

(2010) 04 RAJ CK 0069
In the Rajasthan High Court

Hari Singh and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226, 227, 309
Industrial Disputes Act, 1947 — Section 25, 25B

Citation : (2010) 2 WLN 667

Hon'ble Judges : Gopal Krishan Vyas, J;A.M. Kapadia, J

Bench : Division Bench

Judgement

Gopal Krishan Vyas, J.—In this writ petition filed under Article 226 & 227 of the Constitution of India, petitioners are challenging the judgment dated 17th August 2001 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur (hereinafter referred to as "the Tribunal") praying that "respondents may kindly be directed to reinstate the petitioners in continuity of service with all consequential benefits."

2. As per the averments made in the writ petition, petitioners were appointed in service under respondent No. 2 in Air Force Mess, Uttarlai on different dates to work as Lascar and they were discharging their duties regularly since their appointment and completed 240 days in service and their services were terminated with effect from 1st January 1997 by verbal order. The petitioners challenged the verbal termination order before the Tribunal by filing Original Application in which it was mentioned that as per Model Standing Orders applicable upon various units of different establishments, a casual labour/workman who has completed six months service in the same establishment or under the same employer within the meaning of Sub-clause (b) of Clause (2) of Section 25B of the Industrial Disputes Act shall be brought on the regular strength of the establishment and his pay shall be fixed at the minimum in the time scale or pay applicable to the work he has been doing as a casual workman. In the OA filed by them against verbal termination order, a specific ground was taken that prior to termination, the petitioners preferred OA No. 354/1996 for

regularization in which notices were already issued but only to deprive the fruits of that petition, the services of the petitioners have been terminated. It is also brought to the notice of the Tribunal that services of the petitioner-applicants were terminated without compliance of Section 25F, G & H of the Industrial Disputes Act so also without complying with Rule 77 of the Industrial Disputes Rules, therefore, their termination is illegal.

3. In the OA, a specific ground was taken by the petitioners before the Tribunal that action of the respondents is per-se malafide because only to deprive the applicant-petitioners from the benefit of regularization, the verbal termination order has been passed that too without following the principles of natural justice and in violation of the Model Standing Orders, therefore, verbal termination of petitioners w.e.f. 01.01.1997 may kindly be set aside and the respondents may kindly be directed to reinstate the applicants.

4. In the reply filed by respondents, it was admitted that five applicants were employed in the Air Force as casual labour for conservancy services at regular intervals from different dates. It is also brought to the notice of the Tribunal that no selection process was resorted before employment and petitioners were paid wages at par with the rate of payment made by Municipality, Barmer for Sweepers. It is also brought to the notice of the Tribunal that none of the applicants have worked continuously for 240 days in a year which can be seen from the details of Attendance Register annexed with the reply. It is also submitted in the reply by the respondents that services of the applicants were utilized as and when required as per sanction from Command Headquarter. It is also submitted that direct recruitment of Grade "C" & "D" civilian posts was resorted by the Station as per vacancies released vide Air Headquarter letter dated 28.09.1995 and for recruitment names of candidates were requisitioned from Employment Exchange, Barmer and name of one of the petitioners Umed Singh was sponsored for the post of Lascar and not for Safaiwala but Umed Singh was not found suitable for the post of Lascar, hence his case was not recommended for employment. As per respondents, none of the petitioners completed 240 days in a year, so also respondent department is not covered under the definition of "Industry" as defined under the Act of 1947 as they are performing sovereign function of the Union of India . The petitioners were engaged only for specific nature of work as and when required and after completion of that work there is no question of taking them on duty, therefore, no relief can be granted as prayed for by them.

5. The Tribunal, after considering all aspects of the matter, dismissed both the original applications filed for the purpose of regularization and for quashing the verbal termination order vide judgment dated 17th August 2001.

6. In this writ petition, the petitioners are challenging the validity of the verbal termination order and the judgment rendered by the Tribunal dated 17th August 2001. The contention of the petitioners is that they were working on daily wage basis and as per the Scheme framed by the Central Government for the purpose

of regularization under which they were entitled for grant of temporary status and regularization and for the said relief earlier they preferred Original Application before the Tribunal but during pendency of the said Original Application, the respondents terminated their services by verbal order therefore by way of filing subsequent OA No. 254/1997 the petitioner-applicants challenged the verbal order on the ground that their services have been terminated only to deprive them from the fruits of regularization that too without following the provisions of Industrial Disputes Act and Principles of Natural Justice but learned Tribunal erroneously dismissed both the OAs filed for regularization as well as against the verbal termination order on wrong premise of law. While dismissing OA No. 254/1997, it is observed by the Tribunal that applicants cannot claim any relief for quashing their verbal termination order from the Tribunal under the provisions of Industrial Disputes Act, 1947.

7. It is also observed that for implementing the provisions of Standing orders and claiming relief under the labour laws other forums are available where applicants can raise their grievance if they are so advised.

8. It is argued that above finding of learned Tribunal is totally erroneous because in case of petitioners' termination respondent department was under obligation to follow principles of natural justice as well as the provisions of Industrial Disputes Act but without following any procedure illegally terminated the services of the petitioners, therefore, the finding of learned Tribunal deserves to be quashed on the ground that while deciding the OAs, the learned Tribunal failed to consider the fact that Central Government has framed a scheme for grant of temporary status and regularization of the casual workers under which claim of the petitioners was under consideration before Tribunal. In this view of the matter, it is obvious that the finding of learned Tribunal while dismissing the OA filed by the petitioners against verbal termination order is contrary to the basic principles of law, therefore, relief prayed for in OA was required to be given.

9. Per contra, learned Counsel appearing on behalf of Union of India vehemently argued that petitioners are not entitled for any relief because they were admittedly appointed as Casual Labours and they were not regular employee nor they can be treated as "Workman" as defined under the Industrial Disputes Act, therefore, the finding of learned Tribunal is perfectly in consonance with law and the petitioners are not entitled for any relief, therefore, the judgment rendered by the Tribunal may kindly be upheld because the finding of Tribunal is perfectly in accordance with law that no casual labour can claim any right to remain in service.

10. We have considered rival submissions made by both the parties and perused the record. It is true that before termination of the petitioners' services by verbal order, an OA for regularization of the services was filed before the Tribunal against the respondents and during pendency of the said OA, by verbal order the services of the petitioners were discontinued. As per Para 2 of the reply filed before the Tribunal, the dates were given for initial appointment of the

petitioners, which are as follows:

- (a) Shri Umed Singh July 1990
- (b) Shri Chain Singh December 1992
- (c) Shri Mewa Ram January 1993
- (d) Shri Pokhra Ram November 1994
- (e) Shri Hari Singh January 1994

Meaning thereby, the engagement of the petitioners as causal labour has been admitted but it is denied that any selection was made prior to their employment but respondents made specific assertion in reply before the Tribunal that petitioners were employed as causal labours on different dates. It is also admitted that Central Government framed a scheme which is on record as Annex. 5 whereby scheme for grant of temporary status and regularization of causal labours was formulated and petitioners while working as Labour made a prayer in earlier OA that respondent may be directed to consider their case under the Scheme for the purpose of granting temporary status and regularization. We have perused the said scheme. Obviously, the scheme was framed with certain conditions and the respondents were under obligation to consider the candidature of the petitioners but their case was not considered and in earlier OA was filed by the petitioners. The respondent department is a department of welfare State and under Article 21 of the Constitution right to livelihood has been granted. Admittedly, petitioners were appointed on different dates and they were in service when earlier OA was filed for regularization. The notices of OA in respect of regularization were issued by the Tribunal and after service upon respondents, it was duty of the respondents to first consider the cases of the petitioners under the said scheme but without considering their case for regularization and without submitting reply before Tribunal, the services of the petitioners were terminated that too without following the principles of natural justice. The petitioners preferred OA against the verbal terminal order and prayed that petitioners' verbal termination is in contravention of Industrial Disputes Act so also against the principles of natural justice because no notice before termination was given to the petitioners.

11. In reply filed by the respondents, only ground was taken that if petitioners are claiming that they are workmen then they cannot claim their relief before the Tribunal and they are required to agitate their matter before the Industrial Tribunal. In our opinion, it is true that if any disputed question of fact exists for the purpose of granting relief under the Industrial Disputes Act then a workman is required to raise Industrial Dispute to get adjudication but in the peculiar facts of this case that during the pendency of OA for regularization, the services of the petitioners were dispensed with that too without following any procedure or without giving any notice to them, then it can be said that the services of the petitioners were terminated while exercising arbitrary powers so also giving

complete go by to the principles of natural justice. The Hon'ble Apex Court in the case of D.K. Yadav Vs. J.M.A. Industries Ltd., held that termination of service involves civil consequences and results in deprivation of right to livelihood implicit under Article 21 of the Constitution of India, therefore, action of terminating services of a workman or casual labour must be just, fair and reasonable in accordance with law. The action/decision administrative in nature which involves civil consequences be just, fair, reasonable, non-arbitrary and in consonance with the principles of natural justice. Para 11, 12, 13, & 14 of the D.K. Yadav's case are as follows:

11. The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders effecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial enquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial enquiry and not to administrative enquiry. It must logically apply to both.

12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.

13. In Delhi Transport Corporation v. D.T.C. Mazdoor Congress this Court held that right to public employment and its concomitant right to livelihood received protective umbrella under the canopy of Articles 14 and 21 etc. All matters relating to employment includes the right to continue in service till the employee reaches superannuation or until his service is duly terminated in accordance with just, fair and reasonable procedure prescribed under the provisions of the Constitution and the rules made under proviso to Article 309 of the Constitution

or the statutory provisions or the rules, regulations or instructions having statutory flavour. They must be conformable to the rights guaranteed in Part III and IV of the Constitution. Article 21 guarantees right to life which includes right to livelihood, the deprivation thereof must be in accordance with just and fair procedure prescribed by law conformable to Articles 14 and 21 so as to be just, fair and reasonable and not fanciful, oppressive or at vagary. The principles of natural justice are an integral part of the guarantee of equality assured by Article 14. Any law made or action taken by an employer must be fair, just and reasonable. The power to terminate the service of an employee/workman in accordance with just, fair, and reasonable procedure is an essential inbuilt of natural justice. Articles 14 strikes at arbitrary action. It is not the form of the action but the substance of the order that is to be looked into. It is open to the court to lift the veil and gauge the effect of the impugned action to find whether it is the foundation to impose punishment or is only a motive. Fair play is to secure justice, procedural as well as substantive. The substance of the order is the soul and the affect thereof is the end result.

14. It is thus well settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted" complying with the principles of natural justice. In *D.T.C. v. D.T.C. Mazdoor Congress and Ors.* the Constitution bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without enquiry offended Article 14. The order terminating the service of the employees was set aside.

12. Upon perusal of above adjudication made by the Hon"ble Apex Court, we are of the opinion that action of respondents in terminating the services of the petitioners by verbal order during the pendency of OA for regularization before the Tribunal was totally illegal and was in violation of principles of natural justice. The learned Tribunal has failed to consider this aspect of the matter and has straightway dismissed both the OAs filed by the petitioners for regularization as well as against termination, which is not proper. In this view of the matter, without commenting upon the finding whether Industrial Disputes Act is applicable or not, we are of the opinion that after implementation of the Scheme, the administrative authorities are under obligation to act reasonably, fairly and their actions should not be arbitrary and against the principles of natural justice. Therefore, while following the adjudication made by the Hon"ble Apex Court in *D.K. Yadav's case* (supra), the order under challenge dated 17th August 2001 (Annex.11) in OA No. 254/1997 is hereby set aside and further the verbal termination order of the petitioners w.e.f. 01.01.1997 is also hereby quashed and set aside. The respondents are directed to take the petitioners on duty forthwith with continuity in service but the petitioners shall not be entitled for back wages

from the date of their verbal termination order dated 1st January 1997 but they shall be entitled to 50% back wages with effect from the date of judgment of Central Administrative Tribunal i.e. 17th August 2001.

13. Writ Petition is allowed in above terms.