: viz.,
 - (i) The applicants shall approach the Labour Court within a period of 5 (five) weeks from today. In the event of failure of the applicants to approach the Labour Court within the time stipulated above the interim order shall stand vacated automatically thereafter i.e. after 5 (five) weeks from today.

[Signature]

[Signature]

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(ii) However in the event of the applicants approaching the Labour Court with an application for interim relief within 5 weeks from today after presenting the dispute then the interim order shall continue to operate till the order on the application for interim relief is passed by the Labour Court and shall cease to operate thereafter and the parties shall abide by the order of the Labour Court.

(3) All the rights and contentions of the parties on

merits are left open.

(4) No order as to costs.

(5) Office to return the O.A. with appropriate endorsement immediately retaining one copy for record.

(6) Copy of order expedited.

H. Rajendra Prasad
(H. Rajendra Prasad)
Member (A)

M.G. Chaudhari
(M.G. Chaudhari)
Vice Chairman

Dt. 30-5-1996
(Open Court Dictation)

Dy. Registrar (Jud)
7/5/96

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Copy to:-

1. Chief Personnel Officer, South Central Railways, Secunderabad.
2. Divisional Railway Manager(P), South Central Railways, B.G.Division, Secunderabad.
3. Sr.Divisional Engineer/Co-Ord/B.G. Secunderabad.
4. Divisional Engineer,West,B.G. Secunderabad.
5. Asst.Engineer,South Central Railways, B.G.Bidar.
6. Jr.Engineer(Permanent Way), South Central Railways, Parli.
7. One copy to Sri P.Krishna Reddy, Advocate, CAT.Hyderabad.
8. One copy to Sri V.Rajeshwar Rao, CGSC. CAT.Hyd.
9. One copy to Library,CAT.Hyd.
10. One spare copy.

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD : M(A)

Dated: 130-5 -1996

ORDER/JUDGMENT

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

O.A.No. 585/86

T.A.No.

(w.p.)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default

Ordered/Rejected.

No order as to costs.

Records See -
M. Justice Lallu Rao 2
in front. The paper be
returned to the counsel
with the endorsement by
Secty to Lallu Rao
of the Court by keeping
a copy of the same for
the record purpose

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