

(2012) 03 MAD CK 0187

In the Madras High Court

Case No : Writ Petition No. 9925 of 2007 and M.P. No. 1 of 2007

Institute of Hotel Management, Catering Technology and
Applied Nutrition

APPELLANT

Vs

Presiding Officer, II Addl. Labour Court, Chennai and Another

RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 17B, 2(b), 2(s), 25F, 2A(2)

Citation : (2012) 4 LLJ 272

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Balasubramanian, for the Appellant; V. Govardhan for T. Arul, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice K. Chandru

1. The writ petition is filed by the petitioner management seeking to challenge an award passed by the 1st respondent Labour Court in I.D. No. 165 of 1999 dated July 5, 2006. By the impugned order, the Labour Court directed the reinstatement of the 2nd respondent with backwages and continuity of service and all other attendant benefits. The writ petition was admitted on March 16, 2007. Pending the writ petition, this Court granted an interim stay on the same day. However, though the 2nd respondent was served as early as June 1, 2007, he has not come forward to file any application either to vacate the stay or to seek the wages in terms of Section 17-B of the Industrial Disputes Act.

2. When the matter came up for final hearing, since the petitioner has not filed all the relevant documents made available before the Labour Court, this Court directed the Registry to summon the original records from the Labour Court for perusal. Accordingly, the Registry summoned the original records and circulated

the same for perusal by this Court.

3. Heard the arguments of the learned Counsel on both sides.

4. It is seen from the records that the 2nd respondent was initially appointed by the petitioner as a Trainee Cleaner on contingency basis with daily wage of Rs. 5/- per day by order dated September 7, 1982. Subsequently, when his services were dispensed with without following any procedure, he raised an industrial dispute u/s 2-A(2) of the Industrial Disputes Act before the Government Labour Officer Circle III, Chennai vide his letter dated September 13, 1990. The Conciliation Officer as he could not bring about any settlement gave a failure report dated December 7, 1990. On the strength of the failure report, the 2nd respondent filed a claim statement dated March 17, 1999. The Labour Court registered the dispute as I.D. No. 165 of 1999 and issued notice to the petitioner management.

5. The petitioner filed a counter statement dated September 29, 2000. The stand taken by the petitioner management in the counter statement was that the 2nd respondent was engaged whenever the work was available and depending upon the contingencies. Subsequently, when an application was called for the post of Attender, the 2nd respondent attended the interview on September 1, 1983, but he was not selected. He was sending representation to various authorities. At one point of time, the Principal of the Institute was even willing to secure him for employment in a private Hotel at Anna Salai. However, the 2nd respondent after joining there quit the post. The Institute of Hotel Management, Clearing Technology and Applied Nutrition was notified u/s 14 of the Administrative Tribunals Act, 1985 to be brought under Tribunal's jurisdiction by the Government of India vide Notification dated December 17, 1998 and therefore the industrial dispute is not maintainable.

6. The workman filed an application for production of documents from the management to prove his employment with the Institute. The said application was numbered as I.A. No. 591 of 2002. The said application was registered by the petitioner management stating that attendance and acquittance registers were maintained only for permanent employees and the application was filed only to prolong the dispute.

7. However, the Labour Court by order dated October 3, 2005 made in I.A. N. 253 of 2003 directed the production of attendance register and salaries for the period from September 7, 1982 to December 17, 1988.

8. Thereafter, before the Labour Court the workman examined himself as W.W. 1 and on his side one Rathinam, who was a retired employee of the Institute was examined as W.W. 2. On the side of the workman, 8 documents were filed and marked as Exhibit W. 1 to Exhibit W.8. On the side of the petitioner management, two witnesses were examined. M.W. 1 R. Kumar who was the Upper Division Clerk in the petitioner Institute was examined as M.W. 1 and one D. Grace Kidiyan who was the Principal of the Institute was examined as M.W. 2

and four documents were filed and marked as Exhibit M-1 to Exhibit M-4.

9. The Labour Court on analysis of the materials placed before it came to the conclusion that the contentions raised by the management that the workman was only a daily wage labour and therefore not entitled to protection, cannot be accepted. In fact, it found that W.W. 2, who was the fellow worker and was employed for more than 36 years deposed that the 2nd respondent workman had completed 240 days of service for the period from September 7, 1982 to December 15, 1983 and the workman had continuously employed. After relying upon the judgment of the Supreme Court in Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others, the Labour Court held that the workman was entitled to the normal relief of reinstatement with backwages and continuity of service and all other attendant benefits. Challenging the same, the Writ Petition came to be filed.

10. The contentions raised in the affidavit filed in support of the Writ Petition were that there cannot be any reinstatement in respect of casual vacancy. In fact, they admitted that during the winter vacation namely in December 1998, by order dated December 16, 1998, nine workers were terminated including the 2nd respondent. The Labour Court has no power to deal with regularisation of a temporary casual employee. Inasmuch as the petitioner management was covered by the Central Administrative Tribunal, the workman ought to have filed an application before the Central Administrative Tribunal. The Labour Court has no jurisdiction to deal with the industrial dispute raised by the 2nd respondent.

11. On notice from this Court, the 2nd respondent filed a counter affidavit dated March 25, 2012. He has stated that he could not approach the Labour Court immediately after his termination and the delay was due to the reason that his family was suffering and he has to support two School going children and he was depending upon the income of his wife. He was also under the impression that after the failure report given by the Conciliation Officer, the State Government will have to make a reference and he was waiting for the reference. He later realized that after the amendment made to the Industrial Disputes Act by the State Legislature, no reference is required and thereafter he filed a claim statement. The other contention raised by him is that there was no necessity to approach the Tribunal in respect of his service grievance and the remedy by way of Industrial Disputes Act is very much maintainable. With reference to the service particulars, he had sought for production of documents, which were not forthcoming. Even the preliminary objection raised by the management in I.A. No. 591 of 2002 regarding the maintainability of the industrial dispute was rejected by the Labour Court on February 18, 2003 and the said order has become final. Hence, the management is estopped from once again raking up the same issue and further the delay in approaching the Labour Court cannot be held against him as there is no limitation prescribed.

12. Taking the first objection, namely in view of the Notification issued by the Central Government bringing the Institution within the purview of Central

Administrative Tribunal, whether the jurisdiction of the Labour Court is ousted, is to be considered. It must be noted that initially when the Administrative Tribunals Act was enacted during 1985, Section 2(b) of the Act excludes the employees covered by the Industrial Disputes Act from the purview of the Tribunal and subsequently by amendment made by way of Act 18 of 1986, Section 2(b) was deleted from the purview of the Administrative Tribunals Act, thereby making it clear that the industrial employee working under the establishment covered by Central Administrative Tribunal has option of moving the Industrial Courts or approaching the Central Administrative Tribunal depending on his volition. Hence, the 1st objection stands overruled.

13. The next question is whether the employment of the workman that he is casual employee, excludes the application of the Industrial Disputes Act is concerned, the definition of Section 2(s) of the Act does not make any distinction between permanent or temporary or casual. In fact, the said definition includes even a badli or apprentice. Therefore, it is too late for the petitioner to contend that the provisions of the Industrial Disputes Act are not applicable to the case of the 2nd respondent.

14. The other argument that he did not work for 240 day of service is concerned, the workman took steps to summon the documents from the employer and despite the Labour Court granting direction, the same was not produced. The learned Counsel for the petitioner placed reliance upon the judgment of the Supreme Court in G.M., B.S.N.L. and Others Vs. Mahesh Chand, for contending that when the workman worked continuously for 240 days, whether the onus of proof lies on the workman and not on the management. But in the present case, it is the stand of the petitioner management that only the permanent employees are covered by attendance register and acquittance register and even the Labour Court thereafter had summoned those records to be produced and the same was not produced. On the other hand the workman has got into the box as W.W. 1 to state the nature of his employment and he also examined a fellow workman as W.W. 2, who had worked for 36 years, in support of the tenure of employment of the 2nd respondent workman. Therefore, it cannot be said that the workman has failed to discharge his onus of proof regarding the number of days he worked. In any event, it is a finding of fact recorded by the Labour Court and this Court sitting under Article 226 of the Constitution cannot interfere with the same.

15. The other question that having employed for 240 days, whether the service of the workman can be dispensed with in accordance with the principles of natural justice and after the provisions prescribed u/s 25-F of the Industrial Disputes Act was concerned, it must be noted that when a similar question came up for consideration before the Supreme Court in the case relating to The State Bank of India Vs. Shri N. Sundara Money, the Supreme Court held that even while working as leave substitute, if he completes 240 days of service, then his service can be dispensed only after following the mandatory requirement u/s 25-F of the Industrial Disputes Act. Admittedly the said condition has not been

complied with by the petitioner management. In this context, the Supreme Court has held that the workman is entitled for the normal relief of reinstatement with backwages and he is liable to be restored to the same position where his service was dispensed with contrary to the provisions of the Act. Therefore, there cannot be any impediment in the award of the Labour Court being upheld by this Court. The Labour 3 Court has confined its relief as ordered by the Supreme Court.

16. The Supreme Court had an occasion to consider the question of grant of backwages in respect of restoring the service of a temporary casual workman vide judgment in *Rajasthan Lalit Kala Academy Vs. Radhey Shyam*,). The Supreme Court had held that even in the case of invalid termination, relief of reinstatement with backwages though may be the normal rule, but the Labour Court while ordering such relief has also to take into account the nature of the employment of the workman being ad hoc, daily wage and temporary as well as delay in raising the dispute.

17. In the present case, such an exercise had not been done by the Labour Court. Admittedly there was a delay of 8 years in filing the claim statement. Though the workman cannot be blamed as he himself had stated that he was under the impression that there should be a reference by the State Government on the said issue and later realizing that the State Legislature has amended Section 2-A(2) of the Industrial Disputes Act vide amendment made by the Tamil Nadu Act 5 of 1988 with effect from November 1, 1988 (See: *Technical Teachers Training Institute v. C. Balasubramaniam* 2007 (15) SCC 722 (para 13)). Even otherwise, the fact that he was a temporary and casual employee was admitted. Therefore, findings of the Labour Court directing the entire back wages to be given unmindful of the legal precedents also cannot be accepted.

18. In the present case, the non-employment has taken place in the year 1988 and more than 23 years have lapsed since the date of his non-employment and more than 5 years have lapsed since the date of the award. At this stage, if the petitioner is restored to the post of temporary casual employee, that cannot serve any useful purpose to the workman. Therefore, this Court is inclined to award monetary compensation by substituting the award of reinstatement, which alone can be proper in the facts and circumstances of the case. Under the said circumstances, the 2nd respondent is entitled for the compensation of Rs. 30,000/- in lieu of reinstatement and all other claims over the petitioner management, The award is thus modified. The petitioner management is directed to pay the compensation of Rs. 30,000/- (Rupees thirty thousand only) to the 2nd respondent workman in respect of all claims of the 2nd respondent against the petitioner management. The writ petition is disposed of accordingly. No costs. The connected Miscellaneous Petition is closed.