
(2014) 07 MAD CK 0224
In the Madras High Court
Case No : W.P. (MD) No. 641 of 2012

S. Balamurugan

APPELLANT

Vs

The Presiding Officer

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

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

Citation : (2014) 07 MAD CK 0224

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Judgement

S. Nagamuthu, J.—The challenge in this writ petition is the award of the Labour Court, Madurai in I.D.No.9 of 2004 dated 22.01.2011.

2. The facts arising out of this writ petition are as follows: The petitioner claims that he was appointed as Watchman in the year 1986 in the respondent State Transport Corporation and he was working in the said capacity without any break, for about 16 years. On 18.04.2002, according to the petitioner, he was orally removed from service. The last drawn monthly wages, according to the petitioner, was Rs.2,100/-. Challenging the said oral termination, the petitioner raised the above Industrial Dispute.

3. In the counter filed before the Labour Court, the second respondent herein submitted that the petitioner was never employed directly by the second respondent. According to him, the petitioner was engaged only as Contract Labour by means of an agreement. It is also stated that the said contract was renewed from time to time from 1997 onwards. The contract expired on 15.04.2002. According to the second respondent, the petitioner is not entitled for the benefit of Section 25-F of the Industrial Disputes Act, 1947, because, the termination of services of the petitioner was on account of non-renewal of the contract of employment, which falls within the ambit of Section 2(oo)(bb) of the Industrial Disputes Act.

4. Before the Labour Court, on the side of the workman, he was examined as W.W.1 and on the side of the Management, one C.R.Ramesh was examined as M.W.1. As many as 7 documents were exhibited on the side of the workman and 1 document was exhibited on the side of the Management.

5. Having considered the same, the Labour Court, Madurai, came to the conclusion that the petitioner was not directly employed as permanent employee under the second respondent. The Labour Court further came to the conclusion that he was employed only as Contract Employee and the said contract expired on 15.04.2002. The Labour Court further agreed with the second respondent that termination of the petitioner on account of non-renewal of the contract, would not amount to retrenchment as provided under Section 2(oo)(bb) of the Industrial Disputes Act. Thus, the Labour Court concluded that the petitioner was not entitled for any relief and accordingly dismissed the Industrial Dispute. Challenging the same, the petitioner is before this Court with this writ petition.

6. I have heard the learned counsel for the petitioner and the learned counsel for the second respondent and perused the records carefully.

7. Factually, according to the second respondent, the petitioner was employed only as Contract Labour, which expired on 15.04.2002. Regarding this aspect, there is no material available on record to disagree with. Therefore, I have to commence further discussion on the factual background that the petitioner was employed only as a Contract Labour and the said contract expired on 15.04.2002. Now the legal question is, whether this will amount to retrenchment and whether the petitioner would be entitled for reinstatement in service for non-observance of Section 25-F of the Industrial Disputes Act. In this regard, the learned counsel for the petitioner relies on a Division Bench Judgment of this Court in Manager (P and A), Oil and Natural Gas Corporation Ltd. Vs. G. Radhakrishnan, .

8. I have gone through the said case very carefully. In that case also, the workman therein was employed by way of a Contract. He worked as Contract Employee for several years. Finally, he was terminated from service. He raised an Industrial Dispute challenging the same. In that case also, the contention of the Management was that since he was only a contract employee, as per Section 2(oo)(bb) of the Industrial Disputes Act, the same will not amount to retrenchment and therefore, the termination cannot be found fault with. This contention was negated by the Division Bench for more than one reason. According to the Division Bench, if the requirement of the services of an individual is for a fixed period, that too for a shorter period, certainly the Management can employ the individual on contract basis, and thereafter terminate the contract or refuse to renew the contract. In such a case, the termination would not amount to retrenchment. But when the services of an individual is required perennially for a long time, as a matter of fact, the individual is so employed for such a long period by renewing the contract periodically, according to the Division Bench, this will amount to unfair labour

practice. The Division Bench has further held that termination of such employee though employed as a contract labour, would amount to retrenchment and the same shall not be saved by Section 2(oo)(bb) of the Industrial Disputes Act. The Division Bench has further held that the employer cannot be allowed to abuse or misuse Section 2(oo)(bb) of the Industrial Disputes Act, so as to deprive the poor workman from claiming his benefits under the Industrial Disputes Act. The Division Bench has further held that the Industrial Disputes Act, being a benevolent Act, should be construed so as to ensure that the fruits of the Act reach the poor workman.

9. Pausing for a moment, let me now extract Paragraph-22 of the judgment of the Division Bench:

22. The above referred to decisions on 'interpretation of S. 2(oo)(bb)' explain the legal position to the effect that a claim of an employer on a term based employee providing for automatic termination whether within the terms fixed or on expiry of the said term, cannot be taken for granted to sustain the order of termination. On a plain reading of S. 2(oo)(bb), it is quite clear that such term based employment would fall outside the scope of 'retrenchment' is long as the requirement of such fixed period of employment was bona fide required by the employer. It was, therefore, repeatedly pointed out that such excepted categories required a rigorous test rather than accepting the plea of employer on its face value or otherwise it would cause serious prejudice to an employee, who can be taken for a ride by unscrupulous employers by contending that the term of employment was for specific period though as a matter of fact such period of employment lasted quite for a long spell, In other words even though the requirement of employment was perennial by adopting the methodology of employing a person for a specific period as many a times, an unscrupulous employer can always resort to abusing the provision contained in S. 2(oo)(bb) to thwart the other statutory protection available to an employee under S. 2(oo), namely, in the case of a 'retrenchment' vis-a-vis the consequential benefits contained under S. 25F of the Industrial Disputes Act. Therefore, when such extraordinary circumstances are brought out in the matter of employment and termination is resorted to by taking umbrage under S. 2(oo)(bb) of the Industrial Disputes Act, in the interest of justice, we are of the view that a close scrutiny of the real position will have to be necessarily made to rule out the possibility of any injustice being caused to an employee. It cannot be lost sight of that S. 2(oo)(bb) is specifically meant to cover only such employment which would be needed for an employer for a specific period alone and beyond which the requirement will not be there, and even on such occasions, the employer should not be put into an unnecessary predicament of facing the other consequences that would normally occur while resorting to retrenchment. The benefit of the said exception will have to be strictly restricted to such specific situations alone and the same cannot be allowed to be misused or abused by the employers even in regard to cases where the nature and requirement of employment is perennial.

10. A close reading of the above judgment would clearly go to show that in the case on hand also, the petitioner was employed for 16 years by renewing the contract periodically and hence he is entitled for the benefits of Section 2(oo)(bb) of the Industrial Disputes Act and Section 25-F cannot be applied to the facts of the present case. Allowing termination to be perpetrated in the instant case, would only amount to allowing the respondent Management to abuse Section 2(oo)(bb) of the Industrial Disputes Act.

11. In view of the settled position of law, as held by the Division Bench, in the instant case, since the petitioner had been working for 16 years continuously and he was terminated without following Section 25-F of the Industrial Disputes Act, he is entitled for reinstatement.

12. Now, turning to the continuity of service, in my considered opinion, the petitioner is not entitled for continuity of service, because his employment was only on the basis of contract. When this was pointed out, the learned counsel for the petitioner submitted that the petitioner may be reinstated in service at least as a fresh entrant. The said statement is recorded.

13. Accordingly, I hold that the second respondent shall reinstate the petitioner in service as a fresh entrant. So far as the back wages are concerned, I hold that the petitioner is not entitled for the same, because he was only a contract employee.

14. In view of all the above, the writ petition is allowed and the award of the Labour Court, Madurai is set aside, the Industrial Dispute is allowed and the second respondent is directed to reinstate the petitioner in service as a fresh entrant, providing the last drawn wages to the petitioner, prospectively. It is further directed that the petitioner shall not be entitled for continuity of service as well as the back wages. The second respondent shall reinstate the petitioner in service, within a period of four weeks from the date of receipt of a copy of this order. No costs.