

(2001) 09 MAD CK 0108

In the Madras High Court

Case No : W.A. No. 211 of 1998 and W.P. No. 13112 of 1993

Perambalur Sugar Mills Employees Union Ltd. and Another	APPELLANT
Vs	
Perambalur Sugar Mills Ltd. and Another	RESPONDENT

Date of Decision : 21-09-2001

Acts Referred:

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 4

Citation : (2002) 2 LLJ 1006

Hon'ble Judges : P. Sathasivam, J;K. Gnanaprakasam, J

Bench : Division Bench

Advocate : Vaidyanathan S. Elango, for the Appellant; Vijay Narayan, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Perambalur Sugar Mills Employees' Union (CITU), represented by its Secretary, aggrieved by the order of the learned single Judge, dated February 11, 1997, made in Writ Petition No. 20861 of 1994, wherein the learned Judge confirmed the order of the second respondent Labour Court, Tiruchirapalli, in dismissing the claim of the writ-petitioner has preferred the above appeal.

2. In Writ Petition No. 13112 of 1993, the petitioners, namely, Perambalur Sugar Mill Pattali Thozhil Sangam through its Secretary seeks to issue a writ of mandamus directing the respondents- management of Perambalur Sugar Mills to appoint 63 workers as Mazdoors (casuals) discharged on May 11, 1988 (whose names are furnished in the typed set of documents) in the regular service of the second respondent mill before recruiting any juniors or other outsiders until all these 63 persons of the petitioner- union are so appointed. Since the question raised in the appeal and in the writ petition is similar and identical, they are being disposed of by the following common judgment.

3. The case of Perambalur Sugar Mills Employees' Union (CITU) is briefly stated hereunder:

The petitioner-union represents about 135 workers of the respondent-management (both permanent and casual). The 33 employees concerned in this case have worked under the first respondent for about 4 to 10 years. All of them have completed 480 days in 4 seasons. Out of the 33 workmen, one Arumugam M.W.2 was employed as welder and others were engaged in unloading of sugarcane, baggasse removal, boiler ash cleaning, Firewood section, as helpers, lime and sulphur carrying and mixing, sugar loading and pan mazdoors, etc. The 33 workmen continued to work in the seasons without any break. Even during off-seasons, these workmen were asked to come to do the cleaning work and as badlis in leave vacancies. The first respondent was deducting provident funds from wages of these workers. While so, the management denied employment to these 33 workmen on the ground that they had not been sponsored by the Employment Exchange. On behalf of the 33 employees, their union took up their cause. The workmen concerned were appointed on a casual basis in view of the letter dated December 21, 1987, since the workmen had completed more than 480 days of continuous service in 4 seasons, they had attained permanent status and hence termination of their services is illegal. All of them have rendered continuous service as per Section 25-B of the Industrial Disputes Act, 1947. These 33 workmen have been denied employment on the sole ground of being non-sponsored by the Employment Exchange.

4. The petitioner-union raised a dispute before the conciliation officer. Because of the failure, the Government referred the dispute for adjudication which resulted in I.D. No. 571 of 1990 before the Labour Court, Madurai. After constitution of Labour Court at Trichy, I.D. No. 571/90 was transferred from Madurai to Trichy and renumbered as I.D. 106/92.

5. Before the Labour Court, Govindarajulu and Arumugam, workmen were examined as W.W. 1 and W.W.2 and Exhibits W-1 to W-57 marked on the side of the union. On the side of the management, one Shanmugham was examined as M.W. 1 and Exhibits. M 1 to M 14 (series) were marked in support of their stand. The Labour Court, after holding that the workmen concerned failed to satisfy the two conditions, namely, that all of them were not sponsored by the Employment Exchange and there is no evidence to show that they worked for 240 days in 4 seasons, dismissed the industrial dispute. Against the award of the Labour Court dated September 1, 1994, the Employees Union (CITU) filed Writ Petition No. 20861 1994.

6. The learned Judge, after considering the case of the union as well as the management and after considering the award of the Labour Court, accepted the stand taken by the management and by order, dated December 11, 1997, dismissed the writ petition, against which the Employees Union, C.I.T.U. has preferred Writ Appeal No. 211 of 1998. In Writ Appeal No. 211 of 1998. In Writ Petition No. 13112 of 1993, the Pattali Thozhil Sangam has also raised similar claim. They also contended that the termination of the casuals is in contravention" of the mandate of Section 25-F of the Industrial Disputes Act.

They also contended that these employees worked for 120 days in a period of 6 months during the season. They had also completed more than 480 days in a period of 4 years and attained "permanent status" hence the termination of these employees from the service is illegal.

7. Heard Sri Vaidyanathan, learned counsel for the appellant-employees union (CITU), Sri S. Elango, learned counsel for the Pattali Thozhil Sangam-petitioner in the writ petition and Sri Vijay Narayan, learned counsel for the management-Perambalur Sugar Mills.

8. The points for consideration in these matters are:

- (i) Whether non-employment of the 33 workers is justified;
- (ii) Whether the Labour Court is right in dismissing their claim and whether the learned Judge is right in confirming the award of the Labour Court?
- (iii) Whether the relief prayed for in W.P. No. 13112/1993 can be considered and granted by this Court without going before the competent forum, namely, Labour: Court?

9. It is the specific case of the Employees' Union (CITU) that the 33 employees concerned in this case worked under the first respondent-Sugar Mills for about 4 to 10 years. All of them have completed 480 days in four seasons. Out of the 33 workmen, M.W2 was employed as welder, while the others were engaged in unloading of sugarcane. Bagasse removal, boiler ash cleaning, firewood section as helpers, lime and sulphur carrying and mixing, sugar loading and pan Mazdoors, etc. It is also their case that without these categories of workers, the factory cannot produce and the work will be incomplete. The 33 workmen continued to work in the season without any break. According to them, even during off-seasons, the workmen were asked to come and do the cleaning work and as badlis in leave vacancies. The sugar mill was also deducting provident fund from the wages of these workers. They had rendered continuous service as per Section 25-B of the Industrial Disputes Act. These 33 workmen have been denied employment on the sole ground of being non-sponsored by the employment Exchange and their representations to the management were of no avail, which resulted in raising a dispute in ID. 571/90, before the Labour Court, Madurai, and it was subsequently transferred to the Labour Court, Trichy, and renumbered as ID. 106/92. On the other hand, it is the definite case of the management-sugar mill that as per the instructions of the Government of Tamil Nadu, which are binding on the first respondent-Sugar Mill, in view of the fact that the Government through the Tamil Nadu Sugar Corporation Ltd., is the major share-holder, appointments for these casual vacancies are to be made only through the Employment Exchange. The first respondent-sugar mill is bound to make appointments only through Employment Exchange. The Supreme Court has also held that such instructions are issued, the instructions would not be in violation of the provisions of the Employment Exchange Act, but it would be in conformity with Articles 14 and 16 of the Constitution of India, since it would

prevent arbitrary appointments being made. The Labour Court on appreciation of the entire materials rendered a finding of fact that none of the workmen were able to establish that they had worked 240 days or more in one year and therefore, Section 25-F of the Industrial Disputes Act would not apply. It is also their case that the Government had stipulated, by way of concession, that those casual workmen who had completed 480 days in the period of four seasons would be regularised and absorbed in the services of the first respondent-sugar mill, if they had been sponsored through the Employment Exchange. Inasmuch as the Labour Court has rendered a factual finding that none of the workmen had been sponsored by the Employment Exchange and only 10 out of the 33 workmen had completed 480 days in a period of four seasons, that none of them had completed 240 days in a single year and that Section 25-F would have no application to the facts and circumstances, the interference by this Court under Article 226 is very limited.

10. Before considering the claim of both parties, it is to be noted that the instructions of the Government of Tamil Nadu are binding on the first respondent-sugar mill. Further, in view of the fact that Tamil Nadu Sugar Corporation Ltd., which is wholly owned by the Government of Tamil Nadu is a major share holder and as per the instructions of the Government of Tamil Nadu, appointments for casual vacancies are to be made only through the Employment Exchange. In this regard, Sri Vijay Narayan, learned counsel for the sugar mills brought to our notice a letter No. 11353/E/87-5, dated December 21, 1987 of the Government-Employment Services Department, Madras 92 addressed to the Managing Director, Tamil Nadu Sugar Corporation Limited, Madras- 35 in which the Government is the major share-holder, wherein the Government on considering the request made by the Co-operative Sugar Mills and the earlier instructions of the Director of Employment and Training, etc., issued the following direction:

"4. The Government after consideration, permit the absorption of casual workers initially appointed in the sugar mills through the Employment Exchange against regular vacancies as and when they arise in the same Sugar Mills without further reference to Employment Exchange provided such casual workers have been in continuous service for a period of 480 days of. employment during cane crushing season only not continuous employment in a period of four year for the purpose of eligibility to provide regular employment to casual workers initially recruited through the Employment Exchange subject to the condition that the resultant vacancies should be filled through the Employment Exchange for sponsoring candidates. The permission given in the letter No. 836/E/86-3, dated. March 31, 1986, stands modified to the extent referred to above."

A reading of the above instructions of the Government shows that:

- (1) Casual workers must have been in continuous service for a period of 480 days of employment in cane crushing season; and
- (2) Casual workers should initially be recruited through Employment Exchange.

11. Sri Vaidyanathan, learned counsel for the appellant-union, after taking us through the relevant provisions of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959, would contend that since the employees in question are Class 4 employees, there is no obligation on the part of the management to go to Employment Exchange. In the light of the provisions in the Act, there is no dispute with regard to the same. Sri Vaidyanathan relied on a decision in Kripa Shankar Chatterji Vs. Gurudas Chatterjee and others, : which relates to offer of an employment to apprentice trainees after completion of apprenticeship. The said decision is not helpful to the case on hand. He also relied on another decision of the Supreme Court in Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, : With reference to Section 4(1) of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, restricting the selection only to the candidates sponsored by Employment Exchange. Their Lordships have held thus, at p. 569 of LLJ:

"Better view appears to be that it should be mandatory for the requisitioning authority/ establishment to intimate the Employment Exchange, and Employment Exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having "wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the case of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

It is clear that apart from intimating the vacancy to the Employment Exchange for sponsoring the names of the candidates, the appropriate department or undertaking or establishment should also call for the names by publication in the newspaper having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins and consider the cases of all the candidates who have applied. The said decision is also not helpful to the issue raised by the workmen. Sri Vaidyanathan, learned counsel for the union, after drawing our attention to Section 4 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, as well as the decision rendered by one of us (P.S.J.) in Tamil Nadu State Construction Corporation Ltd., Madurai v. Additional Labour Court, Madurai [W.P.No. 5017 of 1992 etc., batch, dated September 24, 1999], would contend that the condition that even the Class 4 employees, namely, casuals must be sponsored only through Employment Exchange cannot be sustained. We have already referred to the provisions of the Act which shows that the Government undertaking cannot be compelled to call for lists, only from Employment Exchange to fill up their vacancies. After referring to the provisions of the Employment Exchanges (Compulsory Notification of Vacancies) Act and various decisions, I have held

that "in view of the fact that all the workmen concerned are last grade servants, their appointment cannot be construed as contrary to the provisions of the Employment Exchange (Compulsory Notification of Vacancies) Act or other instructions issued by the Government." In that decision, the learned Judge had no occasion to consider the instructions/directions issued by the Court in addition to the provisions of the Act. The very same question was considered by a Division Bench of this Court in *State of Tamil Nadu and others v. Tamil Nadu Recognized (Private) Schools Managers' Association* reported in 1996 (1) L.L.N. 151. The question before the Division Bench was, whether State Government can issue directions to private institutions other than minorities, receiving aids make recruitment through Employment Exchange only. The Division Bench has held that a combined reading of Section 14(1)(ii)(e) of T.N. Recognised Private Schools Regulation Act and Rule 11 of the Rules makes it clear that the State Government is empowered by the statute, to issue directions to private institutions receiving aid, regarding mode and manner of filling up vacancies, while it is open to them to seek provisions of concerned authority to recruit from open competition. The Division Bench after referring to the decision of the Supreme Court in *Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others*, : has held that it is open to the management to make selection out of the candidates who are sponsored by the Employment Exchange. It is only when no candidate is available from the Employment Exchange or the candidates who are sponsored from the Employment Exchange, are found to be unfit, it would be open to the private educational agency to seek the permission of the concerned authority and go ahead with the recruitment from the open competition. Inasmuch as the first respondent-sugar mill is directly under the control of Tamil Nadu Sugar Corporation, which is a State owned Corporation, the Government is competent to issue direction or directions regarding selection and appointment in addition to the provisions of the Employment Exchange (Compulsory Notification of Vacancies) Act. In such a circumstance, and in view of the letter of the Government-Employment Services Department, dated December 21, 1987, prescribing two conditions for acquisition of casuals are to be strictly followed by the first respondent-sugar mill.

12. Though the petitioner-union has stated that all the 33 workmen had completed 480 days in 4 seasons and their services may be regularised. In the counter affidavit filed before the Labour Court as well as before this Court in W.P. No. 20861 of 1994 it is stated that none of them have fulfilled both the conditions referred to above. As a matter of fact, though in the counter- affidavit it is stated that out of 33 persons employed on casual basis, only 10 casuals worked over a period of 4 years. Inasmuch as they were not appointed through the list sponsored by the Employment Exchange, even their services cannot be considered for regularisation. It is also relevant to note the annexure filed along with the counter-affidavit of the first respondent which contains the details of the engagements of the casuals from 1978- 79 to 1987-88 as well as the details of the 33 workmen who are concerned with the subject-matter of the writ petition

and writ appeal. After perusing those details, we are satisfied with the contention raised by the learned counsel for the sugar mills and we are of the view that no direction be granted as claimed.

13. Apart from the above factual aspects, Sri Vijay Narayan has also contended that the first respondent-Sugar mills is a seasonal industry, accordingly cessation of the work consequent to the closure of the season did not amount to retrenchment. He very much relied on a decision of the Apex Court in *Morinda Co-op. Sugar Mills Ltd. Vs. Ram Krishan and others etc.*, : In that decision, their Lordships, after considering Sections 2(oo)(bb), 25-F and 25-H of the Industrial Disputes Act as well as the details regarding crushing seasons in which the factory worked has held that the respondents (workmen) were not working throughout the season and they worked during crushing seasons only. Their Lordships have also held that the workmen were taken into work for the season and consequent to the closure of the season, they ceased to work. He also relied on another decision of the Supreme Court in *Anil Bapurao Kanase Vs. Krishna Sahakari Sakhar Karkhana Ltd.* and another, : In that decision, the argument was advanced, namely, that the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if the procedure contemplated u/s 25-F of the Industrial Disputes Act, 1947, is applied to, his retrenchment is illegal. Rejecting the said content on, their Lordships have observed thus at p. 344 of LLJ:

"3. We find no force in this contention. In *Morinda Co-operative Sugar Mills Ltd. v. Ram Kishan* (supra) in Para. 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing; in Para 4 it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after crushing season was over. Accordingly, in Para. 5, it was held that it is not "retrenchment" within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per Clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application."

Both the above referred decisions clearly show that sugar industry is a seasonal industry, accordingly it was not a case of retrenchment of workman, but of closure of the factory after crushing season was over. In other words, as observed by the Supreme Court, it is not a "retrenchment" within the meaning of Section 2(oo) of the Industrial Disputes Act.

14. Sri Vaidyanathan by relying on a decision of SATHIADEV, J., in *S. Thangappan and Ors. v. Government of Tamil Nadu*, (represented by Commissioner and Secretary, Rural Development) 1986 T.L.N.J. 153, would contend that termination on the ground that Employment Exchange was not consulted cannot be accepted. After going through the said decision, in the light of the specific instruction issued by the Government, as referred to above, for fulfilling two conditions before regularising the services of casuals, we are of the view that the said decision is not helpful to the case of the union.

15. Inasmuch as the Supreme Court has held that sugar industry is a "seasonal industry", the Division Bench of this Court in Tamil Nadu Civil Supplies Corporation Workers Union v. Tamil Nadu Civil Supplies Corporation, reported in 1999 III LLJ (Suppl) 1060 has held that seasonal employees do not acquire right for regularisation. The Division Bench has also held that the Industrial Disputes Act in their view has no application for seasonal appointments, and that likewise, the Conferment of Permanent Status Act also would not apply in which event the employees do not have a legal right.

16. In T.N.C.S.C Employees Union v. T.N.C.S. Corporation Ltd. reported in 2000 II LLJ 326 (Mad), after considering the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and the question regarding the regularisation of casual employees on ad hoc appointment on ground that they had served for more than 480 days within a period of 24 calendar months, and after holding that the work of the claimants is intermittent in character and in the absence of a sanctioned vacancy and there has been no budgetary sanction for that post, I (P.S.J.,) have held that this Court cannot issue positive direction to the respondent-employer to regularise the services of the casual employees on ad hoc appointments.

17. In Indian Airlines Canteen Workers" Union v. Director (Personnel), Indian Airlines 2000 III LLJ (Suppl) 979 (Mad) , I (P.S.J.,) had an occasion to consider similar question regarding regularisation of casual employees in Indian Airlines. The following conclusion and observation arrived at in the said decision is relevant, at p. 995 of LLJ:

"47..... In State of Haryana and others Vs. Piara Singh and others etc. etc., : the Hon"ble Supreme Court has held that a practical and pragmatic view has to be taken and the Court cannot order a wholesale regularisation because it will add a public exchequer and cadre strength. They also held that before regularisation post should be available and one must satisfy the qualification prescribed in the rules and also satisfy the scheme conditions. In 1992 (2) SCC 99 , where a scheme was prepared for giving relief to unemployed persons the Supreme Court in Paras. 16 and 17 have reiterated that there should be sanctioned posts for regularisation. Their Lordships have held that mere completion of 240 days does not entitle a person to regularisation. They have also said that the absorption can only be as per the scheme, which principle has been applied in Indian Airlines Ltd. Vs. Samaresh Bhowmick and Others, : In J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., :the Supreme Court has held that long period of ad hoc employment will not entitle an employee for regularisation. They have got to compete along with others. The Supreme Court has further held that if persons have to be regularised ignoring rules and qualifications, it will amount to a third mode of selection which is not permissible. Same view has been expressed by the Hon"ble Supreme Court in Union of India and another Vs. Moti Lal and others, : Central Welfare Board and Others Vs. Anjali Bepari (Ms) and Others, : State of U.P. and Others Vs. Ajay

Kumar, : and Ashwani Kumar and Others Vs. State of Bihar and Others, : Their Lordships have emphasised that the existence of post before absorption is necessary. The learned counsel for the respondents has also brought to my notice that after 1994 circular, the Bombay High Court has directed the Indian Airlines to prepare a pool of casuals from among those who have worked between 1993 and 1995 and operate the panel on rotation basis. Though this related to Western Region, the Corporation applying the said direction to all the Regions in the interest of uniformity. It is clear from the various decisions of the Apex Court that the casuals can claim no preference for absorption unless they are selected under R and P Rules or they are absorbed as per the scheme."

18. It is relevant to refer a decision of the Apex Court in *Delhi Development Horticulture Employees' Union v. Delhi Administration*, reported in (supra). In this decision, their Lordships have held that when persons appointed under a particular scheme and as soon as the scheme is fulfilled or over the persons employed under the scheme cannot claim regularisation merely because they have put in more than 240 days service.

19. In the light of what is stated above, in view of the fact that sugar industry being a "seasonal industry", the Government can very well prescribe more conditions in addition to the provisions of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959, and also of the fact that all the 33 workmen do not fulfil both the conditions, we are of the view that their claim for regularisation was rightly negated by the, Labour Court as well as the learned single Judge of this Court. We are also satisfied that the petitioners/appellants, who are casual seasonal workers, cannot be permitted to overtake the seasonal workers. Regarding Writ Petition No. 13112 of 1993, we have already referred to the fact that Pattali Thozhil Sangam has approached this Court for issuance of a writ of mandamus, directing the respondents to appoint as mazdoors of 63 workers/casuals discharged on May 11, 1988 (their names are furnished in the typed-set of papers) in the regular service of the second respondent-mill before recruiting any juniors or other outsiders. The observation and ultimate conclusion arrived at by us, in the foregoing paragraphs, are applicable to the case of the petitioners. The principles enunciated above are applicable to the members of Pattali Thozhil Sangham also and unless and until they satisfy both the conditions referred in the letter of the Government Employment Services Department, Madras-9, dated December 21, 1987, their services cannot be regularised.

20. Taking note of the grievance expressed by the casual workers, we hereby direct the management, Perambalur Sugar Mills, to maintain register and engage the workmen when the season starts in the succeeding years in the order of seniority. Only the employees whose names appear in the list have to be engaged in addition to the employees who are already working. The management should not go in for fresh engagement of new workmen. To put it clear, the sugar mills is directed to maintain a register for all the workmen

engaged during the seasons and when the new season starts, the sugar mills should make a publication in local Tamil Dailies in the neighbouring places in which the workmen normally live and if they would report for duty, the sugar mills would engage them in accordance with seniority and exigency of work. Though Sri Vijay Narayan, learned counsel for the sugar mills has stated that this procedure is being followed by them in order to safeguard the interests of the causal workers, we made this observation. With these observations, both the writ appeal and the writ petition are dismissed. No costs.