
(2002) 08 AP CK 0032

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2415 of 2002 and Batch

G. Pandari Babu

APPELLANT

Vs

Chairman, Coir Board and Others

RESPONDENT

Date of Decision : 22-08-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2002) 5 ALD 486

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M. Surender Rao, for the Appellant; A.P. Lakshmi, Additional SC for Central Government for Respondent Nos. 1 to 4 in all WPs and Government Pleader, for Industries and Commerce, in all WPs, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—All these writ petitions involve similar question of fact and law. Hence, they are disposed of through common order.

2. Coir Board, Kochi, (the respondent herein), which is Government of India Undertaking, had established a Regional Coir Training and Development Centre, at Rajahmundry, in Andhra Pradesh (hereinafter referred to as "the Centre"), in the year 1984. The petitioners in this batch of writ petitions came to be appointed in the Centre, at different points of time between 1984 and 1990, in different capacities. They were sought to be discontinued on the ground that the Centre was expected to function only for a limited period and thereafter was to have been taken over by the State Government. The petitioners had to approach this Court seeking redressal. As a result of the orders passed by this Court, the services of the petitioners were regularised.

3. The respondent issued individual orders to the petitioners regularising their services. However, through orders dated 25-1-2002, it had cancelled and withdrawn the orders of regularisation on the ground that the posts were not

sanctioned and not borne out on its regular establishment. On 28-1-2002, the respondent issued orders of termination on the ground that the activities at the Centre have been discontinued. These orders are challenged in this batch of writ petitions, mainly on the ground that they constitute retrenchment in violation of Section 25-F of the Industrial Disputes Act (for short "the Act").

4. The respondent filed counter-affidavits as well as additional counter-affidavits, narrating the circumstances under which the Centre came to be established, at Rajahmundry. It took objection as to maintainability of writ petition. It is contended that the Centre was established with a view to impart training for a limited period and thereafter it was to be handed over to the State Government. They have referred to the correspondence that ensued between the Board, on one hand, and the State Government, on the other, relating to the transfer of the Centre. It is further stated that similar Centres were established in the State of Karnataka and Assam. While the Governments of Karnataka and Assam States have accepted the transfer of the Centres, such a response was not forthcoming from the State of Andhra Pradesh. It is stated that, left with no alternative, the Coir Board had decided to close the Centre at Rajahmundry. So far as the procedure stipulated u/s 25-F of the Act is concerned, the respondent contends that it is not an industry and, as such, is not under obligation to follow the same.

5. Heard the Sri M. Surender Rao, learned Counsel for the petitioners and the learned Additional Standing Counsel for the Central Government.

6. The respondent has taken objection as to the maintainability of the writ petition. According to them, once the complaint of the petitioners is that the termination is in violation of Section 25-F of the Act, the only course open to the petitioners is to seek relief in the Labour Court or the Industrial Tribunal, constituted under the Act and the writ petitions are not maintainable. The learned Counsel for the petitioners, on the other hand, submits that inasmuch as no disputed questions of fact are involved and since the non-compliance of the mandatory provisions of Section 25-F of the Act is evident on the face of it, these writ petitions are maintainable. He relied upon several judgments of various Courts.

7. In *P.R. Ramachandran and Ors v. Tamil Nadu Water Supply and Drainage Board* 1996 (1) LLJ 823, the Madras High Court was dealing with the writ petitions filed by the workmen, who were retrenched without following the procedure u/s 25-F of the Act. Similar objection, as the one in the present writ petitions, as to maintainability, was raised. After reviewing the case law on the subject, it was held as under:

"5. In the instant case, the respondents have acted quite contrary to the principles of natural justice and all accepted rules of procedure and when admittedly, the impugned orders were passed in utter violation of the principles of natural justice, this Court should not only come to the aid of the aggrieved party, but it has a duty to do so.....

.....As seen already, the respondents have unceremoniously terminated the services of the petitioners, who have put in more than 240 days of work, at the time of their termination. Termination of an employment is deprivation of livelihood and deprivation of livelihood would amount to deprivation of liberty. Hence, any termination without following the procedure established by rule of law would violate Article 21 of the Constitution of India."

8. In the present case, the order of termination discloses that neither the petitioners were issued any notices, nor the procedure stipulated u/s 25-F of the Act was followed. Either way, there was a flagrant violation of law. The consequences of these violations did not depend on any disputed question or finding of fact. As a matter of fact, the respondents did not dispute the non-issuance of notices or non-compliance with Section 25-F of the Act. The justification was purely on legal basis, which will be dealt with in the succeeding paragraphs. Therefore, the judgment of the Madras High Court in P.R. Ramachandran case (supra), which in turn followed the various judgments of the Hon'ble Supreme Court and other High Courts, squarely applies to the facts of this case. The objection raised by the respondents as to maintainability of writ petitions is, therefore, rejected.

9. Two orders are challenged in this batch of writ petitions. The first one is dated 25-1-2002, whereunder regularisation of services of the petitioners were cancelled. The second is the one dated 28-1-2002, through which the services of the petitioners were terminated. Inasmuch the main ground of attack is the non compliance of provisions of Section 25 of the Act and in view of the fact that, for the purpose of ensuring compliance with Section 25-F, it would make little difference as to whether an employee was permanent or temporary, the validity or legality of the order dated 25-1-2002 is only of secondary importance, as far as the present issue is concerned. As a matter of fact, the learned Counsel for the petitioners did not canvass this aspect seriously. Therefore, the main question that needs to be addressed to in this batch of writ petitions is as to whether the Memo dated 28-1-2002 terminating the petitioners from service is violattve of Section 25-F of the Act.

10. It is not in dispute that all the petitioners have put in services in the Coir Board running into several years. It is also not in dispute that they answer the description of "Workman" as defined in the Act. Therefore, it needs to be seen as to whether the termination of their services constitute retrenchment, whether they were entitled for payment of notice and retrenchment compensation and whether non-compliance with the same has vitiated the orders of termination.

11. The only plea taken by the respondents is that the respondent is not an industry. They relied on various judgments of the Supreme Court. The 1st judgment which elaborately discussed the circumstances under which an establishment can be treated as industry is the one rendered in Rohtas Sugar Ltd. and Others Vs. Their Workmen, . Thereafter, in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, , seven Judges Bench of the

Supreme Court laid down the circumstances under which the establishments have to be treated as industries for the purpose of Section 25-F of the Act. In *Coir Board, Ernakulam, Cochin v. Indira Devi P.S.* 1998 (1) LLJ 937, a doubt was entertained by a two Judge Bench of the Supreme Court as to whether the Coir Board, i.e., the respondent herein, comes within the definition of industry, in view of certain observations made in *Bangalore Water Supply case (supra)*, wherein it was proposed to exclude institutions like hospitals, dispensaries, educational, scientific, research or training institutes, institutions engaged in charitable, social and philanthropic services, etc. The Bench took the view that the test laid down in *Bangalore Water Supply case (supra)* was rather sweeping, and in that view of the matter, opined that the same needs to be considered afresh and accordingly passed the following order:

"25. Since the difficulty has arisen because of the judicial interpretation given to the definition of "Industry" in the Industrial Disputes Act, there is no reason why the matter should not be judicially re-examined. In the present case, the function of the Coir Board is to promote coir industry, open markets for it and provide facilities to make the coir industry's products more marketable. It is not set up to run any industry itself. Looking to the predominant purpose for which it is set up we would not call it an industry. However, if one were to apply the tests laid down in *Bangalore Water Supply and Sewerage Board's case (supra)*, it is an organisation where there are employers and employees. The organisation does some useful work for the benefit of others. Therefore, it will have to be called an industry under the Industrial Disputes Act.

26. We do not think that such a sweeping test was contemplated by the Industrial Disputes Act, nor do we think that every organisation which does useful service and employs people can be labelled as industry. We, therefore, direct that the matter be placed before the Hon"ble Chief Justice of India to consider whether a Larger Bench should be constituted to reconsider the decision of this Court in *Bangalore Water Supply and Sewerage Board (supra)*."

It was in this context that the matter came to be dealt with by three Judges Bench of the Supreme Court, headed by the Chief Justice, in *Coir Board Ernakulam Kerala State and Another Vs. Indira Devi P.S. and Others*, , wherein it was held as under:

"The judgment delivered by seven learned Judges of this Court in *Bangalore Water Supply case* does not, in our opinion, require any reconsideration on a reference being made by a two Judge Bench of this Court, which is bound by the judgment of the larger Bench."

12. Obviously, not being aware of this development, the respondents, in their counter-affidavit, took the plea that inasmuch the matter is pending before a Larger Bench, they do not have to follow the procedure prescribed u/s 25-F of the Act. In the counter-affidavit, it is stated as follows:-

"The question will be decided by nine Judges of the Bench of Hon"ble Supreme

Court and hence the matter is subjudice. In view of the above, no retrenchment compensation has been paid."

It is, therefore, evident that the only basis for the respondent in not following the procedure prescribed u/s 25-F of the Act is their assumption that the question as to whether the Coir Board is an industry or not, is under consideration before a larger Bench. Now that it has emerged that the Supreme Court had declined to reconsider the judgment in Bangalore Water Supply case (supra) and an indication was given in Coir Board, Ernakulam, Cochin case (supra), that the parameters stipulated in the Bangalore Water Supply case (supra), would bring Coir Board within the definition of "Industry" and the respondent is under obligation to follow the procedure prescribed u/s 25-F of the Act.

13. Admittedly, the provisions of Section 25-F of the Act are not complied with. Therefore, the orders of termination of the respective petitioners dated 28-1-2002 are liable to be set aside and are accordingly set aside.

14. The learned Counsel for the petitioners submits that once the Court finds that the retrenchment was in violation of the provisions of Section 25-F of the Act the petitioners are entitled to be reinstated with full back wages and all consequential benefits. He relied on several judgments, such as, H.D. Singh v. Reserve Bank of India 1986 (1) LLJ 127, Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, etc. The directions contained in these decisions are relatable to the facts of the cases.

15. One distinguishing feature of these cases is that the respondents cannot be said to have deliberately flouted the mandatory provisions u/s 25-F of the Act. The justification pleaded by them was that prima facie a Bench of the Supreme Court took the view that the Coir Board cannot be treated as an industry, having regard to the nature of activities undertaken by it, and that the matter was pending before a Larger Bench for reconsideration. The respondents were obviously not aware of the fact that another Bench of the Supreme Court took the view that it is not necessary to reconsider the judgment in Bangalore Water Supply case (supra). But for the fact that they were not aware of the subsequent developments, the respondents would certainly have violated Section 25-F. This impression can certainly be gathered from the tenor of the counter-affidavits. Another important aspect is that the obligation of the respondents was to run the Centre for five years and thereafter handover the same to the State Government. The correspondence that ensued between the respondents and the Government of Andhra Pradesh vouches for it. It is further stated that the Centre had been discontinued and no activities are undertaken there. Under these circumstances, it is neither just nor proper to saddle the respondents with the liability of full back wages, when they had extracted no work from the petitioners. At the same time, the petitioners who were terminated cannot be left without any remedy.

16. The judgments of the Hon"ble Supreme Court in Hindustan Tin Works Pvt.

Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, , P.G.I, of Medical Education and Research, Chandigarh v. Raj Kumar, (2001) 2 SCC 54 and Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, , are relevant in this context. In Hindustan Tin Works case (supra), it was held that awarding the relief of back wages cannot be a straitjacket formula and that all the relevant considerations shall have to be taken into consideration. In PGI of Medical Education and Research case (supra), it was held as under:

"Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straitjacket formula can be evolved..."

These two decisions were cited with approval and followed in Hindustan Motors Ltd. case (supra).

17. Under these circumstances, this Court feels that the ends of justice will be met if the respondents are directed to reinstate the petitioners with 50% of the back wages. This order shall, however, be without prejudice to the right of the respondents to retrench the petitioners, duly following the provisions of Section 25-F of the Act, if they so want.

18. Accordingly, the writ petitions are allowed --

(a) setting aside the orders of termination dated 28-1-2002;

(b) directing the respondents to reinstate the petitioners with 50% back wages; and

(c) leaving it open to the respondents to retrench the petitioners duly following the provisions of Section 25-F of the Act, if they so want;

19. There shall be no order as to costs.