

(2008) 07 MAD CK 0131
In the Madras High Court
Case No : W.A. No. 364 of 2007

Rajan A.V.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

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

Citation : (2009) 1 LLJ 623

Hon'ble Judges : V. Dhanapalan, J;S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : S.V. Karthikeyan, for the Appellant; M. Dhandapani, S.G.P., for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—Workman has filed this Writ Appeal against the order, dated October 19, 2006, passed in W.P. No. 2774/2001, wherein, the award of the first respondent, ordering reinstatement of the appellant, was set aside by a learned single Judge.

2. According to the appellant, he was appointed as a worker in the second respondent management on August 16, 1983 and continuously working as a temporary worker for over 14 years; though he was a daily rated worker, his wages were paid once in a week and for some time he was also engaged as a Boiler Attender; at that time, he filed a Writ Petition before the High Court in W.P. No. 15051/1991 for appointment as a Boiler Operator, which was rejected, observing that as and when the post of Boiler Operator was brought into existence in the respondent's Corporation, the respondent should consider the appellant's case for being appointed in that post; thereafter, on coming to know that he was dismissed from service by the second respondent with effect from June 1997, he filed a claim petition before the first respondent Labour Court in I.D. No. 734/1997, which was resisted by the second respondent management, on the grounds that the petition for regularisation of service was not

maintainable u/s 2-A of the Industrial Disputes Act; the matter in issue was res judicata between the parties and covered by the order of the High Court in W.P. No. 15051/1991, dated August 18, 1995; the petitioner was engaged purely on temporary and nominal muster roll basis from 1988 onwards when the project work at K.M. 19/10 of Madras-Mahabalipuram Road was started; the petitioner was paid every fortnightly for the days he worked and not for the holidays; there was no regular post of Boiler Operator in the respondent's office and, therefore, it was not possible to regularise the services of the appellant.

3. Based on the above pleadings, the Labour Court, holding that the appellant had been in continuous employment for more than 13 years, passed an award directing the management to reinstate the appellant with continuity of service and other benefits.

4. Aggrieved over the said award of the Labour Court, the management filed Writ Petition No. 2774/2001 and the learned single Judge, considering the facts and circumstances of the case, allowed the Writ Petition, setting the award of the Labour Court. Hence, this Writ Appeal, at the instance of the workman.

5. Learned Counsel for the appellant would contend that the appellant had put in service for more than 14 years in the respondent Corporation and the order of retrenchment all-of-a-sudden without any reason is unwarranted and illegal; the Labour Court, after a careful consideration, held that the appellant was entitled for reinstatement and continuity of service for the reason that the order of retrenchment was in violation of the principles of natural justice and that the Labour Court, only after considering the issue of the appellant working for 240 days in the preceding 12 months prior to termination, admitted the appellant's claim u/s 2(A)(2) of the Industrial Disputes Act. He would further contend that the similarly situated persons were reinstated into service as per the orders of the High Court; the learned single Judge failed to take into consideration all the above aspects while passing the impugned order and, therefore, the same is liable to be set aside.

6. Conversely, Mr. M. Dhandapani, learned Special Government Pleader, appearing for the second respondent, would contend that the petition for regularisation of service was not maintainable u/s 2-A of the Industrial Disputes Act; the matter in issue was res judicata between the parties and covered by the order of the High Court in W.P. No. 15051/1991, dated August 18, 1995; the petitioner was engaged purely on temporary and nominal muster roll basis from 1988 onwards; the petitioner was paid every fortnightly for the days he worked and not for the holidays; there was no regular post of Boiler Operator in the respondent's office and, therefore, the Writ Appeal is liable to be dismissed.

7. Firstly, it is to be seen whether the claim of the appellant was res judicata. In W.P. No. 15051/1991, the appellant sought for regularisation of his services as a Boiler Operator, and the same was filed when the appellant was in service, whereas, I.D. No. 734/1997 was filed pursuant to his termination from service.

Therefore, it cannot be said that the claim of the appellant before the Labour Court was hit by res judicata.

8. Coming to the point, it is not in dispute that the appellant was a workman under the second respondent management. But, the only controversy is, whether the appellant was in continuous service to attract the provisions of Section 25-F of the Industrial Disputes Act, 1947. Section 25-F 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;

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

9. In this context, it is to be stated that unless the workman has put in continuous service for not less than one year, his case would not be governed by Section 25-F. Also, when the workman complains of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has terminated him from service.

10. Let us now see what is "continuous service". Section 25-B explains the term "continuous service". As per Sub-section (1), a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. Further, as per Sub-section (2)(a)(ii), where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than two hundred and forty days.

11. In order to construe that the workman has completed one year of continuous service under the management, firstly, it must be shown that he was employed for a period of not less than 12 calendar months and, next, during those 12 calendar months, he had worked for not less 5 than 240 days.

12. It is true, in cases of termination of services of daily waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman can only call upon the employer to produce before the Court the nominal muster rolls for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference would ultimately depend thereafter on the facts of each case. Mere affidavits or self-serving statements made by the workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. Pertinent it is to state that mere non-production of muster rolls by the employer per se without any plea by the workman will not be a ground for the Tribunal to draw an adverse inference against the management.

13. The appellant, in the claim petition, had only claimed that he continuously worked in the second respondent management for more than fourteen years from August 16, 1983 till June, 1997, as a temporary workman. But, nowhere in the petition, he stated that he worked for 240 days in continuous service within the meaning of Section 25-B. Besides, the appellant has not adduced any evidence to show that he worked for twelve months preceding the date of retrenchment i.e., June, 1997. The mere averment in the affidavit that he continuously worked for more than fourteen years would not satisfy the requirement of "continuous service", within the meaning of Section 25-B. Even if the period for which the appellant is alleged to have worked is taken into account as mentioned in his affidavit, still, the appellant has not fulfilled the requirement of completion of 240 days of continuous service. Moreover, the appellant was appointed only as a daily waged earner and not as a permanent employee of the management. Hence, the appellant cannot claim any right to the post in question and no right has accrued to him to claim any benefits from the management.

14. With regard to one more contention of the learned Counsel for the appellant that similarly situated persons were reinstated into service, it is seen that in W.P. No. 5057/2002, the employee had raised an industrial dispute as early as in the year 1988 and on consideration of the facts and evidence adduced in that case, the Labour Court found that his services were illegally terminated and, in that factual background of the case, another learned single Judge dismissed the batch of writ petitions, filed by the management. However, in the case on hand, there is no evidence to show that the appellant has put in continuous service of 240 days in a given year.

15. All the above aspects have been gone into in detail by the learned single Judge, while passing the order impugned. Therefore, we see no reason to interfere with the said order. As such, this Writ Appeal is dismissed. However, we make it clear that the dismissal of this Writ Appeal will not disentitle the appellant to the benefit of the observation made in W.P. No. 15051/1991, wherein it was observed that as and when the post of Boiler Operator was brought into existence in the respondent's Corporation, the second respondent

should consider the appellant's case for being appointed in that post.

16. No costs.