Exh.29.

GJRJ160001212025	Received on :	20.06.1998		
	Registered on :	20.06.1998		
	Decided on :	**30.03.2026**		
	Duration :	**27**	**09**	**10**
		Yrs.	**Mths.**	**Days**

Before the Hon'ble Member and Presiding Officer of Industrial Tribunal at Rajkot.

Ref. (I. T. C.) No.60/2025

[Old Ref. (I.T.C.) No.36/1998]

First Party:: 1. The Sub-divisional Officer, Phones,
Telecom Department,
Surendranagar.

V/S

Second Party:: 1. Govindbhai Meghjibhai Rathod,
Address: Village & Post: Kerali,
Vankar Vas, Taluka: Wadhwan,
District: Surendranagar.

##########

Reference under sec.10 of the I. D. Act.

##########

For First Party : Ld. advocate Mr. G. K. Bhatt.

For Second Party : Ld. advocate Mr. R. B. Gogia.

(No instruction submitted in this Tribunal).

: Award :

(1). The first party herein is the Telecom department which then after is converted to Bharat Sanchar Nigam Limited (BSNL) as well as the second party is the employee. The above first as well as second party for the sake of brevity and deciding this industrial dispute are referred as '*the opponent*' and '*the applicant*', respectively.

(2). The present industrial dispute was forwarded for adjudication by the Ministry of Labour under the Government of India to the then Industrial Tribunal, Rajkot, as the conciliation proceeding before it could not fructify, *vide* letter dtd.19.05.1998, as per it's order No.L-40012/106/97-IR(DU) and the exact terms of reference are as under:

"Whether the action of the Management of SDO (Phones), Surendranagar in terminating the services of Shri Govindbhai Meghjibhai Rathod is legal & justified? If not, what relief the workman is entitled to?"

(3). Now before going to the chequered history of this reference case, it is required to note that the present dispute has emerged in the year 1988 and since the first party / opponent was the establishment under the control of Central Government, so as per sec.2(a) of the Industrial Dispute Act, the appropriate Government for it is the Central Government, hence the dispute was raised before the authority under the Central Government. At the said relevant time there was no existence of Central Government Industrial Tribunal (hereinafter referred as CGIT) so

the dispute was referred to the Industrial Tribunal at Rajkot for adjudication. Then after as and when the CGIT came in to existence the case was transferred to CGIT, Ahemdabad. Further on looking to the proceedings of this case it transpires that subsequently the case was again transferred to the State Government Industrial Tribunal and was again re-transferred to CGIT.

(3.1). Lastly again as per the Order No.L-20025/01/2025-IR(CM-I) dtd.02.05.2025 and Corrigendum No.L-20025/01/2025-IR(CM-I) dtd.07.08.2025 of the Deputy Director, Ministry of Labour and Employment, Government of India and on basis of the Office Order No.ADT/1/2025/5516 dtd.29.08.2025 passed by the President, Industrial Court, Ahemdabad, the present case along with other cases were again transferred to this Tribunal for adjudication since the disputes were pertaining to territorial jurisdiction of this Tribunal. Hence, the present case was issued new number as Ref. (I.T.C.) No.60/2025.

(3.2). So the present case record like a punching bag has been transferred and re-transferred from one Tribunal to another Tribunal which has effected the future of the litigants and has kept them waiting for the result of the case, which has taken long years and decades in some cases like the present one.

(3.3). After the case was transferred to this Tribunal it was registered by issuing new number and notices were issued to the

parties, wherein the applicant has not remained present and his advocate on record has submitted no instruction pursis, then after notice was issued to the applicant but he has not remained present, whereas the opponent side has remained present through their advocate and since the present case was pending at the stage of evidence of the applicant side so it was proceeded from the said stage.

(4). Now if we peruse the case proceeding then the applicant has submitted his statement of claim at Exh.02. The facts of it in nutshell is as below:

The applicant has stated that he was continuously employed as a casual labour under the opponents from January 1988 to May 1988. The applicant has stated that the copy of the certificate showing the working particulars is produced with the statement of claim. He has stated that he has worked continuously for more than 240 days in the year. He has stated that his service was terminated orally, with malafide intention of not allowing him to complete further 240 days in a year without any written lawful order and without serving notice of one month or providing notice pay in lieu of the notice or without paying the retrenchment compensation as is required to be done under sec.25-F of the I. D. Act. The applicant has stated that the pre-condition is required to be complied with as is laid down in the I. D. Act. During the months, he is shown to have worked less than 30 / 31 days a month as well as he is wrongly and malafidely not allowed to work. Even authorized leave is treated as an absence during these periods. The applicant has stated that the persons

similarly situated like him and persons with subsequent date of engagement after him are allowed to work, by the opponents by inducting them in the department as casual labours, in contravention of sec.25-G, sec.25-H of the I. D. Act. It is contended that fresh persons were also appointed as casual labour after termination of workman, without affording him any opportunity to be employed.

The applicant has stated further that he has also produced some circulars, wherein he is eligible for re-engagement and temporary status. The applicant has stated that the termination of his service is invalid and ineffective, which deserves to be quashed. The applicant has stated that the said oral termination of his service is clear violation of sec.25-F & sec.25-N of the I. D. Act. Further since juniors and fresh persons were continued / inducted in service so it amounts to violation of Articles 14 & 16 of the Constitution of India as well as violations of the provisions of sec.25-G & H of the I. D. Act. It is contended that such persons were inducted as casual labour by showing reasons of judgment passed by CAT, Ahemdabad and Industrial Tribunal, Ahemdabad, so he also has right to be reinstated with consequential benefits from the date such junior persons are inducted, on the ground of equity and similar treatment. He has stated that he is unemployed since the termination of his service, thereby has prayed to allow the reference case with cost by quashing the act related to termination of his service and has further prayed that he be treated as continuous in service for all purposes with full back-wages as well as has prayed for granting cost of this proceeding from the opponent.

(5). The opponent has submitted written statement *vide* Exh.07, wherein it has denied the contentions of the applicant and has stated further that the application is barred by limitation. It is contended that the applicant was working on daily wage basis and the daily wager employee cannot acquire any right to hold civil post. It is contended that the applicant had worked under SDOP, Sen from January 1988 to May 1988 for 135 days only, with breaks in specified period and he had left work from dt.01.06.1988 onwards at his own accord without any intimation to the department for the reason best known to him. He might have left the work after dt.01.06.1988 onwards as there was less wages in comparison to other department / sectors. The applicant has not worked for 240 days in any year. Hence, he is not entitled for regularization in the department as per the Rules & Policy. Hence there is no question of oral termination and giving lawful order, so there is no breach of sec.25-F of the I. D. Act therefore the claim of retrenchment or reinstatement does not arise and the application is to be rejected. The applicant has raised the dispute after lapse of more than 8 years knowing the judicial trend that those who have filed a case in the Court are directed to be automatically regularized. It is stated that no juniors are re-engaged except as per the order passed by the CAT, Ahemdabad. So it is contended that the applicant has not completed continuous work for 240 days hence the question of complying with sec.25-F of the I. D. Act does not arise. It is contended further that the circulars mentioned by the applicant are applicable to those casual labours who were engaged during the period from dt.31.03.1985 to dt.22.06.1988, who are still

continued and not absent for the last 365 days counted from dt.17.12.1993. But the present applicant had already left the service at his own accord for the reason best known to him without any intimation to the department. It is contended that the applicant has not mentioned about his whereabouts and the source of income. He might be having his family, parents, brothers, sisters and other dependents too, so without any earning he cannot discharge his responsibilities towards his family members. This matter has been suppressed which should be got investigated. It is contended that the applicant is not entitled for any relief, thereby, the opponent has prayed that reference is required to be rejected.

(6). The following evidence is produced from applicant side.

: Oral Evidence :

1	Exh.21.	Affidavit of chief examination of the applicant.

: Documentary Evidence :

1	Mark-5/1.	Copy of certificate showing details of working days issued by the opponent.
2	Mark-5/2.	Copy of letter dtd.22.09.89 issued by Asstt. Director General (STN) N.D. department.
3	Mark-5/3.	Copy of letter No.269-4/93/8/STN-II dtd.17.12.1993.
4	Mark-5/4.	Copy of 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme.
5	Mark-5/5.	Copy of judgment passed in OA Nos.2370/89

		and 248, 502, 694/93 in case between Gopal Sharma v/s Union of India.

The applicant after submitting his affidavit of chief examination has not remained present and before this Tribunal his advocate on record has submitted no instruction pursis. The notice was then after served to the applicant even though he has not appeared, so as per order passed below Exh.27, the said evidence in form of affidavit was discarded and the right of the applicant side for submitting evidence was closed.

(7). The opponent side has not produced any sort of evidence i.e. oral or documentary and has submitted evidence closing pursis at Exh.28.

(8). Herein as discussed earlier the applicant has not remained present and his Ld. advocate has submitted no instruction pursis, so no argument is put forth from the applicant side, whereas the Ld. advocate of the opponent has argued orally.

(9). Having heard the Ld. advocate of opponent side and having perused the case record, this Tribunal finds that four issues have emerged for consideration and judicial decision in the present industrial dispute.

(1). Whether the establishment of the opponent falls under the purview of industry as defined in sec.2(j) of the I. D. Act?

(2). Whether the applicant proves that he was terminated illegally by the opponents?

(3). Whether the applicant is entitled for the relief of reinstatement on his original post with back wages or any other relief?

(4). What order?

The answers to the above issues are as below:

(1). Affirmative.

(2). Negative.

(3). Negative.

(4). As per final order.

(10). Reasons for issues::

(11). Issue No.1::

(1). The opponent side herein is the Telecom Department so first it is to be decided that whether said department comes under the purview of an industry as defined in sec.2(j) of the I. D. Act and therefore the provisions of I. D. Act are applicable to it. At this juncture, it is fruitful to refer *sec.2(j)*, the definition of *"industry"*, under the I. D. Act, which is as under:

Sec.2(j):

"industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or

avocation of workmen.

(2). The amended definition of "industry" has not yet come into existence. So to understand the scope of the existing definition, it will be necessary to refer the citation, the case before ***hon'ble Supreme Court*** between ***Bangalore Water Supply and Sewerage Board v/s A. Rajappa,*** which was decided by the bench of seven Judges. The same citation is also referred again in case between ***Karnani Properties Ltd. v/s State of W. B.*** and in case of ***MGT of Somvihar Apartment Owners Housing Management Society Ltd. v/s Workman c/o Indian Engineering & General Mazdoor.*** It is held that the scope of "industry" as defined in sec.2(j) has a wide import. It was held as under:

(a). Where there is

(1) Systematic activity

(2) Organized by co-operation between employer and employee (the direct and substantial element is chimerical)

(3) For the production and / or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but motive of material things or services geared to celestial bliss eg. Making on a large scale prasad or food) primafacie, there is an "industry" in the enterprise.

(b). Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c). True focus is functional and decisive test is the nature of activity with special emphasis on employer – employee relations.

(d). If the organization is a trade or business it does not cease

to be one because philanthropy animating the undertaking.

(3). Here in this case looking to the opponent it is a Telecommunication department and the applicant herein was appointed as a casual labour. Further looking to the document produced by the applicant at mark-5/2, which is the letter dtd.24.08.1990 of the opponent in form of direction issued by the Assistant Director General (STN), wherein it is stated that while retrenching the casual labours in the department, the provisions of sec.25-F of the I. D. Act is applicable and same is to be observed. This itself signifies that since the department of the opponent was an industry as defined in the I. D. Act, so only the said circular was issued directing to comply the provisions of sec.25-F while retrenching the casual labours. Further looking to citation which is the case before ***hon'ble Apex Court*** between ***G. M. Telephones v/s A. Srinivasa Rao***, wherein in view of the decision of ***Bangalore Water Supply Case*** it has been held that the dispute is an industrial dispute. So considering the above discussion, it is sufficient enough to conclude that the establishment of the opponent comes under the purview of the definition of an "industry", of the I. D. Act and hence answer to issue No.1 is given in ***"affirmative"***.

(12). **Issue Nos.2 & 3::**

(1). As the facts of both these issues are interconnected so the discussion of the same is done together to avoid repetition. Now looking to issue No.2, it is regarding whether the applicant

was illegally terminated? For this purpose the applicant has to initially prove that he was workman of the opponent, further he has to prove that he has served continuously as per the provision of **sec.25(B)** of the I. D. Act and then after he was retrenched from service without following the provisions of **sec.25(F)** or any other mandatory provisions of the I. D. Act.

(2). The applicant in his statement of claim has stated that he was employed as a casual labour under the opponent from January 1988 to May 1988. Per contra, the opponent has contended that the applicant had worked under SDOP, Sen from January 1988 to May 1988 for 135 days only with breaks in specified period and he had left work from dt.01.06.1988 onwards at his own accord without any intimation to the department for the reason best known to him, so the claim of reinstatement is not justified hence same should be rejected.

So, looking to the said pleadings, it is an admitted fact that the applicant has worked as a casual labour. Therefore, considering the said work it is of unskilled type which is included in the definition of "workman" i.e. sec.2(s) of the I. D. Act. Hence, it is proved that the applicant is the workman as provided under the statute. Further the ingredients of being a casual or temporary or regular or daily wager or full time or part time workman are not required to be considered for said definition and only the nature of work is relevant factor.

(3). At this juncture looking to the citation, the case before ***hon'ble Supreme Court*** between ***Devinder Singh v/s***

Municipal Corporation, Sanaur, wherein it is held that whether a person is part-time employee or a contractual employee or a temporary employee or casual employee, all are workman as provided in sec.2(s). It is held that the source of employment, the method of recruitment, the terms and conditions of employment / contract of service, the quantum of wages and mode of the payment are not at all relevant for deciding, whether or not a person is a workman within the meaning of sec.2(s). Further looking to the judgment which is also the case before ***hon'ble Apex Court*** between ***Srinibas Goradia v/s Arvind Kumar Sahur & Ors.***, wherein it is held that the designation of an employee does not determine their status as a workman; rather, the dominant nature of their work is the key criterion under the Industrial Disputes Act.

So, looking to the ratio of these judgments and the definition of 'workman' enacted under sec.2(s) in the I. D. Act, the work which was performed by the applicant comes under the purview of this definition. Hence, it is proved that the applicant herein is a workman as defined in the Act.

(4). Now looking further at **sec.25(B)**, the definition of continuous service, the workman / applicant, in the instant case should have actually performed uninterrupted work as provided under sec.25(B-1) or should have worked under the opponent for minimum 240 days during a period of twelve calender months preceding the date of his termination as provided under sec.25(B-2).

(5). For the discussion on this point of continuous service, some citations are required to be referred. The first citation is the case before ***hon'ble Gujarat High Court*** between ***Bilimora Nagarpalika v/s. Jashuben Jashavantbhai Solanki***, which says about the burden of proof and onus of proof regarding the continuous service. It further says that the workman has to discharge the burden that he has completed 240 days of continuous service and once such assertion is primafacie found true with reference to the pleadings and facts on record, the burden shifts on the employer. Further looking to the citations, the case between ***Sriram Industrial Enterprise Ltd. v/s. Mahak Singh & ors.*** and the case between ***R. M. Yellati v/s. the Asst. Executive Engineer***, they also says that burden of continuous service is on workman and he has to produce cogent evidence, oral as well as documentary. The applicant side has relied on the citation which is the case before ***hon'ble Gujarat High Court*** between ***Dy. Executive Engineer (Mechnical) v/s Sukhabhai Gandabhai and Ors.***, wherein it is held the provisions of sec.25-F are applicable to all categories of employees including those employed on daily rated basis or seasonal work.

(6). The applicant in the instant case has pleaded in his statement of claim that he was employed as a casual labour under the opponents from January 1988 till May 1988. He has said that his service was terminated orally, without any written lawful order and without serving notice of one month or providing notice pay in lieu of the notice or without paying the retrenchment compensation as required under sec.25-F of the I.

D. Act. The applicant has stated that the pre-condition is required to be complied with as is laid down in the I. D. Act.

Per contra, the opponent has stated that the applicant had worked under SDOP, Sen from January 1988 to May 1988 for 135 days only with breaks in specified period and he had left work from dt.01.06.1988 onwards at his own accord without any intimation to the department for the reason best known to him, so it is not true that his service was terminated orally. It is contended that the applicant has not completed continuous work for 240 days so the question of complying with sec.25-F of the I. D. Act does not arise.

(6.1). Now herein the applicant has, earlier before CGIT, Ahemdabad, submitted his affidavit of chief examination and same was pending for cross examination. After the case was transferred to this Tribunal, the notice was issued to the applicant but he has not remained present and his advocate on record has submitted no instruction pursis. Therefore, the said affidavit of chief examination of the applicant was discarded as per order passed below Exh.27 and the right of evidence of the applicant was closed. In this circumstance the applicant has failed to prove the contentions raised by him in his statement of claim. Even otherwise if the said pleadings is perused then it is an admitted fact that he has worked from January 1988 till May 1988 and the certificate produced by him at mark-5/1 says that the said total working days were 135. Even if the total working days of said five months are considered then also the days does not reach the magical figure of 240 days. So it is proved that the applicant has

worked for merely five months and the actual working days is 135. Thereby, as discussed above it is not proved that the applicant herein has performed continuous service of 240 or more days in the last 12 months from the last date mentioned by him on which he has performed the work. Therefore, the applicant has failed to prove that he has performed continuous service as provided in sec.25-B(2) of the I. D. Act.

(7). Now whether the termination of the applicant is illegal or not is to be decided. For this purpose the provision of **sec.25(F)** of the I. D. Act will have to be referred and discussed at this stage.

Section – 25(F) ::

Conditions precedent to retrenchment of workman.

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a) The workman has been given one month's notice in writing indicating the reasons of retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) The workman has been paid, the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official

Gazette.

The above provisions are the condition precedent for retrenchment of an employee who has performed continuous service. But in the instant case since the applicant has failed to prove his continuous service as provided in sec.25-B so in that case there will be no question of complying with the provisions of sec.25-F and hence no question regarding violation of sec.25-F of the I. D. Act will also arise.

(8). Now the applicant has contended that there is violation of provisions of sec.25-G & H of the I. D. Act, since while retrenching him the last come first go principle was not followed and at the time of re-employment, the applicant who was retrenched earlier was not given prior opportunity over fresh employees. If the said contention is discussed then first thing to be discussed is whether the applicant is retrenched or not i.e. does his termination comes under the definition of "retrenchment" or not is to be decided.

(9). At this juncture, it will be fruitful to look **sec.2(oo)**, which is the definition of **"retrenchment"::**

Section 2(oo) ::

"Retrenchment", means the termination by the employer of the service of a workmen for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

(a) Voluntary retirement of the workmen; or

(b) Retirement of the workmen on reaching the age of superannuation, if the contract of employment between the employer and the workmen concerned contains a stipulation in that behalf; or

(bb) Termination of the service of the workmen as a result of the non – renewal of the contract of the employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) Termination of the service of a workman on the ground of continued ill – health.

(10). Here in this instant case, the applicant has stated that he was orally terminated from the service without complying the legal provisions. The opponent has stated that the applicant has left the work at his own accord and will without any intimation to the department. So there is no question of oral termination of service and hence there is no retrenchment of service. It is further contended that no juniors were continued nor fresh workmen were employed so there is no violation of sec.25-G & H of the I. D. Act.

(11). So, the opponent has tried to raise a defense that the applicant has voluntarily abandoned the service hence it does not amount to retrenchment.

If the same is discussed on basis of the citation which is the case before ***hon'ble Gujarat High Court*** between

Kheda District Panchayat v/s Jahubhai Devabhai Gohel, wherein it is required to refer para No.6 of said judgment which is as under:

> *6. As regard the next contention raised by Mr. Patel that the workman has left the job at his own and it is a case of abandonment of service and not a case of termination, from perusal of the record, it appears that the petitioner has not issued any letter of notice to workman intimating him to report for work. Not to remain present for work or not to resume work also amounts to misconduct for which departmental inquiry is required to initiate by employer against employee framing specific charge to that effect. Here, in this case, no such inquiry was held by petitioner against respondent. No such opportunity was given by petitioner to workman before terminating service of workman. Even during the pendency of reference also, no intimation was given by petitioner to workman for reporting for duty. Even according to the Apex Court decisions in V. C. Banaras Hindu University & Ors. v/s Shrikant, 2006(0) AIR(SCW) 2952 as well as in case of Viveka Nand Sethi v/s Chairman J. & K. Bank Ltd. & ors, 2005(5) SCC 337, limited inquiry is also necessary to observe the principles of natural justice in such a situation.*

So in the above judgment it was specifically held that the contention of the employer that the workman had abandoned his job by not reporting to it, cannot be accepted only on the ground since no notice was sent to the workman before

passing the termination order and the intention of the workman was required to be brought on record to suggest that he was himself intending to abandon the job. The opponent herein has not produced any sort of evidence so, the opponent has not proved their defense that the applicant has left the job voluntarily. In this circumstance the said defense raised by the opponent side is not proved which results in proving that the applicant was terminated from service by the opponent. Hence, it is proved that the termination of the applicant from service is a simpliciter termination which falls under the purview of retrenchment.

(12). Now it is to be discussed that whether the opponent while retrenching the applicant herein has violated the provisions of sec.25-G & H of the I. D. Act. In pursuance to the same it is required to refer the citation which is the case before ***hon'ble Supreme Court*** between ***Central Bank of India v/s S. Satyam & Ors.***, wherein it is held that sec.25-H regarding re-employment is couched in wide language and is capable of applicable to all retrenched workmen and not merely those who are covered by sec.25-F of the I. D. Act. This means that even if the workman has not performed continuous service but if he is retrenched from service then sec.25-H regarding re-employment is applicable to him also.

Now if the said contention is discussed then the applicant has not mentioned names of any juniors or freshers in his statement of claim nor has produced any documentary evidence to prove that juniors to him were continued or fresh

workers were introduced after terminating him. The applicant has not remained present for cross examination so his affidavit of chief examination is discarded from evidence. In this circumstance the applicant has not proved the contention of fresh or new workers being employed by the opponent after his termination. Hence, considering the above discussion the applicant is unable to prove that which of the juniors were continued after him nor is able to prove that any of the new workmen were employed by the opponent. In this circumstance the violation of sec.25-G & H of the I. D. Act is not proved.

(13). Hence looking to the forgoing discussion, the facts *viz*, applicant was workman as defined in the I. D. Act, there was relationship of an employer and employee between the applicant and the opponents as well as he was retrenched from service, are proved but the applicant is unable to prove his continuous service as is provided in sec.25-B of the I. D. Act nor is able to prove the violations of provisions of sec.25-F, G & H of the I. D. Act.

(14). Now when the applicant is unable to prove the violation of mandatory provisions of the I. D. Act, therefore it is not proved that he was illegally terminated from service nor does he becomes entitled for any relief in this case. In this circumstance the contention of delay and latches in raising the present dispute, which are raised by the opponent side as one of their defense, is not required to be discussed. Hence, the citations relied by the opponent side for the said defense and arguments for the same, are also not required to be referred or discussed. So as per the

forgoing discussion the answers to issue Nos.2 & 3 are accordingly given in "***negative***", therefore, the final order for issue No.4 is passed as below in the larger interest of justice.

:: ORDER ::

(1). The reference case of the applicant is hereby rejected.

(2). The applicant is not entitled for any relief in this case.

(3). No order as to cost.

Date : 30.03.2026
Place: Rajkot

Parvezahemad A. Malaviya
Member,
Industrial Court, Rajkot.
Code No. GJ00837.
