
(2012) 08 AP CK 0067

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19344 of 2001

A. Pochaiah

APPELLANT

Vs

Labour Court-II and 2 others

RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Citation : (2012) 08 AP CK 0067

Hon'ble Judges : C.V.Nagarjuna Reddy, J

Bench : Single Bench

Advocate : AK. Jayaprakash Rao, for the Appellant;

Final Decision : Dismissed

Judgement

C.V.Nagarjuna Reddy

1. The petitioner, who was unsuccessful before the Labour Court, which dismissed ID. No. 103 of 1997 by rejecting his claim for reinstatement in the respondent-Andhra Pradesh State Road Transport Corporation (for short "the Corporation"), filed this Writ Petition, feeling aggrieved by the decision of the Labour Court. I have heard Mr. A.K. Jaya Prakash Rao, learned Counsel for the petitioner. No one entered appearance for the respondents.

2. The facts in a nutshell are that the petitioner claimed that he was appointed as NMR on daily wage basis under the control of respondent No. 3 in the year 1988 when Bhanswada Depot was under construction; that he has continuously worked right from the said time till completion of the construction and that after the commencement of operations in Bhanswada Depot, he was engaged as Sweeper in the year 1992 under the control of respondent No. 2. It is his further case that his services were illegally terminated orally on 20-07-1997. The petitioner has raised an industrial dispute before respondent No. 1 which was registered as ID. No. 103 of 1997.

3. The respondents filed a counter-affidavit wherein the petitioner's claim that

he was engaged as NMR in the year 1988 was denied. It was also pleaded that respondent No. 3 had no competence to appoint any employee and that there were no posts of NMRs. It was further averred that the petitioner was awarded with maintenance contract (sweeping) of Bhanswada Depot on a monthly remuneration letter No. C1/90(1)/98-RM-NZB, dated 06-05-1996, of the office of respondent No. 2; that the petitioner was again given a fresh contract from December, 1997, by enhancing the remuneration to Rs. 3,700/-per month and that at the time of filing of the counter-affidavit, the petitioner himself was maintaining the work of sweeping as the contract period was valid upto 30-11-1999. The respondents have denied the employer and employee relationship between them and the petitioner and pleaded that therefore, the question of terminating the petitioner's services did not arise. The further averment was made that if any vacancy in the Corporation is to be filled up, the same shall be done as per the Rules and Regulations of the Corporation.

4. On behalf of the petitioner, he examined himself as WW. 1 and marked Exs. W.1 and W.17. The respondents have examined the Superintendent (Personnel) as MW. 1 and the Deputy Executive Engineer as MW. 2 and marked Exs. M.1 to M.12.

5. Having regard to the rival contentions, respondent No. 1 has framed the following points:

1. Whether there was relationship of employer and employee between the respondents and the petitioner.

2. If so, whether the petitioner was in continuous service of the respondents for not less than one year ?

3. If so, whether the first respondent was justified in terminating the services of the petitioner ?

4. If not, to what relief is the petitioner entitled ?

6. On appreciation of oral and documentary evidence, respondent No. 1 has held all the points against the petitioner and in favour of the respondents.

7. At the hearing, Mr. A.K. Jaya Prakash Rao, learned Counsel for the petitioner, submitted that the petitioner being illiterate, the respondents have managed to bring in existence, the documents to suit their defence and that the plea of the respondents that the petitioner was a contractor and never engaged as NMR or casual labourer is a mere facade. He placed reliance on the judgment of the apex Court in Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, and Secretary, H.S.E.B Vs. Suresh and Others etc. etc., in support of his submission that the Court has to lift the veil to determine the real nature of the relationship between the employer and the workman.

8. No one appeared for the respondents at the hearing.

9. Except filing a copy of the award of respondent No. 1- Labour Court, the

petitioner has not filed any material in support of his plea. Even the record of the Labour Court is not available before this Court. Therefore, this Court has to make do with the award of the Labour Court only. A perusal of the said award would show that the Labour Court has discussed oral and documentary evidence in detail. In his cross-examination, the petitioner, who deposed as WW1, has himself admitted that he worked as contractor for sweeping and cleaning of Bhanswada Depot from 06-05-1996 to November, 1997 in pursuance of letter, dated 06-05-1996, of the Regional Manager, Nizamabad. He has also admitted that his tender for cleaning and sweeping of Bhanswada Depot premises as per the notification published in newspaper, dated 25-08-1989, was accepted and that he took the contract work of cleaning and sweeping of the depot from the period from 10-07-1997 to 09-11-1999. He further deposed that respondent No. 2 has not given him any order of appointment for working as sweeper and also unequivocally admitted that he was doing the sweeping and cleaning work in Bhanswada Depot on contract basis.

10. Adverting to Exs. W.1 and W.2, the identity cards issued to the petitioner, the Labour Court has observed that these cards contain many erasures at several places which fact was admitted by the petitioner in his cross-examination. With regard to Exs. W.3 to W.12, photocopies of the cheques issued to the petitioner, the Labour Court pointed out that there is nothing to show from those cheques that they were given to the petitioner towards wages for working as sweeper. The crucial document filed by the respondents is Ex. M.1-photocopy of the license given to the petitioner by the Assistant Commissioner of Labour, Nizamabad, under the Contract Labour (Regulation and Abolition) Act, 1970, for doing contract work in the respondent-Corporation wherein the petitioner is described as contractor. Ex. M.4 is the photocopy of application, dated 19-04-1994, given by the petitioner to the Regional Manager, APSRTC, Karimnagar, wherein he stated that he was allotted contract work of sweeping Bhanswada Depot and garage on a monthly payment of Rs. 700/- from February, 1993; that he was working to the full satisfaction of the superiors; that he had to engage a minimum of two persons for sweeping purposes by paying Rs. 700/- each; that therefore, he has requested to enhance the payment from Rs. 700/- to Rs. 1500/- per month. Under Ex. M.3- photocopy of the petitioner's application, dated 28-07-1994, made to the Manager of respondent No. 2, he has expressed his willingness to do the contract work of cleaning the depot, garage, lavatories and growing plants @ Rs. 2,000/- per month on contract basis. Exs. M.2 and M.6 are the photocopies of pay orders given in favour of the petitioner and others. Ex. M.7 is the photocopy of the proceedings of the Regional Manager, Nizamabad, wherein it was stated that the tender of the petitioner for sweeping, cleaning and maintenance of the bus depot and D.M.'s office, Bhanswada, for an amount of Rs. 3,700/- per month was accepted. Ex. M.8 is the photocopy of the order of the Depot Manager, Bhanswada, directing the petitioner to enter into an agreement for sweeping. Ex. M.9 is the photocopy of the deed of license, dated 05-12-1997, entered into by the petitioner with

APSRTC represented by its Managing Director.

11. On an analysis of the above-mentioned oral and documentary evidence, the Labour Court has come to the conclusion that there was no employee and employer relationship between the petitioner and the respondents and that the petitioner was only a contractor and never worked as a daily wage worker in the respondent-Corporation.

12. In the face of the petitioner's own admission that he worked as a contractor, the Labour Court is completely justified in rendering the above noted findings. The submission of the learned Counsel for the petitioner that taking advantage of the illiteracy of the petitioner, the respondents have created record to show that he was only a contractor can be referred only to be rejected. The learned Counsel has not shown that at least a suggestion was made in the cross-examination of MWs. 1 and 2 that these documents were created by the Corporation to suit their defence.

13. With regard to the judgments on which reliance is placed by the learned Counsel for the petitioner, I have carefully gone through them. In both the cases, the High Court has rejected the plea of the Management that the workmen therein were only contract labourers. While declining to interfere with those findings, the Supreme Court has observed that in order to find the real relationship between the Management and the workers, the Courts have to lift the veil. Here, in the instant case, the overwhelming documentary evidence, coupled with the petitioner's own admissions, would undoubtedly show that the petitioner was only a contractor and never engaged as a workman by the respondents.

14. In the light of the above discussion, I do not find any reason to interfere with the well-reasoned award of the Labour Court.

15. Before closing the case, I would like to point out that regrettably, the Corporation has not entered appearance even though the record shows that the notice on respondent No. 2-Depot Manager, Bhanswada, was served. This Court hopes that the Corporation would bestow necessary attention on the cases pending before the Courts and ensure that it is properly represented therein and assistance is rendered on its behalf to the Courts, keeping in view the fact that the default in this regard would cause enormous loss to the public interest as the Corporation is a public utility undertaking.

16. In the light of the above discussion, the Writ Petition is dismissed. As a sequel, WPMP. No. 8552 of 2005 is disposed of as infructuous.