

(2011) 11 MAD CK 0291

In the Madras High Court

Case No : Writ Petition No. 4715 of 2007

G. Udayakumar

APPELLANT

Vs

Telecom, Chengalpattu SSA and The Presiding Officer, Central
Government Industrial Tribunal-cum-Labour Court

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2, 2(S), 25(F), 25(G)

Citation : (2012) 2 LLJ 691 : (2012) 1 MLJ 859

Hon'ble Judges : N. Paual Vasanthakumar, J

Bench : Single Bench

**Advocate : S. Vaidyanathan, for the Appellant; S. Gopinath For 1st Respondent
and Labour Court For 2nd Respondent, for the Respondent**

Final Decision : Allowed

Judgement

N. Paual Vasanthakumar

1. The prayer in the writ petition is to quash the award made in I.D. No. 11 of 2005 dated 30.6.2006 on the file of the Central Government Industrial Tribunal-cum-Labour Court, Chennai, and direct the first respondent to reinstate the petitioner with backwages, continuity of service and other attendant benefits.

2. The case of the petitioner as could be seen from the affidavit filed in support of the writ petition are as follows:

(a) Petitioner joined in the services of BSNL, the then Postal and Telegraphs Department in the year 1983 and he is a physically challenged person. Initially he was posted at Poondi Telephone Exchange, Tiruvallur District as water boy on 1.10.1983 and he rendered continuous service from 1.10.1983 till June, 1995. A certificate to that effect is also issued by the Sub-Divisional Officer, Telegraphs, Tiruvallur District.

(b) Petitioner was made as Full Time Casual Labourer on 26.11.1994 and he was

orally terminated on 10.11.1995. Petitioner submitted various representations to the first respondent for reinstatement and the same having not been considered, he filed O.A. No. 485 of 1996 before the Central Administrative Tribunal, Madras Bench and prayed for a direction for regular appointment. The Central Administrative Tribunal by a detailed order dated 8.1.1999 disposed of O.A.485 of 1996 by giving direction to the appellate authority to dispose of the appeal, which was pending. The appellate authority, by order dated 27.9.1999 rejected the appeal.

(c) Petitioner filed another original application before the Central Administrative Tribunal in O.A. No. 178 of 2000 and by order dated 29.12.2000 the Tribunal again directed the department to pass revised orders within three months. On 17.5.2001 the first respondent rejected the request for reinstatement on the ground that the petitioner was engaged as a water carrier on contingent basis for 2 hours per day according to the need and wages was paid and petitioner had completed only 186 days and therefore his services were terminated in the exigency of service, and that, as the petitioner has not completed full time service of 240 days in one calendar year, there is no possibility of granting permanent status.

(d) According to the petitioner he worked as casual labourer at Tiruvallur Telephone Exchange from 1.10.1983 till 15.6.1995 at the rate of four hours per day and his name is found in the muster roll. The department also directed the casual labourers to maintain separate duty roaster, which was countersigned by the Junior Telecom Officer of the concerned region. Petitioner was given full time work from 26.11.1994 till the date of disengagement and according to the petitioner, he had completed 240 days of continuous work within a period of 12 calendar months and therefore he deemed to have attained permanent status. Petitioner was assigned to do the work of water carrier and to clean the office equipments, pouring distillery water in the battery, sweeping and cleaning the floors and toilets, etc. From 1.7.1994 to 25.11.1994 even though petitioner was ready, he was denied employment and therefore the said period is also to be counted.

(e) In O.A. No. 178 of 2000 which was disposed of by the Central Administrative Tribunal on 29.12.2000 a finding was given to the effect that the petitioner was not served with any written order and he has made a plea that he had been discharging his duties from 1983. He has also produced documents to show that he had been paid wages by the first respondent. The statement regarding the work done by the petitioner from 1983 till 1995, signed by the Sub-Divisional Officer, Tiruvallur (xerox copy) was also filed before the Tribunal and the genuineness of the said document was not disputed by the respondents/department when the matter was argued and the same is recorded by the Tribunal in the above referred order and a direction was given to pass revised orders. Thereafter the request being rejected and on reference Industrial Dispute was raised in I.D. No. 11 of 2005 before the Industrial Tribunal-cum-

Labour Court, Chennai. The said Industrial Dispute was dismissed by award dated 30.5.2006 by the second respondent and the same is challenged in this writ petition.

(f) The grounds raised in the writ petition are that the Labour Court has given a contra finding than the one given by the Central Administrative Tribunal regarding the work done statement of the petitioner from 1983 to 1995 and the said document was also marked as Ex.W-8 and an erroneous finding was given stating that the said document was not a genuine one; and that, in the award it is stated that the petitioner has worked for 186 days and he having not completed 240 days in 12 calendar months, he cannot claim permanent status and the said finding given by the Labour Court is also attacked by contending that the casual service rendered on part time basis was not considered by the Labour Court and the same is also countable for the purpose of calculation of 240 days in 12 calendar months or 480 days in 24 calendar months. The petitioner is praying to quash the award dated 30.6.2006 and to direct the first respondent to reinstate the petitioner with backwages, continuity of service and other benefits.

3. The first respondent has filed counter affidavit contending that the Divisional Engineer of Telecom Department cannot issue any certificate regarding the duty details and the certificate produced by the petitioner was found to be not genuine by the Labour Court and the petitioner has worked as a muster roll employee from 26.11.1994 to 15.6.1995 i.e, for 186 days in a calendar year and from 15.6.1995 he was not allotted work as there was no requirement and he was also not terminated. Regarding the finding given by the Central Administrative Tribunal it is stated that the claim made by the petitioner could not be verified during pendency of the original application. It is also contended that the question of regularisation will not arise as the petitioner has not completed 240 days in 12 calendar months and payment of compensation u/s 25F of Industrial Disputes Act, 1947 will not arise as the petitioner was not terminated. It is also stated that the petitioner is not entitled to get the rights under Sections 25G and H of the Industrial Disputes Act, 1947.

4. With regard to the contention of the petitioner that whether the department is maintaining any register of part time employees, the first respondent was directed to file additional counter affidavit and an additional counter affidavit was filed on 20.10.2011 stating that only one register was maintained and no separate muster roll register was maintained for part time casual employees. Pointing out the said averments the first respondent prayed for dismissal of the writ petition as the Labour Court has already considered all aspects and dismissed the claim of the petitioner.

5. The learned counsel for the petitioner submitted that the petitioner served in the respondent office as part time employee from 1983 till 1994 and as a full time employee for 186 days. The part time employment and payment of salary during the part time employment was proved by the petitioner by filing document viz., Ex.W-8 and the same was also accepted between the parties

before the Central Administrative Tribunal and as such the petitioner has completed more than 240 days in a continuous period of 12 months or 480 days within continuous period of 24 calendar months. The learned counsel also submitted that the petitioner filed an application before the second respondent Regional Labour Commissioner (Central) to summon the original document pertaining to his work and the same is produced. The contention of the petitioner that he has completed more than 480 days of continuous service in 24 calendar months will be established. However, the said document was not produced and the Labour Court could have drawn an adverse inference against the first respondent and granted relief to the petitioner. The learned counsel also pointed out that in the additional affidavit filed by the first respondent dated 20.10.2011 before this Court it is stated that only one register is maintained by the respondent for full time casual employees and no separate muster roll is maintained for the part time casual employees. The learned counsel also submitted that as per the direction of this Court, the entire muster roll register was produced by the first respondent and the learned counsel also produced the same and the said register relates to full time employment of casual labourers and there is no entry regarding part time employees. Therefore the award of the labour Court rejecting the claim of the petitioner on the ground that the petitioner has served only for 186 days on full time basis is not proper as the Labour Court failed to count the part time employment of the petitioner for about 12 years. The learned counsel also relied on the judgment of the Supreme Court reported in Div. Manager, New India Assurance Co. Ltd. Vs. A. Sankaralingam, in support of his contention that even a part time employee is a workman u/s 2(s) of the Industrial Disputes Act, 1947 and the benefits available u/s 25F of Act is bound to be extended even to the part time employees and therefore the part time employment as well as full time employment are bound to be counted for the purpose of arriving at a decision as to whether an individual employee has completed 480 days of continuous service within 24 calendar months.

6. The learned counsel for the first respondent on the other hand submitted that on appreciation of the facts the second respondent Labour Court found that the document furnished by the petitioner viz., Ex.W-8 is a bogus one and except the said document no other document is available to establish the claim of the petitioner that he served as a part time employee from 1983 to 1995. The learned counsel also submitted that merely on the oral evidence given by the petitioner as WW-1 may not be sufficient to conclude that the petitioner served from 1983 to 1994. The learned counsel therefore submitted that the decision arrived at by the Labour Court cannot be treated as a perverse finding warranting interference by this Court under Article 226 of the Constitution of India.

7. I have considered the rival submissions made by the learned counsel for the petitioner as well as learned counsel for the first respondent in the light of the pleadings and documents filed.

8. The point arises for consideration in this writ petition is as to whether the petitioner has served for more than 480 days within continuous period of 24 calendar months to claim the benefits u/s 25F of the Industrial Disputes Act, 1947 and the award of the Labour Court is sustainable.

9. The petitioner has moved the Central Administrative Tribunal by filing O.A. No. 178 of 2000 and the Central Administrative Tribunal found that no written order of appointment was issued to the petitioner and therefore asking the petitioner to produce the order of appointment is an impossibility. The Central Administrative Tribunal also found that the petitioner has produced documents to show that he has been paid wages by the first respondent. The internal correspondence between the Sub-Divisional Engineer addressed to the Sub-Divisional Officer, Tiruvallur, was also taken note of by the Tribunal and the relevant portion was extracted in the order, which reads as follows:

As per our office records the above CM was engaged for contingent work on contract basis. But he was engaged for full time and paid through M/RS with effect from 26.11.1994 by SDOT, Tiruvallur. Please confirm whether you have received any orders from our office to convert the above CM to full time and enrolled his name in M/R.

Since the GM wants to know the above particulars urgently, please inform the same by written of post.

The Central Administrative Tribunal also gave a finding that the genuineness of the said letter is not in dispute and from the file produced it was seen that such a letter was addressed by the Sub-Divisional Engineer (Legal), Chennai to the SDOT, Tiruvallur. The said finding was given by the Central Administrative Tribunal after seeing the records and the same was also admitted by the respondent before the Central Administrative Tribunal. The said findings are not challenged by the first respondent before this Court.

10. The first respondent also failed to produce the records before the Regional Labour Commissioner (Central) in spite of specific request made by the petitioner on 18.6.2004. The records could not be produced as there is no record available/maintained for the part time muster roll employees and the same is admitted in the affidavit filed by the first respondent before this Court dated 20.10.2011. Thus, it is evident that the petitioner's part time employment from 1983 to 1994 cannot be denied by the first respondent and his full time employment for 186 days from 1994 is also fully established.

11. The further question arises is as to whether the first respondent was bound to comply with Section 25F of the Industrial Disputes Act, 1947 as the petitioner is coming within the definition of "workman" u/s 2(s) and "retrenchment" coming within the definition of Section 2(oo) of the Industrial Disputes Act, 1947.

12. It is admitted by the first respondent that Section 25F of the Industrial Disputes Act, 1947 was not followed before disengaging the petitioner. Petitioner

was disengaged not by way of punishment in this case.

13. The said issue is no longer res integra. The Honourable Supreme Court in the decision reported in Ramesh Kumar Vs. State of Haryana, held that a workman posted in the Chief Minister's residence for three years was granted relief by the Supreme Court. In the said case the award of the Labour Court was set aside by the High Court, which was reversed by the Supreme Court and restored the award of the Labour Court. In paragraphs 7 to 11, 18 and 19 it is held as follows:

7. The only point for consideration in this appeal is whether the High Court was justified in setting aside the award of the Labour Court when the appellant had established that he was in continuous service for a period of 240 days in a calendar year, particularly, when similarly placed workmen were regularised by the Government.

8. It is not in dispute that the appellant was appointed as a Mali and posted at the residence of the Chief Minister in the year 1991. The materials placed by the appellant before the Labour Court clearly show that he had worked for three years and there was no break during his service tenure. He was issued identity card to work in the residence of the Chief Minister and no reason was given for his termination. It is also his case that there was no show-cause notice and no inquiry was conducted.

9. A perusal of the order of the Labour Court clearly shows that one Shri Nasib Singh, Junior Engineer, who deposed as MW 1 on behalf of the Department has categorically stated that the workman was engaged by the Department on muster rolls as Mali in December 1991 and he worked up to 31-1-1993. He also stated that there was no break from December 1991 to January 1993 during which the workman was engaged.

10. The Labour Court as per the materials placed rightly found that the workman has continuously worked from December 1991 to 31-1-1993. It also found that the workman worked for 240 days with the Department within 12 calendar months preceding his date of termination i.e. 31-1-1993. It is useful to refer to the definition of "retrenchment" and "workman" in the Act which reads thus:

2. (oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that

dispute, but does not include any such person-

25-F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

It is not in dispute that the appellant is a "workman" as defined u/s 2(s) and "retrenchment" if any it should be in accordance with Section 25-F of the Act.

11. Admittedly, in the case on hand, the workman was not given any notice or pay in lieu of notice or retrenchment compensation at the time of his retrenchment. In view of the same, the Labour Court has correctly concluded that his termination is in contravention of the provisions of Section 25-F of the Act. Though the Department has relied on a circular, the Labour Court on going through the same rightly concluded that the same is not applicable to the case of the retrenchment.

18. It is to be noted in the case of termination of casual employee what is required to be seen is whether a workman has completed 240 days in the preceding 12 months or not. If sufficient materials are shown that the workman has completed 240 days then his service cannot be terminated without giving notice or compensation in lieu of it in terms of Section 25-F. The High Court failed to appreciate that in the present case the appellant has completed 240 days in the preceding 12 months and no notice or compensation in lieu of it was given to him, in such circumstances his termination was illegal. All the decisions relied on by the High Court are not applicable to the case on hand more particularly, in view of the specific factual finding by the Labour Court.

19. Under these circumstances, the impugned order of the High Court dated 23-12-2008 passed in CWP No. 575 of 2004 is set aside.

Following the above decision of the Supreme Court, this Court in W.P. No. 3116 and 3481 of 2006 by order dated 20.8.2010 ordered the Tamil Nadu Electricity Board to reinstate the workmen therein, but denied backwages due to the delay on the part of the workmen in approaching the Labour Court. The same is reported in 2010 (4) LLN 444 : 2010 (3) TLNJ 529 (Civil) (Tamil Nadu Electricity

Board, Chennai v. M. Sadagopan). The appeals filed against the said decision in W.A.Nos. 2162 and 2163 of 2010 were dismissed by the First Bench of this Court on 1.11.2010.

14. Applying the decisions cited above, the writ petition filed by the petitioner deserves to be ordered, without backwages. The petitioner is denied backwages as there is no proof available as to the petitioner was otherwise not in employment from 1995 till date. If backwages is ordered, it will prejudice the first respondent paying salary without extracting any work from the petitioner for over 15 years.

15. In the result, the writ petition is ordered on the following terms:

(a) The award passed by the second respondent in I.D. No. 11 of 2005 dated 30.6.2006 is set aside.

(b) The first respondent is directed to reinstate the petitioner without backwages, but with continuity of service and other benefits.

(c) The first respondent is directed to implement this order within a period of four weeks from the date of receipt of copy of this order.

(d) There is no order as to costs.