
(1995) 08 AP CK 0029
In the Andhra Pradesh High Court
Case No : W.A. No. 815 of 1995

Municipal Commissioner, Rajendranagar Municipality

APPELLANT

Vs

D. Susheela and Others

RESPONDENT

Date of Decision : 02-08-1995

Acts Referred:

Factories Act, 1948 — Section 2

Industrial Disputes Act, 1947 — Section 17, 17A, 17B, 25F, 25J

Citation : (1995) 3 ALD 150 : (1998) 2 AnWR 744

Hon'ble Judges : Prabha Shankar Mishra, C.J.;C.V.N. Sastry, J

Bench : Division Bench

Judgement

P.S. Mishra, C.J.—Heard

2. It seems there is a total misconception about the application of Section 9 of the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structures) Act, 1994 (for short "Act No. 2 of 1994). We have reasons to hold that there is absolutely no basis for any such apprehension to the appellant that Section 9 of Act No. 2 of 1994 shall stand in the way of the award u/s 2A(2) of the Industrial Disputes Act (introduced by the State Amendment Act No. 32 of 1987 with effect from July 27, 1987). Section 7 of Act No. 2 of 1994 provides as follows :

"7. Bar for regularisation of services :-

No person who is a daily wage employee and no person who is appointed on a temporary basis u/s 3 and is continuing as such at the commencement of this Act shall have or shall be deemed ever to have a right to claim for regularisation of services on any ground whatsoever and the services of such person shall be liable to be terminated at any time without any notice and without assigning any reasons.

Provided that in the case of Workmen falling within the scope of Section 25F of the Industrial Disputes Act, 1947, one month's wages and such compensation as

would be payable under the said section shall be paid in case of termination of services :

Provided further that nothing in this section shall apply to the Workmen governed by Chapter VB of the Industrial Disputes Act, 1947.

Explanation : For the removal of doubts it is hereby declared that the termination of services under this section shall not be deemed to be dismissal or removal from service within the meaning of Article 311 of the Constitution or of any other relevant law providing for the dismissal or removal of employees but shall only amount to termination simpliciter, not amounting to any punishment."

3. Chapter VB of the Industrial Disputes Act contains special provisions relating to retrenchment etc., to industrial establishments, not being an establishment of a seasonal character or in which work is performed only intermittently, in which not less than 100 workmen were employed on an average per working day for the preceding twelve months. "Industrial Establishment" is defined u/s 25L to mean a factory as defined in clause (m) of Section 2 of the Factories Act, 1948. "Factory" means any premises including the precincts whereon ten or more workers are working and were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or whereon twenty or more workers are working and were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on.

4. Section 25K and 25L of the Industrial Disputes Act read together leave no manner of doubt that to a place, in which some sort of manufacturing is done on any day of the preceding twelve months either with the aid of power or without the aid of power and the number of persons employed is not less than 100, special provisions in Chapter VB will apply and unless conditions precedent to retrenchment of workmen as contemplated u/s 25N are fulfilled, no workman shall be retrenched. Even otherwise, Section 25F of the Industrial Disputes Act is made applicable to the cases of workmen who are in continuous service for the purposes of Chapter VA and conditions precedent to retrenchment of workmen as found in the said provision unless complied with, protections extended by law to workmen will be attracted. Section 25J of the Industrial Disputes Act provides that provisions of Chapter VA shall have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 provided that were under the provisions of any other Act, or Rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under the Act the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under the Act.

5. Protections, which are extended to workmen under Chapters VA of the Industrial Disputes Act, thus shall be available to the employees and if their claims are based on the rights under Chapters VA and VB of the Industrial Disputes Act, they, notwithstanding anything in Section 9 of Act No. 2 of 1994, shall not abate and shall be enforceable. Awards under the Industrial Disputes Act are made enforceable by Section 17A of the Act on the expiry of thirty days from the date of publication u/s 17. Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, it is made liable u/s 17B to pay such workmen, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any Rule, if the workman had not been employed in any establishment during such period.

6. The instant case is one in which the Labour Court has found against the employer (appellant) that it terminated the services of the respondent-workmen without resorting to the procedure contemplated u/s 25F of the Industrial Disputes Act. The two contentions which are reiterated before us on behalf of the appellant i.e., (1) retrenched employees were not in the continuous service of the appellant-employer for a period of 240 days; and (2) the claim of the workmen had abated, u/s 9 of Act No. 2 of 1994, are answered by the learned single Judge, in our opinion, correctly. Learned single Judge has said :

"The Labour Court has also noted that the petitioner-municipality, which was the respondent before the Labour Court, despite having afforded an opportunity to lead evidence in support of its claim, did not choose to lead any evidence. The learned Presiding Officer of the Labour Court has placed reliance on the evidence given on behalf of respondents 1 to 9 by Smt. L. Narasamma - respondent No. 7 in this writ petition and also the documentary evidence marked as Exs. W. 1 to W. 9, Exs. W. 1 to W. 9 are the service certificates issued by the Municipal authorities themselves. Therefore, in my considered opinion, it cannot be said that the finding recorded by the Labour Court is based on "no evidence or the finding suffers from any error apparent on its fact." and further,

"Lastly, advertent to the argument of the learned counsel for the petitioner that the Labour Court has not taken into account the provisions of Act 2 of 1994, it should be noted that this plea was never taken before the Labour Court. Therefore, the Labour Court has no occasion to consider the same. The petitioner cannot be permitted to urge a point which was never pleaded nor urged before the Court below, in the instant case before the Labour Court. Be that as it may, I do not find any substance in this argument also. Act 2 of 1994 is an Act made by the State Legislature and it has not the effect of overriding the provisions of the Central Act. Respondents 1 to 9 have made out a case that their termination of service with effect from December 31, 1991 was in violation of the mandatory provisions of Sections 25F of the Act. So long as that finding recorded by the

Labour Court is valid and correct, the petitioner - management cannot assail the validity of that finding by placing reliance on the provisions of Act 2 of 1994."

7. Learned counsel for the appellant has not been able to show to us any material to take a contrary view. Appellant has wronged the respondent-workmen in more than one way. It has violated the mandatory requirement of Section 25F of the Industrial Disputes Act as well as the requirements of Section 17B thereof. Relationship of "employer and employee" in the case of statutory authority like a Municipality, a local self-government, is not that of a "master and servant", but of status of the employee which is protected under Articles 14 and 16(1) of the Constitution of India. Conditions of service and more so, the statutory protections are intended to protect that what Article 21 of the Constitution of India guarantees - the right to life, which includes right to receive the salary in service of the State on such terms as are agreed and on conditions which are provided under the statutes meant for them. Violations of the mandatory, requirements as are provided u/s 25F of the Industrial Disputes Act, clearly establish that the State concerned has not fulfilled its obligations arising under the twin guarantees of equality before law and equal protection of law as well as equality of opportunity of employment. It is imperative, in our view, thus to direct the appellant to honour the award forthwith and treat the reinstatement effective from the day the award became enforceable under the law.

8. With the above directions, the appeal is dismissed. No. Costs.