

(2001) 09 MAD CK 0104
In the Madras High Court
Case No : Writ Petition No. 193 of 1997

Poori R. (alias) Bhoopathi

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 04-09-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(OO), 25F

Citation : (2002) 95 FLR 624 : (2002) 4 LLJ 16 : (2002) 2 LW 333

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K.P. Sivasubramaniam, J.—In this writ petition, the petitioner prays for writ of certiorarified mandamus to call for the award of the Labour

Court, Vellore, in I.D. No. 1150/93, dated January 30, 1996. The employee whose claim was rejected by the Labour Court is the writ-petitioner herein.

2. The facts which are sufficient for the disposal of the writ petition are as follows:

By a resolution, dated November 29, 1999, the petitioner was appointed as cashier, Subsequently, he claimed to have been promoted by a

resolution, dated July 18, 1991, as assistant secretary. However, his services were terminated with effect from: October 28, 1991 on the ground

that the petitioner was not recruited through the Employment Exchange. Therefore, the employee raised the industrial dispute and the first

respondent, the Labour Court found that since the appointment was irregular and not through Employment Exchange, the principles relating to

Section 25-F of the Industrial Disputes Act will not be applicable. Hence, the

claim petition was rejected and the petitioner has approached this

Court praying for quashing the said order and or directions to reinstate the petitioner with back wages and continuity of service.

3. The fact that the petitioner had been appointed without being sponsored by Employment Exchange has not been disputed by the petitioner.

However, learned counsel for the petitioner contends that the conclusion of the Labour Court that no show-cause notice is necessary and that

there was no necessity to comply with the requirements u/s 25-F of the Industrial Disputes Act is not correct in view of the judgment of the

Supreme Court in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh

and Others, : That was a case in which the objection by the management was that the respondents workmen were terminated from service on the

ground that the Chairman had no power to appoint them. The Constitutional Bench, after considering the provisions of Section 25-F read with

Section 2(oo) of the Act came to the conclusion that the expression ""retrenchment"" would mean termination of service of a workman for any

reason whatsoever except those which were expressly excluded in the section. The same view was followed by the Division Bench of this High

Court in The President, Srirangam Co-operative Urban Bank Ltd. Vs. The Presiding Officer, Labour Court and K. Nagarajan,

4. Learned counsel for the respondent however contends that there was no proof of the fact that the petitioner was working for a continuous

period of more than 240 days and there was no requirement to comply with Section 25-F of the Industrial Disputes Act in the case of illegal

appointment.

5. In the context of whether Section 25-F would apply or not, I have already mentioned about the judgment of the Supreme Court and the

Division Bench of this Court as stated above and hence, I am unable to sustain the objection on behalf of the management.

6. As regards whether the petitioner had worked for more than 240 days, it is seen that in the Claim Statement itself, the petitioner has stated that

he was continuously serving for the past 11 months without any blemish of service. In the counter by the management, there is no denial of the said

fact. In fact, in the writ petition also, the petitioner has reasserted the said

contention and in para. 6 of the counter the said statement of the petitioner is not denied and on the other hand, all that is stated by the management is that it may be true that the petitioner had worked for more than 240 days.

7. Therefore, as a question of fact, there is no denial of the fact that the petitioner had worked for more than 240 days. Therefore, it is irresistible

to conclude that the petitioner had worked for more than 240 days and he is entitled to a show-cause notice and for compliance of the provisions

u/s 25-F of the Industrial Disputes Act, The conclusion of the Labour Court cannot be sustained.

8. The writ-petitioner shall be reinstated in service with continuity in service. However, considering that the second respondent is a public institution

and also that the petitioner has not been working as such for the past period after the date of termination of service, the management shall be liable

to pay 50 per cent of the back wages. The petitioner shall be reinstated in service

9. In the result, the writ petition is allowed. No costs.