

(2006) 12 MAD CK 0183

In the Madras High Court

Case No : Writ Petition No's. 31017 and 31018 of 2005

G. Krishnamurthy and Prithiviraj

APPELLANT

Vs

The General Manager, Southern Railways and The Controller
of Stores, Southern Railways

RESPONDENT

Date of Decision : 14-12-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F, 25G, 25H

Citation : (2006) 12 MAD CK 0183

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : A. Anbarasu, for the Appellant; V.G. Suresh Kumar, for the Respondent

Judgement

M. Jaichandren, J.—The writ petitions are filed for the issuance of Writs of Mandamus to direct the respondents to reinstate the petitioners in service in the same division in which they have been already working or in any other division with full back-wages and for other orders.

2. Since the facts and circumstances and the issues raised in the above writ petitions are the same, a common order is passed.

3. Heard the learned Counsel appearing on behalf of the petitioners as well as for the respondents.

The brief facts of the case, as stated by the petitioners, are as follows:

4. The petitioners were working under the Southern Railways as Piece Rate Tailors. Originally, the petitioners were working on individual contract for a period of six months. At the end of the six months period, the said contract was neither extended nor were the petitioners made as permanent employees. However, the petitioners were allowed to continue as Piece Rate Tailors, without any break in service. The job of the petitioners involved stitching of uniforms to the Railway Servants and it was of a permanent nature.

5. A charter of demands, dated 29.9.1986, was placed before the respondents through the Union, claiming various benefits, including confirmation of service and for regular scale of pay. However, instead of considering the requests made by the petitioners, the respondents had terminated the petitioners from service, as the contract period was over. Since the respondents had terminated the service of the petitioners, contrary to the provisions of law contained in The Industrial Disputes Act, 1947, the petitioners had filed an original application before the Central Administrative Tribunal, Chennai, in O.A. No. 469 of 1990. The Central Administrative Tribunal, Chennai, had passed an order holding that the employer-employee relationship existed and therefore, the matter was remanded back to the Industrial Tribunal to verify whether all the employees had completed 240 days in service.

6. The Industrial Tribunal, after recording fresh evidence, came to the conclusion that except the petitioners and a few other employees, all other workers had completed 240 days in service and that they were entitled to reinstatement without back-wages. The said order was passed by the Industrial Tribunal, on 15.9.1994. The petitioners and other employees, who were not included in the order of the Central Administrative Tribunal, dated 15.9.1994, had approached this Court by way of a writ petition in W.P. No. 13148 of 1996. Since the writ petition has been dismissed, a Writ Appeal was filed in W.A. Nos. 2 and 3 of 1998. By an order, dated 11.11.1998, the First Bench of this Court had observed, while disposing of the matter, that in respect of the eight employees, including the petitioners, Section 25H of The Industrial Disputes Act, 1947, would have to be complied with, even if the employees had abandoned their service or worked for less than 240 days in a year. In spite of several representations made by the petitioners, the respondents had not reinstated the petitioners in service. Hence, the petitioners have come before this Court by way of filing the above writ petitions.

7. A counter-affidavit had been filed on behalf of the respondents stating that the writ petitions are not legally maintainable and that the petitioners had no subsisting cause of action to maintain the writ petitions. In the public notice issued calling for Piece Rate Tailors to stitch terricotton uniforms, it was clearly mentioned that it was not a recruitment of any kind for Railway service and that the Tailors so engaged will be piece rate workers paid only on the basis of the quantum of work turned out. The Tailors were engaged during the years 1984 to 1986 and the Railway Administration had entered into individual independent contracts with the Tailors. On completion of the work, the engagement of the Tailors was stopped, on 20.12.1986.

8. It has been further stated that the contract agreement provides that the administration reserves the right to terminate the engagement of all or any of the piece rate workers without assigning any reason, whatsoever. The piece rate workers were also free to stop their engagement after giving three days notice. The Tailors were not entitled to any privilege, as available to regular employees

of the Railway Department. No attendance was maintained for them, since they were not on regular engagement.

9. The Piece Rate Tailors had raised an Industrial Dispute through the Regional Labour Commissioner, Chennai, and the Ministry of Labour, New Delhi. Since conciliation process had failed, they had approached the Industrial Tribunal by filing I.D. No 52 of 1988. The Tribunal had initially held that there was no employer-employee relationship between the Railway Administration and the Tailors. Against the said award, the Tailors had filed O.A. No. 469 of 1990, on the file of the Central Administrative Tribunal. The Central Administrative Tribunal had remanded the matter to the Industrial Tribunal for adjudication. Thereafter, the Industrial Tribunal by its award, dated 15.9.1994, had held that an employee-employer relationship existed between the railway Administration and the Tailors and therefore, a direction for their reinstatement was ordered along with back-wages. Out of 35 petitioners, the award was made in favour of 26 Piece Rate Tailors and insofar as the remaining 9 petitioners were concerned, their claims were negated. The writ petition filed against the said order by the petitioners along with seven other similarly placed persons in W.P. No. 13148 of 1996, had been dismissed. The Writ Appeals filed against the said order in W.A. Nos. 2 and 3 of 1998 were also dismissed by an order, dated 11.11.1998. However, while dismissing the writ appeals, this Court had observed that Section 25H of The Industrial Disputes Act, 1947, would be complied with irrespective of the fact whether the appellants had abandoned their service or worked for less than 240 days.

10. The other petitioners, being 26 in number, had filed an original application before the Central Administrative Tribunal in O.A. No. 73 of 1999. By virtue of the order of the Tribunal, as confirmed by this Court in W.P. No. 14369 of 1999, the said petitioners have either been employed as Group D Railway Servants or in case of certain of the petitioners who had died pending proceedings monetary compensation had been paid as directed. The said 26 persons stand on a totally different footing and the petitioners herein cannot equate themselves with those persons.

11. The petitioners cannot be re-engaged, since there has been no engagement of Tailors by the Railways after the issues had been raised. Therefore, Section 25H of The Industrial Disputes Act, 1947, has no application in the case of the petitioners. Further, the very system of the Railways stitching uniforms has been dispensed with and a new system had been introduced under which the employees are given stitching allowance to enable them to stitch their own uniforms. There is no post of Tailor in the Railway Administration and even engagement of Piece Rate Tailors have been dispensed with. Therefore, the prayer of the petitioners for reinstatement with back-wages cannot be sustained in the eye of law, both on facts and in law.

12. The learned Counsel appearing on behalf of the respondents had relied on the following cases in support of his contentions.

12.1. In *The Cawnpore Tannery Ltd., Kanpur Vs. S. Guha and Others*, , the Supreme Court had held that "it could not be contended that though u/s 25H of the Industrial Disputes Act the principle has now been statutorily recognized that a retrenched workman must be given an opportunity of reemployment when the employer has to employ an additional hand, it was not open to the Tribunals, in the instant case to give relief on the said principle as at the relevant time Section 25H was not in the statute book. Even before Section 25H was added to the Act, Industrial adjudication generally recognized the principle that if an employer retrenched the services of an employee on the ground that the employee in question had become surplus, it was necessary that whenever the employer had occasion to employ another hand the retrenched workman should be given an opportunity to join service. This principle was regarded as of general application in industrial adjudication on the ground that it was based on considerations of fairplay and justice (vide *Vishuddananda Saraswathi Hospital v. Their Employee* 1949 L.L.J. 111; *Kilburn and Company and MacNeill and Company v. Their Employees* 1950 L.L.J. 125 and *Annapurna Mills v. Certain Workmen* 1953 I L.L.J. 43). It is true that in the case of *Annapurna Mills* the discharge of the workmen was the result of the fact that the employer had closed his business and it was held that with improvement in circumstances if the employer reopened his business it was necessary that he should take back in his employment his old employees. It would be noticed that the principle which was applied to the case of an employer who reopened his business which had been closed by him is substantially the same principle which requires the employer to give an opportunity to his retrenched workman when he has occasion to engage another servant.

No doubt it is true that the offer would be conditioned by the consideration of the category to which the retrenched employee belonged but in view of the finding that the concerned workman was doing a substantial amount of clerical work, it could not be contended that the reemployment were to posts of different category."

12.2. In *Regional Manager, S.B.I. Vs. Rakesh Kumar Tewari*, , the Supreme Court had held that "Section 25H unlike Section 25G deals with a situation where the retrenchment is assumed to have been validly made. In the circumstances, if the employer wishes to re-employ any employee, he must offer to employ retrenched workmen first and give them preference over others. The two Sections viz. Sections 25G and 25H therefore, operate in different fields and deal with two contradictory fact situations.

The "last come first go" rule contained in Section 25G predicates (1) that the workman retrenched belongs to a particular category; (2) that there was no agreement to the contrary; and (3) that the employer had not recorded any reasons for not following the principle. These are all questions of fact in respect of which evidence would have to be led, the onus to prove the first requirement being on the workman and the second and third requirements on the employer.

Necessarily a fair opportunity of leading such evidence must be available to both parties."

13. Per contra, the learned Counsel appearing on behalf of the petitioners had relied on a decision of the Supreme Court in *Central Bank of India Vs. S. Satyam and others*, wherein, the Supreme Court had held that "the plain language of Section 25H speaks only of re-employment of "retrenched workmen". The ordinary meaning of the expression "retrenched workmen" must relate to the wide meaning of "retrenchment" given in Section 2(oo). Section 25F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman...who has been in continuous service for not less than one year". Section 25G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25F. Section 25H is capable of application to all retrenched workmen, not merely those covered by Section 25F. It does not require curtailment of the ordinary meaning of the word "retrenchment" used therein. The provision for re-employment of retrenched workmen merely gives preference to a retrenched workman in the matter of re-employment over other persons. It is enacted for the benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman. Chapter V-A, in which Section 25H occurs, provides for retrenchment and is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment and, therefore, there is no reason to restrict the application of Section 25H therein only to one category of retrenched workmen."

14. On a perusal of the records available and on analysing the rival contentions of the learned Counsels appearing on behalf of the petitioners as well as for the respondents, it is clear that though the petitioners were engaged by the respondent Railway Administration only on contract basis as Piece Rate Tailors for a specific period, the First Bench of this Court, by its order, dated 11.11.1998, in W.A. Nos. 2 and 3 of 1998, had stated as follows:

Counsel for the parties agree that with respect to eight employees, the subject matter of both the appeals, Section 25H of the Industrial Disputes Act will be complied forthwith and strictly irrespective of the fact whether they have abandoned the job or less than 240 days.

15. In such circumstances, the respondent Railway Administration has to abide by the observations of this Court made in W.A. Nos. 2 and 3 of 1998. In fact, it was a consent order by which the counsels for the parties had agreed that the employees concerned, including the petitioners herein, would be entitled to the privileges as envisaged in Section 25H of The Industrial Disputes Act, 1947. It is not open to the respondent Railway Administration to contend otherwise, at this stage. Since the learned Counsel appearing on behalf of the respondents had

submitted that no new employment is being made as Tailors and the petitioners cannot claim re-employment in any other category or post, as a matter of right, this Court is of the considered view that the respondent Railway Administration should consider the petitioners, if any fresh employment is being made in the Tailoring unit in the Cloths Factory, General Stores Depot, Southern Railway, Perambur, Chennai as the petitioners would be entitled to such relief.

With the above direction, the writ petitions are disposed of. No costs.