

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8275 of 1998

Date of Decision: 29-04-2005

S R BHARAI

Versus

UNION OF INDIA

(For Full Title See Page 2)

Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for reporting?

For the petitioner:

MR PH PATHAK

MR ASIM J PANDYA

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. This Special Civil Application arises out of the judgment and orders of Central Administrative Tribunal (CAT), Ahmedabad Bench, dated 12-03-1998/25-06-1998, in Original Application No.120 of 1992/Review Application No.21 of 1998, holding that petitioner is not entitled to

Whether Reporters of Local Papers may be allowed to see the Judgment?
protection under the provisions of the Industrial
Disputes Act, 1947 (for short 'the I.D.Act'),
particularly Section 25F.

2. Petitioner submits that he was selected after following the due procedure and given appointment against vacant post of Telephone Operator, vide order dated 21-11-1983. However, his services were terminated orally from 31-12-1989, although he had been working continuously as Telephone Operator. Aggrieved by the termination, he preferred Original Application No.120 of 1992 before the CAT, but vide order dated 12-03-1998, the Application was rejected. Review Application No.21 of 1998 was also rejected on 25-06-1998 in a mechanical way, without properly considering the questions raised.

3. Respondents opposed the Application and stated that CAT has no jurisdiction to entertain the Application, which, otherwise is barred by limitation; petitioner was initially working on hourly rate basis at Visavadar, later, this arrangement was discontinued on account of surplus staff in the District and automation of the Exchange; he was not regularly appointed, his services were to be utilised on hourly rate basis when there was shortfall in the strength of Telephone Operators due to the vacancies and he was relieved from service from 28-05-1985 and not from 1990, as suggested by the petitioner.

4. Petitioner disputes these averments and states that he was appointed on regular basis following due and proper procedure and was not engaged on hourly basis; he was paid salary at the end of the month and worked continuously without any break; he was transferred to other places as well and had completed 240 days; and Telephone Operators, declared surplus, had been absorbed in clerical cadre. It is denied that due to automation of Exchanges there was no work. It is stated that vacancies existed, against which there was need for Telephone Operators.

5. Shri P.H.Pathak, learned counsel for the petitioner, contends that petitioner was engaged regularly on monthly salary. He worked continuously without any break and completed 240 days of service, therefore, entitled to protection under the provisions of I.D.Act. It is submitted that oral termination of the petitioner without offering retrenchment compensation is illegal, arbitrary and against the provisions of I.D.Act,

since respondent did not follow the mandatory provisions of the I.D.Act, therefore, action of termination of petitioner's services is void ab-initio and as such petitioner is entitled to be considered as continuous in service with all consequential benefits. Reference is made to decisions: State Bank of India vs. N.S. Money (AIR 1976 SC 1111), L.Robert D'Souza vs. Executive Engineer, Southern Railway (AIR 1982 SC 854), H.D. Singh vs. Reserve Bank of India (AIR 1986 SC 132), Punjab Land Development and Reclamation Corporation Limited vs. Presiding Officer, Labour Court (AIR 1990(3) SCC 682), D.K.Yadav vs. I.M.A. Industries Limited (1993) 3 SCC 259, Sarabhai Chemicals vs. Subhash N. Pandya (1984(1) GLR 329).

6. Shri Asim J.Pandya, learned counsel for the respondents, submits that petitioner was offered work of short-duty Telephone Operator on hourly basis whenever there was shortage of regular Telephone Operator and as he was not appointed as regular Telephone Operator, question of completion of 240 days' service by the petitioner in a year does not arise. Reference is made to Himanshu Kumar Vidyarthi and others vs. State of Bihar and others (1997.4 SCC 391).

7. Therefore, questions fall for our consideration are nature of appointment of the petitioner, nature of work entrusted to the petitioner, period for which he worked and whether he was in continuous service and as such entitled to protection under the provisions of the I.D.Act.

8. Perusal of R.P.A.D. letter (Annexure-A) from the Divisional Engineer, Telegraphs, Junagadh Division, Junagadh of Indian Posts and Telegraphs to the petitioner clearly mentions that petitioner is being appointed pursuant to "recruitment to the cadre of Telephone Operator in the P & T Department". It is stated to have been made pursuant to public advertisement and petitioner's application. He was selected subject to terms specified therein, but none of the terms stated that appointment is on hourly basis, temporary and terminable by oral order. Therefore, there is no manner of doubt that petitioner was appointed on regular basis against available post to the cadre of Telephone Operators in the P & T Department. Contention to the contrary is liable to be rejected.

9. The question whether Telephone Department is an 'industry' has been answered by the Apex Court in General Manager, Telecom vs. A.Srinivasa Rao and others (1997.8

SCC 767) overruling two of its earlier decisions in Sub-Divisional Inspector of Post v. Theyyan Joseph (1996.8 SCC 489) and Bombay Telephone Canteen Employees' Assn. v. Union of India (1997.6 SCC 723 : AIR 1997 SC 2817). Once Telecom Department has been held 'industry' by Apex Court in A.Srinivasa Rao case (supra), Himanshu Kumar Vidyarthi case (supra) is not helpful to the respondents in this case. Dailywager is entitled to protection of Section 25F of I.D.Act provided he has continuously served for a requisite statutory minimum period in a year. Having done so, termination of service of such a workman without complying with Section 25F is illegal (See Rattan Singh v. Union of India and another - 1997.11 SCC 396). It is contended by the respondents that petitioner did not complete 240 days in a year. We fail to understand this contention. In the affidavit of Vinod Prakash, T.D.M. Junagadh, dated nil November 1992, it is stated in paragraph 7 that petitioner was relieved from service with effect from 28.5.1989 and not in 1990 as suggested by the applicant. With this background, the documents filed by the respondents vide affidavit of S.P.Snehi, A.G.M. (Admn.), O/o.G.M.T.D., Junagadh dated 17-02-1998, may be examined. Counting backwards from 27-05-1989 to 20-05-1988 during the year 1989-88, the total working period comes to 240 days in a year taking into consideration the per day normal working hours of an employee. The case of petitioner, who falls under Section 25B(1), he having been in continuous service for a year, as such satisfies the requirement of Sections 25B(1) and 25B(2) of the I.D.Act. (See Moti Ceramic Industries v Jivuben Rupabhai and others (2000-2(41) GLR 1558) and Wormen of American Express International Banking Corporation v Management of American Express International Banking Corporation (AIR 1986 SC 458). Therefore, the petitioner is entitled to protection of Section 25F of the I.D.Act both ways. The termination is hit by Section 25F r.w. Rule 77 of Industrial Disputes (Central) Rules, 1957, therefore, it amounts to retrenchment, being violative of these provisions.

10. Next question is to what relief the petitioner is entitled to. It is found that Telecom Department is an 'industry'. Further, the action of the respondents terminating the services of the petitioner amounts to retrenchment as having not followed the mandatory provisions of the I.D.Act, therefore, illegal and non-est. Giving consideration to all these aspects of the matter, we are of the opinion that the defence put up by the respondents has no substance and petitioner is entitled to reinstatement in service. It is now to be considered whether the petitioner is entitled to full backwages or not. Petitioner was deprived of rendering

services to the respondents, although he was willing to serve, but taking into consideration that he is getting back to service, interest of justice would be met by payment of 40% of backwages to the petitioner (See Management of M.C.D. vs. Prem Chand Gupta and another AIR 2000 SC 454, Vikramaditya Pandey v Industrial Tribunal and another 2001 AIR SCW 310 and Bank of Baroda v. Ghemarbhair Harjibhai Rabari - 2005 AIR SCW 1817). No other point was urged.

11. Consequently, Petition is allowed. Orders of Central Administrative Tribunal in Original Application No.120 of 1992/Review Application No.21 of 1998 dated 12-03-1998/25-06-1998 are set aside. Petitioner shall be deemed to be in continuous service of respondents from the date his services were terminated with 40% back wages. He shall also be entitled to the benefits he could have availed in case his services had not been terminated. Parties shall bear their own costs.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

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