

**(2002) 08 AP CK 0044**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Petition No. 1211 of 1995**

Union of India (UOI)

APPELLANT

Vs

P. Mahipal Reddy and Another

RESPONDENT

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**Date of Decision :** 07-08-2002

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 25F, 2A

**Citation :** (2002) 08 AP CK 0044

**Hon'ble Judges :** L. Narasimha Reddy, J

**Bench :** Single Bench

**Advocate :** R.S. Murthy, Addl. Central Government Standing, for the Appellant;  
C. Suryanarayana, for R-1, for the Respondent

**Final Decision :** Allowed

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## Judgement

L. Narasimha Reddy, J.—In this writ petition, the Award of the Industrial Tribunal, Hyderabad, in I.D.No.50 of 1991 dated 5-10-1993 is challenged by the Union of India, represented by its Sub Divisional Officer, Telecommunications, Medak.

2. The 1st respondent was engaged as casual labourer with effect from 1-4-1986. He alleged that though he was initially engaged as casual labourer, he was asked to perform the duty of Telephone Operator, with effect from 2-5-1986 and thereafter he was engaged on miscellaneous works at the Telephone Exchange till the end of May 1987. Complaining that he was discharged without issuing any notice or complying with the provisions of Section 25F of the Industrial Disputes Act (for short "the Act"), he raised an Industrial Dispute before the Industrial Tribunal, the 2nd respondent.

3. The petitioner refuted the claim of the 1st respondent. It was its case that the 1st respondent was engaged as casual labourer in April 1986 and he was engaged as such till February 1987 and thereafter since there was no work, he was discharged. It was also contended that even at the time of engagement, the 1st respondent was informed that he would be continued as long as the work

exists and he shall not have any right to be regularised or continued after the completion of the work. A declaration was also secured to that effect. The petitioner flatly denied that the 1st respondent was engaged as Telephone Operator at any point of time.

4. The Industrial Tribunal, through its Award dated 5-10-1993, took the view that the termination of the services of the 1st respondent was contrary to Section 25F of the Act. However, it went further and held that the 1st respondent was entitled to be regularised as Telephone Operator, reinstated into service with full back wages, continuity of service, protection of seniority and other attendant benefits.

5. Sri R.S. Murthy, learned Additional Standing Counsel for the Central Government, submits that the 1st respondent was never engaged as Telephone Operator and, at any rate, the question as to whether he is entitled to be regularised as Telephone Operator, cannot constitute the subject matter of the Industrial Disputes. He states that the Industrial Tribunal has gone beyond the scope of the Industrial Dispute in holding that the 1st respondent is entitled to be regularised as Telephone Operator. So far as the direction as to reinstatement and back wages is concerned, the learned counsel submits that the engagement of an individual as casual labourer, by its very nature, is work specific and once the work or project for which the individual is engaged is completed, such a casual labourer cannot be continued at all.

6. Sri C. Suryanarayana, learned counsel for the 1st respondent, on the other hand, submits that though the petitioner was initially engaged as casual labourer, he was entrusted with the work of Telephone Operator and, as such, he was entitled to be regularised as Telephone Operator. He states that once the 1st respondent has been engaged for more than 240 days, he could not have been terminated except following the procedure stipulated u/s 25F of the Act.

7. The 1st respondent was engaged as casual labourer with effect from 1-4-1986. The contention of the 1st respondent in this regard was accepted by the petitioner. The petitioner, however, disputes the allegation of the 1st respondent that he performed the duties of Telephone Operator with effect from 2-5-1996. The question as to whether the 2nd respondent worked as Telephone Operator and the relief of regularisation, as such, has two facets. The first one is as to the competence of the Industrial Tribunal and the 2nd one is as to whether the 1st respondent made out a case in that regard.

8. The Industrial Tribunal is vested with the power to entertain and decide Industrial Disputes. The ID in question was raised by the 1st respondent directly, i.e., u/s 2-A(ii) of the Act. Such an Industrial Dispute can be maintained only when a workman is dismissed or removed from service. This contemplates that the workman holds a particular post before he came to be dismissed or removed. If the Labour Court or the Industrial Tribunal is satisfied that the dismissal or removal was not proper or sustainable, it can direct reinstatement. Whenever such a reinstatement is ordered, it shall be only to the post held by a workman

before he was removed or dismissed from service. The Industrial Tribunal is not competent to go beyond that and direct regularisation in any particular post. Its duty ends where it restores the position of the workman, which he occupied before he came to be removed or dismissed. In this case, the Industrial Tribunal, after discussing the matter touching on the question of regularisation, held as under:

"So, relying upon the orders and circulars, I am of the clear view that the petitioner workman is entitled to such absorption as Telephone Operator."

9. This finding as well as the direction by the Industrial Tribunal, that too in the proceedings initiated by the workman challenging the removal or discharge in contravention of Section 25F of the Act, is totally outside its jurisdiction and the same cannot be sustained.

10. The next facet is as to whether the 1st respondent has made out his case in this regard at all. In a way, having regard to the finding of this Court in the preceding paragraph, this question does not arise. However, it becomes relevant in the sense if in fact the 1st respondent held the post of Telephone Operator and he not was reinstated to that post. It is from this point of view that this aspect is dealt with. In his Statement of Claim, the 1st respondent alleged as under:-

"He was employed as Cable Laying Mazdoor for 8 days in April, 1986 and kept idle for the rest of the month. He was again employed for one day on 1-5-1986 as such Mazdoor. But after taking notice of the fact that the petitioner passed SSC and that there was shortage of Telephone Operators at Siddipet, he was employed to perform the duties of Telephone Operator at Siddipet Telephone Exchange w.e.f. 2-5-1986 "in the strength of Casual Mazdoors". He was so employed till 9-5-1987 i.e., for one year and seven days. Later, the petitioner was employed on other miscellaneous works at the Telephone Exchange at Siddipet till the end of May, 1987."

11. From this it cannot be said that the petitioner was engaged as Telephone Operator at any point of time. His engagement was as a casual labourer and by the time he came to be discontinued, even according to him, he was employed to undertake miscellaneous works in the Telephone Exchange. The petitioner in its counter in the ID stated as under:

"The petitioner was engaged as a casual mazdoor in sub-division on the following dates viz., 8 days in April 1986, 31 days in May 1986, 30 days in June 1986, 31 days in July 1986, 31 days in August 1986, 30 days in September 1986, 31 days in October 1986, 30 days in November 1986, 31 days in December 1986, 31 days in January 1986 and 28 days in February 1987."

12. This aspect was not contradicted either by subsequent pleadings or by leading any evidence. Therefore, such an engagement cannot be said to be an employment as Telephone Operator even for a brief period.

13. Now remains the question as to whether the retrenchment of the petitioner

was contrary to the provisions of Section 25F of the Act. Even from the counter affidavit filed by the petitioner herein, it is evident that the 1st respondent worked for a period exceeding 240 days. As such, the 1st respondent could not have been retrenched except by following the provisions of Section 25F of the Act. Admittedly, the petitioner did not issue notice of one month nor paid the retrenchment compensation, as required u/s 25F of the Act. In that view of the matter, the retrenchment was illegal. Therefore, no exception can be taken to the order passed by the 2nd respondent directing reinstatement of the petitioner. Reinstatement of the petitioner shall, however, be as casual labourer.

14. So far as the back wages are concerned, the Industrial Tribunal awarded them in full. At the time of admission of the writ petition, the petitioner undertook to reinstate the petitioner and sought for stay of operation of the award as regards other aspects. The 1st respondent filed CC.No.53/97 alleging that he was not reinstated. It was stated by the petitioner herein that the 1st respondent insisted for reinstatement as Telephone Operator alone, refused to join duty as casual labour and the same is not permissible. The contempt case, however, was withdrawn. The averment of the petitioner that the 1st respondent refused to join duty as casual labourer remains unrebutted. Therefore, the 1st respondent is not entitled for the back wages during which the writ petition was pending.

15. The writ petition is accordingly allowed in part; setting aside that part of the Award wherein the 2nd respondent held that the 1st respondent was entitled to be absorbed as Telephone Operator. In all other aspects, the Award is upheld, subject to the observation made above as regards payment of back wages. There shall be no order as to costs.