
(1993) 09 AHC CK 0036
In the Allahabad High Court
Case No : C.M.W.P. No. 22651 of 1988

Indian Veterinary Research Institute and Another	APPELLANT
Vs	
Central Govt. Industrial Tribunal and Another	RESPONDENT

Date of Decision : 29-09-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1994) 1 AWC 79 : (1994) 68 FLR 380 : (1994) 2 LLJ 1102

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Advocate : Rakesh Tewari, for the Appellant; K.P. Agrawal and M.A. Haseen, for the Respondent

Final Decision : Dismissed

Judgement

R.R.K. Trivedi, J.—Petitioner's case is that the impugned award is liable to be quashed as Tribunal has failed to consider the implication of Section 2(oo)(bb) of the Industrial Disputes Act. It is stated that the respondent No. 2 was a probationer and for his unsatisfactory work, he could be discharged from the service which could not attract provisions of Section 25F of the Industrial Disputes Act. Tribunal is said to have acted beyond his jurisdiction. It is further contended that the Tribunal has no jurisdiction to proceed with the case, same was to be transferred to the Central Administrative Tribunal u/s 29 of the Act. The industrial Tribunal ceased to have its jurisdiction w.e.f. May 15, 1987 on the matter.

The respondent No. 2 had no right to hold the post. His services could be terminated without any notice. The respondent No. 2 is not entitled to get any protection under the Constitution or under the Industrial Disputes Act. Termination of service of respondent No. 2 was not due to his misconduct but was only for his unsatisfactory work.

2. Respondent No. 2 was said to have been appointed on probation on May 15,

1987 as T-1 (Laboratory Assistant) at the petitioner's institution. Respondent No. 2's period of probation was extended by one year. His work and conduct was not found satisfactory. Hence, his services were terminated on May 12, 1981. Of course, the respondent No. 2 is said to have raised a dispute under the provisions of Industrial Disputes Act which was referred for adjudication by the Central Government to the Central Government Industrial Tribunal/Labour Court, Kanpur on January 2, 1987. Petitioner filed his written statement before the Tribunal in pursuance of the summons. Respondent No. 2 has stated that he was not informed that his period of probation was extended. He would be deemed to have been confirmed after the expiry of the period of probation. He was a workman. Neither he was paid one month's pay nor retrenchment compensation before the issuance of the impugned order. Service Rules applicable to him were not complied with, therefore, the termination of service was illegal. He has also challenged the recording of adverse remarks against him, which according to him, was outcome of personal bias and prejudice by Dr. M.C. Prasad under whom he was working. Before the Tribunal, petitioner has denied all these charges. Petitioner made an attempt before the Tribunal that conduct and work of respondent No. 2 was not satisfactory during the period of probation, therefore, his period of probation was extended and after that his services were terminated. However, Tribunal issued an award against the petitioner on 31st of May, 1988 which was published on 17th June, 1988 and the petitioner is said to have received the copy of the award on 29th September, 1988.

3. It is further submitted that Government of India had issued a notification u/s 14(2) dated April 20, 1987 which conferred jurisdiction on the Central Administrative Tribunal in respect of disputes relating to service matters of I.C.A.R. All the cases pending on that day before the Industrial Tribunal were liable to be transferred to the Central Administrative Tribunal u/s 29 of the Central Administrative Tribunal Act, therefore, the award was without jurisdiction. As a probationer, respondent No. 2 has no right to the post, therefore, award is bad.

4. Counter-affidavit is filed by the respondent No. 2. He has denied the averments raised by the petitioner in this petition, and has submitted that Tribunal's award is according to law. It is also denied that the Tribunal has lost the jurisdiction. It is submitted that the Tribunal had the jurisdiction to pass the award and this ground was not taken before the Tribunal at any time. Services of the respondent No. 2 are said to have been terminated without any justifiable cause and the said termination is wrong.

5. I have heard the learned counsel for the parties at some length. The point of lack of jurisdiction of the Industrial Tribunal to decide the dispute referred to it by the Central Government was on second look not pressed by the learned counsel for the petitioner so vehemently. He had referred to Section 14 of the Central Industrial Tribunal Act which defines the jurisdiction, power and authority of the Central Administrative Tribunal, but bar of jurisdiction is contained in Section 28

of the Act. It creates a bar of jurisdiction of the Tribunal and Court in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post except the matters which are before the Supreme Court and Industrial Tribunal, Labour Court or other authority constituted under Industrial Disputes Act or any other corresponding law for the time being in force. Section 28 itself provides that the jurisdiction of Industrial Tribunal is not barred. In those cases in which jurisdiction of the Tribunal or Court is barred matters pending before them are to be transferred to the Central Administrative Tribunal. However, before reading Section 28, learned counsel for the petitioner did realise that his objection was not sustainable. Omission of Clause (b) in Section 2 of the Act also would not affect the jurisdiction of the Industrial Tribunal to hear the matters which arise out of the Industrial Disputes Act.

6. Therefore, it is held that Industrial Tribunal had the jurisdiction to decide the matter and there is no error in the award of the Tribunal on the ground of lack of jurisdiction.

7. On merits it was contended by the learned counsel for the petitioner that respondent No. 2 could not get protection under the provisions of Industrial Disputes Act because his termination of service was as a result of non-renewal of the contract of employment on its expiry. It is stated that the respondent No. 2 was appointed on probation for one year, therefore, he could be terminated during the probation. If there is no renewal of contract his services are liable to be terminated, that would not amount to retrenchment as envisaged in Section 2(oo)(bb) of the Industrial Disputes Act.

8. It is true that the respondent No. 2 was appointed on probation but he was not employed for a fixed term, therefore, the provision of law referred to by the learned counsel for the petitioner would not come into play. Retrenchment means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action. Respondent No. 2 had not been punished also. Once there is retrenchment of service for any reason whatsoever which does not fall within the exception of Section 2(oo)(a)(b)(c), the termination amounts to retrenchment. Learned counsel for the petitioner has not been able to show from the record that respondent No. 2 was appointed for a fixed term or for a specified term under the contract of employment. In that case, on the expiry of the term or on the expiry of period of contract employer is not bound to renew the contract or: extend the term, as the case may be. So it would not amount to retrenchment. Learned counsel for the respondent No. 2 has relied on an authority of Supreme Court *Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another*, The Supreme Court has considered the ambit of Section 2(oo) and exceptions made to the said Section. It is held that termination of service of an employee during the probation amounts to retrenchment and if a retrenchment is to be made, it is necessary to follow the

provisions of Section 25F of Industrial Disputes Act. If those provisions are not complied with, retrenchment is to be set aside. In the present case the provision of Section 25F has not been followed, therefore, retrenchment of the respondent No. 2 even though he was on probation will be bad. Admittedly, these provisions have not been followed, therefore, retrenchment of the respondent No. 2 becomes invalid.

9. Learned counsel for the petitioner has referred to an authority reported in *Sushil Kwnar Pandey v. Director, Valvikas Seva Evam Paushtik Ahar and Ors.* 1993 (66) FLR.381 to show that there was no infirmity in the order of retrenchment, therefore, the impugned award was bad. From reading the judgment, it transpires that the petitioner had not raised any industrial dispute. He had filed this writ petition on the ground that his termination from service was against the provisions of Section 25F of the Industrial Disputes Act.

He had prayed for regularisation of service also. The writ petition was dismissed because one of the conditions of his appointment was that his service can be terminated at any time without any notice. However, he was paid wages for the days for which he had worked. Similar authority reported in *Krishna Lal v. Surendra Bahadur Singh and Anr.* 1993 (66) FLR 584 also would not help the petitioner because the petitioner was appointed for a fixed term in a leave vacancy which was obtained by the employee for a fixed period.

10. A workman engaged on probation is not necessarily appointed for a fixed term or for a specified period. In case of fixed term appointment, appointment order shall say so. A person who is appointed on probation without fixing any term is not appointed for a fixed term nor is he appointed for a specified work unless it is proved that his appointment was for a specified work or for a fixed term.

11. As a probationer, respondent No. 2 could be retrenched only after the provisions of Section 25F is complied with. The short question which falls for consideration in this case is whether respondent No. 2's retrenchment is valid without following the provisions laid down in Section 25F of the Industrial Disputes Act. Petitioner submits that, that Section was not required to be followed. This contention is not acceptable and needs to be rejected. Respondent No. 2 was appointed on probation. Provisions of Section 25F, is therefore, applicable to him. He could not be retrenched without following this provision. The award has been issued on this ground by the Labour Court which does not suffer from any infirmity or illegality. The result is that the award is held to be valid and cannot be set aside in this writ petition.

12. As a result of the aforesaid discussion, the writ petition has no merit and is dismissed with costs.