
(2000) 01 MAD CK 0072

In the Madras High Court

Case No : Writ Petition No. 12788 of 1992 and W.M.P. No. 24815 of 1993

Management, Church of South India

APPELLANT

Vs

Edith Peter and Another

RESPONDENT

Date of Decision : 06-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2

Citation : (2000) 2 LLJ 1341

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : D. Balaraman, for S.M. Loganathan, for the Appellant; Vaidyanathan, for Row and Reddy, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—The Management, Church of South India, Nagercoil, has filed this writ petition seeking for the issue of a Writ of Certiorari to call for the records relating to the impugned Award passed by the Additional Labour Judge, Madurai District, the second respondent herein in I.D. No. 347 of 1983 dated October 28, 1991 directing the Management to reinstate Smt. Edith Peter, the first respondent herein with back wages and continuity of service and quash the same.

2. The short facts are as follows:

"(a) Edith Peter, the first respondent herein, was employed, as an Assistant Superintendent of the Embroidery industry of the petitioner-Management from July 20, 1977 on a monthly salary of Rs. 200/- with a dearness allowance of Rs. 50/-.

(b) On September 22, 1978, the first respondent received an intimation from the Chairman of the Board that her service was terminated. She filed an appeal before the Executive Committee of the Diocese, which, in turn, revoked the order

of termination. Subsequently, an order dated November 27, 1978 was served on her stating that she was placed under suspension. Some charges were framed against her. She sent an explanation. Finally, by the order dated March 1, 1980 her service was terminated.

(c) Thereafter, by the order dated June 10, 1980 she was restored to service as Assistant Superintendent of Lace and Embroidery Industry at Moolachi. After she started functioning in the said place, the Chairman of the Industries Board sent a communication dated September 2, 1980 to the Bishop making allegations against the first respondent. On the basis of that, she was suspended on September 12, 1980.

(d) On receipt of the notice, the first respondent submitted her explanation giving various details. Having not been satisfied with the said explanation, she was dismissed from service again by the order dated January 20, 1981 stating that her dismissal would take effect from September 12, 1980, the date of suspension.

(e) Thereafter, she raised an industrial dispute before the Government, which, in turn by G.O. Ms. No. 2365 dated October 11, 1983 through its Labour Department referred the adjudication to the Labour Court. The said dispute was entertained in I.D. No. 347 of 1983.

(f) During the course of enquiry, the respondent-employee was examined as W.W. 1. Through her Exs. W1 to W15 were marked. On the side of the Management, M. W. 1 to M. W. 3 were examined and Exs. M1 to M22 were marked.

(g) The following two important issues were framed by the Labour Court-

(1) Whether the employee is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947?

(2) Whether the non employment of the employee by the Management is justified? If not to what relief she is entitled?

(h) On consideration of the materials available on record, the Labour Court would hold that the first respondent herein was employed as workman under the Management and as such, the Labour Court has got jurisdiction to deal with the matter as an industrial dispute and that the non employment of the employee was unjustified and therefore, she is to be reinstated with all the attendant benefits.

(i) Aggrieved by the above Award, the Management has filed this writ petition."

3. Mr. Balaraman, the learned counsel appearing for the petitioner would at length submit that the Management is justified in terminating the service of the first respondent even without any enquiry, since she was in a probation period and that in any event, the Labour Court has no jurisdiction to entertain the claim of the first respondent-employee as an industrial dispute, as the first respondent

having supervisory capacity to control over the entire staff working under her cannot be considered to be a workman as defined in Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

4. On the other hand, Mr. Vaidyanathan, representing Row and Reddy appearing for the first respondent-employee, in justification of the impugned Award, would strenuously contend that the Labour Court on a meticulous analysis of the materials available on record has come to the correct conclusion that the first respondent was a workman and her non-employment was unjustified and that this Court may not sit over the impugned Award as an appellate Court as the scope of Article 226 of the Constitution is so limited while dealing with the factual finding rendered by the Labour Court.

5. The counsel for both would cite a number of authorities which we shall see later.

6. I have given my anxious consideration to the above rival contentions.

7. Even at the threshold, I shall point out that regarding the second question as to whether non-employment is justified without an enquiry, the learned counsel for the petitioner has not seriously argued, inasmuch as there is no domestic enquiry before passing the order of dismissal dated January 21, 1981 terminating the service of the employee.

8. No doubt, it is true that the case of the Management is that the employee, the first respondent herein was appointed as probationer second time. It is equally true that during the probation period if the work and performance of the duties of the probationer were not satisfactory, then the Management is entitled to terminate the service without conducting any enquiry.

9. But, in the instant case, the first respondent was originally appointed on July 20, 1977. Since there was some allegation against her, the probation period was extended. On September 22, 1978 she was terminated. But, subsequently the said order was revoked and instead of that, she was placed under suspension. Thereafter, an enquiry was conducted.

10. Again on March 1, 1980, the first respondent was issued with an order terminating her services. Then, she received fresh appointment order dated June 10, 1980. Immediately, within three months she received a suspension order dated September 12, 1980 on receipt of some complaint. She was also asked to send explanation. Ultimately, she was dismissed from service on January 20, 1981.

11. It is clear from the reading of the dismissal order dated January 20, 1981 that the first respondent was merely informed that she was dismissed from service with effect from September 12, 1980, the date of suspension without giving any reason. But, the fact remains that the dismissal order dated January 20, 1981 is the sequel to the proceedings initiated against the first respondent on the basis of the complaint by the Chairman of the Industries Board dated

September 2, 1980 in pursuance of which she was suspended on September 12, 1980.

12. Thus, it is clear that the dismissal order was on the basis of the complaint against her which amounts to a stigma and therefore, the action of dismissing the first respondent from service without conducting enquiry and giving opportunity to the first respondent is violative of Article 311(2) of the Constitution.

13. Under those circumstances, the dismissal order cannot be claimed to be the termination simpliciter, but the service of the first respondent was terminated on the ground of misconduct.

14. When the Management thought it fit to issue show cause notice for the complaint dated September 2, 1980 and suspend the employee on September 12, 1980, it ought to have given an opportunity of being heard and for participating in the domestic enquiry. As this was not done, it can be safely held as correctly found by the Labour Court, the order of nonemployment without conducting enquiry, in violation of the principles of natural justice, would not be a legal one.

15. As indicated above, the learned counsel for the petitioner correctly did not concentrate much on this point.

16. Let us now come to the other important point on which much stress was laid by the counsel for the petitioner by stating that the Labour Court is wrong in finding that the first respondent was a workman without any basis and contrary to records.

17. According to the counsel, the Labour Court has not properly considered the documents which are to the effect that the first respondent was given all the powers and control over the discharge of the administrative and managerial functions and as such, the first respondent ought not to have been considered to be a workman.

18. On going through the Award, it is seen that the Labour Court has elaborately considered this aspect by referring to the relevant provisions of the Act and the oral and documentary evidence available on record and found that the first respondent was a workman. A thorough reading of the Award would make it clear that there is no valid ground to take different view from that of the Labour Court.

19. Section 2(s) of the Act is the relevant section. The expression "workman" defined in Section 2(s) reads as under:

"Workman means any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical 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 person (i), (ii) and (iii)

(iv) who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensem or exercise, 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."

20. In view of the above definitions, the only issue to be decided on the basis of the materials available on record is whether the first has exercised her powers?

21. If the materials available on record make it clear that the first respondent has exercised her powers mainly of a managerial or administrative nature as stipulated in the above section, then it has to be held that she is not a workman and consequently, the Labour Court would not be competent to decide about the other issues.

22. As indicated above, the Labour Court considered Ex. W1, the Board resolutions giving the details of the nature of work for the Assistant Superintendent, Exs. W2 and W3, the letters addressed by the first respondent to the Chairman of the Board seeking permission for the temporary appointment of a piece work girl and Exs. W12 and W13 showing that the first respondent was occasionally allowed to exercise a few managerial powers, and that too only after the approval of the Chairman of the Board and in the light of the oral evidence of W. W 1, would come to the conclusion that the nature of duties performed by the first respondent was both supervisory and clerical and not administrative or managerial and that therefore, she was a workman.

23. Where an employee has multifarious duties and a question is raised whether a person is a workman or someone other than a workman, the Court shall find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other work, may not necessarily be in tune with the basic duties, these additional duties cannot change the character and status of the person concerned. In other words, the dominant purpose of employment must be first taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of a person.

24. The definition of the expression "workman" extracted clearly shows that the person concerned would cease to be a workman, if he performs some supervisory duties but he shall be a person who must be engaged in a supervisory capacity. The nomenclature given to the job as Assistant Superintendent would not decide the issue, as invariably the employer used to adopt these high sounding nomenclatures for avoiding the application of the Act.

25. The test that on must (sic) employee in such a case is what was the primary basic or dominant nature of duties for which the person whose status is under

enquiry was employed. A few extra duties would hardly be relevant to determine his status. The words like managerial or supervisory have to be understood in their proper connotation and their mere use should not detract from the truth.

26. Whether or not an employee is a workman u/s 2(s) of the Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and the materials on record. It is not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases.

27. To put it briefly, the determinative factor is the main duty of the employee concerned and not some works incidentally done. If the employee is mainly doing supervisory work but incidentally does some clerical work, the employee should be held to be doing supervisory work. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally, the employee will come within the purview of "workman" as defined in Section 2(s) of the Act.

28. The above principles have been laid down in S.K. Verma Vs. Mahesh Chandra and Another, , S.K. Maini Vs. M/s. Carona Sahu Company Limited and others, and Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd. Bombay, .

29. Applying these principles to the present case, the evidence of W.W 1 the employee and Exs. W1 to W15 would clearly show that she was doing mainly clerical work. According to the evidence she was working under the control of one Isaac, who was the Chairman of the Board. She had no powers in the policy of the Management, issuing cheques, granting of leave, taking disciplinary action against workman, etc.

30. From paragraphs 4 to 8 of the Award, it is clear that all the materials have been fully discussed by the Labour Court and it was held that she was a workman u/s 2(s) of the Act. It is also not in dispute that the salary of the first respondent was only Rs. 265/- per month.

31. The learned counsel for the petitioner Management has referred to various documents such as letters written by the first respondent to other various organisations willing to give some discount on the purchase of the piece of embroidery cloth from the petitioner-Management.

32. But, a complete reading of all the documents produced by both the Management and the employee would clearly show that for each and everything, the first respondent has to obtain permission from the Board and that she cannot independently act. As pointed out by the Labour Court the first respondent has to maintain the accounts and the registers and for every correspondence, she has to obtain the approval from the Chairman of the Board.

33. Though the Management witnesses 1 to 3 would state in the Chief Examination that the first respondent was doing only supervisory work, they

would admit in the cross-examination that the first respondent cannot act on her own and she could do everything only with the approval of the Chairman of the Board.

34. It is also relevant to note that the evidence of W.W. 1 and other documents would clearly show that there is no clerk working in the Branch and she alone was doing the clerical work including the maintenance of accounts and registers.

35. In the light of these materials, when the Labour Court has come to the conclusion that the first respondent was discharging duties of clerical nature and she was not performing primary managerial and administrative functions, this Court cannot hold that such a finding is wrong, particularly when the nature of the jurisdiction under Article 226 is supervisory and not appellate.

36. Even otherwise on going through the materials available on record in the form of oral and documentary evidence, I am not able to hold that the factual finding rendered by the Labour Court is wrong.

37. In view of the above discussion, I am of the considered opinion that this writ petition has no merit and the same is liable to be dismissed and accordingly dismissed. Consequently, no separate order is necessary in W.M.P. No. 24815 of 1993. No costs.