
(2003) 04 GAU CK 0051
In the Gauhati High Court
Case No : Writ Petition (C) . No. 2267 of 2000

Principal, Kendriya Vidyalaya and Another	APPELLANT
Vs	
Uttam Bose and Another	RESPONDENT

Date of Decision : 03-04-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2003) 3 GLT 184 : (2004) 1 LLJ 686

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Advocate : B.P. Todi and P. Baruah, for the Appellant; M.U. Mahmud and P.K. Talukdar, for the Respondent

Judgement

A.H. Saikia, J.—Heard Dr. B.P. Todi, learned senior counsel assisted by Ms. P. Baruah, learned counsel for the petitioners. Also heard Mr. M.U. Mahmud, learned counsel for the respondent.

2. The legality and correctness of the impugned award dated December 28, 1999 passed by the learned Presiding Officer, Industrial Tribunal, Guwahati in Reference No. 1(C) of 1999 has been assailed in this writ petition. By the impugned order dated December 28, 1999 it was held by the Tribunal that the petitioner was not justified in not regularising the service of the respondent No. 1, workman, as Group "D" employee and as the said action was illegal and improper. Answering the reference in favour of the workman, the Tribunal accordingly directed the petitioners to engage the respondent No. 1 in his service even on casual basis, if there was any regular post at present and regularise the respondent No. 1 as soon as vacancy arises.

3. The factual matrix of this case in a nutshell is that the respondents, alleging the illegal termination of service, raised the dispute before the Assistant Labour commissioner, Guwahati, who in turn by his communication dated June 12, 1998 submitted the report to the Secretary to the Government of India, Ministry of Labour. Ultimately, the matter was referred to the Presiding Officer, Industrial

Tribunal, Guwahati raising the dispute whether the action of the petitioner in not regularising the service of the respondent No. 1 was legal and justified and if not, to what relief the workman was entitled to. The reference before the Industrial Tribunal was numbered as 1(C)/99. Before the Tribunal, the respondent No. 1 alleged that he worked under the petitioners as "Peon" since March 23, 1994 as casual workman for continuous period of 270 days and the Principal of the Vidyalaya assured him for regularisation of his service as and when vacancy would arise. But instead of regularising his service, the workman was removed from service on and from January 20, 1995 without giving any benefit as per provision of Section 25-F of the Industrial Disputes Act, 1947 (for short, the "Act"). It was further contended that at the time of release there were 5 (five) vacancies in Group D employee out of which 3 (three) were filled up by transfer and remaining vacancies were filled up by holding interview of the candidates sponsored by the local Employment Exchange ignoring the entitlement of the respondent No. 1.

4. The petitioners contested the reference by filing written statement contending inter alia that the respondent No. 1 did not work continuously for a period of 270 days as claimed. It was further contended that the Kendriya Vidyalaya was not an industry within the meaning of Section 2(j) of the Act and thus the Tribunal was not competent to adjudicate the reference. According to the petitioners, the respondent No. 1 was initially engaged on casual basis on April 23, 1994 and thereafter on several occasions he was engaged and disengaged depending upon the exigencies of works. Ultimately, when all the posts were filled up by regular appointee or by regular employees on transfer, the services of the casual employees including the respondent No. were not required and accordingly the respondent No. 1 was not engaged after his last disengagement on January 19, 1995. During such period from April 23, 1994 to January 18, 1995, he was engaged and disengaged on several occasions and total number of days of work done by him from time to time was 213. It was admitted by the petitioners that during the period of 1994-95 there were five vacancies against Group "D" employee, some of those were filled up by regular employees and others were filled up by holding interview calling the names from the Employment Exchange. Since the name of respondent No. 1 was not sponsored by the concerned Employment Exchange, his case could not be considered for regular employment. The Tribunal upon hearing the learned counsel for the parties and considering the materials available on record, observed that (1) the Kendriya Vidyalaya being a educational institution was an industry and as such the Tribunal was competent to adjudicate the dispute under reference; (2) the respondent No. 1 was a "workman" within the meaning of Section 2(s) of the Act and (3) the respondent No. 1 worked as casual labour for more than 240 days and as such a right has been accrued to him for regularisation of his service and the petitioners ought to have complied with the provision of Section 25-F of the Act in terminating his service.

5. I have carefully gone through the impugned award. I fully agree with the view

taken by the Tribunal that the petitioner No. 1 being a educational institution is an industry relying on the decision of Apex Court reported in Coir Board, Ernakulam, Cochin and Another Vs. Indira Devi P.S. and Others, In the above referred case, the Apex Court dealing with the scope of definition of "Industry" u/s 2(j) of the Act, doubted the correctness of the tests laid down in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, wherein the Hon"ble Supreme Court, while widening the scope of definition of industry under the Act, held that the definition of industry would cover all professions, clubs, educational institutions, cooperatives, research institutions, charitable projects and anything else which could be looked upon as organized activity where there was a relationship of employer and employee and goods were produced or service was rendered. The Supreme Court also held that such sweeping test was not contemplated by the Act and every organization which did useful service and employed people could not be levelled as an industry and accordingly, the entire matter was directed to be placed before Hon"ble the Chief Justice of India for consideration whether a larger Bench should be constituted to reconsider the decision in Bangalore Water Supply & Sewerage Board's case (supra). The Apex Court by its decision in Coir Board Ernakulam Kerala State and Another Vs. Indira Devi P.S. and Others, came to hold that no reconsideration of the said case was necessary. The Hon"ble Supreme Court observed as follows at p. 1109 of LLJ:

"7. We have considered the order made in Civil Appeals Nos. 1720-21 of 1990. The judgment in Bangalore Water Supply & Sewerage Board v. A. Rajappa was delivered almost two decades ago and the law has since been amended pursuant to that judgment though the date of enforcement of the amendment has not been notified.

2. The judgment delivered by seven learned Judges of this Court in Bangalore Water Supply case does not, in our opinion, require any reconsideration on a reference being made by a two- Judge Bench of this Court, which is bound by the judgment of the Larger Bench.

3. The appeals shall, therefore, be listed before the appropriate Bench for further proceedings."

In view of the above decision, the law is now settled that the educational institution is also an industry within the meaning of "Industry" u/s 2(j) of the Act. Once the person is accepted to be workman, he is entitled to the benefits of Section 25-F of the Act which reads as follows:

"25-F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

[*** ***)

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days" average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [for such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

6. A bare perusal, of this provision would go to show that the workman who has been in continuous service for not less than one year under the employer cannot be terminated unless he has been served with one month's notice in writing indicating his termination or he has been paid in lieu of such one month's notice, the wages for the period of the notice i.e., one month's wage. He is also entitled to, at the time of his termination, compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months.

7. The issue involved in the instant case precisely centers round the applicability of the benefit of Clause (a) of Section 25-F of the Act to the respondent No. 1. In the case in hand as per claim of the respondent No. 1, he worked as casual labourer(Peon) for more than 240 days which was also observed by the Tribunal. In order to satisfy Section 25-F of the Act, the workman must be in continuous service for not less than one year under the employer. The workman is deemed to be in continuous service in terms of the definition in the Section 25-B of the Act for a period of one year, if he during the period of 12 calendar months, preceding the date of termination, has actually worked under the employer for not less than 240 days.

8. Bearing this 240 days of service by the workman in mind, now the question is whether the respondent No. 1 had completed 240 days of service under the petitioners. On close scrutiny of the impugned award and the material available on record including the written statement filed by the petitioners before the Tribunal, it appears that the Tribunal found that the workman/respondent No. 1 worked as casual labourer for more than 240 days but it failed to discuss in details how it arrived at the said finding of 240 days of working period of workman. The Kendriya Vidyalaya in its written statement in paragraph 8 categorically averred that the workman/respondent No. 1 was engaged on April 23, 1994 while he was disengaged on January 19, 1995. It was also averred that during the said period from April 23, 1994 to January 18, 1995 the workman/respondent No. 1 was engaged and disengaged on several occasions and his total number of days of work from time to time was 213 days. The impugned award does not reflect any such discussion on calculation of days, taking into consideration the averments made in written statement of the petitioners to make it 240 days to attract the benefit of Section 25-F of the Act. The Tribunal simply held :

".....So far as the fact of the case is concerned, I find that the workman worked as casual labour for more than 240 days "

But the specific case of the petitioners was that the workman was engaged as casual labour from time to time only for 213 days without having any continuity therein and his service was utilised only as stop-gap arrangement. In that view of the matter, this finding of the Tribunal, in the considered opinion of this Court, is perverse.

9. Accordingly, this Court considers that it would be appropriate in the interest of justice if the matter is sent down to the Tribunal to decide the limited issue as to whether the workman/respondent No. 1 had completed 240 days of continuous service by proper and correct determination of all the days of work rendered by the workman on consideration of all the materials available on record. Consequently, this impugned award dated December 28, 1999 is hereby quashed and this matter is sent back to the Tribunal to consider and decide the limited point as indicated above. The parties are hereby directed to appear before the Tribunal on April 28, 1903. Since the matter relates to 1995, the Tribunal is directed to make an attempt to dispose of the case at the earliest possible preferably within a period of 3 (three) months from the date of appearance of all the parties as indicated above.

10. With the above direction, this writ petition is disposed of. The parties are to bear their own costs.