

(2000) 03 MAD CK 0087

In the Madras High Court

Case No : W.A. No. 505 of 2000 and C.M.P. No. 4431 of 2000

Management, NLC Employees' Co-operative Thrift and Credit
Society Ltd. and Another

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 27-03-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2000) 87 FLR 248 : (2000) 2 LLJ 1002 : (2000) WritLR 689

Hon'ble Judges : K.G. Balakrishnan, C.J;K. Govindarajan, J

Bench : Division Bench

Advocate : R. Raghavan and P. Srinivas, for the Appellant;

Final Decision : Dismissed

Judgement

K.G. Balakrishnan, C.J.—Appeal is filed against the order dated August 13, 1999 passed by the learned single Judge in W.P. No. 6709/1996.

2. The 2nd respondent's name was sponsored by Cuddalore Employment Exchange and an interview was conducted by the appellant society on May 28, 1991 and pursuant to that, the 2nd respondent was selected and he joined the duty on May 29, 1991. His services were terminated on September 17, 1991 by the order passed by the Special Officer of the Society. The 2nd respondent raised an industrial dispute and by the award passed by the Presiding Officer of the Labour Court, Cuddalore it was held that the termination of the service of the 2nd respondent was illegal as no opportunity was given to the employee before his service was terminated and the appellants were directed to reinstate the 2nd respondent forthwith with continuity in service but without backwages. This award was challenged by the appellants herein before the learned single Judge in W.P. No. 6709/1996. The learned single Judge declined to interfere in the matter and the writ petition was dismissed. Aggrieved by the same, present appeal is filed.

3. We heard the Counsel for the appellants.

4. At the outset we wish to state that in the impugned order it is not stated, for what reasons the service of the 2nd respondent was terminated. The appellants have no case that at the time of appointment of the 2nd respondent, the appellant society lacked authority to appoint him. The appellants have also no case that the 2nd respondent was served with any notice and before passing the order of termination the 2nd respondent was heard in the matter.

5. Counsel for the appellants would contend that in view of Section 25-F of the Industrial Disputes Act, 1947 there was no necessity to issue notice and hear the 2nd respondent as the order of termination was within a period of one year.

6. Section 25-F of the Industrial Disputes Act, 1947 reads as follows:

"25-F. Conditions precedent to retrenchment of workmen: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

b).....

c)....."

7. According to the appellants' counsel as the workman viz. the 2nd respondent was working for a period less than one year, no notice need be given in writing indicating the reasons for retrenchment. In the instant case the service of the 2nd respondent was terminated and not retrenched as contended by the appellant. It is not disputed that the 2nd respondent was appointed on permanent basis. It is the case of the appellants that the 2nd respondent was terminated from service for any of the reasons coming under I.D. Act. In fact the appointment of the 2nd respondent was cancelled by the impugned order passed by the Special Officer. The provisions contained in Section 25-F of the I.D. Act has no application to the facts of the present case.

8. Counsel for the appellants drew our attention to the decision of the Supreme Court reported in Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, . That was a case where the employees were appointed by the Delhi Administration without seeking sponsorship from the Employment Exchange and all the candidates were appointed allegedly through back door method and these employees wanted regularisation on completion of 240 days. It was under those circumstances, the Supreme Court observed as follows (1992)-II-LLJ-452:

"23. Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they

have put in work for 240 or more days, has been leading. Although there is Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the employment register

A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years

The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are time-bound and there is no need for the workmen beyond the completion of the works undertaken. The public interest are thus jeopardised on both counts."

9. The abovesaid observations made by the Supreme Court also has no bearing on the point for the reason that the 2nd respondent herein was sponsored by the Employment Exchange and he was appointed after conducting an interview and following the procedure prescribed under the Act. The only objection raised by the Counsel for the appellants is that prior approval of the Registrar was not obtained and the Registrar had not fixed the cadre strength. In the impugned order no such reasons have been recorded by the Special Officer. In the instant case, the 2nd respondent was working in the society during the relevant time and his appointment was made on permanent basis. Therefore when the service of the 2nd respondent was terminated without assigning any reason, the 2nd respondent is entitled to approach the Labour Court against the impugned order. We do not find any reason to interfere either with the order of the learned single Judge or with the order of the Presiding Officer, Labour Court. We see no merits in this writ appeal and accordingly it is dismissed. Consequently, C.W.P. No. 4431/2000 is also dismissed.