
(2000) 02 KL CK 0007
In the High Court Of Kerala
Case No : W.A. No. 63 of 1993

Jayabharath Printers and Publishers

APPELLANT

Vs

Suresh Kumar

RESPONDENT

Date of Decision : 03-02-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 2(aa)(bb), 2(oo), 2(oo)(bb), 25B

Citation : (2000) 1 KLJ 1028

Hon'ble Judges : D. Sreedevi, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : M. Ramachandran and P.V. Abraham, for the Appellant; V.V. Surendran, for the Respondent

Final Decision : Allowed

Judgement

Dr. AR. Lakshmanan, J.—Heard Mr. M. Ramachandran for the appellant and Mr. V.V. Surendran for the second respondent. The appellant establishment is a Printing Press, which filed the Original Petition challenging Exhibit P2 award passed by the Labour Court, Kozhikode in t.D.7/1989. The said dispute had been raised by the workman, K.Suresh Kumar, challenging termination of his services as a Binder. According to the appellant, additional hands were used to be employed on temporary basis, when there is pressure of work and in order to tide over the situation. Appointment orders were also used to be given showing the tenure and the emoluments payable. Exhibit P1 was a specimen copy of appointment issued to the workman on 7.-9-1987. He was so engaged from 7-9-1987 to 10-10-1987. Altogether, from 3-12-1985 the workman had been given work on seven different spells, ranging from 30 days to 75 days on each occasion. Apart from the second respondent, certain others were also engaged on similar basis during the period in question. Regular appointment was not resorted to as it was not possible to give full employment and the establishment could not afford to pay salary for additional number of workmen without adequate work.. The industrial dispute was raised by the workman challenging

the order of termination. The Labour Court by its award dated July 21, 1990 held that the termination was illegal and invalid in law and in view of the said finding on Point No. 1, the Labour Court also held that the workman is entitled to reinstatement with back wages as if there is no termination at all.

2. This award was challenged by the management in O.P. 3240/1991. It was contended that the management had not terminated the services of the workman as his services got terminated efflux of time. Both the management and the workman produced materials in support of their allegations. The management had produced the vouchers and supporting documents for perusal of the Labour Court; The Labour Court, however, held that there was continuity of engagement and that there was a termination in violation of Section 8F of the I.D. Act. As a consequence, the Labour Court also held that the workman is entitled to reinstatement with back wages. According to Mr., Ramachandran, learned counsel for the management, the award is vitiated by errors of law, apparent on the face of the record, illogical and arbitrary and is therefore liable to be set aside.

3. The respondent, workman, filed a counter affidavit. According to him, the termination was illegal and hence he protested the same and that he had two years continuous and uninterrupted service under the management and even while he was employed continuously under the management, the management used to issue fresh appointment orders at periodical intervals and obtained his signature in order to make it appear that there is break of service. This was with the motive of defeating the provisions of law and thereby deny the rights to him. It is clearly an unfair labour practice. In paragraph 5 of the counter affidavit, it instated that on account of poverty and financial difficulties he had to yield to the unfair directions of the management and that the illegal termination of his employment by the management was disputed by him and ultimately the Government referred the dispute to the Labour Court for adjudication. It is his contention that the Labour Court has properly appreciated the pleadings and has arrived at a correct finding by its award and there is no illegality, irregularity or impropriety in the award. It is his specific case that he had been appointed as a regular employee since 3-12-1985, which continued uninterruptedly till 12-10-1987, the date of termination. It is that termination that is raised as an industrial dispute. After referring to the pleadings and the various Exhibits, the learned counsel for the workman Mr. Surendran submitted that this Court is exercising only a supervisory jurisdiction and not an appellate jurisdiction and hence the scope of interference is very limited and within that limited scope there remains nothing to disturb the award of the Labour Court.

4. The Writ petition was dismissed by a learned Single Judge of this Court. Before the learned Judge, the amended Section 2(oo)(bb) of the I.D. Act was also pressed into service. It was argued that in the light of the provisions contained therein, the termination of the service of the worker on the expiry of the contract period will not amount to retrenchment. It was also further contended by the

management that as it is not a retrenchment, the workman will not be entitled to the benefit of Section 25-F of the Act. The attention of the learned Single Judge was drawn to Exhibit M4 series. It was contended by the workman that Exhibit.M4 series are created with ulterior motives by obtaining signatures on periodical intervals so as to make it appear that there is break of service and that it was a contract appointment for a specified period. The learned Judge in para 8 of his judgment has held thus:-

It is true that u/s 2(oo)(bb), the termination of service as a result of nonrenewable of contract of employment between the employer and the workman concerned, on its expiry will not amount to retrenchment. So the question to be considered is whether the contentions raised by the management that the engagement is a contract employment for specified periods and the services were terminated on the expiry of such periods and reappointment were made on contract basis and, therefore the termination of service of such worker on the expiry of the period of contract shall not amount to retrenchment within the meaning of Section 2(aa)(bb) of the Industrial Disputes Act is correct. The workman has given evidence that Ext. M4 series do not reflect the real nature of the employment, that he has worked continuously and that Ext. M4 series were obtained under threat of deprivation of employment. This story spoken to by the worker was accepted by the Labour Court. The gaps during which he was out of employment according to Ext. M4 series are not very wide. It is not as if at a particular period, there was excess work and therefore to meet the emergency such a contract employment was made. The nature of the employment and the gaps between the periods would indicate that the conclusion arrived at by the Labour Court-that it was a continuous endangerment, is reasonable. In the counter affidavit filed by the 2nd respondent, it has been pointed out specifically that the entries in Ext, M11 would contradict Ext. M4 series. That aspect has not been considered by the Labour Court, though those documents were produced before the Labour Court. However, no reply affidavit has been filed contradicting this averment. Even eschewing this material, it cannot be said that the view expressed by the Labour court is perverse or that no reasonable person will come to such a conclusion.

In conclusion, the learned Judge held that taking into account the nature of appointments made in the instant case and the gaps in between he was inclined to think that the view taken by the Labour Court that this is not a case coming within the purview of Section 2(oo)(bb) is reasonable and correct. Accordingly, he dismissed the Original Petition filed by the management.

5. Being aggrieved, the management has filed the above appeal. We have heard the arguments of Mr. M. Ramachandran and Mr. V.V. Surendran for the respective parties..

6. We have summoned the entire records from the Labour Court and perused the same. Exhibit PI and other documents produced along with the same as M4 series correctly gives the nature and duration of the engagement of the

workman. The workman by his self serving statement had claimed that he was continuing uninterruptedly even during the period where there was actual gap. Infact, the workman had required to produce all vouchers and the vouchers produced indicated that his claim was false. No payment for the period in between had been made as could be seen from the records produced before us. Infact, no engagement was there as only for specified periods the worker had been engaged. The Labour Court without any basis jumped into the conclusion that the documentary proof before it cannot be relied on. The Labour Court has also clearly held that the series of appointment orders, which have been issued by the management and marked as Ext. M4 series, show that the workman had worked on seven occasions in the press and that as and when the period fixed in each appointment order expires, his service was dispensed with and he was later appointed by a fresh appointment order. However, the Labour Court has accepted the statement of the workman as WW-1 that from 3-12-1985 onwards he is continuously working in the press till 10-10-1987, that Ext. M4 series are issued by the press just to make it appear that the workman is not a regular employee and that there is break in service. The workman has also deposed that he has signed in Exhibit M4 series appointment orders. However, he would contend that he was forced to sign in those documents under threat by the management.

7. Against this evidence, the management let. in evidence through MW-1 to the effect that the workman was not a regular employee at all and that he was not worked continuously from 3-12-1985 and that on certain occasion there will be heavy work in the press, which could not be attended to by the permanent staff employed in the press and on such occasions the workman was employed temporarily to attend the extra work. He further deposed that the workman was not paid any bonus, leave salary etc, which a regular employee is entitled to and that he was paid only a consolidated salary of Rs. 500/- per month. In paragraph 11, the Labour court held that the oral evidence adduced by the parties would reveal that this is nothing but interested versions of two rival parties and on analyzing this evidence on the basis of documentary evidence produced, there is some truth in the workman's case. The Labour Court has also held that the management has created Exhibit M4 series and that it is the duty of the Court under such circumstances to come to the rescue of the worker. We are of the opinion that the award of the Labour Court is nothing but perverse. The Labour court has failed to appreciate the evidence adduced by the management as well as by the workman in its proper perspective. The Labour er-urt, in our opinion, has committed a grave error in accepting the case of the workman and rejecting the case of the management. The Labour court has also not appreciated the amended provisions of Section 2(oo)(bb) and Section 25-F of the I.D. Act. The finding of the Labour Court that the workman had continuous service of any length of time is nothing but perverse and against the evidence let in. It was within the province of the employer to decide as to when engagement of temporary hands will be required and when not. As could be seen from the records, there was frequent breaks and even if such break was incorporated, to

avoid liabilities, the Labour Court on a reading of Section 2(oo) and Section 25-B could not have held that there was continuous service and the service was terminated in violation of Section 25F of the I.D. Act. It is the case of the management that the engagement of the workman was not mala fide and purely for trade reasons. However, the Labour Court found mala fide motives, where there was none, and in endorsing the finding as correct, the learned Single Judge has also committed an error. In our opinion, the learned Single Judge has not properly appreciated that there was no violation of Section- 25-F of the I.D. Act and the workman had not satisfied the required length of continuous service. It was for economic reasons that permanently workmen for binding were not engaged. But, overlooking all these, the learned Single Judge and the Labour Court had committed an error in directing payment of back wages and reinstatement. The Labour Court and the learned Single Judge have also not appreciated the contention of the management that the workman had only interrupted service. In the face of the several orders of engagement produced before the Labour Court and perused by us in the writ appeal, we are of the opinion that the finding to the contrary is unacceptable. The workman had no explanation as to why the earlier orders were not challenged by him.: The approach made by the Labour Court and affirmed by this Court was patently erroneous. Both the Labour Court and the learned Single Judge, which had to rest its findings on evidence, have accepted the self serving testimony of the workman. The finding in paragraph 11 of the award of the Labour Court would show the partisan approach of the Labour court and bereft of the factual foundations, which is extracted below;

This is in short the gist of the oral evidence adduced by the parties. Just a reading of these two testimonies would reveal clearly that this is nothing but interested versions of two rival parties. But even then on analysing this evidence in detail in the light of the documentary evidence produced, it seems to be that there is some truth in the workman's case. The reason being, first of all admittedly the management concern is a printing press from which a periodical by name "Kesari" is printed and published. Now the case of the management is that the service of the workman will be called for only when there is extra printing work in the press and when the work is finished he will be terminated. In my opinion in a press in which a periodical is printed and published the workload should be more or less the same always and there cannot be much fluctuation in the workload. This fact rather makes me doubt very much the case of the management that this workman will be appointed only when there is extra work. Secondly on going through Ext. M4 series it can be seen that the breaks or intervals in between each appointment order is only for few days extending around 20 to 28 days. It cannot believe the version that workload will increase and decrease at such short intervals in a printing press engaged in publishing a periodical.

We have also made a thorough search as to whether any documentary evidence was placed before the Labour Court to show that the workman had worked for

any period than those covered by the appointment orders and that whether any payment for the period in between had been made. We had only searched in vain. Infact, no engagement was there as only for specified periods the worker had been engaged.

8. Section 2(oo)(bb) of the Industrial Disputes Act clearly indicated that the termination of service of a workman as a result of non-renewal of the contract of employment on its expiry did not amount to retrenchment. Exhibit P1 showed a contract of employment. There was no retrenchment. The Labour Court, in our view, has wholly erred in its approach and without any justification or reasonable cause has attempted to impose the service of a person which is not required for the management.

9. Mr. M. Ramachandran, in support of his submission, cited the following four decisions: U.P. State Co-operative Land Development Bank Ltd. v. Taz Mulk Ansari and Ors., 1994 Supp. (2) SCC 745. , State of Rajasthan and others Vs. Rameshwar Lal Gahlot, , Koodaranji SC Bank v. M.M. Lissy & Ors., 1994 (2) LLJ 97 and Life Insurance Corp. & Anr. v. R.K.Srivastaya, 1994 (2) LLJ 1136.

10. Mr., V.V. Surendran, in support of his submissions,, relied on the following four decisions: State Bank of India v. Sundaramoney, (1976) 1 LLJ 478, Balbir Singh v. Kurukshetra Central Co-op.Bank Ltd & Ors., (1990)1 LLJ 443, D.H.Shirke & ors. v, Zilla Parishad, Yavatmal & Ors., (1990)1 LLJ 445, and K. Rajendran v. Director (Personnel), Project and Equipment Corporation of India Ltd., New Delhi & Anr., (1995)3 Supp.LLJ 240.)

11. U.P. State Co-operative Land Development Bank Ltd. v. Taz Mulk Ansari and Ors., 1994 Supp. (2) SCC 745. - In this case the workmen were engaged under an agreement for a specified period. The High Court by the impugned order has granted regularisation of the workmen on the ground that the workmen had put in more than 240 days as daily-rated employees in a year. The Supreme Court allowed the appeal filed by the management on the ground that the undisputed records show that the workmen were every time employed at a time for only three months and their last employment was only for 17 days and that their service was to come to an end on the expiry of the said 17 days and in view of the proviso to clause (a) of Secion 6-N, no notice for terminating their service was necessary and, therefore, the termination of their services was valid. In this view of this matter, the Supreme Court allowed the appeal and set aside the decision of the High Court.

12. State of Rajasthan and others Vs. Rameshwar Lal Gahlot, -This is also a case of appointment for a specified period and the service was terminated on expiry of such period. "The Supreme Court held that Section 25-F is not attracted and hence neither relief of fresh appointment nor that of reinstatement could-be granted. The Supreme Court, held that when appointment is for a fixed period, unless there is finding that power under clause (bb) of Section 2(oo) was misused or vitiated by its mala fide exercise, it cannot be held that the

termination is illegal. In its absence, the employer could terminate the services in terms of the letter of appointment unless it is a colourable exercise of power. It must be established in each case that the power was misused by the management or the appointment for a fixed period was a colourable exercise of power.

13. 1994(2)LLJ 97 - This judgment was rendered by a Division Bench of this Court, comprising of M.Jagannadha Rao, C.J.(as he then was) and K,Sreedharaan, J. (as he then was). In this case, the workman was appointed on daily wages basis against the Rules. On instructions by the higher authorities, the Bank terminated her services. When the matter went before the Labour Court, on reference, an award was passed ordering reinstatement. On a writ petition filed by the Bank, the learned Single Judge held that it was retrenchment. The Bank went on appeal. The Bench held that the appointment of the first respondent-workman was contrary to Rules as no Co-operative Society is entitled to engage workman on daily wages and that under directions of the higher authorities the workman could not be continued in service and so she was terminated and that, therefore, the termination cannot be considered as retrenchment. Infact the Supreme Court in the decision reported in Workmen v. Bangalore W.C. & S. Mills Co.(1962 I LLJ 213) took the view that termination of service of workmen when the employer has no option in law to continue them in service is not retrenchment. Their Lordships observed:-

It seems to us that a service cannot be said to be terminated IKIless it was capable of being continued. If it is not capable of being continued, that is to say, in the same manner in which it had been going on before, and it is, therefore, brought to an end, that is not a termination of the service.

14. 1994(2) LLJ 1136 - A Division Bench of the Allahabad High Court in an identical matter held that termination as a result of non-renewal of contract of employment on expiry of the period of contract does not come under "retrenchment" as envisaged in Section 2(oo)(bb) of the Act. The Bench held that the petitioner's contractual employment having come to an end by efflux of time does not amount to retrenchment..

15. (1976) 1 LLJ 478 In that case, the Supreme Court was considering a case of retrenchment within the meaning of Section 2(oo) of the I.D. Act as it stood then. Sub-clause (bb) was inserted by Section 2 of the Amendment Act 49 of 1984, which came into force on 18-8-1984, Section 2(oo)(bb) says that termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein does not come within the definition of "retrenchment". Sub-clause (bb) came into effect from August 18, 1984. The judgment cited by Mr. Surendran and reported in (1976) 1 LLJ. 478 was rendered before the addition of sub-clause (bb) by the Amending Act 49 of 1984. Thus, that case cannot be taken as a determining factor in the instant case. The newly added sub-clause

(bb) saves the stand of the appellant herein, since the workman was engaged occasionally during the period from 3-12-1985 till 12-10-1987, i.e, after the introduction of Sec. 2(oo)(bb) on 18-8-1984. In view of the above, the judgment cited and reported in (1976) 1 LLJ 478 will be of any assistance to the workman.

16. 1990 (1) LLJ 443 was a decision rendered by a learned single Judge of the Punjab & Haryana High Court. The learned Judge held that the contractual clause enshrined in clause (bb) cannot be resorted to frustrate the claim of the employee against uncalled for retrenchment or for denying the other benefits and that the said clause has to be so interpreted as to limit it to cases where the work itself has been accomplished and the agreement of hiring for a specific period was genuine and if the work continues, the non-renewal of the contract has to be dubbed as mala fide.

17. 1990 (1) LLJ 445 was rendered by a learned single Judge of the Bombay High Court (Nagpur Bench). The learned Judge also took the view that the amended sub-clause (bb) would apply only to cases where work ceases with employment or post itself ceases to exist or such other analogous cases where contract of employment is fair, proper and bonafide and that the Labour Court has jurisdiction to examine each and every case and protect the workmen against exploiting employers. The learned Judge also held that it would be improper and unwise simply to decide the nature of employment on the basis of the letter of appointment issued by the employer and the nature of employment will have to be determined with reference to the nature of duties performed by the workman and the type of job the workman was entrusted with.

18. The decision reported in 1995 (3) Supp LLJ 240 was rendered by a Single Judge of the Madras High Court. The learned single Judge was of the opinion that the exception as contained in sub-clause (bb) to clause (oo) of Sec. 2 will have to be strictly construed and clause (bb) should be made applicable only to such cases Where the work ceases with the employment or the post itself ceases to exist. In the facts and circumstances of the said case, the learned Judge held that the termination of the service of the workman amounts to retrenchment within the meaning of Sec. 2(oo) of the Act.

19. We are of the view that all the three judgments were rendered by the learned Judges on the facts and circumstances of the respective cases. This apart, these three decisions cannot be treated as a binding precedent on us in view of the decision cited and referred to by us in paragraphs supra. In U.P. State Co-operative Land Development Bank Ltd. v. Taz Mulk Ansari and Ors., 1994 Supp. (2) SCC 745. , the Supreme Court held that the termination of the services in that case was valid after the expiry of the term of employment and that mere service of 240 days in a year does not entitle a workman to regularisation and therefore no notice of termination was necessary. State of Rajasthan and others Vs. Rameshwar Lal Gahlot, is also a case of termination of an employee who was appointed for a specified period. The Supreme Court held that in such circumstances Sec. 25F is not attracted and hence neither the relief of fresh

appointment nor that of reinstatement could be granted.

20. The undisputed records placed before us shows that the workman was every time employed at a specified time and his service was to come to an end on the expiry of the specified date. The records have not been properly construed and appreciated by the Labour Court and also by the learned single Judge. The Division Bench of the Allahabad High Court also, as already noticed, held that the termination of service as a result of non-renewal of the contract of employment on the expiry of the period of contract does not come under retrenchment as defined in Sec. 2(oo)(bb) of the I.D. Act. Similar view was taken by our High Court in the decision reported in 1994 (2) LLJ 97, Section 2(oo) sub-clause (bb) has been inserted by the Amending Act 49 of 1984. In our opinion, it purports to exclude from the ambit of the definition of retrenchment (a) termination of the service of a workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned, on its expiry; or (b) termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The first part relates to termination of service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry. The second part refers to "such contract" being terminated under a stipulation in that behalf contained therein. As already noticed, under Exhibit P1, which is the contract, there is a stipulation that the appointment is purely on temporary basis from 7-9-87 to 10-10-87 and the workman will be paid a total of Rs. 500/- as salary inclusive of all allowances and that his appointment is purely on a temporary basis and the absolute authority to terminate his services at any time is vested in the management. In token of his willingness to work as stipulated in Exhibit P1, the workman has also signed the said document. Regarding the nature of employment, there is ample pleadings and evidence, which is temporary in nature.. There is also evidence in regard to the nature of duties performed by the workman. The workman has also not been able to substantiate his contention that he had been working continuously without interruption.

We are compelled to interfere with the award of the Labour Court and the learned single Judge, since the findings rendered by the Labour Court and also by the learned single Judge rested on no materials. We, therefore, set aside the award of the Labour Court, which is impugned in the writ petition and the judgment of the learned single Judge in the Original Petition. The Original Petition and the Writ Appeal are allowed. However, there will be no order as to costs.