

(1980) 11 KL CK 0013

In the High Court Of Kerala

Case No : O.P. No's. 1961 of 1980N and 2134 of 1980D

Prabhakaran and Others

APPELLANT

Vs

Kerala State Transport Corporation

RESPONDENT

Date of Decision : 12-11-1980

Acts Referred:

Constitution of India, 1950 — Article 133(1), 134A
Industrial Disputes Act, 1947 — Section 25A, 25B, 25C, 25D, 25E
Kerala State and Subordinate Services Rules, 1958 — Rule 9

Citation : (1980) 11 KL CK 0013

Hon'ble Judges : Balakrishna Eradi, C.J.; Bhaskaran, J

Bench : Division Bench

Advocate : M.M. Cherian and Mathew Zachariah, for the Appellant; George Mathew Kalapurakkal, for the Respondent

Final Decision : Allowed

Judgement

Balakrishna Eradi, C.J.—The points raised in these two writ petitions and the relief claimed therein being identical, they have been heard together on the suggestion of both sides. There are 11 Petitioners in O.P. No. 1951 of 1980 and 5 Petitioners in O.P. No. 213 of 1980. All of them were appointed by the Kerala State Road Transport Corporation as reserve conductors on a purely temporary basis under Rule 9(a)(i) of the Kerala State and Subordinate Services Rules, the provisions of which have been made applicable to personnel in the service of the Corporation. The orders of appointment given to the writ Petitioners contained a recital that the appointment were to endure only for a period of 89 days. The grievance with which the Petitioners have come up to this Court is that steps are being taken by the Corporation to discharge them from service without complying with the procedure laid down in Section 25G of the Industrial Disputes Act (for short the Act). According to the Petitioners, despite the fact that their orders of appointment contained a specification of the duration of their tenure in the posts in question, the termination of their service constitutes "retrenchment" for the purpose of the Act and hence the provisions of Section 25G are attracted

in their case. In answer to the aforesaid contention the stand taken by the 1st Respondent--Corporation is that the termination of the services of temporary employees appointed only for a period expressly specified in the orders of appointment will not constitute retrenchment and hence there is no scope for the Petitioners to invoke the aid of Section 25G in their favour. Another point advanced on behalf of the Respondents is that none of the Petitioners has been in continuous service for not less than one year under the Corporation so as to become entitled to the benefit of Section 25F and that the provisions of Section 25G should be regarded as applicable only in respect of employees eligible for the benefit conferred by Section 25F. Counsel also submitted before us that the provisions of Rule 9(a)(i) of the Kerala State and Subordinate Services Rules should be regarded as an implied term of the contract of appointment of the Petitioners and hence there is an agreement between the employer and the workman as contemplated by Section 25G entitling the employer, namely, the Corporation, to terminate the service of the temporary employees without complying with the procedure laid down in Section 25G.

2. The contention put forward by the Petitioners that the termination of their service would constitute retrenchment notwithstanding the fact that they are temporary employees appointed only for the duration of the time specified in the orders of appointment has to be upheld in view of the recent pronouncement of the Supreme Court in *Santosh Gupta Vs. State Bank of Patiala*, , laying down that the expression "retrenchment" must include every termination of the service of a workman by an act of the employer irrespective of the nature of the reason for such termination. Hence we are unable to accept the argument advanced by the counsel appearing for the 1st Respondent--Corporation that the proposed termination of the service of the Petitioners will not constitute retrenchment under the Act.

3. The next question to be considered is whether there is any justification for restricting the scope and applicability of Section 25G to cases where the employees concerned have been in continuous service of the employer for not less than one year so as to be entitled and thereby qualified to claim the benefit of Section 25F. Sections 25F and 25G are totally independent provisions though both of them deal with the topic of retrenchment of workmen. While Section 25F confers certain special rights such as entitlement to notice and payment of retrenchment compensation on workmen who had been in continuous service for not less than one year, Section 25G is a general provision covering all cases of retrenchment and it confers on the workmen the minimal safeguard of the observance of the principle of last come first go in, the matter of effecting such retrenchment. Counsel for the Respondent forcefully argued that the scheme of Chapter V-A of the Act has to be gathered by a combined reading of sections 25A to 25J and according to him, on such combined reading it would become manifest that the intention of Parliament was to restrict the scope of Section 25G only to cases of workmen who are eligible for the benefits conferred by Section 25F. We are unable to accept this argument. While it is a well accepted principle

that different parts of the same section should be read together in order to find out the legislative intent and purpose underlying the concerned provision, the said principle cannot be extended in the matter of interpretation of distinct and independent provisions though contained in the same Chapter. As already indicated by us, the legislative intent and purport underlying in Section 25F is distinct and different from that of Section 25G and we see no warrant whatever for restricting the scope of Section 25G by reading into it a limitation that the benefit of the section would be available only in respect of workmen who satisfy the condition regarding the length of continuous service specified in Section 25F. Such an interpretation which involves adding into the section words which are not there has to be avoided by the court particularly in the matter of construction of a piece of social legislation intended to confer benefits such as security of tenure and other safeguards in favour of workmen. In our opinion Section 25G will get attracted to all cases of retrenchment and the procedure laid down therein insisting on the observance of the principle of last come first go will have to be strictly followed by the employer if the retrenchment is to be regarded as valid save in cases covered by the last portion of the section, namely, where "for reasons to be recorded, the employer retrenches any other workmen".

4. We do not also find it possible to accede to the contention of the learned Advocate for the Corporation that Rule 9(a){i} of the Kerala State and Subordinate Services Rules has to be treated as an implied term of the contract of service of the Petitioners and hence there is an agreement between the employer and the workmen concerned in these cases entitling the employer to terminate the service of the workmen without following the procedure laid down in Section 25G. Rule 9(a)(i) being totally silent about the manner and order in which termination of the service of temporary employees appointed under that rule is to be effected, we do not see how it could be successfully contended by the Respondent that the provisions in the said rule, when read into contracts of appointment of the Petitioners, constitute an agreement to the contrary between the employer and the workmen so as to exclude the applicability of Section 25G. This contention put forward by the Respondent will also therefore stand rejected.

5. Lastly it was contended that the Petitioners are not entitled to claim the benefit of the safeguard provided by Section 25G because they cannot be said to belong "to a particular category of workmen" in the establishment of the Corporation. All the Petitioners belong to the category of temporary reserve conductors and we are unable to understand the expression "belongs to a particular category" used in Section 25G as implying that the workmen concerned should have acquired an indefeasible title to the post concerned under the employer. There is no incongruity whatever in treating a temporary workman functioning as conductor as belonging to the particular category, namely, that of temporary reserve conductors. What is enjoined by Section 25G is that while effecting retrenchment from amongst personnel belonging to any particular category the procedure laid down there should be followed and having regard to the object and purpose underlying the said prescription made by Parliament it in

wholly immaterial whether the employment of the workmen concerned is on a temporary or permanent basis. Accordingly, we hold that the provisions of Section 25G are applicable in respect of temporary employees like the Petitioners before us.

6. In the result, these writ petitions are allowed and there will be a direction to the 1st Respondent-Corporation not to terminate the service of the writ Petitioners except in accordance with the procedure laid down in Section 25G of the Act. The parties will bear their respective costs.

Immediately after pronouncement of the judgment, the learned Advocate appearing on behalf of the Corporation (1st Respondent) orally prayed under Article 134A of the Constitution for the grant of a certificate under Article 133(1) to enable the Corporation to carry these matters in appeal before the Supreme Court. In our opinion, the questions of law involved in these cases are of general importance and require to be pronounced upon by the Supreme Court. Hence we direct that certificates under Article 133(1) shall issue to the 1st Respondent.