Ref. (I. T. C.) Case No.68/2025.

Exh.40.

GJRJ160001292025	Received on :	12.02.2001		
	Registered on :	12.02.2001		
	Decided on :	**16.04.2026**		
	Duration :	**25**	**02**	**04**
		Yrs.	**Mths.**	**Days**

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

Ref. (I. T. C.) No.68/2025

[Old Ref. (I.T.C.) No.04/2001]

First Parties:: 1. The Chief General Manager,
Telecom Department,
Seva Sadan Building, 1st floor,
Bhadra, Ahemdabad – 380001,
Gujarat.

2. The Telecom District Manager,
Telecom Department,
Near Alankar Talkies,
Surendranagar – 363001.

V/S

Second Party:: 1. Rameshbhai M. Panara,
Address: Village: Kothariya,
Taluka: Wadhwan city,

Ref. (I. T. C.) Case No.68/2025.

District: Surendranagar.

##########

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

##########

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

For Second Party : Ld. advocate Mr. P. M. Vora.

: Award :

(1). The first party herein is the Chief Manager and District Manager 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.18.01.2001, as per it's order No.L-40012/443/2000-IR(DU) and the exact terms of reference are as under:

"Whether the action of the Management of Telecom Deptt., Surendranagar/Ahemdabad in terminating/discontinuing the services of Sh. Rakeshbhai M. Panara, casual labour w.e.f. dt.21.01.2000 is just, valid and legal? If not, to what relief the

workman is entitled to and what directions are necessary in the matter?"

(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 2000 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.68/2025.

(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 both the parties have remained present through their advocates and since the case was pending at the stage of arguments so it was proceeded further 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 March 1983 to dt.26.03.1997 and was again reengaged from dt.04.09.1998 to dt.21.01.2000 under SDOT, Surendranagar and SDOT, Ahemdabad. The applicant has stated that the copies of the certificate showing the working particulars is produced with the statement of claim. He has stated that he has worked totally for more than 15 years and has worked continuously for more than 240 days in the last preceding 12 months prior to his termination

from services on dt.21.01.2000. This termination was without following the provisions of sec.25-F of the I. D. Act and so it was illegal and void. The applicant has stated that his services are terminated without giving him one month's notice and his services have been terminated in flagrant violation of sec.25-F of the I. D. Act, so not a single condition has been complied with sec.25-F before terminating his services.

The applicant has stated that his juniors have been retained in services and many of them have been regularized whereas he is only singled out. Therefore, there is violation of sec.25-G of the I. D. Act. There is also violation of sec.25-H of the I. D. Act. He has said that even under the scheme of respondents he is entitled to temporary status long back and also to be appointed as regular mazdoor but all these benefits are also denied to him illegally and malafidely.

The applicant has stated that he is being arbitrarily dealt with the matter of his employment by the opponents and the termination of his service is invalid and ineffective which deserves to be quashed.

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 so he has also right to be reinstated with consequential benefits from the date such junior persons are included / inducted on the ground of

equity and similar treatment.

The applicant has stated further that he has been entitled to temporary status on completion of one year service as a casual labour and also for reinstatement in terms of scheme framed by the Telecom department namely Casual Laobourers (Grant of Temporary Status and Regularization) scheme and for relaxation and amendment in the same. He has produced the copy of the same as well as has produced copies of circulars framed by Telecom department dtd.09.03.1999, 19.09.2000 and 29.09.2000. 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. 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.06, 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 it is not true that the applicant

was employed as a casual labour from March 1983 to dt.26.03.1997 but in fact he was on work under SDOP Surendranagar from May-June 1987 and again in August 1987 for 28 days then after from December 1987 for 28 days up to dt.24.08.1988. Then after the applicant has remained absent without permission / information or medical certificate for about 32 months. This long period cannot be condoned by any authority. Then the applicant has come back in the month of May 1991 and worked under SDOT, Limbdi. After that his service was terminated on dt.30.09.1997 by observing all the formalities under sec.25-F of the I. D. Act as there was no work available for him. The applicant has prior to this proceeding filed O.A. No.583/1997 before CAT, Ahemdabad for regularization of services and consequential benefits. In pursuance to judgment dtd.17.08.1998 passed in MA No.534/1998 on OA No.583/1997, the applicant was taken back in service on dt.03.09.1998 till the final outcome of said O.A. However, as per the decision dtd.15.12.1999 passed by CAT, Ahemdabad in OA No.583/1997, it was held that as far as matters under the I. D. Act are concerned CAT has no jurisdiction so has disposed off without entering in to the merits. Therefore, the interim relief granted by CAT to the applicant was an order without jurisdiction. Being aggrieved by said order, the applicant has moved before hon'ble High Court by preferring S.C.A. No.10100/1999 challenging the judgment and order dtd.15.12.1999 passed by CAT, Ahemdabad in OA No.583/1997, which was dismissed by hon'ble High Court and so the order of CAT was confirmed. Then after the applicant was terminated on dt.21.01.2000 with written lawful order and

by serving notice as well as paying one month notice pay and paying retrenchment compensation as required under sec.25-F of the I. D. Act. So the say of the applicant that he was re-engaged from dt.04.09.1998 to dt.21.01.2000 under SDOT, Surendranagar and SDOT, Ahemdabad is not correct. The applicant was re-engaged in compliance of order dtd.17.08.1998 of CAT from dt.04.09.1998 till dt.21.01.2000 under SDOT, Limbdi & SDOT, Wadhwan with break period. It is denied that the applicant has worked for more than 15 years. Thus, the applicant has not come with clean hands so has prayed to reject the reference case. It is stated that no juniors to applicant are retained and regularized in service so there is no violation of sec.25-G & 25-H of the I. D. Act. It is stated that the applicant is not fit for temporary status and regularization as per the policy of department. The temporary status and regularization is being given to the casual labours as per guidelines and instructions issued by the department from time to time and the applicant does not come under the purview of the said departmental instructions for granting temporary status and regularization. It is stated that the applicant had worked purely on daily wages for a temporary nature of work and now since the services of the applicant were not required by the department since there was no work so he was retrenched after observing all the formalities under the I. D. Act by paying eligible compensation and one month advance pay and serving notice under sec.25-F of the I. D. Act. It is contended that no juniors are re-engaged except as per the order passed by the Tribunal and therefore question of engaging junior persons does not arise. So the dispute is belated, an after thought which

appears to have been raised to get the benefit of present judicial trend. 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.15.	Affidavit of chief examination of the applicant.

: Documentary Evidence :

1	Exh.17.	Copy of certificate showing details of working days issued by the opponent.
2	Exh.18.	Copy of 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme.
3	Exh.19.	Copy of Circulars of opponent dtd.09.03.1999, 19.09.2000 & 29.09.2000.
4	Mark-16/1.	Identity card issued by the opponent.
5	Mark-16/2.	Certificate issued by the opponent.
6	Mark-16/3.	Telegram issued by the opponent.
7	Mark-16/4.	Letter dtd.03.09.1998 written by applicant to the opponent.
8	Mark-16/5.	Letter written by opponent.
9	Mark-16/6.	Award of O.A. No.695/1994 passed by CAT.

The applicant has submitted closing pursis at

Exh.24.

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

: Oral Evidence :

1	Exh.15.	Affidavit of chief examination of the opponent's witness Baldevbhai Purshottamdas Patel.
2	Exh.28.	Affidavit of chief examination of the opponent's witness Mansukhbhai Kalyanbhai Prejiya.

: Documentary Evidence :

1	Exh.20.	Copy of order dtd.17.08.1998 in MA No.534/1998 in OA No.583/1997 of CAT.
2	Exh.21.	Copy of order dtd.15.12.1999 in OA No.583/1997 of CAT.
3	Exh.22.	Copy of judgment dtd.20.01.2000 passed in SC No.10100/1999.
4	Exh.23.	Copy of notice dtd.21.01.2000 under sec.25-F of I. D. Act along with copies of cheques.

Though two affidavits of witnesses were submitted by the opponent side but they have not remained present for cross

examination and the opponent side has then after submitted closing pursis at Exh.31.

(8). Herein the Ld. advocate of applicant side has submitted written arguments at Exh.38, whereas 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

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

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 Exh.18, 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 herein as per the defense of the opponent side, the applicant was retrenched from service by complying with provisions of sec.25-F of the I. D. Act, which also says that since the establishment of the opponent was falling under the purview of an industry and the provisions of I. D. Act are applicable to it hence only such procedure as provided in I. D. Act was carried out. 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 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

4 1998 (1) LLN 326.

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 March 1983 to dt.26.03.1997 and was again re-engaged from dt.04.09.1998 to dt.21.01.2000 under SDOT, Surendranagar and SDOT, Ahemdabad.

Per contra, the opponent has contended that it is not true that the applicant was employed as casual labour from March 1983 to dt.26.03.1997 but in fact he was on work under SDOP, Surendranagar from May & June 1987 and again in August 1987 for 28 days then after from December 1987 for 28 days up to dt.24.08.1988. Then after the applicant has remained absent without permission / information or medical certificate for about 32 months. Then the applicant has come back in the month of May 1991 and worked under SDOT, Limbdi. After that his service was terminated on dt.30.09.1997 by observing all the formalities under sec.25-F of the I. D. Act as there was no work available for him. The applicant has prior to this proceeding filed O.A. No.583/1997 before CAT, Ahemdabad for regularization of services and consequential benefits. In pursuance to judgment dtd.17.08.1998 passed in MA No.534/1998 on OA No.583/1997, the applicant was taken back in service on dt.03.09.1998 till the final outcome of said O.A. However, as per the decision dtd.15.12.1999 passed by CAT, Ahemdabad in OA No.583/1997 it was held that as far as matters under the I. D. Act are concerned CAT has no jurisdiction so it has not entered in to the

merits. Therefore, the interim relief granted by CAT to the applicant was an order without jurisdiction. Being aggrieved by said order, the applicant has moved before hon'ble High Court by preferring S.C.A. No.10100/1999 challenging the judgment and order dtd.15.12.1999 passed by CAT, Ahemdabad in OA No.583/1997, which was dismissed by hon'ble High Court and so the order of CAT was confirmed. Then after the applicant was terminated on dt.21.01.2000 with written lawful order and by serving notice as well as paying one month notice pay and paying retrenchment compensation as required under sec.25-F of the I. D. Act. So the say of the applicant that he was re-engaged from dt.04.09.1998 to dt.21.01.2000 under SDOT, Surendranagar and SDOT, Ahemdabad is not correct. The applicant was re-engaged in compliance of order dtd.17.08.1998 of CAT from dt.04.09.1998 till dt.21.01.2000 under SDOT, Limbdi & SDOT, Wadhwan with break period. It is denied that the applicant has worked for more than 15 years. Thus, the applicant has not come with clean hands so has prayed to reject the reference case.

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.

(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

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

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 the opponents from March 1983 to dt.26.03.1997 and was again re-engaged from dt.04.09.1998 to dt.21.01.2000 under SDOT, Surendranagar and SDOT, Ahemdabad. The applicant has stated

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

that the copies of the certificate showing the working particulars is produced with the statement of claim. He has stated that he has worked totally for more than 15 years and has worked continuously for more than 240 days in the last preceding 12 months prior to his termination from services on dt.21.01.2000. This termination was without following the provisions of sec.25-F of the I. D. Act and so it was illegal and void. The applicant has stated that his services are terminated without giving him one month's notice and his services have been terminated in flagrant violation of sec.25-F of the I. D. Act, so not a single condition has been complied with of sec.25-F before terminating his services.

Per contra, the opponent has stated that it is not true that the applicant was employed as casual labour from March 1983 to dt.26.03.1997 but in fact he was on work under SDOP, Surendranagar from May & June 1987 and again in August 1987 for 28 days then after from December 1987 for 28 days up to dt.24.08.1988. Then after the applicant has remained absent without permission / information or medical certificate for about 32 months. Then the applicant has come back in the month of May 1991 and worked under SDOT, Limbdi. After that his service was terminated on dt.30.09.1997 by observing all the formalities under sec.25-F of the I. D. Act as there was no work available for him. The applicant has prior to this proceeding filed O.A. No.583/1997 before CAT, Ahemdabad for regularization of services and consequential benefits. In pursuance to judgment dtd.17.08.1998 passed in MA No.534/1998 on OA No.583/1997, the applicant was taken back in service on dt.03.09.1998 till the

final outcome of said O.A. However, as per the decision dtd.15.12.1999 passed by CAT, Ahemdabad in OA No.583/1997 it was held that as far as matters under I. D. Act are concerned CAT has no jurisdiction so it has not entered in to the merits. Therefore, the interim relief granted by CAT to the applicant was an order without jurisdiction. Being aggrieved by said order, the applicant has moved before hon'ble High Court by preferring S.C.A. No.10100/1999 challenging the judgment and order dtd.15.12.1999 passed by CAT, Ahemdabad in OA No.583/1997, which was dismissed by hon'ble High Court and so the order of CAT was confirmed. Then after the applicant was terminated on dt.21.01.2000 with written lawful order and by serving notice as well as paying one month notice pay and retrenchment compensation as required under sec.25-F of the I. D. Act. So the say of the applicant that he was re-engaged from dt.04.09.1998 to dt.21.01.2000 under SDOT, Surendranagar and SDOT, Ahemdabad is not correct. The applicant was re-engaged in compliance of order dtd.17.08.1998 of CAT from dt.04.09.1998 till dt.21.01.2000 under SDOT, Limbdi & SDOT, Wadhwan with break period. It is denied that the applicant has worked for more than 15 years. Thus, the applicant has not come with clean hands so has prayed to reject the reference case.

(6.1). Now herein the applicant at Exh.17 has produced the certificates issued by the opponent regarding his service. The first of which is for the period from May 1987 to August 1988 and the total working days therein is 322. The second certificate is from dt.12.05.1991 till dt.31.12.1996, wherein the total working days

are 641. However, in this certificate no working days are shown for the period from dt.01.06.1993 till dt.31.03.1995, which says that the applicant has not worked during this period. The third certificate is for the period from dt.01.01.1997 till 30.09.1997 for working days 273 and from dt.03.09.1998 till dt.31.05.1999 for working days 271. In this certificate it is mentioned that there was break period from dt.01.10.1997 till dt.02.09.1998. So, considering these certificates it can be said that the applicant has worked for the periods from May 1987 to August 1988; from dt.12.05.1991 till dt.31.12.1996 but excluding the interim period from dt.01.06.1993 till dt.31.03.1995 and has further worked from dt.01.01.1997 till 30.09.1997; from dt.03.09.1998 till dt.31.05.1999 but excluding period from dt.01.10.1997 till dt.02.09.1998. However, whenever the applicant has performed work he has worked for more than 240 days in each spells. Further looking to the pleadings of the opponent also it transpires that the service of the applicant is continuous as is provided in sec.25-B of the Act. Thereby, as discussed above it is proved that the applicant herein has performed continuous service of 240 or more days so it is proved 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.

(8). 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.

(8.1). Now if we discuss regarding the aspect of retrenchment and compliance of provisions of sec.25-F referred in forgoing paras then in the instant case the opponent side has contended that the service of applicant was terminated on dt.30.09.1997 by observing all the formalities under sec.25-F of the I. D. Act as there was no work available for him. It is contended that the applicant has prior to this proceeding filed O.A. No.583/1997 before CAT, Ahemdabad for regularization of services and consequential benefits. In pursuance to judgment dtd.17.08.1998 passed in MA No.534/1998 on OA No.583/1997, the applicant was taken back in service on dt.03.09.1998 till the final outcome of said O.A. However, as per the decision dtd.15.12.1999 passed by CAT, Ahemdabad in OA No.583/1997 it was held that as far as matters under I. D. Act are concerned, CAT has no jurisdiction so it has not entered in the merits. Therefore, the interim relief granted by CAT to the applicant was an order without jurisdiction. Being aggrieved by said order, the

applicant has moved before hon'ble High Court by preferring S.C.A. No.10100/1999, challenging the judgment and order dtd.15.12.1999 passed by CAT, Ahemdabad in OA No.583/1997, which was dismissed by hon'ble High Court and so the order of CAT was confirmed. Then after the applicant was terminated on dt.21.01.2000 with a written lawful order and by serving notice as well as paying one month notice pay and retrenchment compensation as required under sec.25-F of the I. D. Act. So the say of the applicant that he was re-engaged from dt.04.09.1998 to dt.21.01.2000 under SDOT, Surendranagar and SDOT, Ahemdabad is not correct. The applicant was re-engaged in compliance of order dtd.17.08.1998 of CAT from dt.04.09.1998 till dt.21.01.2000 under SDOT, Limbdi & SDOT, Wadhwan with break period. Thus, the applicant has not come with clean hands so has prayed to reject the reference case.

(8.2). Now if the said defense is discussed then the opponent has produced the copies of all the above referred orders passed by CAT and hon'ble High Court *vide* Exh.20 to 22. The applicant has not uttered a whisper about it and has kept totally mum about the said proceedings preferred by himself and the orders 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.

(8.3). However, if we further discuss then the opponent has produced at Exh.23 the notice dtd.21.01.2000 of termination under sec.25(F)(b) of the I. D. Act which is issued to the applicant stating that his service is terminated as it is no more required. Along with this notice the opponent has produced the 'Form P' which is notice dtd.21.01.2000 of retrenchment given by an employer under clause (c) of sec.25-F to the appropriate Government informing about retrenchment of the applicant and along with it copies of two cheques dtd.21.01.2000 issued in name of the applicant worth Rs.3,610/- and Rs.12,227/- are produced. The said documents were admitted by the applicant side by putting endorsement on list *viz*, 'no objection if exhibited subject to their case'. However, the applicant has not denied about the said procedure being carried out by the opponent and issuance of two cheques for amount of notice pay and retrenchment compensation. In this circumstance the evidence which is placed on record clearly proves the defense of the opponent side that on the date when the petition of the applicant was dismissed by the hon'ble High Court he was retrenched from service by following due procedure as provided in the statute. It is further proved that his last re-engagement from dt.04.09.1998 till dt.21.01.2000 was done in compliance of the interim order passed by the CAT and so when the said proceedings were finally dismissed by hon'ble High Court hence the applicant was retrenched from service by complying the provisions of sec.25-F. Therefore, the applicant has miserably failed to prove that he was terminated orally in sheer violation of the mandatory provisions of sec.25-F of the I. D. Act.

(9). Now let us discuss about the other contention raised by the applicant which is related to violation of the provisions of sec.25-G & H of the I. D. Act, wherein it is stated that persons similarly situated like him and with subsequent date of engagement than him are allowed to work by the opponents by inducting them in department as casual labour by reason of judgment of CAT, Ahemdabad. It is further contended that juniors and fresh persons were continued / inducted in service in violation of sec.25-G & H of the I. D. Act.

(10). Herein it is an admitted fact that the applicant was retrenched from service. So 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.***[10], 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.

(10.1). Now if the said contention is discussed then the applicant has not mentioned names of any juniors or freshers in

10 1996-II-CLR 1095.

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 mentioned names of any such persons in his affidavit of chief examination nor has produced any documentary evidence to prove the said aspect. 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.

(11). 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 by complying the provisions of sec.25-F of I. D. Act are proved but the applicant is unable to prove the violations of provisions of sec.25-G & H of the I. D. Act.

(12). Now when the applicant is unable to prove the violation of mandatory provisions of the I. D. Act but on the contrary it is proved that the opponent while terminating i.e. retrenching the applicant from service has complied the provisions of sec.25-F 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 : 16.04.2026
Place: Rajkot

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