Ref. (I. T. C.) Case No.61/2025.

Exh.48.

GJRJ160001222025	Received on :	20.06.1998		
	Registered on :	20.06.1998		
	Decided on :	**17.04.2026**		
	Duration :	**27**	**09**	**27**
		Yrs.	**Mths.**	**Days**

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

Ref. (I. T. C.) No.61/2025

[Old Ref. (I.T.C.) No.39/1998]

First Parties::

1. The General Manager,
   Telephones,
   District – Rajkot.
2. The Sub-Divisional Officer,
   Telegraphs, Dhoraji.

V/S

Second Party::

1. Rasikkumar Valjibhai,
   Address:
   Village: Jamvada – 360410.
   Taluka: Dhoraji
   District: Rajkot.

##########

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

##########

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

For Second Party : Ld. advocate Mr. A. L. Saiyad.

No appearance before this Tribunal.

: Award :

(1). The first party herein is the General Manager and the Sub-Divisional Officer of 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 opponents*' 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-40011/38/95-IR(DU) and the exact terms of reference are as under:

"Whether the action of the Management of the Sub-Divisional Officer, Telegraphs, Dhoraji in terminating the services of Shri Rasikkumar V., casual labour is legal and justified? If not, what relief the concerned 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 1985 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.61/2025.

(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 even after notice was issued to him, whereas the opponent side has remained present through their advocate and since the present case was pending at the stage of arguments 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 employed as a casual labour under the opponents from December 1983 to June 1985 and the details of his service particulars are as under:

From date	To	MR. No.	Total days	Worked under
December 83.	----	6/34977	10	SDOT, Dhoraji.
February 84.	June 84.	77-23-4-19-24 /34977, 28377	99	--do--
July 84	August 84	5-12/28396	43	--do--
December 84.	----	15-7556	31	--do--

March 85.	April 85.	2-4/7634	61	--do--
June 85	----	23/7556.	31	--do--
		Total days 275		

The applicant has stated further that the xerox copies of the certificate showing the working particulars is produced with the statement of claim. The said details shows that he has worked for total 275 days and has worked continuously for more than 240 days in the last preceding 12 months prior to his termination of services on June 1985. The applicant has stated that his services 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.

The applicant has stated that there is sufficient evidence to show that his services were terminated by oral order without complying sec.25-F of the I. D. Act. He has stated that the persons similarly situated like him and persons with subsequent date of engagement than him are allowed to work by the opponent by inducting them in the department as a casual labours. The applicant has stated that he has also produced some circulars by which he is eligible for re-engagement and temporary status. The copy of such circular dtd.22.09.1989 of the Assistant Director General (STN) N. D. Deptt. of Telecom office of the CGM, Ahemdabad is produced by him and also the copy

of Casual Labourers Scheme (Grant of Temporary Status and Regularization) is produced by him. He has also produced the judgment of OA Nos.2370/89 and OA Nos.248, 502, 694/93 in case between Gopal Sharma & Ors. v/s Union of India & Ors. decided on dt.15.11.1991, which is passed by New Delhi Bench of CAT is produced herein. He has stated that he is being arbitrarily dealt with in the matter of employment by the opponents and so 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.

The applicant has stated that there is sufficient evidence to show that his services were terminated by oral order without complying sec.25-F of the I. D. Act. He has stated that the persons similarly situated like him and persons with subsequent date of engagement than him are allowed to work by the opponent by inducting them in the department as a casual labour by reasons of judgment of CAT, Ahemdabad and Industrial Tribunal, Ahemdabad so he has also right to be reinstated with consequential benefits from the date of such junior persons are included / 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 termination of his

service and he be treated as continuous in service for all purposes with full back-wages as well as has prayed for granting him cost of this proceeding from the opponent.

(5). The opponent has submitted written statement *vide* Exh.09, wherein it has denied the contentions of the applicant and has stated further that the application is barred by limitation. Further it is submitted that as per departmental rules Appendix-3 to P & T FHB Vol.III, the muster rolls are to be preserved only for five years, so the applicant should have approached within five years of his so-called termination. In the present case there is an inordinate delay of more than 11 years, hence on said ground the reference is not legal nor maintainable. It is further contended that this Tribunal has no jurisdiction to entertain the application / reference and as per the judgment of hon'ble Apex Court, the Postal and Telecom Department is not an industry as defined in sec.2(j) of the I. D. Act since it is run by the Central Government and it is a Ministry under the Union of India, where employees hold office during the pleasure of the President of India. Further as per the ratio of judgment of hon'ble Apex Court the department of Telecommunications is not an industry, so this Tribunal has no jurisdiction to entertain the reference case. It is further submitted that the appointment / termination of casual labours / daily rated mazdoors and other casual employees are to be governed by relevant departmental instructions, so also the reference case for the said industrial dispute is not tenable nor maintainable. It is further submitted that as per the records available other than the muster roll, the applicant was engaged as

casual labourer for purely seasonal and casual nature of work for specified period on daily rated basis for 204 days only in the year of 1984 and only 31 days in the year 1985 under Sub-divisional Engineer Telegraphs, Dhoraji. It is submitted that the applicant was most irregular casual labourer working in the Dhoraji Sub-division, which can be seen from the copies of working certificates produced by the applicant. It is submitted that when hard work like digging and installation of over-head alignment was in progress, the applicant used to remain absent for number of days. The applicant was habitual in remaining absent from work at his own will, whenever such hard nature of work was to be started or was in progress. The applicant has remained absent from work without any intimation or prior approval of the concerned incharge supervisor of the casual party. It is also submitted that when the applicant was working as casual labourer in the department, the daily rate of the labourer was very low. Hence, he was leaving the work as and when he was getting higher rated work elsewhere. It is submitted that the pplicant was never discharged from work by the opponents, but he himself has left the work at his own will and wish after January 1985. It is submitted that the applicant has claimed to be joined in other unit i.e. A.E. Co-axial, Dhoraji which is separate management and has no control or concerned with this unit. The copy of working days from March to April 1985 under A.E. Co-axial, Dhoraji produced by the applicant, is not the subject matter of this unit / office where the applicant was working initially.

It is further submitted that previously in O.A. No.185/1990 filed by the present applicant for the same relief,

before CT, Ahemdabad which was rejected vide judgment dtd.28.09.1994, wherein in para No.8 by discussing about the certificate of working days it was held that genuineness of the same cannot be taken on its face value. So in view of said observation by CAT, Ahemdabad, the applicant should be put to strict proof for the evidence produced by him in from certificate of work. Therefore, the contentions of the applicant that he has completed 240 days of continuous work in a year and has completed 240 days continuous service just preceding 12 calender months from the date of his so-called termination, are not correct, misleading and his services were orally terminated are not correct, misleading and so are specifically denied. Hence it is submitted that there is no violation of sec.25-F of the I. D. ct so the reference case is deserved to be dismissed.

It is contended that after January 1985 onwards, the applicant has left the work at his own accord without any intimation or information to the opponents. Thereafter he has not approached before any authority for his so-called termination and perhaps he has left the work at his own accord to get better wages / work in any other organization / private sector. Now the applicant has raised the dispute / matter after lapse of more than 11 years of delay knowing the present trend that those who have completed 240 days services or more are directed to be regularized. Further since the applicant has left the service on his own accord and has not completed service of 240 days so the provisions of sec.25-F is not attracted and he is not entitled to get any benefit. Further as per the Circular dtd.22.09.1989 the provisions of sec.25-F of the I. D. Act are made applicable to the

opponent with effect from dt.22.09.1989 and the present case is of the year 1985 as well as the applicant has not completed 240 days of service in the relevant year and has left the work at his own accord so there is no violation of provisions of sec.25-F of the I. D. Act. The opponent has stated that the applicant has not made out any justifiable grounds for such inordinate delay of more than 11 years. The applicant has not mentioned anywhere about the source of his income. He might be having his family, parents, brother and sister and other dependents too, so without any earning he cannot discharge his responsibilities towards his family members. The said aspect has been suppressed by the applicant which should be investigated. It is stated further that as held by hon'ble Apex Court the daily wager does not acquire any right to held a civil post, thereby the opponents have prayed to dismiss the case of the applicant.

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

: Oral Evidence :

1	Exh.17 & 22.	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.22.09.1989 of sstt. Director General (STN).
3	Mark-5/3.	Copy of letter dtd.17.12.1993 of ADG

		DOT, New Delhi.
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.
6	Mark-18/1 & 23/1.	Original as well as xerox copy of certificate issued by the opponent.

The applicant has submitted closing pursis on dt.29.04.2011.

(7). The following evidence is produced from opponent side.

: Oral Evidence :

1	Exh.39.	Deposition of the opponent's witness Vithl Lalji Jagani.

: Documentary Evidence :

1	Mark-11/1.	Rules for preservation of accounts record.
2	Mark-11/2.	Copy of judgment dtd.28.09.1994 passed in case of applicnt by CAT.
3	Mark-11/3 to 11/6.	Judgment passed in other matters.
4	Mark-26/1.	Letter written by Dhoraji office to Rajkot office.
5	Mark-26/2.	Work order issued by the opponent.

6	Mark-26/3 & 26/4.	Certificates and documents produced for purpose of specimen signatures of officer from Dhoraji.
7	Exh.29	Original work order book seril No.001 to 100 bearing signature of concerned officer.
8	Exh.30 & 31	Specimen signature of Mr. C. C. Parmar.
9	Exh.32 to 34.	Notice of O.A. No.185/1990, certificate produced in said proceeding and order passed therein.
10	Exh.35 to 38.	Notice, index of O.A. No.92/1996, documents produced in said proceeding and order passed therein.

The opponent side has then after submitted closing pursis at Exh.40.

(8). Herein the Ld. advocate of applicant side has not remained present nor has the applicant remained present before this Tribunal so no arguments is put forth from the applicant side, however since the matter was already pending for argument so it is decided on merits. The Ld. advocate of the opponent side has argued orally.

(9). Having heard the Ld. advocates of respective sides 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[1],*** 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.[2]*** and in case of ***MGT of Somvihar Apartment Owners Housing Management Society Ltd. v/s Workman c/o Indian Engineering & General Mazdoor[3].*** 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.

1 AIR 1978 SC 548.
2 AIR 1990 SC 2047.
3 AIR 2002 SC 2630.

(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-5/4, which is the scheme for granting temporary status to casual labours issued by the opponent, wherein it is stated that the casual labours who does not fall under the purview of scheme for giving temporary status and who has not completed service of 240 days, is to be terminated after following the conditions of sec.25-F, G & H of the I. D. Act. 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, G & H, 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***[4], 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

4 1998 (1) LLN 326.

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 opponents from December 1983 to June 1985.

Per contra, the opponent has contended that as per the records available other than the muster roll, the applicant was engaged as casual labourer for purely seasonal and casual nature of work for specified period on daily rated basis for 204 days only in the year of 1984 and only 31 days in the year 1985 under Sub-divisional Engineer Telegraphs, Dhoraji.

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***[5], 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.***[6], 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.

5 2011 AIR SCW 3455.
6 2025 Supreme (SC) 2083.

(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***[7], 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.***[8] and the case between ***R. M. Yellati v/s. the Asst. Executive Engineer***[9], they also says that burden of continuous service is on workman and he has to produce cogent evidence, oral as well as documentary.

(6). The applicant in the instant case has pleaded in his statement of claim that he was employed as a casual labour under

7 2013(1) GLR 845.
8 2007 II CLR 744.
9 2005 (III) CLR 1028 (S.C.).

the opponents from December 1983 to June 1985 and the details of his service particulars are as under:

From date	To	MR. No.	Total days	Worked under
December 83.	----	6/34977	10	SDOT, Dhoraji.
February 84.	June 84.	77-23-4-19-24 /34977, 28377	99	--do--
July 84	August 84	5-12/28396	43	--do--
December 84.	----	15-7556	31	--do--
March 85.	April 85.	2-4/7634	61	--do--
June 85	----	23/7556.	31	--do--
		Total days 275		

The applicant has stated further that the xerox copies of the certificate showing the working particulars is produced with the statement of claim. The said details shows that he has worked for total 275 days and has worked continuously for more than 240 days in the last preceding 12 months prior to his termination of services on June 1985. The applicant has stated that his services 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 as per the

records available other than the muster roll, the applicant was engaged as casual labourer for purely seasonal and casual nature of work for specified period on daily rated basis for 204 days only in the year of 1984 and only 31 days in the year 1985 under Sub-divisional Engineer Telegraphs, Dhoraji. It is submitted that the applicant was most irregular casual labourer working in the Dhoraji Sub-division, which can be seen from the copies of working certificates produced by the applicant. It is submitted that when hard work like digging and installation of over-head alignment was in progress, the applicant used to remain absent for number of days. The applicant was habitual in remaining absent from work at his own will, whenever such hard nature of work was to be started or was in progress. The applicant has remained absent from work without any intimation or prior approval of the concerned incharge supervisor of the casual party. It is also submitted that when the applicant was working as casual labourer in the department, the daily rate of the labourer was very low. Hence, he was leaving the work as and when he was getting higher rated work elsewhere. It is submitted that the applicant was never discharged from work by the opponents, but he himself has left the work at his own will and wish after January 1985. It is submitted that the applicant has claimed to be joined in other unit i.e. A.E. Co-axial, Dhoraji which is separate management and has no control or concerned with this unit. The copy of working days from March to April 1985 under A.E. Co-axial, Dhoraji produced by the applicant, is not the subject matter of this unit / office where the applicant was working initially. It is further submitted that previously in O.A. No.185/1990 filed by

the present applicant for the same relief, before CT, Ahemdabad which was rejected vide judgment dtd.28.09.1994, wherein in para No.8 by discussing about the certificate of working days it was held that genuineness of the same cannot be taken on its face value. So in view of said observation by CAT, Ahemdabad, the applicant should be put to strict proof for the evidence produced by him in from certificate of work. The contentions of the applicant that he has completed 240 days of continuous work in a year and has completed 240 days continuous service just preceding 12 calender months from the date of his so-called termination, are not correct, misleading and his services were orally terminated are not correct, misleading and so are specifically denied. Hence it is submitted that there is no violation of sec.25-F of the I. D. ct so the reference case is deserved to be dismissed.

(6.1). Now herein the applicant at mark-5/1 has produced two certificates to prove his continuous service. The first of which is from December 1983 to January 1985, wherein total days are shown as 215. This certificate does not bear the signature of the Sub-divisional Officer, Telegraphs, Dhoraji even though when his stamp is pasted on it. Further if the said certificate is compared with the pleadings and the details shown in tabular column of statement of claim then in the said pleadings the working days are not shown for the months of January 1984 and January 1985 but in this first certificate the working days of said two months are shown. Further the second certificate is produced which shows the work done in months of March 1985

and April 1985 for total 61 days i.e. all the days of said two months. This certificate shows that the applicant has worked at Co-axial Dhoraji but the opponent has stated that the said unit is separate unit and they are not concerned with it.

(6.2). Hence, in this circumstance when there is self contradictory facts pertaining to working days mentioned in first certificate in comparison with the pleadings and the opponent has denied about second certificate by saying that it is all togather a different unit, so the burden to prove the facts *viz*, working days, genuineness of said certificates and that the Co-axial Dhoraji was also under the opponent, has increased many fold on the applicant.

(6.3). It is pertinent to note that prior to this proceedings the applicant has even preferred proceedings before CAT, Ahemdabad *vide* O.A. No.185/1990 for the identical cause of termination of his service. In said proceeding the judgment was passed on dt.28.09.1994 and the said petition of the applicant was rejected on the ground of being not maintainable before said Tribunal, wherein the applicant has produced the very same certificates. If the certificates of mark-5/1 are perused minutely then they are xerox copies of the certified copies of the said certificates issued by CAT which were produced in said proceedings before the CAT. In the said judgment the Tribunal has doubted the genuineness of said certificates. It is pertinent to note that the opponent has produced the copies of the above referred order passed by CAT along with relevant documents

produced therein at mark-11/2 and *vide* Exh.32 to 32. The applicant has not uttered a whisper about it and has kept totally mum about the said proceedings preferred by himself and the order passed therein. He has not uttered any word about it either in his statement of claim or in his affidavit of chief examination. It is trite rule of law that when any party appears before any adjudicatory forum they have to disclose each and every fact required for adjudication but herein the applicant has suppressed the material facts so only on the said ground he becomes dis-entitled for any relief.

(6.4). Now if we further peruse the case record then the applicant at mark-18/1 has produced a fresh original certificate of working days and at mark-23/1 the xerox copy of certificate but even the said xerox produced at mark-23/1 is not the original of which is produced at mark-18/1. In said certificates the total working days from December 1983 to September 1984 is shown as 284. Both certificates have stamp of Sub-divisional office Dhoraji with signatures which can be read as of some person named C. C. Parmar. The opponent side has heavily challenged the genuineness of said certificate and more particularly the signature on it. Even if the said original and xerox copy are perused with the naked eye then the signatures in both are differing from each other. Further the opponent side at mark-26/1 has produced the letter from Sub-divisional Officer, Dhoraji, wherein it is stated that the said certificate is verified from their office record and it is bogus. He has also sent the specimen signatures of the officer named Mr. C. C. Parmar to prove that

signature on the certificate produced by the applicant is forged. The opponent side has even produced the original record bearing original signatures of said officer at Exh.29 to 31, which contains the original work order book with serial No.001 to 100 for period from dt.01.01.1984 to dt.01.01.1985 and certificates issued by said officer to other workers under his signature. On perusal of the said original documents it clearly transpires that the applicant has subsequently produced a forged and brought-up certificate. This act of the applicant entails criminal action against him but since the present proceeding is more than two decades old so this Tribunal is restraining from proceeding for taking such criminal action against the applicant. However, the applicant by doing so and producing forge evidence in form of certificate, has dis-entitled himself from getting any relief in this case.

Thereby, as discussed above the applicant herein has miserably failed to prove that he has performed continuous service of 240 or more days 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***[10], 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)*

10 2006 GLR 2591.

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 submitted affidavit of their witness wherein the witness has contended about the abandonment of service. However herein the applicant has contended that he was terminated in June 1985 but he has failed to prove said aspect in this case i.e. his termination in June 1985 is not proved. Therefore, the aspect that the applicant was terminated on said date which amounts to retrenchment, is not proved by the applicant side.

(12). Now for the sake of considering if we presumes that the applicant was retrenched from service then 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.***[11], wherein it is held that sec.25-H regarding re-employment is couched in wide

11 1996-II-CLR 1095.

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 contended in his statement of claim that juniors were continued and new employees were employed in his place. However he has not mentioned names of any such persons nor has produced any evidence for the same. So, considering the above discussion the applicant is unable to prove that which of such 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 and there was relationship of an employer and employee between the applicant and the opponents is proved but the applicant is unable to prove that he was retrenched from service nor is able to prove his continuous service as is provided in sec.25-B of the I. D. Act and neither 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 : 17.04.2026
Place: Rajkot

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