

(2016) 10 KL CK 0039

In the High Court Of Kerala

Case No : Writ Appeal No. 1382 of 2014 in WP(C). 12534 of 2004 (Against the judgment in WP(C) 12534 of 2004 of High Court of Kerala dated 21-05-2014).

K. Anandan, aged 47 years, S/o. Kochukittan, Puthenkandathil, Thamallakkal, Harippad, Alappuzha District - Appellant @HASH State Bank of Travancore, Zonal Office, SBT Avenue, Kochi-682 036, Represented By Its Assistant General Manager-III

Date of Decision : 31-10-2016

Acts Referred:

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

Citation : (2017) 152 FLR 518 : (2017) 1 ILRKerala 168 : (2016) 4 KLT 556

Hon'ble Judges : Antony Dominic and Shircy V., JJ.

Bench : Division Bench

Advocate : Sri. B. Ashok Shenoy, Sri. K.V. George, Sri. P.N. Rajagopalan Nair and Sri. P.S. Gireesh, Advocates, for the Appellant; Sri. P. Ramakrishnan, Advocate, for the Respondent No. 1; Sri Paul Abraham Vakkanal, Government Pleader, for the Respondent No. 2; Sri.

Final Decision : Dismissed

Judgement

Mrs. Shircy V., J. - A tea supplier claimed to be an employee of a bank on the ground that he was engaged by the members of staff to supply tea during the office hours, requested the management to regularise his service in the bank. Then the dispute between the bank and this particular person was referred for adjudication under the Industrial Disputes Act. The Industrial Tribunal after due deliberation found that he was an employee of the 1st respondent bank, and that his services were illegally terminated. Then the 1st respondent moved W.P.(C)No.12534 of 2004 before this Court to quash the Award of the Industrial Tribunal. The writ petition was allowed upholding the contention of the bank. This appeal is filed against the judgment dated 21.5.2014 of the learned single Judge in W.P.(C) No. 12534 of 2004 whereby Ext.P1 award of the learned Industrial Tribunal has been quashed.

2. To appreciate the controversy between the parties, necessary facts are

narrated in brief : The appellant claims that he was working as a peon/sweeper in Haripad branch of the 1st respondent/State Bank of Travancore, Zonal Office, Kochi from February 1983 to December 1992 with a break for few days. From January 1993 he was employed in the said Branch continuously till his termination on 28.11.1998. Though he made requests to the 1st respondent/management to regularise his service, the bank did not respond. Thereafter the management notified 151 vacancies of peons and made advertisements in newspapers inviting applications from candidates. Then he filed application in the month of October, 1992 for his regularisation in the post, but he was terminated with effect from 28.11.1998. That his retrenchment is in violation of Section 25F of the Industrial Disputes Act (for short "the I.D.Act"), is his grievance and hence he is challenging the judgment in W.P. (C) No. 12534 of 2004.

3. The 1st respondent has disputed the claim of the appellant and contended that the appellant was never appointed in the bank either as a peon or as sweeper, temporary or casual, as alleged/claimed by him and so the question of termination from service does not arise. In fact he had been engaged by the employees of the bank to prepare tea and that was by the Staff Welfare Committee and the 1st respondent bank has nothing to do with his engagement by the Staff Welfare Committee.

4. The learned Industrial Tribunal as per the award dated 10.7.2003 found that there was definite employer employee relationship between the appellant and the first respondent/management and hence the appellant is entitled to get protection as envisaged under Section 25F of the I.D.Act when his service was terminated. The operative portion of the award of the Industrial Tribunal reads as follows :-

" It is a fact that there was definite employer-employee relationship between him and Bank management. In such a situation, the workman is entitled for protection as envisaged in Section 25-F of the I.D. Act when his service was terminated. Therefore the termination effected in his case has to be declared as violative of Section 25-F of the I.D.Act. As a result he would deem to be in employment till he is validly terminated by the management."

The learned single Judge found that this appellant is not an employee of the 1st respondent and hence the findings of the Industrial Tribunal is perverse and thus the Award was set aside. However, it was observed that if any payment has been made to the appellant during the pendency of the writ petition, under Section 17B of the I.D. Act, the same shall not be recovered from him. So in short, it has been found that the appellant is not a workman so as to claim any benefit under Section 25F of the I.D. Act.

5. Heard the learned counsel appearing for the appellant, learned counsel appearing for the first respondent and the learned Government Pleader appearing for the second respondent.

6. In the Writ Appeal we are called upon to reappraise the validity or otherwise of

the contentions raised by the appellant, whether the appellant is a workman of the 1st respondent bank/ management so as to get the benefits under Section 25F of the I.D. Act. Before the Industrial Tribunal, MW1 and MW2 were examined on the side of the 1st respondent and Ext.M1 was marked. The appellant was also examined as WW1 and Exts. W1 to W4 were marked to substantiate his claim. He had fairly admitted that he had not been served with an appointment order, even though he claims that he was working in the bank right from February 1983 to December 1992 with a break for few days and thereafter from 1993 January to November 1998 continuously as peon/sweeper. It is also admitted by him that he never affixed his signature in the attendance register maintained in the bank.

7. According to the appellant, he was given payment for his work as peon by the bank and the bank obtained signed vouchers on every week end. But no such document is forthcoming to substantiate the said claim by the appellant. The 1st respondent's case is that the appellant was engaged by the Welfare Committee of the staff to prepare tea during office hours. Of-course, he was assisting the members of Staff by providing refreshment. Definitely it was not a free service. The members of the Staff Welfare Committee were paying some amount for his work and that too through the account he was maintaining in the bank. There was payment for the same as revealed from Ext.M1. As he was engaged by the employees of the bank, it could only be presumed that the payment was effected by them through his account maintained in the bank. Maintaining an account in the bank will not definitely lead to a conclusion that he was receiving remuneration for his engagement as a workman of the management and that alone is not sufficient to conclude that he was an employee of the bank. At best he can be an employee of the Welfare Committee and not of the bank. of course, it is admitted by the then, Manager, who was examined as MW1 that a letter from Haripad Branch was sent to the Zonal Office making some kind of recommendation for him and the copy of the same is Ext.W4. Presumably his recommendation was turned down. So by no stretch of imagination it could be considered as a valid document to substantiate his claim of continuous employment under the management. Admittedly, a Branch Manager has no authority to appoint an employee in a bank. So, maintaining an account in the bank and or having a transaction with the bank by the appellant do not indicate as sufficient documents to conclude that he had worked there as a peon or sweeper and obtained wages on every week from the bank through his account.

8. Of course, the appellant had sought for remand of the matter to the Tribunal for production of additional documents but as the appellant did not pursue his request for production of documents before the Tribunal, the same was discarded accepting the explanation on the side of MW2 that the bank will not keep documents pertaining to salary slips or such connected details beyond a period of five years. As the appellant has raised the contention that he is the employee of the 1st respondent bank, no doubt the burden is upon him to substantiate the same by adducing reliable and cogent evidence. The very fact that he maintains

an account with the bank is not at all sufficient to infer that he was receiving salary from the bank through his account, especially when the 1st respondent has a case that he was engaged to provide refreshment for the employees by the Welfare Committee. Being the employees of the Bank, they might have paid his wages for providing refreshments, through his account maintained in the bank. Apart from Ext W4, no other document is available to substantiate the contention of the appellant that he is an employee/workman of the bank. So, in short the recommendation letter, which is admitted by MW1, forwarded to the Zonal Office, or maintaining an account or transaction in the bank etc. are not sufficient to infer that the appellant was an employee of the bank so as to have the status of a workman.

9. Workman is defined under Section 2(s) of the I.D. Act as follows:

"2(s) "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding (ten thousand rupees) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

10. In *Eranalloor Service Co-operative Bank Ltd. v. Labour Court and Others* (1986) II LLJ 492 (Ker.)], this Court held that the person who claims the benefit of Section 25F shall establish that he is in the service of the employer having been appointed validly. It is further held that the workman in order to avail of the benefits of Section 25F should establish that he has the right to continue in service and that the said service has been terminated without complying with the provisions of Section 25F.

11. So the provisions of Section 25F of the I.D. Act can be availed of only if it is proved that the appellant is a "workman" as defined under the Act. Needless to say that the appellant does not fulfill the requirements of the definition of "Workman" as contemplated in the Act. Here, in this case, there exists no valid appointment, no valid employer and employee relationship and no retrenchment

of a bank employee and hence the provisions of Section 25F of the Act is not attracted. So, the finding of the Industrial Tribunal that there is illegal retrenchment of the employee being perverse, the learned single Judge was justified in quashing Ext.P1 award. We find no illegality in the Judgment impugned.

12. Writ Appeal fails. Dismissed. No costs.