
(1997) 02 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No. 761 of 1993

Murali P. and Others

APPELLANT

Vs

Management of Hindustan Machine Tools Ltd.

RESPONDENT

Date of Decision : 06-02-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B

Citation : (1997) 2 ALT 648 : (1998) 1 LLJ 78

Hon'ble Judges : Prabha Shankar Mishra, C.J.;D.H. Nasir, J

Bench : Division Bench

Judgement

P.S. Mishra, C.J.—Writ petitioners-appellant, 25 in number, have moved in appeal under Clause 15 of the Letters Patent of this Court against the judgment of a learned single Judge in a petition under Article 226 of the Constitution of India. They have made the prayer that they be declared as regular members of the respondent organization right from the date of their entry into service and at they are entitled to the salary as is paid to the persons working in the canteen as regular members of the respondent-organisation. Facts in brief are as follows :-

M/s. Hindustan Machine Tools Limited, it is not in dispute, is an instrumentality of the Central Government. It has employed around seven thousand workers including workers in the canteen which initially was run by a contractor. When engaged, they were paid daily wages of Rs. 12/- and later, the same has been raised to Rs. 30/- per day.

2. The issue, whether the canteen is a statutory canteen under the Factories Act and thus employees in the canteen are employees of the respondent-organisation, however, has stood settled by an agreement which the management has entered with the Union of the workmen and it is conceded that canteen is a part of the establishment of the respondent-orgainsation. In the year 1983, to be precise on February 19, 1983, the management has entered into an agreement with the Union promising that services of the employees in the canteen would be regularised. They, however, have been continued as causal

employees only. We are informed, even after the disposal of the writ petition and until the disposal by us of the instant appeal, the appellants are still continued as casual workers.

3. Respondent-organisation has stated that when the contract labour system was abolished and the canteen was taken over by the respondent-organisation in the year 1983, the Union of the workmen entered into a settlement with the management on February 19, 1983; as per the said settlement most of the workers, who earlier worked with the contractor, were directly employed afresh by the respondent and it was agreed that opportunity would be given to workmen numbering 30 including the persons shown in the Annexure to the settlement, dated February 19, 1983, to work as casual labour as per the need and requirement of the canteen from time to time. The respondent-organisation could directly employ 180 workers in the said canteen, as per the agreement and after man power studies undertaken by the company, it would be decided whether to absorb others shown in the Schedule of the settlement. According to the respondent, there is no opportunity, as there is no vacancy for the writ petitioner-appellants to be regularised as employees except the casual employment in terms of the agreement in the service of the organisation.

4. There is thus no dispute before us that as per the terms of the settlement as and when regular vacancies would arise the casual labour would be provided regular employment according to their respective seniority. Learned single Judge considered three questions - (1) whether any person was employed in the workman category in the factory or canteen on regular basis by the respondent-Company subsequent to February 19, 1983; (2) whether any person was appointed in the canteen besides the petitioners (appellants herein) on casual basis. If so, on how many days each one of them was appointed; (3) whether there was any high rate of absenteeism of regular employees in the canteen and based on the report of the Advocate Commissioner appointed by the Court, who visited the factory and gave a detailed report, concluded that there was no recruitment in the factory subsequent to 1983 and that the management has been taking the services of the casual labour whenever regular employees were absent, as per the agreement and that there was high rate of absenteeism of the regular employees. On the question, whether the petitioners-appellants are entitled for regularisation, learned single Judge has devoted some consideration and opined - (1) the petitioners (appellants herein) are party to the settlement entered into between the Union and the management on February 19, 1983; (2) as per the terms of the settlement, the petitioners (appellants) services will be regularised as and when regular vacancies arise according to the seniority and according to other terms provided in the said settlement and (3) No violation of the terms of the settlement was made and said settlement is binding on the petitioners-appellants. Even if the terms of the settlement are violated, the available remedy is under the Industrial Disputes Act. He has, on the said basis, dismissed the writ petition, but observed, "However, the petitioners services will be taken on casual labour basis as and when regular employees are absent. The

petitioners case will be considered for regularisations as and when regular vacancies arise, as per the terms of the settlement dated February 19, 1983."

5. We do not propose in the instant case to travel beyond the above facts. However, one must take notice of, in all the above, the significant fact that writ petitioners-appellants have been working from before the alleged settlement and even after the settlement, it is not disputed, except in the case of five of them, they have been reporting for work and have always been engaged for work. The "casual" status assigned to the writ petitioners-appellants appears to be only for the purpose of the payment of wages and not for the work extracted from them. They have been working in place of the regular employees and it is shown thus, from the facts as above, that they have worked continuously without any break in their service, received only Rs. 30/- from the date it has been enhanced as wages as against the regular wages paid to other employees. It is indeed shocking that the respondent, a Government of India undertaking, has been engaging employees as casual workers paying to them wages much less than the regular wages payable for the work taken from them as regular employees for more than one and half (1-1/2) decades and denying to them the consequential benefits in the shape of provident fund, employees' insurance, etc. Casual or ad hoc appointments can never be for periods exceeding a few days or few months.

6. Section 25B in Chapter V-A of the Industrial Disputes Act for protections, inter alia, under various provisions therein as well as in Chapter V-B of the Industrial Disputes Act, has given the definition of "continuous service" to mean, for a workman, the period of uninterrupted service including service which may be interrupted on account of sickness or authorised leave or an accident or a strike, which is not due to any fault on the part of the workman, if he has worked for 190 days in the case of a workman employed below ground in a mine and 240 days in any other case, in a calendar year. Such continuous service with no interruptions is indicated, except in the case of five employees whose names are mentioned in the additional counter affidavit filed on behalf of the respondent. It will be, therefore, in our view, unfair not to recognise the service rendered by the writ petitioners-appellants, except those who, have not been engaged as stated in the additional counter affidavit filed on behalf of the respondent in the appeal on February 4, 1997, as regular employees.

7. There is some attempt before us to suggest that there are serious financial constraints as the company is suffering losses and it has not been able to pay the salary arrears to both officers as well as workmen. The company is also not providing various fringe benefits to both officers and workmen due to paucity of funds. We do not propose to advert to this aspect of the matter beyond stating that recognition of the petitioners-appellants being in regular service of the respondent shall in no way give to them anything more than what other employees of the company are entitled to. If other employees of the company have to face retrenchments, if they have to be denied their perks and/or even wages, it cannot be said petitioners-appellants would receive when other

employees would not receive. This, however, cannot mean that with continuous service of more than one and half (I-1/2) decades behind them, petitioners-appellants shall not be given the same status as any other regular employee is given. We hold with-out hesitation that petitioners-appellants shall be treated on par with regular employees for the purposes of emoluments including fringe benefits for which purpose the respondent-company shall be entitled to choose dates for their respective engagements staggered between 1988 and 1996 in accordance with their respective seniority and admit them to the benefits of regular employees accordingly. The above, in our view, will meet the ends of justice.

8. For the reasons aforementioned, we are inclined to allow the application of petitioners-appellants 1 to 5, 7, 9, 10, 12, 13, 14, 17 and 20 to 25, who admittedly have been reporting regularly for work and are engaged accordingly for work regularly, for being absorbed as regular employees of the respondent-company in terms as above.

9. In the result, the appeal is allowed, impugned judgment is set aside and the writ petition is ordered in terms as above, but without Costs.