
(1984) 09 KAR CK 0029
In the Karnataka High Court
Case No : Writ Petition No. 6299 of 1983

Honnayya and Others

APPELLANT

Vs

Karnataka State Road Transport Corporation and Another

RESPONDENT

Date of Decision : 21-09-1984

Acts Referred:

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

Citation : (1985) ILR (Kar) 1390 : (1985) 1 KarLJ 314 : (1985) 2 LLJ 487

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Judgement

1. The petitioners, who are ex-employees of the Karnataka State Road Transport Corporation ("Corporation" for short), have presented these petitions questioning the legality of the order terminating the services of each of the petitioners on the ground that they had been made in violation of the mandatory requirements of S. 25-F of the Industrial Disputes Act ("the Act" for short).

2. The facts of the case, in brief, are as follows : The name of each of the petitioners had been included in a list called "Badli list" prepared by the concerned officers of the Corporation. The list so prepared was for the purpose of utilising their services on days on which regular employees of the Corporation remained absent by taking leave. Accordingly, the petitioners whose names were included in the badli list were being given appointments only on days on which the regular employees were on leave. By each of the orders, impugned in these petitions, the names of the petitioners were deleted from the badli list on ground of unsuitability. Prior to the order of termination none of the petitioners had put in 240 days of service in any of the years. The contention of the petitioners, however, is that their cases fall within the scope of s. 25-B(1) of the Act as they had worked on all days in a year on which they were given work and as the work was not given on other days for no fault of theirs, notwithstanding the intervening period on which they had not worked, they must be deemed to be in continuous service.

3. As against this, the contention of the Corporation is that the inclusion of the names of the petitioners in badli list did not mean that they became employees of the Corporation. It was only for the purpose of providing them appointment on day to day basis against leave vacancies as is evident from Regulation 16 of the K.S.R.T.C. Cadre and Recruitment Regulations, 1968. As they had not worked for 240 days in any year, they did not come within the purview of S. 25-B(2) and as they were not in employment of the Corporation on the days on which they had not worked, they were not governed by S. 25-B(1) also. Therefore, S. 25-F was not at all attracted to their cases.

Section 25-B of the Act reads as follows :

"25B. For the purpose of this Chapter, - (1) a workman shall be said to be in continuous services for a period if he is, for that period, in uninterrupted service, including service which may be interrupted 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;

(2) Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer -

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case."

The language of the provision indicates that Clause (1) applied to cases where a person is in the service of an employer, but in a given year, he had not worked on certain days for one or the other reasons set out in the sub-section, namely, sickness, authorised leave or an accident or a strike which is not illegal, or a lock-out or cessation of work not due to any faults on the part of the workman. The sub-section presupposes the continued existence of employer and employee relationship during the period on which the workman was unable to work for one or the other reason, set out in S. 25-B(1) or even if he was in a position to work, either because the employer was unable to give the work or because the employer deliberately prevented the workman from working, there was interruption in the service of the employee. In the cases where the employer prevents the workman from working on any day or for any period, the workman does not cases to be in service and he would, therefore, be entitled to claim wages for such period and for that purpose he could make an application under S. 33-C(2) of the Act before a Labour Court or under S. 15 of the Payment of Wages Act, on the ground that non-payment of wages for such period amounts to deduction of wages within the meaning of that expression used in the Payment

of Wages Act. In cases where the non-assignment of work was not on account of any deliberate act on the part of the employer, still the workman would be in the service of the employer during that period and would be deemed to be in continuous service notwithstanding the cessation of work during such period.

4. As far as the scope of S. 25-B(2) is concerned, there is no dispute. For attracting this clause, all that is necessary is that the workman concerned must have worked under an employer for 240 days in a year. If he has worked, he stands governed by this clause irrespective of the nature of employment. (See *Hutchiah Vs. Karnataka State Road Transport Corporation*, and *Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another*,

5. Bearing in mind the scope of S. 25-B(1) the case put forward by the petitioners have got to be examined. The scheme under which the petitioners were given work on certain days in a year is as follows : It is natural that when a large number of personnel are in the employment of the Corporation employed in connection with its transport services, some of them would be applying for leave on many days on account of personal reasons or illness. Therefore, it become necessary for the Corporation to engage the services of some other person in the place of the employee of the Corporation, who applies for leaves for the day or days, on which he applied for leave. In order to know as to who could be engaged on such days, the Corporation has got a system of preparing a list of names called "Badli List", in which the names of those unemployed persons, who are desirous of securing work against leave vacancies, are included. Such lists are prepared and sent to the depots concerned which are the starting point of stage carriages or contract carriages of the Corporation in different parts of the State. Persons whose names are in the badli list, if they so desire, are at liberty to come to the depot at the commencement of the working hours and find out whether any employee of the Corporation had applied for leave and whether they could get work in his place on the date on which the employee had applied for leave on payment of prescribed wages for the day. In fact, to regulate such day to day employment or engagement regulation 16 is incorporated in the service regulations of the Corporation. It reads -

"16. Procedure for appointment of badlis. - 1. A badli worker is one who is employed on day-to-day basis in any vacancy caused by the absence of any employee and who is paid for the numbers of days he works as such, either daily or once in a month.

2. A list of badli workers shall be maintained in a depot or workshops. The appointment of a badli worker shall be made from among those in the list of Badli workers who are present at the Depot/Workshops, preference being given to the person who arrives first at the place of duty. If for any reason a Badli worker is not found suitable for the post, his name may be removed from the list of Badli workers.

3. A Badli worker would be eligible for such day-to-day appointment as long as his name figures in the list of badli workers."

The language of Rule 16 is clear and unambiguous. The persons whose names are included in the Badli List would secure employment for the day and that would be given on first come first served basis. Thus it may be seen that except the fact that persons like the petitioners are given job on daily wages for the day concerned, on the days on which no job is given, there is no employer and employee relationship between the Corporation and the petitioners. The day-to-day appointment is given by the depot manager, who is authorised to engage workman for the day and not by the appointing authority for the post.

6. I fail to appreciate how a workmen who secured work against leave vacancies for those days stands covered by S. 25-B(1) of the Act. It would be a travesty of law to say that if a person is given work for one or for a few days in a year by an employer, either as a leave substitute or to meet the extra work arising on any occasion, the rest of the days on which no work is given amounts to "cessation of employment" within the meaning of S. 25-B(1) and that the workman must be deemed to be in continuous service of such employer. The following illustration would bring forth the fallacy of the construction of S. 25-B(1) suggested for the petitioners. Take for instance that during the Dasara Festival, the Corporation is in need of more drivers and conductors as it is required to run more trips to meet the seasonal traffic and, therefore, some persons, who are qualified to be drivers or conductors and whose names are in Badli list or not are given work for a period of about 10 days. According to the construction of S. 25B(1) by the petitioners, as for the other 355 days in the year, it is the Corporation who failed to give the work and, therefore, cessation of work was for no fault of workman and, therefore, it would constitute interruption within the meaning of S. 25-B(1) of the Act. In such a case, in reality all that can be said is, the Corporation gave work for 10 days and not that the Corporation denied work for 355 days.

7. Learned counsel for the petitioners maintained that S. 25-B(1) of the Act was a beneficial legislation and, therefore, such an interpretation has to be given.

8. The principle of giving beneficial interpretation to a provision arises when two reasonable interpretations of a provision are possible and one of it is advantageous to the workman and the other is not, but not in a case where no other interpretation is possible. The interpretation suggested for the petitioners is unintended by the provision and is patently unreasonable and would lead to unjust results. Learned counsel maintained that if an employee takes the services of a workman even for a day in a year, the rest of the 364 days would have to be treated as interruption in service and S. 25-B(1) would apply to his case. Neither the text nor the context of S. 25-B(1) of the Act permits any such construction. Such construction would also render S. 25(2) otiose and, therefore, impermissible.

9. Learned counsel for the petitioners, however, submitted that the judgment of

the Supreme Court in *Mohanlal v. Bharat Electronics Ltd.* 1981 I LlJ 70, supports the submission. The relevant portion of the judgment reads (at p. 76).

"Mr. Markandey contended that Cls. (1) and (2) of S. 25B provide for two different contingencies and that none of the clauses is satisfied by the appellant. He contended that sub-s. (1) provides for uninterrupted services and sub-s. (2) comprehends a case where the workman is not in continuous service. The language employed in sub-s. (1) and (2) does not admit of this dichotomy. Sub-Ss. (1 and 2) introduce a deeming fiction as to what circumstances a workman could be said to be in continuous service for the purposes of Chapter V-A. Sub-s. (1) provides a deeming fiction in that where a workman is in service for a certain period he shall be deemed to be in continuous service for that period even if service is interrupted 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. Situations such as sickness, authorised leave, an accident, a strike not illegal, a lock-out or a cessation of work would ipso facto interrupt a service. These interruptions have to be ignored to treat the workman in uninterrupted services and such service interrupted on account of the aforementioned causes which would be deemed to be uninterrupted would be continuous service for the period for which the workman has been in service. In industrial employment for that matter in any service, sickness, authorised leave an accident, a strike which is not illegal, a lock-out and a cessation of work not due to any fault on the part of the workman, are known hazards and there are bound to be interruptions on that account. Sub-s. (1) mandates that interruptions therein indicated are to be ignored meaning thereby that on account of such cessation an uninterrupted and such uninterrupted service shall for the purpose of Chapter V-A deemed to be continuous service. That is only one part of the fiction.

10. I fail to see how the above paragraph supports the construction of S. 25-B(1) of the Act made by the learned counsel for the petitioners. The above paragraph also indicates that in order to attract the provisions of S. 25-B(1) of the Act, the condition precedent is that the person must have been in service during the period, i.e., not only on the days when actually worked, but also on days he could not work under circumstances set out in S. 25(1). In other words, in order that S. 25-B(1) is attracted to the case of an employee, he should have been in the employment of the employer concerned not only on days on which he has worked, but also on the days on which he had not worked, either on account of his inability or on account of his being prevented by the employer from working.

11. On the other hand, the judgment of the Supreme Court in *Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd.*, provides a complete answer to the point raised by the petitioners. In the above case, the Supreme Court was interpreting the meaning of the expression "continuous service" used in S. 2(c) of the Payment of Gratuity Act, which is in pari materia with S. 25B(1) of the Act and the Explanation below it which is similar to S. 25B(2) of the Act. Repelling

the contention that a person who had been employed as a substitute on a few days in a year in the place of an absentee workman should be deemed to be in continuous service under the main part of the section on the ground that on the rest of the days there was cessation of the employment for no fault of the workman concerned, the Supreme Court stated thus

"The Report of the Badli Labour Enquiry Committee, Cotton Textile Industry, 1967, no doubt shows that the badli employees are an integral part of the textile industry and that they enjoy most of the benefits of the permanent employees; but there may not be any opportunity of service as observed by this Court in the Delhi Cloth Mills" case (1969) 36 F.J.R. 247, (supra). The badli employees are nothing but substitutes. They, are like "spare men" who are not employed" while waiting for a job; Conlon v. Glasgow 36 S.L.R. 652. Vallabhdas Kanji (P) Ltd. v. Esmail Koya [1978] 52 470, taking the view to the contrary does not appear to lay down a good law. Accordingly, we uphold the view that the badli employees are not covered by the substantive part of the definition of "continuous service" in S. 2(c), but came within Explanation I and, therefore, are not entitled to payment of gratuity for the badli period, i.e., in respect of the years in which there was no work allotted to them due to their failure to report to duty."

The interpretation of the aforesaid provision of the Payment of Gratuity Act applies on all fours to Ss. 25(1) and (2) of the Act as the language of both the provisions are identical.

The decision of this Court is Mahadev Textile Mill v. Additional Industrial Tribunal [1976] 1 Kar. L.J. 315 also clearly indicates that a "Badli" can not be regarded as in the employment of an employer on the days on which he had not worked. S. 25B(1), therefore, could only apply to the case of a workman in the service of an employer throughout a specified period, but was unable or prevented from working on certain days or period. Having regard to regulation 16 of the Recruitment Regulations of the Corporation, the petitioners cannot be regarded as in the service of the Corporation on days on which the petitioners were not given appointment.

12. Learned counsel for the petitioners submitted that in the case of one of the petitioners, a provident fund account had also been opened. As stated earlier, none of the facts concerning the giving of work to the petitioners on certain days have been disputed. That being the position, the fact whether by mistake or otherwise a provident fund account had been opened does not make any difference as far as the applicability of S. 25B(1) of the Act is concerned.

13. In some of the petitions, an alternative contention was raised to the effect that though each of the petitioners had not worked for 240 days preceding the date of termination, if calculation is made from the date of commencement of appointment, they had worked for 240 days in some or the other year, and, therefore, they should be regarded as having been in continuous service for one year in view of S. 25B(2) and, therefore, termination of their service without

complying with S. 25F of the Act was void.

14. As against the above submission, learned counsel for the Corporation submitted that none of these petitioners had worked for 240 days in any of the years. He also submitted that S. 25B(2) could be attracted only if the workman concerned had worked for 240 days within a period of twelve months immediately preceding the date of termination. In support of this submission counsel for the Corporation relied on the following observations of the Supreme Court in Mohan Lal's case, (supra) :

"Sub-section (2) incorporates another deeming fiction for an entirely different situation. It comprehends a situation where a workman is not in continuous service within the meaning of sub-s. (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period of one year or six months, as the case may be, if the workman during the period of 12 calendar months just preceding the date with reference to which calculation is to be made, has actually worked under that employer for not less than 240 days. Sub-s. (2) specifically comprehends a situation where a workman is not in continuous service as per the deeming fiction indicated in sub-s. (1) for a period of one year or six months. In such a case he is deemed to be in continuous service for a period of one year if he satisfies the conditions in Clause (a) of sub-s. (2). The conditions are that commencing from the date with reference to which calculation is to be made, in case of retrenchment that date of retrenchment, if in a period of 12 calendar months just preceding such date the workman has rendered service for a period of 240 days, he shall be deemed to be in continuous service for a period of one year for the purposes of Chapter VA"

Learned counsel for the petitioners relied on paragraph 22 of the judgment of this Court in Huthaiah's case [1982] 61 F.J.R. 207, and submitted that if a workman had worked for 240 days in any of the years preceding the date of retrenchment, S. 25F would be attracted.

15. Learned counsel for the Corporation submitted that he had conceded in all cases in which a workman had worked for 240 days in any year, but these petitioners had not worked for 240 days in any year. As there is a dispute on questions of fact, if any of the petitioner considers that he had worked for 240 days in a year, he is at liberty to raise an industrial dispute.

16. In the second group of cases, there is an additional objection to the effect that they are liable to be dismissed on the ground of delay. All these petitions have been presented after three years after the date on which they were removed from Badli list. Hence they are liable to be dismissed on the ground of delay and laches. (See Order in W.P. No. 21409 of 1983 and connected cases D.D. 28th March, 1984).

17. In the result, I make the following order :

(i) The writ petitions are dismissed.

(ii) No costs.