

(2009) 10 KL CK 0021

In the High Court Of Kerala

Case No : Writ Petition (C) No. 27809 of 2003 (I)

Express Publications

APPELLANT

Vs

K. Daglas and Another

RESPONDENT

Date of Decision : 05-10-2009

Acts Referred:

Contract Act, 1872 — Section 23
Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2010) 126 FLR 484 : (2010) 2 KLJ 392

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : U.K. Ramakrishnan, E.K. Madhavan, P.V. Lohithakshan, P. Vijayamma, V. Krishna MenonUma Gopinath, Devidas U.K.and Amrita Jayaram, for the Appellant; M. Sasindran, for the Respondent

Final Decision : Allowed

Judgement

P.R. Ramachandra Menon, J.—The petitioner/management is before this Court challenging Ext. P4 order passed by the second respondent/Tribunal whereby cessation of employment of the first respondent/worker due to non renewal of Ext.P3 tenure prescribed in the contract of employment was interfered with, holding that it was not a case of non renewal of contract; that there was no proper termination of service and hence that the worker was liable to be deemed as continuing in service, for having not complied with the requirements of Section 25F of the Industrial disputes Act.

2. The case of the petitioner/Management is that such a wrong finding has been rendered by the Tribunal after holding that Exts. P2 and P3 contracts of employment are void having executed the same contrary to the "public policy" and further as a measure of coercion, whereby the worker was forced to execute the same, whereas, there is absolutely no such case for the worker anywhere in the Claim Statement, nor has he adduced any evidence in this regard.

3. The petitioner was having a bureau in Kannur, where admittedly one

correspondent alone was working, besides the first respondent engaged as part time Teleprinter Operator, as per Ext. P1 offer dated 25.05.1992. As borne by Ext.pl appointment order, the part-time engagement of the first respondent was w.e.f. 01.05.1992, for a monthly consolidated amount of Rs. 500/-, making it clear that, he, being a part time employee, the provisions of the Working Journalists & other Newspaper Employees (conditions of Service and Miscellaneous provisions) Act and other "Acts" connected there to will not be applicable to him and that his service is liable to be terminated at any time without notice.

4. While so, the petitioner/management and the first respondent/worker entered into Ext. P2 agreement dated 07.12.1996, where by the terms of engagement were brushed up and set forth in better terms for either side, stipulating that the tenure if engagement as "part time Teleprinter Operator" would be for a period commencing from 01.12.1996 to 31.03.1998; that the total consolidated payment would be a sum of Rs. 1000/- per month; that the worker would not be entitled to get any other amenities; that the worker would not have any claim for future employment in the Company on the basis of the contract entered into and further that the above engagement was liable to be terminated at any time, as specified.

5. On expiry of the tenure of the said contract, it is seen that the same was renewed as per Ext.P3 dated 21.04.1998, whereby the payment was enhanced to Rs. 1100/- per month and the tenure was extended upto 31.03.1999 without changing the other service conditions. It is the case of the Management that in the meanwhile, computerisation of the bureau was effected pursuant to which the Teleprinter System was dispensed with and the correspondent himself was effecting the necessary operations, particularly since the first respondent/worker had absolutely no acquaintance with the computer. Still, the Management waited to have the tenure of the contract expired and accordingly, as there was no further need, necessity or occasion, the tenure of the contract was no renewed after 31.03.1999 and as such there was no engagement of the first respondent w.e.f. 01.04.1999. Contending that non renewal of the first respondent w.e.f. 01.04.1999 as wrongful denial of employment, an industrial dispute was raised, which led to the adjudication before the second respondent, culminating in Ext.P4

6. The evidence consists of the oral testimony of the worker, who was examined as W1, producing Exts. W1 to W6, whereas the personal Officer of the Management, who is the attesting witness to Exts. P2 and P3 was examined as M.W. 1, simultaneously producing and marking Exts. M1 and M2 contracts produced as Exts. P2 and P3 in the Writ petition.

7. After considering the pleadings and evidence on record, the Tribunal arrived at a finding that, at the time of initial engagement, no period of employment was fixed; that exts. P2 and P3 were got executed by the Management as a matter of "pressure tactics" and the worker was made to sign the same, which was very much against the "public policy" and it was hit by Section 23 of the Indian

Contract Act. Accordingly, placing reliance on the decision rendered by the Apex Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . It was held that exts. M1 and M2 contracts (exts. P2 and P3 herein) were null and void. In consequence, the Tribunal held that there was no termination of service of the first respondent at any point of time and that the worker was liable to be deemed as continuing in service. Since there was no compliance with the requirements u/s 25F of the industrial disputes Act, based on the finding arrived at by the Tribunal that non engagement of the first respondent amounted to retrenchment of service, it was held that such denial of employment from 01.04.1999 was illegal and the Management had to reinstate him in service with backwages and all other attendant benefits, which in turn is under challenge in the present Writ Petition.

8. Mr. U.K. Ramakrishnan, the learned Senior Counsel appearing for the petitioner submits that the observations made by the Tribunal to sustain the finding are wrong and perverse in all respects, in so far as even the worker did not have any such case either by way of pleadings or in evidence, that he was forced to execute Exts. P2 and P3 contracts. It is pointed out that the Tribunal was proceedings on a wrong track, under the impression that the first respondent was continuing in service (prior to execution of the said contracts) as a "permanent employee", and the admitted nature of engagement only as a "Part Time Teleprinter Operator" (as shown in Ext. P1 order appointment) has never been referred to anywhere in the Award. The learned Sri. Counsel further submits that the reference made to Section 23 of the Indian Contract Act and also the reliance placed on 1986 LLJ 171 are thoroughly wrong and misconceived, as the same is not applicable to the case in hand. The learned Sr. Counsel placed reliance on the decisions rendered by the Apex Court, as reported in Kishore Chandra Samal Vs. The Divisional Manager, Orissa State Cashew Development Corporation Ltd., Dhenkanal, and 2006 II LLJ 235 (SC) Municipal Corporation, Ludhiana v. Ram Pal to sustain the contentions raised in the Writ Petition.

9. The learned Counsel for the first respondent submits that the finding and reasoning given by the Tribunal are very much correct and sustainable and not assailable under any circumstances. It is also stated that Exts. P2 and P3 were executed at the instance of the Management, that the worker was not ware of the contents of the same and further that denial of employment very much amounted to retrenchment, which has been rightly held as illegal, for having not complied with the terms of Sect. 25F of the Industrial Disputed Act.

10. Obviously, reinstatement with backwages and all other attendant benefits have been awarded by the Tribunal on the basis of the finding that denial of engagement amounted to retrenchment u/s 25F of the Industrial Disputes Act. It has of course been brought in evidence that the first respondent was continuing in service on the basis of Exts. P2 and P3 contracts, execution of which is rather admitted from the part of the worker as well. But the said contracts have been

ignored by the Tribunal as null and void, stating as opposed to "public policy", and observing that the stipulation of the period of employment in the said contracts was not correct or sustainable, particularly when the initial appointment did not provide for the same. In other words, if the said documents were valid and sustainable, it would not have resulted in a situation ordering reinstatement in service with backwages in view of the specific clause contained therein prescribing the tenure of engagement. This is for the reason that non-renewal of the specified term will clearly come within the purview of Clause (bb) of Section 2(oo) of the Industrial Disputes Act, defining the term "retrenchment". Where it has been specifically stipulated that non renewal of tenure of engagement will not constitute "retrenchment".

11. Coming to the question of sustainability of Exts. P2 and P3 contracts, it is true that, when the first respondent was originally engaged as per Ext. P1, no tenure of engagement was prescribed. But the fact remains that the first respondent was engaged only as a "part Time Teleprinter Operator" for a consolidated sum of Rs. 500/- per month. It is also an admitted fact that no specific plea was raised from the part of the worker, that Ext. P2 agreement was executed stipulating the period of service as a measure of coercion. This is more so, since the alleged denial of service did not occur during the period of Ext. P2 contract, which on the other hand was extended further as borne by Ext. P3 and there was absolutely no complaint for the first respondent in any manner, till completion of the extended tenure on 31.02.1999.

12. That apart, there is substantial variation as to the factual scenario, when the parties executed Ext. P2/P3 contracts, modifying the terms prevailed earlier. The glaring instance is with regard to the quantum of payment, whereby the consolidated pay was enhanced to Rs. 1000/- per month and thereafter to Ra. 1100/- per month. Further, the stipulation under Clause (6) of Ext. P2, whereby the Management reserved the right to terminate the service. "Without any notice" was consciously changed in Ext. P3 (under Clause (6)), that such termination will be possible only on issuance of "one month"s notice in writing or on payment of month;s remuneration. The quantum of wage was further enhanced in Ext. P3, whereby Ext. P2 contract was renewed. Exts. P2 and P3 are to be treated as a "package deal" whereby the worker was benefited to some extent, while some other clauses were incorporated specifying the "tenure" to meet the organisational requirement of the Management. There is absolutely no clause in exts. P2 or P3, whereby an inference can be drawn, that the same was executed contrary to the "public policy", which reasoning hence does not attract to the case in hand; particularly when the terms and conditions stipulated therein were very much acceptable to the worker, who was engaged only as a "Part time Teleprinter Operator". For the very same reason, the law declared by the Apex Court in 1986-II-LLJ 171, which stands entirely on a different pedestal, is not at all attracted to the case in hand. This being the position, the observation made by the Tribunal that Exts. P2 and P3 contracts are null and void and hit by Section 23 of the Indian Contract Act is not correct or sustainable under any

circumstances.

13. As rightly pointed out by the learned Sr. Counsel for the petitioner, an observation was made by the Tribunal in paragraph No. 4 of Ext. P4 award (wrongly numbered after paragraph 6) that, it is common case of the parties that the worker was working as "Teleprinter Operator" (omitting the words-"part time"). Similar mistakes have been repeated elsewhere as well; besides the wrong observation made in paragraph No. 8 that action of the Management in procuring Exts. M1 and M2 contracts of service from an "otherwise permanent employee" as a measure of coercion. It is also observed by the Tribunal in the very same paragraph that the worker had no choice but to execute the contract and that the initiation for executing the contract was from the Management, while the worker had to yield to it for obvious reasons. It is further inferred that the Management has resorted to some coercion, whereby the said contract was procured from the worker, suggesting that it was contrary to the statutory and contractual prescriptions. No specific reference has been made by the first respondent to any such case as having put forth before the Tribunal; that the contracts were executed by the worker under pressure, threat or coercion. When there was no case for the worker even in the course of evidence (when he was examined as WW1) and more particularly when no suggestion was even made while the Management witness (MW1) was cross examined, it can only be held that the observation made by the Tribunal is not correct or proper, as not based on any specific pleading or evidence

14. Viewed in the above circumstances, the finding and reasoning given by the Tribunal holding that Exts. P2 and P3 contracts are "null and void" and opposed to public policy, forcing the worker to have executed the same, are not sustainable. Since Exts. P2 and P3 are very much legal, proper and sustainable in all respects, the only question that remains to be considered is whether non renewal of the contract will give rise to any cause of action to the first respondent, to sustain his case. Obviously, by virtue of the exclusion given under Clause (bb) of Section 2(oo) of the Industrial Disputes Act, it will. never constitute "retrenchment" and as such, the Management is no supposed to comply with the requirement of Section 25F of the Industrial Disputes Act, on not renewing the terms of the contract. The legal position in this regard stands well settled by the decisions rendered by the Apex Court in Kishore Chandra Samal Vs. The Divisional Manager, Orissa State Cashew Development Corporation Ltd., Dhenkanal, and 2006 II LLJ 235 (SC) (Municipal Corporation, Ludhiana v. Ram Pal as well.

15. In the above facts and circumstances, this Court finds that Ext.P4 award passed by the Tribunal is not correct or sustainable and it is hereby set. aside. It is made clear that non-engagement of the first respondent w.e.f. 01.04.1999 pursuant to non renewal of Ext.P3 contract, which came to an end on 31.03.1999, does not come within the purview of "retrenchment and as such, the first respondent is not entitled to get any benefit.

The Writ Petition succeeds and it is allowed as above. No cost.