
(1976) 06 KL CK 0009

In the High Court Of Kerala

Case No : W.A. No's. 159, 160, 161 etc. of 1976

General Manager, K.S.R.T. Corporation

APPELLANT

Vs

Sunder Raj and Others

RESPONDENT

Date of Decision : 29-06-1976

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25B, 25B(1), 25B(2), 25C

Citation : (1976) 06 KL CK 0009

Hon'ble Judges : Govindan Nair, C.J.; Bhaskaran, J

Bench : Division Bench

Advocate : M.P. Menon, for the Appellant; P.K. Behanan, George C. Varghese and K.A. Abraham, for the Respondent

Final Decision : Dismissed

Judgement

Govindan Nair, C.J.—All these Writ Appeals are taken by the General Manager of the Kerala State Road Transport Corporation, Trivandrum from the judgment disposing of a batch of Original Petitions. The question that arose for consideration was whether the Petitioners in the Original Petitions who were employed off and on in the Kerala State Road Transport Corporation, hereinafter referred to as the "Corporation", were entitled to retrenchment compensation as provided in Section 25F of the Industrial Disputes Act, 1947, for short, the Act. The question had to be resolved in the light of the definition of "continuous service" in Section 25B of the Act and from the construction of Section 25B(2) (a). The learned Judge who heard the Original Petitions came to the conclusion that if the workmen had worked for 240 days they should be deemed to have been in "continuous service" for a period of one year and if that be so, even though the workmen had not been employed during a spread out period of 12 calendar months the workmen should be held to have been in continuous service for one year.

2. The Original Petitions dealt with by the learned Judge may be divided into four groups. The first group consists of cases in which the Petitioners approached this

Court before receipt of notices of termination of services and obtained orders of stay of termination of services. The Writ Appeals arising from the judgment disposing of those petitions are Nos. 161, 164, 171, 176, 180, 185, 187 and 188 of 1976.

3. The second group consists of cases where termination notices had been served on the workmen and where such notices have been stayed by this Court. The Writ Appeals relating to such petitions are Nos. 159, 163, 168, 172, 173, 178, 181, 182, 183 and 189 of 1976.

4. The third group consists of one case, W.A. No. 191 of. 1976. Counsel Sri M.P. Menon appearing for the Appellant submitted that the appeal is not pressed and so the matter need not be dealt with on the merits.

5. The last group consists of 13 cases where notices were served on the workmen. In these cases no orders of stay have been issued.

6. The main question arising for consideration in these Writ Appeals turns on the interpretation of Section 25B(2) of the Act. Before we extract Section 25B it will be useful to glance back and advert to the provisions in the Act before the Act was amended in 1964 by Act 36 of 1964. We may as well mention at this stage that Chapter V A of the Act was itself introduced into the Act by Act 43 of 1953. By that amending Act, Section 2(eee), a definition of the term "continuous service", was introduced into the Act. That definition was in these terms:

"Continuous service" means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.

Section 25B in Chapter V A introduced by the same amending Act read as follows:

25B. Definition of one year of continuous service. -- For the purposes of Section 25C and 25F, a workman who, during a period of twelve calendar months, has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry.

Explanation: -- In computing the number of days on which a workman has actually worked in an industry, the days on which --

(a) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946), or under this Act or under any other law applicable to the industrial establishment, the largest number of days during which he has been so laid-off being taken into account for the purposes of this clause.

(b) he has been on leave with full wages earned in the previous year, and

(c) in the case of a female, she has been on maternity leave; so however that the total period of such maternity leave shall not exceed twelve weeks,

shall be included.

We may also refer to Section 25F(b) in Chapter V A as it stood before the amendment effected by Act 36 of 1964. That section was in these terms:

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 service or any part thereof in excess of six months;....

7. The Supreme Court had to interpret Section 2(eee) containing the definition of the term "continuous service", and Section 25B of the Act as it stood before the amendment effected by Act 36 of 1964 in *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, . The question that arose for consideration was whether a workman who had put in 240 days was entitled to retrenchment compensation as envisaged by Section 25F in Chapter V A of the Act even when he had not been employed during 12 calendar months. We may add a word of explanation. It is possible for a workman to put in 240 days long before the expiry of 12 months. Employment for a short spell may result in work being provided for 240 days. In such cases can it be said that the workman had "continuous service" for a year. The two views that have to be considered are (1) whether it is enough that a workman had been employed for 240 days in 12 calendar months or (2) whether the 240 days" work should also have been spread over a period of 12 calendar months. The contention raised on behalf of the employer before the Supreme Court was that such persons who had not been employed for 12 calendar months were not entitled to the compensation provided by Section 25F even though they had worked for 210 days, or more. This contention was accepted by the Supreme Court and we shall refer to a short passage from paragraph 8 of the judgment in *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, .

The position therefore is that during a period of employment for less than 12 calendar months these two persons worked for more than 240 days. In our opinion that would not satisfy the requirement of Section 25B. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a period of not less than 12 calendar months and, next that during those 12 calendar months had worked for not less than 240 days. Where, as in the present case, the workmen have not at all been employed for a period of 12 calendar months it becomes unnecessary to examine whether the actual days of work numbered 240 days or more. For, in any case, the requirements of Section 25B would not be satisfied by the mere fact of the number of working days being not less than 240 days.

After this decision of the Supreme Court, the Act was amended again by Act 36 of 1964. By the amendments introduced by this amending Act, Section 2(eee) was deleted and Section 25B was amended to incorporate the definition of "continuous service" in Section 25B(1). Then followed Section 25B(2) which is more or less on the same terms as the old Section 25B. Change was effected

also in Section 25F(b). For the words "for every completed year of service" in the section as it stood before the amendment, the words "for every completed year of continuous service" was substituted by the amending Act 36 of 1964.

8. The Supreme Court had to consider the effect of these amendments in the light of the arguments that were advanced before the Supreme Court by counsel for the employer that as a result of the amendments it was not enough that a workman had put in 240 days during a period of 12 calendar months but that he should further have continuous service as defined in Section 25B(1). It was suggested that after the amendment the position is different from what it was at the time of the judgment in *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, was pronounced. This contention was negated by the Supreme Court and it was observed that the amendment had no such effect. The judgment also contains a general statement that there was no change in law by the amendment. We must of course agree with counsel for the Respondents that the amplitude of the amendments effected by Act 36 of 1964, in other respects, if any, was not specifically dealt with by the Supreme Court and the court had only to consider the question whether after the amendment Section 25B(1) must also be satisfied in cases where Section 25B(2) applied. The answer, as we said was in the negative. (See *Employers in Relation to Digwadih Colliery Vs. Their Workmen*, .

Counsel for the Respondents sought support for his submission that service for 12 calendar months was unnecessary from the decision of the Rajasthan High Court in *Viney Kumar Majoo Vs. State and Others*, . Justice Kan Singh in interpreting Section 25B(2) came to the conclusion that the words "during a period of 12 calendar months" occurring in the section are meant only to provide a unit of measure of time within which 240 days" work had to be put in. To quote the words of the learned Judge:

The use of the expression "during a period of 12 calendar months preceding the date with reference to which calculation is to be made" is with a view to ensuring that the period of 240 days has to be in relation to a certain unit of measure of time which is provided to be one year. In other words, if a person renders service for not less than 240 days in a span of one year, then he is still entitled to be considered as one who had put in continuous service for a period of one year.

The Supreme Court decision in *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, was relied on by counsel for the employer and it was urged before the Rajasthan High Court that the interpretation sought to be placed on Section 25B(2) as indicated in the paragraph quoted above would be against the dicta of the decision in the above Supreme Court case. The Rajasthan High Court dealt with the argument in paragraph 12 of the judgment thus:

I am clearly of the opinion that what I have already said does not go against what Their Lordships were pleased to lay down. One year"s period contemplated in Sub-section (2) of Section 25B of the Act only furnishes a unit of measure and

if during that unit of measure the period of service actually rendered by a workman is 240 days, then that workman can be considered to be such as has rendered one year's continuous service for the purposes of the Act. These observations, in my view, do not support the submission that even under the amended section the employee must have actually been in the service for the statutory period of one year.

The learned Judge then proceeded to rest the conclusion reached also on the principle that a beneficent piece of legislation must be construed in favour of those who are benefitted by the legislation. With very great respect, we are unable to agree with this decision. We feel no doubt that the question is concluded by the decision of the Supreme Court. We must also say with great respect that it appears to us that it is impossible to distinguish the decision of the Supreme Court, in *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, on the basis of the change of law effected by the amending Act 36 of 1964. We have examined the provisions that existed before the amendment was effected and those that came into existence as a result of the amendment. The changes effected related more to form than substance. Section 2(eee) which contained the definition of the term "continuous service" and was part of section which contained various definitions was unrooted from there and has been replanted in Chapter VA and numbered as Section 25B(1). This transplanting has not changed the plant. Section 25F(1) is practically the same as the original Section 2(eee). The old Section 25B was in the form of a proviso to the old definition of the term "continuous service" in Section 2(eee) and Section 25B (the whole section before the amendment of Act 36 of 1964) was to apply for the purposes of Sections 25C and 25F. Section 25B as it stood then therefore contained a definition for the term one year of continuous service for the purposes of Sections 25C and 25F. By the amendment, after having defined what is meant by "continuous service" in Section 25B(1) Section 25B(2) dealt with cases where a workman had not been in "continuous service" within the meaning of Sub-section (1) and provided what is meant by a period of "continuous service of one year" and stipulated the conditions that had to be satisfied. Those conditions for the purpose of holding that there has been "continuous service for a period of one year" are identical to those that were contained in the old Section 25B, namely, 240 days' work and that during a period of 12 calendar months. The only alteration made is fixing the date or time from which the 12 calendar months should be calculated backwards. Section 25B(2)(a) provided that those 12 calendar months must precede the date with reference to which calculation is to be made. This change does not affect the question before us. Perhaps before the amendment effected by Act 36 of 1964, it would have been possible for a workman to contend that if he had at any time before the relevant date when he was sought to be retrenched, 240 days of work during a span of 12 calendar months, he would be entitled to the compensation provided by Section 25B. It is no longer possible for a workman to contend in that manner after the amendment. He must have done 240 days of work during the 12 calendar months immediately preceding the

retrenchment and he should have been employed also for 12 calendar months in accordance with the decision of the Supreme Court.

9. The only other change effected by the amending Act 36 of 1964 which is relevant for our purpose is the change in the wording of Section 25F(b) which as we see it is merely for the purpose of removing an incongruity between the wording in the old Sections 25B and 25F(b). This change has no relevance in interpreting Section 25B(1) and (2). Therefore we can discern no such material change effected by the amending Act 36 of 1964 which would justify the conclusion that the law has been altered since the decision of the Supreme Court in *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, thus enabling us to distinguish the decision. We must follow the Supreme Court decision and with great respect, we are unable to accept the view taken by the learned Judge in the judgment under appeal following the decision of the Rajasthan High Court in *Viney Kumar Majoo v. State and Ors.* AIR 1968 Raj 227.

10. The view that we have taken finds support also from the decisions of the Orissa High Court in *Mahadev Prasad Gupta and Ors. v. State* 1964 11 L.L.J. 546, of the Patna High Court in *Workman of Pure Kustore Colliery v. Central Government Industrial Tribunal-cum-Labour Court, Jabbalpur* and Anr. 1969 1 L.L.J. 126 and of the Allahabad High Court in *British India Corporation Ltd. Kanpur v. Labour Court (II), Kanpur and Ors.* 1968 L.I.C. 1316.

11. These appeals must therefore succeed. All those workmen who did not have employment during a period of 12 calendar months will be entitled to no compensation u/s 25F even if they had worked for 240 days. The position of those who had not even worked for 240 days is of course worse. They too will be entitled to no compensation.

12. In the light of the above, we have to hold that the petitions of those workmen who fall within the first group mentioned in paragraph 2 above where notices had not been issued but orders of stay had been obtained from this Court should be dismissed as the Petitioners therein were not entitled to retrenchment compensation when they approached this Court. We accordingly allow the appeals mentioned under group No. 1 in paragraph 2 above and dismiss the relative Original Petitions. We direct the parties to bear their respective costs.

13. The second group consists of cases where termination notices had been served but those notices had been stayed by this Court. The learned Judge in the judgment under appeal has observed that the workmen who would fall under this group of cases will be entitled to reckon the number of days they had worked after the order of stay issued by this Court before the orders of stay was passed as well as the period during which they worked for the purpose of the question whether they had worked during 12 calendar months and that if they had put in 240 days inclusive of the days on which they worked after the stay order, and had 12 calendar months of employment they will be entitled to get the compensation as provided in Section 25F. Counsel on behalf of the Appellant

contended that such a direction given by the judgment is not justified, that notices had been served properly and that orders of stay have been obtained without any legal right and the fact that they continued to work because of the stay orders cannot be pressed into service for determining the question whether the termination was valid or not and that this Court should therefore only consider whether the notices were legal or not and whether there has been an effective and legal termination of service. Where notices of termination had been issued and there has been a valid termination of the relationship of employer-employee the only question this Court can consider is whether such notices were valid or not. We have, in the light of the discussions to hold that the notices are valid. As far as the workmen in this group of petitions are concerned they will be entitled to no compensation u/s 25F. The appeals are therefore allowed and the relative Original Petitions dismissed.

14. Writ Appeal No. 191 of 1976 is not pressed. This appeal accordingly is dismissed.

15. In the last group of cases there were no orders of stay. The workmen concerned had not worked during a period of 12 calendar months. These Writ Appeals are allowed and the relative Original Petitions are dismissed.

16. We make no order as to costs in these Appeals.