
(2001) 03 BOM CK 0004

In the Bombay High Court

Case No : Writ Petition No. 2456 of 1996

General Manager, Telecom, Nagpur and others

APPELLANT

Vs

Naresh Brijlal Charote and another

RESPONDENT

Date of Decision : 07-03-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(j), 25F, 2A

Citation : (2001) 03 BOM CK 0004

Hon'ble Judges : S.D. Gundewar, J

Bench : Single Bench

Advocate : L.K. Khamborkar, for the Appellant; P.D. Meghe, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Gundewar, J.—This writ petition is directed against an Award dated 28-9-1995 passed by the Central Government Industrial Tribunal No. 2 Bombay (for short, "C.G.I.T.") on a reference made to it by the Government of India, Ministry of Labour, vide its letter dated 13-7-1994. By the aforesaid Award the C.G.I.T. has held that the action of the management in terminating the services of the Respondent No. 1 herein was not justified and ordered his reinstatement with back wages from 6-1-1992 till his appointment on the basis of the last wages drawn and for treating his services as continuous for other benefits.

2. A few facts, leading to this petition, in brief, may be summarized as below.

The Respondent No. 1 Naresh Brijlal Charote was appointed as part time sweeper in Telecom Department, General Manager, Phones (Main), Nagpur, on 15-5-1987. He was nominated by the Office of Employment Exchange, Nagpur. He was orally retrenched on 10-10-1991. It is averred by the Respondent No. 1 that he was also engaged in A.E. Electrical Stores, Nagpur, where he worked from 1988 to 6-2-1992 and thereafter he was not provided with any work though it was available, which act of the management, according to him, is illegal and amounts to retrenchment. According to Respondent No. 1, he was paid Rs. 39.55 paise

per day. He was neither served with one month's notice nor paid one month's wages in lieu of the notice nor paid retrenchment compensation. The provisions of Section 25F of the Industrial Disputes Act (for short, "the Act") were thus not complied with. He had worked continuously for more than 240 days but was not made permanent in service by the management so as to deprive him of the benefits of the provisions of the Act, to which he was entitled. It is also averred by the Respondent No. 1 that the persons junior to him are still in service. He had, therefore, served the Petitioners with notice, but the Petitioners did not pay any heed to his request and, therefore, he was constrained to approach the Assistant Labour Commissioner (Central) Nagpur vide application u/s 2-A of the Act raising industrial dispute.

3. The Petitioners resisted the Respondent No. 1's claim vide their written statement (Ex..4). It was their contention that the appointment of Respondent No. 1 as a part time sweeper was purely temporary and his services were terminable without any notice. The Petitioners denied that there was any oral retrenchment on 10-10-1991, as alleged. According to the Petitioners, the nature of work of Respondent No. 1 was to clean wash basins, floors, latrines, etc. His wages were on hourly basis and he was to work daily for three hours. He was working in three different offices of the Petitioners and enhancement in his wages was due to change in price index and as per the directions issued by the Head Office from time to time. The work of Respondent No. 1 was not up to the mark. He used to attend the office late and used to remain absent from duty purposely. As his appointment was on daily wages, the question of issuance of notice or payment of compensation in lieu of notice or payment of retrenchment compensation does not arise. He cannot be said to be full time or casual labourer and, therefore, the schemes like grant of temporary status to the employees and regularization of their services are not applicable to an employee like the Respondent No. 1 herein. As such the question of completion of his 240 days of service in a year also does not arise. The provisions of the Act are thus not applicable to the present case.

4. Heard Shri L. K. Khamborkar, the learned Counsel for the Petitioners and Shri P. D. Meghe, the learned Counsel for Respondent No. 1. The Respondent No. 2 - C.G.I.T. is a formal party.

5. It is contended by Shri Khamborkar, the learned Counsel for the Petitioners, that the telecommunication department is not an industry as defined in Section 2(j) of the Act and, therefore, the provisions of the Act are not applicable to the disputes like the present one and hence the proceedings initiated by the Respondent No. 1 by raising the industrial dispute and the impugned Award dated 28-9-1995 are without jurisdiction and liable to be quashed and set aside. For this, he placed reliance on a decision in Sub-Divisional Inspector of Post, Vaikam, and others Vs. Theyyam Joseph, etc., .

6. It is further contended by Shri Khamborkar, the learned Counsel for the Petitioners, that the Respondent No. 1 was appointed as a part time sweeper on

daily wage basis and his services were terminable without any notice and, therefore, according to him, the termination of service of Respondent No. 1 by the Petitioners does not amount to retrenchment within the meaning assigned to the said term in the Act. The C.G.I.T., therefore, erred in holding that the termination of the services of Respondent No. 1 is illegal due to non-compliance of the provisions of Section 25F of the Act and, therefore, the impugned order is liable to be quashed on this count. For this, he placed reliance on a decision in State of Himachal Pradesh Vs. Suresh Kumar Verma and another, .

7. Shri Meghe, the learned Counsel for the Respondent No. 1, while supporting the impugned Award, submitted that a part time employee is also a workman and as the Respondent No. 1 who was appointed as a part time sweeper and worked for more than 240 days, the learned Presiding Officer, C.G.I.T. has rightly held that his services cannot be terminated without following the provisions of Section 25F of the Act.

8. It is further submitted by Shri Meghe, the learned Counsel for the Respondent No. 1, that the three Judge Bench of the Apex Court in the case in General Manager, Telecom v. S. Srinivas Rao and Ors., AIR 1998 SC 656 overruled its earlier decision of Division Bench in the case in Sub-Divisional Inspector of Post, Vaikam, and others Vs. Theyyam Joseph, etc.,, and held that the Telecom Department of Union of India which is engaged in commercial activity and is not discharging any sovereign function of the State, is an industry and, therefore, according to Shri Meghe, learned Counsel for Respondent No. 1, the provisions of the Act are applicable to the present case.

9. Shri Khamborkar, the learned Counsel for the Petitioners though admitted that three Judge Bench of the Apex Court in AIR 1998 SC 656; (cited supra) while holding that the Telecom Department is an industry, has overruled its earlier Division Bench decision in Sub-Divisional Inspector of Post, Vaikam, and others Vs. Theyyam Joseph, etc.,, , however, has submitted that in earlier Division Bench decision in Sub-Divisional Inspector of Post, Vaikam, and others Vs. Theyyam Joseph, etc.,, , the Apex Court held that the Telecom department is not an industry only after considering the nature of work of the said department, but in the subsequent decision i.e. in AIR 1998 SC 656 (cited supra) the Apex Court held that the said department is an industry only on the basis of an admission given by the learned Counsel for the Department in that regard and, according to Shri Khamborkar, such an admission given by the learned Counsel for the department in fact does not bind the departments all the times to come. On careful reading of both the aforesaid decisions reported in Sub-Divisional Inspector of Post, Vaikam, and others Vs. Theyyam Joseph, etc.,, and AIR 1998 SC 656, I am unable to concede to the aforesaid proposition made by Shri Khamborkar. In the case in General Manager, Telecom v. S. Srinivas Rao AIR 1998 SC 656 the Apex Court after applying the dominant nature test found that the Telecom Department of Union of India is engaged in commercial activity and is not discharging any sovereign function of the State and, as such, it observed

in para 6 of the said judgment as below:

6. It is rightly not disputed by the learned Counsel for the Appellant that according to this test the Telecommunication Department of the Union of India is an "industry" within that definition because it is engaged in a commercial activity and the Department is not engaged in discharging any of the sovereign functions of the State.

In view of this, it cannot be said that simply on the basis of an admission given by the learned Counsel for the Department the Apex Court held that Telecom Department is an industry. The submission made by the learned Counsel for the Petitioners in this regard, therefore, must fail.

10. The next contention raised by Shri Khamborkar, the learned Counsel for the Petitioners, is that the appointment order dated 8-7-1987 (Annexure-1) itself indicates that the services of Respondent No. 1 were purely temporary and can be terminated without any notice. According to him, the said appointment order further indicates that his appointment was on daily wage basis and as his appointment to the post of part time sweeper was not according to the rules, the termination of his services does not amount to retrenchment within the meaning assigned to the said term in the Act.

11. Now, from the submissions made by Shri Meghe, the learned Counsel for Respondent No. 1, it appears that Respondent No. 1 was selected only after an interview and, therefore, an appointment letter dated 8-7-1987 (Annexure-I) was issued. A perusal of the said letter clearly indicates that Respondent No. 1 was appointed as a part-time sweeper. The said letter further indicates that he would be paid for his work on prescribed daily wages. That does not mean that the Respondent No. 1 was appointed on hourly basis and was not a casual labourer. It is well settled that in order to render a person "workman" what is required is that he should be employed in any industry to discharge any manual skilled or unskilled work for hire. The definition of "workman" as given in the Act does not make any distinction between full-time employee and part time employee. It does not lay down that only a person employed for full time will be said to be a workman and that the one who is employed for part time should not be taken as a workman. What is required is that the person should be employed for hire to discharge the work manual, skilled or unskilled etc. in any industry. If this test is fulfilled, a part time employee can also be said to be a "workman". Now, if this test is applied to the present case, it can very well be said that Respondent No. 1, who was appointed as a part-time sweeper and was required to do manual and unskilled work is a "workman" within the meaning assigned to the said terms in the Act and as he worked for more than 240 days in a year, the provisions of Section 25F of the Act are applicable to the case in hand and as neither any notice, as contemplated u/s 25F of the Act, was served upon the Respondent No. 1 nor he was paid compensation in lieu of the said notice, nor was paid retrenchment compensation, it cannot be said that the provisions of Section 25F of the Act were duly complied with. It has been time and again held

by this Court as well as by the Apex Court that the noncompliance of the mandatory provisions of Section 25F of the Act would render the termination of service void ab initio. I am fortified in this view by a decision of the Apex Court in the case in Mohanlal v. Management of M/s Bharat Electronics Ltd., (1991) 3 SCC 225.

12. Admittedly, in the case in hand, there was no compliance of the provisions of Section 25F of the Act and, therefore, in my opinion, the learned Presiding Officer of C.G.T.T. has rightly held so. In view of this, the impugned order passed by him cannot be said to be erroneous or unjustified.

13. For the reasons stated hereinabove, the contentions raised by the learned Counsel for the Petitioners must fail and the impugned order, in my opinion, being just and proper does not require any interference at the hands of this Court.

14. In the result, therefore, the writ petition stands dismissed with no order as to costs. Rule discharged.