

(1995) 09 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 4393 of 1993-W

Divisional Railway Manager	Vs	APPELLANT
General Secretary, Dakshina Railway Casual Labour Union and Others		RESPONDENT

Date of Decision : 26-09-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 311
Industrial Disputes Act, 1947 — Section 2, 25B(1), 25B(2), 25F, 25H

Citation : (1995) 09 KL CK 0011

Hon'ble Judges : K.J. Joseph, J

Bench : Single Bench

Advocate : M.C. Cherian, for the Appellant; B. Gopakumar, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

K.J. Joseph, J.—The Divisional Railway Manager, Southern Railway is the Petitioner. He seeks to quash Exts. P-13 and P-14.

2. According to the Petitioner, the employees represented by the first Respondent union were engaged as casual labourers under the provisions of the Indian Railway Establishment Manual (for short, the Manual only) by the Permanent Way Inspector on the basis of specific sanction. Thereafter, since they themselves absented from work from 1st March 1983 onwards, their services were terminated. The Tribunal ordered their reinstatement with all benefits of service. According to the Petitioner, the Tribunal went wrong in ordering their reinstatement, as there was no order of sanction to continue them under employment after March 1983, and that since they were engaged on the basis of specific order of sanction, denial of employment on the expiry of the period of sanction would not come under para 2302 of the Manual. On that ground, no notice also need be given to the employees before denying employment to them. They are not entitled to get any benefit of retrenchment compensation u/s 25-F

of the Industrial Disputes Act (for short the Act only) or preferential claim u/s 25-H of the Act, since none of them had the continued service of 240 days in a calendar year under the Railways. The Petitioner also contended that the Tribunal, while ordering reinstatement of the employees in service with all benefits of service, did not understand the scope of Section 25-B(1) and (2) of the Act. While doing so, the Tribunal also failed to consider the relevant materials and the evidence adduced in the case and irrelevant materials were relied on to order their reinstatement in service.

3. Heard Counsel on both sides.

4. The first Respondent filed a detailed counter affidavit denying all the grounds taken by the Petitioner. According to the first Respondent, the employees attained the temporary status of "railway servants" since they had 120 days of service under the Railways in a calendar year by virtue of their employment as casual labourers and that they were denied employment without complying with the provisions contained in the Manual and in the Act. Therefore, they contended that Ext. P-13 award is perfectly legal, within the scope of Ext. P-1 order of reference. It is their further case that none of the grounds urged in the Original Petition would be available to the Petitioner, since those grounds were never raised before the Tribunal and that the only ground urged was, the employees absented themselves from work and, therefore, denial of employment was justified.

5. As could be seen from Ext. P-3, the case of the Railways was that the employees were initially engaged from 1979 for sporadic work, as and when work was available. Such engagements were made against specific sanction given by the officers of the concerned department according to availability of work. According to the Petitioner, the employees under the first Respondent absented themselves right from the initial engagement and, there is no question of retrenching their services. All the fifteen employees obtained the temporary status of Railway employees since they had completed 120 days of continuous work under the Railways. The Petitioner contended before the Tribunal that since the employees did not complete 240 days of continuous service in a calendar year under the Railways, the Industrial Disputes Act would not be applicable in their case. It was also stated in the written objection that the employees remained absent from 1st March 1983 onwards for reasons best known to them, and that the temporary status conferred on them would not give them the right of a regular servant and, therefore, they were not eligible for any retrenchment compensation or pay, in lieu of notice.

6. Thus, a reading of Ext. P-3 would positively show that the Railways had no case before the Tribunal that the employees were denied employment for want of sanction. On the other hand, what was stated therein was that all the fifteen employees were employed against sanction orders. They had no case before the Tribunal that for want of sanction, the Railway was unable to provide employment to them. Exts. P-4 and P-5 would amply prove that the employees

were engaged as casual labour on the strength of sanction orders. But there was no statement or evidence before the Tribunal adduced either by the Railways or by the employees to prove that the employees were denied employment for want of sanction. Such a case is seen set up by the Railways only before this Court for the first time in this Original Petition. I see no justification for the Petitioner to raise such a contention for the first time before this Court in this proceeding under Articles 226 and 227 of the Constitution of India.

7. In the evidence of M.W. 1, which is produced as Ext. P-11 in this case, there was no statement that the employees were denied employment due to the expiry of sanction orders to the post to which they were engaged. Instead, what was deposed was that the employees were casual workers and for engaging them, special sanction was required from higher authorities and that they were purely casual labours and none of them had worked for more than 240 days in a calendar year. He had also admitted that all the employees attained temporary status. In the absence of any such contention before the Tribunal, I do not find any legal justification for the Petitioner to raise such a contention before this Court for the first time in this proceeding. On the other hand, the Petitioner contended before the Tribunal that the casual labours so employed against sanction orders remained absent from March, 1983 onwards for reasons best known to them only. As could be seen from paragraph 7 of Ext. P-3 written objection, the employees absented themselves from attending the sporadic work from 1st March 1983 onwards and, therefore, no retrenchment was enforced on them. M.W. 1 gave evidence before the Tribunal that the employees absented themselves from work and that he did not know under what circumstances they abandoned the work. But there was no legal evidence adduced by the Railways to come to the conclusion that work was offered to the employees, but they refused to do it or they absented themselves from doing it. The Tribunal, after considering the matter elaborately, came to the conclusion that the management failed to prove the case of abandonment or absenting themselves from work by any legal evidence and, therefore, rejected the said contention of the management.

8. Abandonment of work or absenting themselves from work itself postulates the existence of work and sanction order for the said work. When there is no work to be provided on the basis of sanction order, there is no question of absenting themselves from work or abandoning the work. When management contended before the Tribunal that the employees absented themselves from work, obviously, it postulates that there was work sanctioned by the Railways, but the employees remained absent purposefully.

9. There was no case for the Railways either in Ext. P-3 or in Ext. P-11 that after 1st March 1983, there were orders of sanction to engage casual labours and that the concerned authorities gave no sanction after 1st March 1983 and, therefore, the employees could not be engaged for work for want of sanction. On the other hand, as stated earlier, the specific case put forward by the Railways was that

the employees were casual labours and that they absented themselves from doing the work. As stated earlier, the Railways had no case before the Tribunal that the services of those casual labourers were terminated for want of sanction. In the absence of such a case, the Tribunal had no occasion to consider the present case of the Railways raised for the first time before this Court that the services of the employees were terminated due to the expiry of sanction to the post to which they were engaged; Both the contentions raised by the Railways that the employees absented themselves from work from 1st March 1983 onwards and that they abandoned the work were rightly negatived by the Tribunal while passing Ext. P-13 award. There was no legal basis for the Petitioner to contend that the employees absented themselves from work in spite of availability of work. On the other hand, it was the consistent case of the union that the employees were denied employment from March 1983 onwards. The evidence of W.W. 1 and W.W. 2 would amply prove that the employees were made to understand by the Permanent Way Inspector that they would not have work from March 1983 onwards and, as a matter of fact, as could be seen from Exts. P-4 and P-5, they were denied employment from March 1983 onwards. In the absence of a specific contention by the Railways before the Tribunal that in spite of sanctioned work, the employees absented themselves from doing the work, it came to the conclusion that there was denial of employment to them by the management. I do not consider it necessary to disturb the said finding of fact arrived by the Tribunal on the basis of the pleadings and evidence adduced before it in this proceeding under Articles 226 and 227 of the Constitution of India.

10. It is the admitted case of the parties that the employees had attained temporary status. Exts. P-16 and P-17 would amply prove that the Railways had accepted the contention of the employees that they attained the temporary status since they had worked for 120 days continuously in a calendar year. In the light of the above admitted fact, the only question to be decided is, whether the termination of those who attained the status of temporary Railway servants without complying with the provisions contained in Chapter XXIII of the Manual is legal or not. The relevant portions of Paras 2301, 2302 and 2505 of the Manual are extracted below:

2301. Definition". A "temporary railway servant" means, a Railway servant without a lien on a permanent post on a Railway or any other administration or Office under the Railway Board. The term does not include "casual labour", a "contract" or "part time" employee or an "apprentice".

2302. Termination of service and periods of notice.-(1) Service of a temporary Railway servant shall be liable to termination on 14 days notice on either side provided that such a Railway servant shall not be entitled to any notice of termination of his service-

(i) if the termination is due to the expiry of the sanction to the post which he holds or the expiry of the officiating vacancy or to his compulsory retirement due

to mental or physical incapacity or to his removal or dismissal from service as a disciplinary measure after compliance with the provisions of Clause (2) of Article 311 of the Constitution of India.

(ii) * * * * *

2505. Notice of termination of service.-Except where notice is necessary under any statutory obligation, no notice is required for termination of service of the casual labour. Their services will be deemed to have terminated when they absent themselves or on the close of the day.

Note.-In the case of a casual labourer who is to be treated as temporary after completion of six month"s continuous service, the period of notice will be determined by the rules applicable to temporary Railway servants.

Thus, it is clear that the employees are entitled to get 14 days" notice before termination of their service. The Supreme Court had occasion to consider the right of a casual labour who acquired the status of a temporary Railway servant, in the decision reported in L. Robert D"souza v. The Executive Engineer and Anr. AIR 1982 S.C. 854 and held thus:

... It is thus abundantly clear that if a person belonging to the category of casual labour employed in construction work other than work-charged projects renders six months" continuous service without a break, by the operation of statutory rule the person would be treated as temporary Railway servant after the expiry of six months of continuous employment. It is equally true of even seasonal labour. Once the person acquired the status of temporary Railway servant by operation of law, the conditions of his service would be governed as set out in Chapter XXIII.

The Supreme Court also had occasion to consider the method of termination of a temporary casual labour who acquired the temporary status and held thus:

Once it is held that by operation of statutory rule in the Manual, the Appellant had acquired a status of temporary Railway servant and assuming that the termination of service in the circumstances alleged does not constitute retrenchment *stricto sensu*, would the termination be still valid? The answer is an emphatic No. On the admission of the Railway administration, service was terminated on account of absence during the period Appellant was on fast. Absence without leave constitutes misconduct and it is not open to the employer to terminate service without notice and inquiry or at any rate without complying with the minimum principal of natural justice. Further, Rule 2302 clearly prescribes the mode, manner and methodology of terminating service of a temporary Railway servant and admittedly the procedure therein prescribed having not been carried out, the termination is void and invalid. Accordingly, the same conclusion would be reached even while accepting for the purpose of the facts of this case simultaneously rejecting it in law that the termination does not constitute retrenchment yet nonetheless it would be void and inoperative.

11. There was no case for the Railways that 14 days notice in writing was given to any of the fifteen employees. As a matter of fact, there was no case for them that any notice was given to the employees in any form. On the other hand, what their contention before the Tribunal was that since the employees were only casual labours, they were not entitled to get the benefits conferred on a temporary Railway servant. There is no provision in the Manual making a distinction between a temporary Railway servant and a casual labour who acquired the status of a temporary Railway servant. As a matter of fact, the service conditions of the temporary Railway servants and those who attained the status of temporary Railway servants are governed by the provisions of Chapter XXIII of the Manual. In the absence of a case for the Railways that 14 days' notice was given to the employees, termination of service or denial of employment to them would attract Para 2302 of Chapter XXIII of the Manual.

12. As held by the Supreme Court in Robert D'souza's case AIR 1982 S.C. 854 termination of service of a workman who acquired the temporary status would be retrenchment within the meaning of the said term, except if the case falls within any of the excepted categories enumerated therein viz. (i) termination by way of punishment inflicted pursuant to disciplinary action; (ii) voluntary retirement of the workman; (iii) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; (iv) or termination of the service on the ground of continued ill-health. Once the case does not fall in any of the excepted categories, the termination of service, even if it be according to automatic discharge from service under agreement, would nonetheless be retrenchment within the meaning of the expression in Section 2(00). It must, as a corollary, follow that if the name of the workman is struck off, the roll that itself would constitute retrenchment. In the light of the above principles, the finding arrived at by the Tribunal that the termination of service without complying with Para 2302 was illegal, cannot be said to be unjust. Such termination is clearly illegal and the Tribunal was perfectly justified in interfering with such denial of employment and termination of service.

13. Counsel for the Petitioner made a feeble attempt to satisfy this Court that the Union had adduced evidence to prove that the employees were informed orally by the Permanent Way Inspector that they would not have employment from March 1983 onwards. While submitting the claim statement and also while giving evidence, it was stated that M.W. 1 had informed the workers on 5th January 1983 that there would be no work for them from March 1983 onwards. The question is, whether such an oral information stated to have been given by the Permanent Way Inspector would be sufficient compliance Para 2302 of the Manual?

14. It is true that in Para 2302, it is not specifically stated that 14 days' notice should be given in writing as distinguished from 30 days' notice contemplated u/s 25F of the Act. The oral statement made by W.W. L cannot be considered as a

notice contemplated under Para 2302 of the Manual. While establishing the case of the workmen that they were denied employment by the Railways, they contented that M.W. 1 had informed them that there would be no work from March 1983 onwards. Going by the said statement, it has to be held that the employees were denied work from March 1983 onwards and that the documentary as well as oral evidence adduced by the management would prove that such statement was untrue since there was work up to 31st March 1983 as could be seen from Exts. P-4 and P-5 and many of the employees were actually employed even in March 1983. Therefore, the oral information given by M.W. 1 cannot be considered to be a statutory compliance of 14 days' notice contemplated under Para 2302 of the Manual. Thus, it is proved, beyond doubt, that the employees were denied employment without complying with Para 2302 of the Manual. The finding arrived at by the Tribunal that the retrenchment of the workmen effected without giving 14 days' notice was illegal has only to be confirmed.

15. Counsel for the Petitioner brought to my notice the statement in paragraph 8 of Ext. P-13 award, wherein the Tribunal had relied on the statement of the Union Secretary that immediately after denial of employment to the workmen, they approached M.W. 1 and they were told that work sanction could be obtained within a week and then they would be given work. The above statement would show that the workers were told that they would be allowed to work within a week of their denial of employment. The Tribunal also found on the evidence adduced before it that even after getting work sanction orders from the concerned authorities, the Railways did not provide employment to them. The above finding would positively show that there were work sanction orders but the workers were denied employment by the Petitioner. Denial of employment to the employees and not giving 14 days' notice or 14 days' wages in lieu of such notice would make the retrenchment of the employees illegal. The finding of the Tribunal that the termination without complying with the statutory provisions could only be considered as null and void does not call for interference by this Court in this proceeding.

16. Regarding the applicability of the provisions of the Industrial Disputes Act, the Tribunal, in paragraph 10 of Ext. P-13, found that having found the termination of the employees who attained the temporary status null and void, it was unnecessary to consider the said point. But since the said plea was raised before the Tribunal, it dealt with that matter also. Placing reliance on the decision of the Supreme Court reported in *Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation*, Counsel for the Petitioner submitted that the said finding of the Tribunal is illegal. I see no justification to go into that question in this proceeding, in the light of my finding that the Tribunal correctly found that the termination of the workmen is null and void.

17. Counsel for the Petitioner also submitted that while arriving at the

conclusions in Ext. P-13, relevant materials were not considered by the Tribunal and that irrelevant materials were considered for the purpose of coming to the conclusion that the retrenchment of the workers is bad. I see no legal force in the said contention. A reading of Ext. P-13 would positively show that the Tribunal had relied on the evidence adduced before it and in the light of the evidence so adduced, both oral and documentary, it came to the conclusion that the retrenchment of the workmen was illegal. There is no justification to interfere with such a finding in this proceeding under Articles 226 and 227 of the Constitution of India.

18. Counsel for the petitioner brought to my notice the decisions of the Supreme Court reported in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, and Hindustan Lever Limited Vs. B.N. Dongre and Others, wherein the Supreme Court had held that the powers of this Court under Articles 226 and 227 of the Constitution of India are wide enough to interfere with the award of the Industrial Tribunal if that is based on a complete misconception of law or it is based on no evidence or that no reasonable man would come to the conclusion to which the Tribunal had arrived at. It is not the lack of power that prevents this Court from interfering with the matter.

Interference is possible and justifiable in appropriate cases. The decision of the Industrial Tribunal would be subject to review by this Court under Articles 226 and 227 of the Constitution. This is more so, since there is no appeal provided before any authority against the award passed by the Tribunal under the provisions of the Industrial Disputes Act. Therefore, the above decisions would not be of any use to the Petitioner unless it is established that Ext. P-13 is in any way illegal, perverse or based on no legal evidence at all. As stated earlier, the Petitioner could not establish any infirmity against Ext. P-13 so as to attract interference by this Court under Articles 226 and 227 of the Constitution.

19. Counsel for the Petitioner also contended that Ext. P-13 is beyond the scope of Ext. P-1 order of reference and that the Tribunal exceeded its jurisdiction while passing Ext. P-13. As can be seen from Exts. P-1 and P-13, the dispute that was referred is, whether the action of the Divisional Railway Manager, Palakkad Division in terminating the service of the workmen from 5th November 1983 is justified or not. Counsel for the Petitioner submitted that there was no specific finding regarding the actual date on which the service of the workmen was terminated.

20. The Tribunal, placing reliance on the evidence in the case, came to the conclusion that the workmen were denied employment from March 1983 onwards. It is true that in some of the proceedings there was discrepancy in respect of the claim of the workmen regarding the actual date from which they were denied employment. But the evidence in the case would positively prove that the employees were denied employment from March 1983 onwards. Exts. P-16 and P-17 would also support the case of the workmen. But it is the case of the workmen that since the dispute that was referred to was regarding the

termination of their service with effect from 5th November 1983, they claimed benefits only from that date onwards and the Tribunal granted only that prayer. Therefore, if the workmen were denied employment from March 1983 onwards, it has to be held that even on 5th November 1983, they were not having employment and, therefore, they are perfectly entitled to get all the benefits from 5th November 1983 onwards, the date referred to in Exts. P-1 and P-13.

21. Counsel for the Petitioner also submitted that what was referred to the Tribunal was the question whether the action of the Divisional Railway Manager in terminating the service is justified or not. According to Counsel, the employees were denied employment by the Permanent Way Inspector and not by the Divisional Railway Manager. I see no substance in that contention also. Admittedly, the employees were denied employment by the Railways. Placing reliance on the decisions reported in *Calcutta Electric Supply Corporation v. Calcutta Electric Supply Workers' Union and Ors.* AIR 1959 S.C. 1191 *Management of Wenger and Co. Vs. Their Workmen, and Workmen of English Electric Company of India Ltd., Madras Vs. Presiding Officer and Another*, counsel for the petitioner submitted that Ext. P-13 was passed in violation of the terms of reference made by the Government evidenced by Ext. P-1.

22. The question that was considered by the Supreme Court in AIR 1959 S.C. 1191 was that as per the order of reference what was referred to the Tribunal was regarding the medical aid that the workmen are entitled to get, which was one among the various demands made by the workmen. But the Tribunal came to the conclusion that the workmen and members of their families are entitled to get medical aid subject to the limitation that no employee would be entitled to claim medical treatment which would cause more than one month salary due to them. The reference was only with regard to medical aid to employees and not to members of their family. But the finding arrived at was not only to the employees, but to members of their families also. Moreover, there were different demands made by different unions before the management and one union had made a specific demand that members of the families are also entitled to get medical aid, which was not referred to the Tribunal. Under such circumstances, the Supreme Court had found that the Tribunal went wrong in passing the award and it is beyond the scope of reference.

23. In the decision reported in *Management of Wenger and Co. Vs. Their Workmen*, also, the award was against the specific terms of reference made to it. In that case, what was referred to the Tribunal was the question whether the workmen were entitled to share the service charges collected previously by different management upto the date of reference and if so, what should be the percentage and what directions were necessary in this perspective. But what was decided by the Tribunal was in regard to the claim for a share in the service charges in future, i.e. after the award. The Supreme Court had found that it was beyond the scope of the term of reference.

24. In *Workmen of English Electric Company of India Ltd., Madras Vs. Presiding*

Officer and Another, , the question that was referred for adjudication was in regard to non-employment of certain workers and the reliefs which they were entitled to get. But what was adjudicated by the Tribunal was their claim for confirmation with the stoppage of work leading to retrenchment. That was also found to be beyond the scope of reference made to the Tribunal.

25. Thus, the decisions relied on by Counsel for the Petitioner would not be of any use in the present case. As stated earlier, the reference that was made to the Tribunal in this case was regarding the termination of service of the workmen with effect from 5th November 1983 and it was that question which was considered in Ext. P-13 award. Ext. P-13 cannot be said to be beyond the scope of reference made to the Tribunal.

26. In the light of the above findings arrived at by me, it cannot be said that the Tribunal had exceeded the jurisdiction conferred on it while passing Ext. P-13 award. In the light of the principles enumerated by the Supreme Court in the decision reported in Biswabahan Das Vs. Gopen Chandra Hazarika and Others, this Court is justified in interfering with the matter and it cannot be said that the Tribunal exceeded its jurisdiction while passing Ext. P-13. Counsel for the Petitioner also submitted that the relief granted by the Tribunal may be modified since it caused great financial commitment on the Railways. But I see no justification to interfere with the relief granted in favour of the workmen by the Industrial Tribunal.

27. I see no merit in the Original Petition. The Petitioner has not succeeded in establishing that Ext. P-13 is in any way illegal, improper or perverse warranting interference by this Court under Articles 226 and 227 of the Constitution of India.

The Original Petition is, therefore, dismissed. No costs.

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