

Kalamuddin M. Ansari Vs Government of India

Court: GUJARAT HIGH COURT

Date of Decision: April 18, 2016

Acts Referred: Industrial Disputes Act, 1947 - Section 10(1), 25F

Citation: (2016) 2 CLR 741 : (2016) 151 FLR 449 : (2016) 3 GCD 2608 : (2016) 3 GLR 2162 : (2016) 3 GujLH 323 : (2016) 3 LLJ 639

Hon'ble Judges: Anant S. Dave and A.S. Supehia, JJ.

Bench: Division Bench

Advocate: Mr. Prabhakar Upadyay, Advocate, for the Appellant; Ms. P.J. Davawala, Advocate, for the Respondent

Final Decision: Allowed

Judgement

A.S. Supehia, J.(Oral) - The appellant-workman, original respondent, raised industrial dispute being Ref. (ITC) No.11/92 and it was referred for

adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 ("the I.D. Act" for short) to the Desk Officer, Government of India,

Ministry of Labour, New Delhi, vide order dated 25.06.1992 to the Industrial Tribunal, Ahmedabad, as per the Schedule attached to the

reference. Said schedule reads as under:

Whether the action of management of Telecom Manager (TDM), Mehsana and others in not considering the name of the workman Shri

Kalamudin for the scheme of Supreme Court for observing the casual labourers who have continuously worked for more than one year, is

justified? If not, what relief the workman concerned is entitled to.

2. Industrial Tribunal examined the factual scenario therein in the context of the reference, scheme applicable and found that the workman had

completed 240 days in a given year and the first party i.e. Telecommunication Department, admitted that the second party had worked in 1997 for

240 days. However, while allowing the reference partly the first party was directed to reinstate the second party viz. the workman within 30 days

from the date of receipt of this award and it was directed to consider name of the second party for the scheme of the Supreme Court for observing

casual labourer who have continuously worked for more than one year and it was also directed to pay 50% back wages from the date of

termination till the date of re-employment. In case if the first party is unable to employ the second party within 30 days of the receipt of the award,

for any reason, the first party was fastened with further liability to pay compensation of Rs.1,25,000/- in lieu of reemployment to the second party

within 45 days of the receipt of the award.

3. The above award dated 18.10.1999 in Reference (I.T.C.) No.11/92 passed by Presiding Officer, Industrial Tribunal (Central), Ahmedabad,

was challenged by the Department of Telecommunication in writ petition being Special Civil Application No. 291/2000 raising many fold

contentions and one of the main contentions was that the impugned award was beyond the terms of the reference inasmuch as the Industrial

Tribunal was not to undertake and exercise of finding the fact about working days of workman in a given year for the purpose of provisions of

Section 25F of the Act. Such exercise was to be carried out to ascertain the claim of the workman about his entitlement and temporary status as

per the scheme, which came into force w.e.f. On 01.10.1989. Learned Single Judge vide judgment and order dated 20.01.2011 partly allowed

the petition by modifying compensation from Rs. 1,25,000/- to Rs. 50,000/-. It was further observed that the workman would not be entitled for

reinstatement or any other benefits.

4. Being aggrieved and dissatisfied with the aforesaid judgment, the workman preferred the present Letters Patent Appeal.

5. The scheme, which is relevant for the purpose of deciding the present controversy, reads as under:

Subsequent to the issue of instructions regarding regularisation of casual labourer vide this office letter No.269-29/87-STN dated 18.11.88. a

scheme for conferring temporary status on casual labourers who are currently employed and have rendered a continuous service of at least one

year has been approved by the Telecom Commission. Details of the Scheme are furnished in the Annexure.

2. Immediate action may kindly be taken to confer temporary status on all eligible casual labourers in accordance with the above Scheme.

3. In this connection your kind attention is invited to letter No. 270-6/84 STN dated 30.3.85 wherein instructions were issued to stop fresh

recruitment and employment of casual labourers for any type of work in Telecom. Circles/Districts. Casual labourers could be engaged after

30.3.85 in projects and Electrification Circles only for specific works and on completion of the work the casual labourers so engaged were

required to be retrenched. These instructions were reiterated in d.o. letters NO.270-6/84- STN dated 22.4.87 and 22.5.87 from Member (Pers.)

and Secretary of the Telecom. Department respectively. According to the instructions subsequently issued vide this office letter NO.270-6/84-

STN dated 22.6.88 fresh recruitment of casual labourers even for specific works for specific periods in Projects and Electrification Circles also

should not be resorted to.

3.2 In view of the above instructions normally no casual labourers engaged after 30.3.85 would be available for consideration for conferring

temporary status. In the unlikely event of there being any cases of casual labourers engaged after 30.3.85 requiring consideration for conferment of

temporary status, such cases should be referred to the Telecom. Commission with relevant details and particulars regarding the action taken against

the officer under whose authorisation/approval the irregular engagement/ non-retrenchment was resorted to.

3.3 No casual labourer who has been recruited after 30.3.85 should be granted temporary status without specific approval from this Office.

Casual Labourers (Grant of Temporary Status and Regularisation) Scheme.

1. This Scheme shall be called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Department of

Telecommunications, 1989.

2. This Scheme will come in force with effect from 1.10.89 onwards.

3. This Scheme is applicable to the casual labourers employed by the Department of Telecommunications.

4. The provisions in the Scheme would be as under:-

(A) Vacancies in the Group "D" Cadres in various offices of the Department of Telecommunications would be exclusively filled by regularisation of

casual labourers and no outsiders would be appointed to the cadre except in the case of appointment on compassionate grounds, till the absorption

of all existing casual labourers fulfilling the eligibility conditions including the educational qualifications prescribed in the relevant Recruitment Rules.

However, regular Group D staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies. In the case

of illiterate Casual Labourers, the regularisation will be considered only against those posts in respect of which illiteracy will not be an impediment

in the performance of duties. They would be allowed age relaxation equivalent to the period for which they had worked continuously as casual

labour for the purposes of the age limits prescribed for appointment to the Group D Cadre, if required. Outside recruitment for filling up the

vacancies in Gr. D will be permitted only under the condition when eligible casual labourers are available.

(D) Till regular Gr. D vacancies are available to absorb all the casual labourers to whom this Scheme is applicable, the casual labourers would be

conferred. (a) Temporary Status as per the details given below.

5. Temporary status

(i) Temporary status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least

one year. Out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five day week).

Such casual labourers will be designated as Temporary Mazdoor.

(ii) Such conferment of temporary status would be without reference to the creation/availability of regular Gr.D posts.

(iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on

daily rates of pay on a need basis. He may be deployed anywhere within the recruitment unit/ territorial circles on the basis of availability of work.

(iv) Such casual labourers who acquire temporary status will, not, however, be brought on to the permanent establishment unless they are selected

through regular selection process for Gr.D posts.

6. Scheme has genesis in the judgment of the Apex Court in the case of Daily Rated Casual Labour Employed Under P&T Department,

Through *Bhartiya Dak Tar Mazdoor Manch v. Union of India*, 1988 (1) S.C.C. 122 and the principal complaint of the petitioner-workman

in the above case was that even many of them had rendered services as daily rated workmen or casual labourers for about 10 years and wages

paid to them was very low. After considering Articles 14 and 16 of the Constitution of India with regard to the fundamental rights of the citizens

and Articles 37 and 38 (2) pertaining to directive principles of State policy the respondents were directed to prepare the scheme for absorbing the

casual labourers within eight months from today.

7. Mr. Prabhakar Upadhyay, learned advocate appearing on behalf of the appellant, has raised various contentions opposing the judgment passed

by the learned Single Judge. He specifically stated that the Tribunal in its award dated 18.10.1999 has firstly directed reinstatement with 50% back

wages, and thereafter it was observed that if the respondent employer was unable to employ the workman, in that case, only compensation of

Rs. 1,25,000/- was to be paid in lieu of re-employment.

8. Ms. P.J. Davawala, learned advocate appearing on behalf of the Government of India, has vehemently contended that the workman i.e. the

appellant, original respondent, did not complete 240 days of work and, as per the aforesaid scheme, dated 07.11.1989, no temporary status could

have been conferred upon the workman. She has further argued that the Industrial Tribunal has gone beyond the terms of the reference and

observed that Section 25F of the I.D. Act was not followed while terminating the services of the workman. She has specifically relied upon

Clause-5 of the said Scheme whereby the temporary status is defined and submitted that as per the said clause workman was not ""currently

employed"" and hence, the Industrial Tribunal as well as the learned Single Judge have erred in granting compensation to the workman. She has also

stated that as per the aforesaid Scheme, the workman was not employed regularly. She has also produced a chart depicting the number of days

the appellant had worked, which is reproduced herein below:

No. of days worked by Shri Kalamuddin M. Ansari (i.e. the petitioner)

Year Month No. of days

1987 March, 87 28

"" April, 87 22

"" May, 87 30

"" June, 87 30

"" July, 87 29

"" Total... 139

"" August, 87 Break of 49 days

"" Sept., 87 18

"" Oct., 87 24

"" Nov., 87 29

"" Dec., 87 31

"" Total... 102 days

1988 Jan., 88 15

"" Feb., 88 26

"" Mar., 88 1

"" Total... 42

"" April, 88 Break of one month

"" May, 88 26

"" June, 88 25

"" July, 88 $\tilde{\text{A}}\text{A}\hat{\text{A}}\frac{1}{2}$

"" Aug., 88 $\tilde{\text{A}}\text{A}\hat{\text{A}}\frac{1}{2}$

"" Sept. 88 $\tilde{\text{A}}\text{A}\hat{\text{A}}\frac{1}{2}$

"" Oct., 88 Break of 6 months

"" Nov., 88 $\tilde{\text{A}}\text{A}\hat{\text{A}}\frac{1}{2}$

"" Dec., 88 $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$

1989 Jan., 89 26

"" Feb.,89 $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$

"" Mar., 89 Break of 3 months

"" April, 89 $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$

"" May, 89 31

"" June,89 $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$

"" July,89 $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$

"" Aug., 89 Break continued

"" Sept. 89 $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$

"" Oct., 89 $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$

"" Nov.,89 $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$

"" Dec., 89 $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$

1990 Jan., 90 $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$

"" Feb.,90 $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$

Continuous from June

"" Mar.,90

1989

"" April,90 $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$

"" May,90 Total 18 months

"" June,90 $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$

"" July,90 $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$

"" Aug.,90 $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$

"" Sept.90 $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$

"" Oct.,90 $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$

"" Nov.,90 $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$

"" Dec.,90 23

"" Total $\tilde{A}_{\tilde{L}}\hat{A}^{\frac{1}{2}}$ 23 days

1991 Jan., 91 Break of one month

"" Feb.,91 23

"" Mar.,91 11

"" April,91 16

"" May,91 $\tilde{A}_{\hat{L}}\hat{A}^{\frac{1}{2}}$

"" June,91 $\tilde{A}_{\hat{L}}\hat{A}^{\frac{1}{2}}$

"" July,91 $\tilde{A}_{\hat{L}}\hat{A}^{\frac{1}{2}}$

"" Aug.,91 $\tilde{A}_{\hat{L}}\hat{A}^{\frac{1}{2}}$

"" Sept.91 $\tilde{A}_{\hat{L}}\hat{A}^{\frac{1}{2}}$

"" Oct.,91 $\tilde{A}_{\hat{L}}\hat{A}^{\frac{1}{2}}$

"" Nov.,91 $\tilde{A}_{\hat{L}}\hat{A}^{\frac{1}{2}}$

"" Dec.,91 $\tilde{A}_{\hat{L}}\hat{A}^{\frac{1}{2}}$

"" Total $\tilde{A}_{\hat{L}}\hat{A}^{\frac{1}{2}}$ 70 days

Total No. of days: 139

+102

+42

+57

+26

+31

+23

+70

484 between March, 87

Total $\tilde{A}_{\hat{L}}\hat{A}^{\frac{1}{2}}$

and April 91

The above chart, according to her, reveal intermittent break in service and no continuity of service rendered by the workman. Therefore, the order

under challenge in this appeal does not warrant any interference.

9. Having given thoughtful consideration to the rival submissions of the learned advocates appearing for the respective parties, we have noticed that

the Industrial Tribunal has undertaken careful exercise of coming to the conclusion that the workman had completed 240 days of work. As

observed earlier, the concerned authorities had in fact admitted before the Industrial Tribunal that the appellant had worked for 240 days in the

year 1987. Though, the Industrial Tribunal has gone into the factor of violation of Section 25F of the I.D. Act but looking to the terms of reference

it cannot be said that the findings of the Tribunal on 240 working days are wrong. A careful scrutiny of order, will reveal that the entire exercise

undertaken by the Industrial Tribunal was for determining the factor of completion of 240 days by the workman for the purpose of ascertaining

eligibility of workman for temporary status as per the scheme.

10. Ms. P.J. Davawala, learned advocate, has referred to Clause-5 of the aforesaid scheme and pointed out that the appellant was not "currently

employed" and his services were discontinued. Bare perusal of Clause-5 of the said Scheme reveal that the temporary status can be conferred to

the casual labourers currently employed and who have rendered continuous services at least for a period one year. The chart produced by Ms.

P.J. Davawala, learned advocate, clearly indicates that the appellant was engaged from March 1987 to April 1991. Submission on the part of Ms.

P.J. Davawala, learned advocate, that there was indeed some break in service and hence, the appellant cannot be said to be "currently employed",

cannot be justified in view of working days of the Appellant as specified in the chart. Though, there was artificial break given to the workman it

cannot be said that he was not "currently employed". In our opinion, looking to the working days of the appellant, he is entitled for the benefits of

the aforesaid scheme and, therefore, he is to be conferred the temporary status.

11. At this juncture, we may observe with profit that there is no absolute bar of not considering the cases of casual labourers/the workman for the

purpose of conferring the temporary status. Paragraph Nos. 3.2 to 3.3 of the said Scheme, as recorded earlier, envisage that a casual labourer,

who is employed after 30.03.1985, can be granted temporary status with approval from the Office. The case of the workman was neither

considered by the department for granting any temporary status nor it was sent for obtaining specific approval.

12. The Apex Court in the case of Daily Rated Casual Labour Employed Under P&T Department, Through Bhartiya Dak Tar Mazdoor Manch

(supra) has directed the concerned department to frame a scheme for such casual labourers. A detailed observation regarding the employment,

right to protection against unemployment, decent living for workman and his family, equal pay for equal work, etc. and various other factors were

considered by the Apex Court while directing the authorities to frame such schemes. In Paragraph No.8 of the said judgment the Supreme Court

has observed as below:

8. India is a socialist republic. It implies the existence of certain important obligations which the State has to discharge. The right to work, the right

to free choice of employment, the right to just and favourable conditions of work, the right to protection against unemployment, the right of every

one who works to just and favourable remuneration ensuring a decent living for himself and for family, the right of every one without discrimination

of any kind to equal pay for equal work, the right to rest, leisure, reasonable limitation on working hours and periodic holidays with pay, the right to

form trade unions and the right to join trade unions of one's choice and the right to security of work are some of the rights which have to be

ensured by appropriate legislative and executive measures. It is true that all these rights cannot be extended simultaneously. But they do indicate the

socialist goal. The degree of achievement in this direction depends upon the economic throughout the country. Of those rights the question of

security of work is of utmost importance. If a person does not have the feeling that he belongs to an organisation engaged in production he will not

put forward his best effort to produce more. $\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$

Thus, the basic purpose of the scheme was to ascertain and ensure that the workmen receive protection in employment.

13. Ms. P.J. Davawala, learned advocate appearing on behalf of the Government of India, has also relied upon the judgment rendered by the

Apex Court in the case of Controller of Defence Accounts, Dehradun v. Dhani Ram, 2007 (1) SCC 462. In Paragraph No.12 the Apex

Court has observed as under:

12. Clause 4 of the Scheme is very clear that the conferment of "temporary" status is to be given to the casual labourers who were in employment

as on the date of commencement of the Scheme. High Court seems to have taken the view that this is an ongoing scheme and as and when casual

labourers complete 240 days of work in a year or 206 days (in case of offices observing 5 days a week), they are entitled to get "temporary

status. Clearly clause 4 of the Scheme does not envisage it as an ongoing scheme. In order to acquire "temporary" status, the casual labourer

should have been in employment as on the date of commencement of the Scheme and he should have also rendered a continuous service of at least

one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days

a week. From clause 4 of the Scheme, it does not appear to be a general guideline to be applied for the purpose of giving "temporary" status to all

the casual workers, as and when they complete one year's continuous service. Of course, it is up to the Union Government to formulate any

scheme as and when it is found necessary that the casual labourers are to be given "temporary" status and later they are to be absorbed in Group

D" posts.

The aforesaid paragraph clearly depicts that in order to acquire "temporary" status, the casual labourer should have been in employment as on the

date of commencement of the Scheme and he should have also rendered a continuous service of at least one year which means that he should have

been engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. In the present case it is

undisputed that the appellant had worked for 240 days in the year 1987 and thereafter also he was employed till Dec. 1991, though with some

artificial breaks.

14. She has also relied on the order dated 26.11.2014 passed by the Apex Court in the case of Bharat Sanchar Nigam Ltd. & Anr. v.

K.G. Selvaraj & Ors. (in Civil Appeal No. 3816/07) wherein the Apex Court recorded the finding of the concerned workman about rendering

234 days of service in 12 calendar months between 26.12.1984 to 31.12.1985. The Apex Court has observed that the concerned respondent

was awarded compensation of Rs. 1,00,000/- as a one time measure in final settlement of all the dispute inter se between the parties. In the

present case it is undisputed that the appellant had worked for 240 days and thereafter also employed by the respondent. Hence, the aforesaid

order dated 26.11.2014 passed by the Apex Court will not apply in the facts of the present case.

15. One more aspect needs to be clarified that the Tribunal in the final directions has observed that ""in case if the first party is unable to employ the

second party within 30 days of the receipt of the award, for any reason, the first party was fastened with further liability to pay compensation of

Rs. 1,25,000/- in lieu of re-employment."" In our view as per the aforesaid scheme the Authorities should have employed the Appellant since it is

not the case of the Respondent-Authorities that no work was available or the workman could not have been employed on the former status prior

to his termination.

16. Consequently, and in light of what has been discussed above, we quash and set aside the judgment and order dated 20.01.2011 passed by

learned Single Judge in Special Civil Application No. 291/2000. We further direct the respondent authorities to reinstate the appellant-workman

and consider his case for conferring him temporary status as per Clause-5 of Casual Labourers (Grant of Temporary Status and Regularisation)

Scheme, 1989 within a period of six weeks from the date of receipt of this order.

17. Appeal is allowed accordingly.