
(1973) 07 MAD CK 0046
In the Madras High Court

N Sundaramony

APPELLANT

Vs

The State Bank of India

RESPONDENT

Date of Decision : 19-07-1973

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1974) 1 MLJ 358

Hon'ble Judges : K.N. Mudaliyar, J

Bench : Division Bench

Judgement

K.N. Mudaliyar, J.—The petitioner is a B.Sc. graduate of the Madras University. He was employed as a Cashier in the Kuzhithurai Branch of the State Bank of India from 4th July, 1970 onwards till 18th November, 1972 with intermittent break in service. He was appointed on a temporary basis, although the Cashier's work in the respondent's branch was of a permanent nature and, according to the petitioner, there was continuous need for such a person. Even after his termination another person was immediately appointed in his place. The petitioner relies on certain passages in the Desai Award and Sastry Award, which define a temporary employee "as an employee who has been appointed for a limited period of work, which is of an essentially temporary nature or who is employed temporarily as an additional employee in connection with a temporary increase in work of a permanent nature". The Cashier's work for which the petitioner was employed was neither essentially of a temporary nature, nor was it due to any temporary increase in the work of a permanent nature. The petitioner was employed for nearly 21/2 years. The Cashier's work which the petitioner was doing was a permanent piece of work. the petitioner's grievance is that he was appointed on a temporary basis only with a view to deprive him of the benefits available to permanent employees under the aforesaid two awards, The petitioner has mentioned in his affidavit the period during which he worked, commencing from 4th July, 1970 and ending with 18th November, 1972, although interrupted. The petitioner attributes even unfair labour practice to the respondent. He seeks to impugn the last letter of 10th November, 1972 marked

as "A" under Which his services came to an end from 18th November, 1972. He maintains that the Cashier's post is a permanent post and he has all the qualifications for being appointed permanently and his complaint is that the respondent should have appointed him as such because that work was of a permanent nature. He challenges the legality of the impugned order mainly on the basis that even assuming that the work he was doing was of a temporary nature and he became a surplus to the requirements of the respondent, when that work was over, he should have been at least paid the statutory retrenchment compensation u/s 25-F of the Industrial Disputes Act for 21/2 years of service because during every 12 calendar months, he had actually worked for 240 days. The respondent is an industry as defined in Section 2(j) of the Act. The petitioner was a workman as defined in Section 2(s) of the Act as he was doing work essentially of a clerical nature. At the time of the impugned order marked "A", he was drawing a salary, including all allowances, of Rs. 344 per month. u/s 25-B (a)(ii) and (b)(ii) of the Act, an employee is deemed to have completed a continuous service of one year or six months, as the case may be, if he has actually worked for 240 days during twelve calendar months in the first case or 120 days in the latter case. That the petitioner has fulfilled this requirement will be clear from the details given as per annexure I filed along with the writ petition. Therefore, according to the petitioner, for the 21/2 years of continuous service, the respondent should have paid him the statutory retrenchment compensation u/s 25-F of the Act. It is a condition precedent and failure to do so would render the impugned termination order void. Therefore even on this alternative ground the petitioner claims that the impugned order is null and void.

2. The petitioner has further stated in his affidavit that even paragraph 523 of the Sastry Award contemplates the payment of such retrenchment compensation which the respondent has deliberately failed to make. He also says that the respondent; even failed to give 14 days notice as contemplated in paragraph 522(4) of the Sastry Award before passing the impugned order. For that reason also, the "petitioner challenges the validity of the impugned order.

3. The petitioner prays for a writ in the nature of certiorari for quashing the order of appointment of temporary Clerks/ Cashiers R.M. No. 12 dated 10th November, 1972. He also prays that he may be reposted as a Cashier.

4. The respondent, the State Bank of India, Kuzhithurai Branch., has pleaded in the counter-affidavit that the writ petition is not maintainable as the State Bank is not an authority or tribunal contemplated under Article 226 of the Constitution. According to the respondent, the relationship between the petitioner and the respondent being purely contractual and governed by the terms of the appropriate order of temporary appointment, this Court cannot be called upon the exercise its powers under Article 226 of the Constitution. The respondent contends that the two prayers of the petitioner are untenable because the order referred to as "A" in the affidavit has already worked itself out with effect from

18th November, 1972 and hence it is not seen how it can be quashed. It is a composite order appointing the petitioner for a term as a temporary employee for the period mentioned therein and at the expiry of that period, the employment itself automatically ceased. On and from 18th November, 1972 the petitioner in the terms of the order referred to as "A" has ceased to be an employee and the . petitioner's Writ petition which has been filed into Court on 4th December, 1972 cannot have the effect of resurrecting that order.

5. The respondent does not question the accuracy or the truth of the periods of service rendered by the petitioner with intermittent breaks in service. The respondent refutes the allegation that the breaks in service have been deliberately created by the respondent with a view to deny the petitioner the benefits. The State Bank of India is constituted under the State Bank of India Act, 1955 and the Bank has formulated rules for recruitment of clerks, cashiers and other employees. Candidates for permanent appointment have got to pass a written test held by the Bank. The Bank holds periodical written tests for recruitment of clerks and cashiers on a permanent basis. Those who pass the written test qualify for an interview on the basis of which alone permanent employment could be offered. The respondent states that the petitioner was entertained on occasions as a temporary cashier from the month of July, 1970, since he possessed the prescribed minimum educational qualification and also satisfied the requirements as to age, but that he could not be considered for permanent appointment as he did not pass the written test. Subsequently the petitioner submitted an application for appointment as clerk or cashier. The Bank conducted written test in August, 1972 for recruitment of cashiers and in view of the petitioner's request, he was permitted to sit for that test. But he failed in the test and could not therefore be considered by the Bank for permanent appointment in the Bank's service. In the meantime he also completed the age of 25 on 20th November, 1972. The Bank could not consider him for permanent employment after the said date in view of the existing rules governing appointment of clerks and cashiers.

6. The Kuzhthurai Branch has four cashiers appointed on a permanent basis. But occasions do arise when any one or more of these four permanent cashiers either goes or go on leave or when there is temporary increase in the work in the cash department and on such occasions temporary cashiers have to be appointed to cope up with the work. The local branch Agent has no powers to appoint cashiers on a permanent basis. The respondent admits that the petitioner was appointed on a temporary basis on various occasions either to fill up a leave vacancy, or to cope up with the temporary increase in work, between 4th July, 1970 and 18th November, 1972. The respondent questions the validity of the petitioner's reliance on the Sastry Award. The respondent states that the orders of temporary appointment of the petitioner make it clear that no right is conferred on him in respect of any claim for absorption in the Bank's permanent establishment in any category and it is, therefore, not open to the petitioner now to contend that the post of the cashier is of a permanent nature, or that any

violation of any of the Awards has been committed by the respondent. The temporary appointments of the petitioner on the dates mentioned in the table were made either in a leave vacancy, or to cope up with the temporary increase in work at the Branch. The respondent has mentioned in the counter-affidavit the need for the appointment of the petitioner for the period from 18th November, 1971 to 17th December, 1971. The respondent refers to a leave vacancy from 18th December, 1971 to 17th January, 1972. As a third instance, the respondent mentions the necessity for appointment of a temporary cashier as one cashier from the Branch was deputed to the Reserve Bank. There is a further instance of increase in work at the close of the financial year as the need for appointing the petitioner. Undoubtedly, as contended by the respondent, it would be seen that the temporary appointment of the petitioner as cashier was either due to additional work or due to a permanent incumbent going on leave or on deputation to some other branch. The respondent also mentions about the test held on 2nd August, 1972 at Palayamkottai and the failure of the petitioner.

7. In paragraph 9 of the counter, the respondent has stated that there is no element of retrenchment u/s 25-F of the Industrial Disputes Act and that merely because the petitioner has worked for more than 240 days, he does not become eligible for receipt of retrenchment compensation, unless his services were terminated by way of retrenchment. The petitioner himself has admitted in the affidavit that after the termination of his services another person was immediately appointed in his place. Hence it is stated that there is no question of his becoming a surplus and his services being terminated on that ground. Unless a person becomes surplus to the requirements of the employer, termination of his services cannot be taken as retrenchment. There is therefore no question of the respondent failing to comply with any statutory provision thereby rendering Exhibit "A" void. The impugned order cannot be described as an order of termination. On the plain language of the order, it is an appointment for a fixed term, the appointment automatically ceasing on the expiry of the term. Such occasions can never be described as retrenchment u/s 25-F of the Act.

8. The respondent has further contended that the reliance placed by the petitioner on the Sastry Award and the Desai Award is the result of a misconception of the provisions thereof. The Bank has the power to resort to temporary appointment and any composite order of the Bank appointing a person for a definite period at the end of which the appointment automatically comes to an end is an administrative order.

9. The respondent has finally contended that the petitioner has an alternative remedy in that he could have raised an industrial dispute if he had any grievance in the matter.

10. In the rejoinder, the petitioner has stated that since during every period of twelve months, he had put in 240 days of service, the respondent should have paid him retrenchment compensation u/s 25-F, which they have failed to do. Therefore the impugned order in Exhibit "A" is void.

11. The learned Counsel for the petitioner argued that, in view of Sections 25-B and 25-F of the Industrial Disputes Act, the petitioner must have been paid retrenchment compensation before the self-operating order resulted in the termination of the services of the petitioner on 18th November, 1972. He relied on the rationale found in the decision in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, . He further contended that the payment of retrenchment compensation is a condition precedent to the termination of the service and therefore the order of termination is void. His argument runs thus : The petitioner has completed in a year 240 days of service, or at least 120 days within six months. Therefore the petitioner shall be deemed to be in continuous service and only on a proper compliance with the requirements of Section 25-F, the petitioner can be retrenched by an employer. As the employer has not paid retrenchment compensation to the petitioner on or before 18th November, 1972, the condition precedent for the termination of the services of the petitioner has not been complied with and, therefore, the impugned order is void in law.

Section 2(oo), of the Industrial Disputes Act states : --

retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action....

We are concerned with the material portion of this definition which contains the significant phrase "for any reason whatsoever". The fact that the impugned order does contain a self-operating clause terminating the services of the petitioner, after providing for temporary employment for a fixed period, does not obliterate the fact that the petitioner's services are terminated on a certain day. Instead of passing a separate order terminating the services of the petitioner, after the fixed term of 8 days of temporary employment, the very order of appointment contains the termination clause. Therefore, in my view, it is nonetheless a termination order per se, although it may contain other things in the form of a composite order. That the petitioner is a workman is not disputed and that the State Bank is an industry is also not disputed. The question whether the impugned order contained the order of termination is answered by me.

12. Mr. M.R. Narayanaswami, the learned Counsel for the respondent, contended that the State Bank is not a State amenable to a Writ of this Court. But I am bound by the Bench decision of this Court in *Ramiah v. State Bank of India* (1968) 2 L.L.J. 424. holding that the State Bank of India is a public authority within the scope of Article 326.

13. The learned Counsel for the respondent has also contended that the relationship between the petitioner and the respondent is purely one of contractual relationship and, therefore, the impugned order which is a self-operating order has worked itself out and the relief asked for by the petitioner cannot be granted by the respondent. He has further contended that even assuming that the relationship is not one of master and servant based on

contractual relationship the termination of the services of the petitioner is certainly not a result of surplus labour and that since the Industrial Disputes Act is a self-contained Code, it is certainly open to the petitioner to go before the Industrial Tribunal or Labour Court and raise an industrial dispute. His argument is that the State Bank has the right to employ temporary employees and that the relationship is as between master and servant. In support of his argument, he relied on the following decisions.

14. In *Satish Chandra Anand Vs. The Union of India (UOI)*, the petitioner was employed by the Government of India on a five year contract in the Directorate-General of Resettlement and Employment of the Ministry of Labour. This was after selection by the Federal Public Service Commission. The contract of service was due to expire in 1950. By a letter dated 30th June, 1950 the Government of India made a new offer to continue him on the expiry of his contract on the terms specified in that letter. One of the terms was that he would be continued in the post temporarily for the period of Resettlement and Employment Organisation. He accepted the offer and continued in service. These facts undoubtedly prove that the petitioner in that case was a temporary-servant employed by the Government of India. He is certainly not a workman within the meaning of the Industrial Disputes Act who should be deemed to be in continuous service by reason of the number of days of service in compliance with the requirements of Section 25-B of that Act. The Supreme Court held on the basis of the facts in that case that there can be no grievance against an order of temporary employment on special terms as opposed to permanent employment. The entire case was judged in respect of the alleged violation of Articles 14, 16 and 311 of the Constitution. I am afraid this judgment has no relevance to the facts of the instant case.

13. Again, in *Ramiah v. State Bank of India (1968) 2 L.L.J. 304*, the service agreement provided for termination of the services of the employee by giving two months notice. The employee was called upon to explain certain charges of misconduct. There was an allegation of misconduct against him. The order terminating the services of the employee stated that even though he could have been dismissed from service for misconduct alleged against him, he was discharged from service in pursuance of the terms of the agreement of service on payment of two months wages and allowances in lieu of notice. It was rightly held by Veeraswami, J., as he then was, that such action of the public authority in the circumstances could not be assailed in a writ petition on the ground that it was really a case of dismissal. It was ultimately found that the termination of the services of the employee was made in substantial compliance with the relevant clause of the service agreement. He was not found to be a workman within the meaning of Section 2(s) of the Act. The principal question raised in that case was whether the order of dismissal was clothed in the garb of termination. Ultimately it was held that the order made by the Bank authorities was in pursuance of a service condition. I am afraid the reasoning in this judgment is not helpful in the instant case.

16. I have therefore no hesitation in rejecting the argument based on contractual liability.

17. I am unable to appreciate how the prayer is an untenable one. If the impugned order embodied in Exhibit A" is a void one and if the petitioner in the eye of law is deemed to be in continuous employment in view of Sections 25-B and 25-F, I am unable to see any reason why the prayer should be held as not valid. The learned Counsel for the petitioner relied on the rationale found in *Rex v. Northumberland Compensation Appeal Tribunal Ex parte Shaw* (1952) 1 K.B. 338. wherein it has been held that an order for certiorari can be granted by the Divisional Court to bring into the King's Bench Division to be quashed a decision of an inferior Court, such as a statutory tribunal, on the ground of error on the face of the record.

18. Mr. M.R. Narayanaswami contended that there has been no reduction in the quantum of work in the Branch at Kuzhuthurai and, therefore, the order of termination would not be tantamount to retrenchment and that unless there is surplus labour, the petitioner cannot be said to be retrenched. The learned Counsel relied on the following observation in the decision in *Hariprasad v. A.D. Divelkar* 1957 S.G.J. 83 : 1957 S.G.R. 121 : AIR 1957 S.G. 121 :

On our interpretation, in no case is there any retrenchment, unless there is discharge of surplus labour or staff in a continuing or running industry.

19. The learned Counsel for the respondent then relied on the decision of *Murugesu Naicker Co. v. Labour Court* (1963) 1 L.L.T. 495. Veeraswami, J., as he then was, held in that case that the expression "retrenchment" must be understood in its ordinary sense and every termination would not be retrenchment and that the termination in order to be retrenchment should be of surplus labour or staff and it should be an industry which is continuing and not closed, or transferred. In my view, this decision only follows the ratio found in the above Supreme Court decision.

20. The respondent admits in the counter that the petitioner was employed temporarily either to meet the additional work or to do the work of a permanent incumbent who was on leave, on or deputation some other branch. In the face of this averment, I find no difficulty in holding that the termination of the petitioner amounts to discharge of surplus labour or staff in a continuing or a running industry. When the permanent cashier, either on transfer or on deputation, returned to the Kuzhuthuri Branch, the petitioner was found to be surplus and therefore he was discharged. That would amount to retrenchment within the meaning of Section 25-F read with Section 2(oo) of the Industrial Disputes Act.

21. The last argument of the respondent is that it was open to the petitioner to go before the Industrial Tribunal, or Labour Court and raise an industrial dispute and in law he is not justified in seeking a writ of certiorari from this Court. In my view, the decision in *State of Bombay v. Hospital Mazdoor Sabha* 1960 S.G.J. 679 : 1960 S.G.R. 866 : (1960) 1 L.L.J. 251. would be an answer. In the said

case, the termination of the two respondents was not merely held to be inoperative and void, but the Supreme Court further confirmed the propriety of the writ of mandamus issued by a Division Bench of the Bombay High Court. When once I hold, as I have done, that the impugned order in Exhibit "A" contains the termination order also and that the said termination order amounts to retrenchment within the meaning of Section 2(oo) read with Section 25-F of the Industrial Disputes Act, I have no hesitation in holding that the impugned order is void in law and that the petitioner is justified in maintaining his prayer as he did in this case.

22. The learned Counsel for the petitioner went to the extent of contending on the strength of the ratio found in the decision of Palaniswamy, J., in *Pilot Pen Co. v. Presiding Officer, Additional Labour Court, Madras* (1971) 1 L.L.J. 241. that even a casual worker who complies with the requirement of Section 25-B of the Act is deemed to be retrenched when his services are terminated. He also relied on the decision in *L. Krisknan v. Southern Railway* (1972) 2 L.L.J. 568. The petitioners in that case were employed as khalasis. They acquired the status of temporary workmen. Their services were terminated between 16th January, 1970 to 23rd January, 1970. The termination was challenged on the ground that Section 25-F was not complied with. Neither notice of one month nor wages for the period were tendered or paid at the time of retrenchment. A Division Bench of the Kerala High Court has held that the definition of the term retrenchment indicates that cases of termination by employer for any reason whatsoever otherwise than in the four cases referred to in the definition would amount to retrenchment. As a matter of fact, it was held that the petitioners in that case were terminated because they were found to be surplus.

23. For the foregoing, reasons I allow the writ petition with costs. The order of appointment for temporary clerks/cashiers RM. No. 12, dated 10th November, 1972 in (Exhibit "A") is found to be void and inoperative in law and it is therefore quashed. But I cannot issue a direction to the respondent to repost the petitioner as cashier. Counsel's fee Rs. 250.