
(2008) 01 MAD CK 0238

In the Madras High Court

Case No : Writ Petition No. 6356 of 2005

S. Ramalingam

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-01-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 25G

Citation : (2008) 01 MAD CK 0238

Hon'ble Judges : P.K. Misra, J;K. Chandru, J

Bench : Division Bench

Advocate : V. Ajayakumar, for the Appellant; S. Rajasekar, ACGSC for Respondents 1-4, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard the arguments of Mr. V. Ajayakumar, learned Counsel for the petitioner and Mr. S. Rajasekar, learned Additional Central Government Standing Counsel representing the respondents 1 to 4 and have perused the records.

2. Aggrieved by the order of the Central Administrative Tribunal [for short, "CAT"] dated 30.9.2002 made in O.A. No. 509 of 2002 dismissing the case of the petitioner, the present writ petition has been filed. The petitioner along with another person, by name V. Calavady, filed two Original Applications.

3. The petitioner was appointed as a Helper in the Unit Run Canteen at NCC Headquarters at Puducherry with consolidated pay of Rs. 800/- by the fourth respondent. The All India Defence Civilian Canteen Employees' Union, which is an Union of Canteen Employees in the three Armed Forces filed a writ petition before the Supreme Court in Union of India v. A. Aslam 2001 (1) SCC 720 wherein the Supreme Court held that the employees working in the Defence Canteen are central Government employees and gave certain directions with reference to these employees. Thereafter, on the basis of the order of the

Supreme Court, the fourth respondent issued an order dated 01.02.2002 bringing his post under time scale of pay and also demanded a cash security to be paid in instalments. However, within a month after the date of the order, his services were terminated without any reason. Though it was claimed that he continued to work in the canteen, he was not permitted to sign the Attendance Register. During the month of March, the salary to the petitioner was paid along with arrears. But, however, by the impugned order, he was informed that his services have become surplus in the Union Run canteen. The petitioner sent a representation dated 27.5.2002 against the order of termination and requested them to recall the same. But since there was no reply, he was forced to file O.A. No. 509 of 2002 and the same was heard along with O.A. No. 508 of 2002.

4. A reply affidavit was filed by the respondents wherein the averments made by the petitioner were accepted. It was contended that the petitioner was found surplus and out of six staff employed in the Canteen, only four were required. Therefore, the services of the petitioner, whose name was found in serial No. 6, were terminated.

5. The Tribunal, accepting the said contention, rejected the case of the petitioner and it held in paragraph 10 that the Board of Officers Running the Union Run canteen met on 30.01.2002 and decided that the petitioner along with the other applicant became surplus. But it was held that one Mr. Nagash, who was Ex-Havildar, who had put in only two months of service, was retained even though the applicant had put in 1-1/2 years service. This was on the basis that the canteen is a welfare measure for retired and serving employees. Therefore, the retired Army person can be preferred over a Civilian employee.

6. In this context, Mr. V. Ajayakumar, learned Counsel appearing for the petitioner brought to the notice of this Court the decision of the Supreme Court reported in 2004 (10) SCC 609 Dharma Nand and Anr. v. Union of India and Ors. and contended that once an employee is treated as a Government servant following the judgment of the Supreme Court in M. Aslam's case (cited supra), his services cannot be dispensed with under the sweet will and pleasure of the officers and the action of the respondents should be informed with reason and it cannot be arbitrary. In this context, he referred to paragraph 5 of the said judgment, which is as follows:

Para 5: We are of the view that if these petitioners should have been treated as government servants, the services could not have been terminated on the ground that their services were no longer required. The only ground stated for terminating service was that it was only for 5 years? tenure and their services were no longer required. We hold that termination was illegal and the petitioners are entitled to be reinstated in service forthwith. The petitioners are also entitled to get consequential benefits. The petitioners are entitled to get consolidated amount from the date of the termination till the date of judgment in Union of India v. M. Aslam, namely, 4-1-2001 and from that date till reinstatement they shall be paid minimum of the pay scale applicable to their counterpart serving in

the CSD canteens.

7. Mr. S. Rajasekar, learned Additional Central Government Standing Counsel, produced the minutes of the Board of Officers wherein it is clearly shown that the petitioner had 1-1/2 years of service and Ex-Havildar Nagesh had only two months of service. It is also admitted that the terms and conditions of service of the Unit Run Canteen employees were governed by the Rules appended with the covering letter dated 14.9.2001. He produced a circular dated 28.4.2003 with regard to the Rules regulating the terms of conditions of Civilian Employees of Unit Run Canteen paid out of Non Public Fund. Even otherwise, it has been stipulated u/s 25G of the Industrial Disputes Act, 1947 that in the matter of retrenchment, the rule of seniority will have to be followed and the golden rule of seniority is "last come first go". The principles evolved in the industrial jurisprudence has also been adopted in the service law See: Inder Pal Yadav and Others Vs. Union of India (UOI) and Others, and, therefore, there is no gain saying by the respondents that they will have pick and choose policy not based upon either on constitutional principles or principles of industrial law. Even the service rules framed in respect of them does not show that any such preference can be made.

8. In fact, in the present case, the petitioner has been brought under time scale of pay and, therefore, unless during the period of probation, he had committed any misconduct and if proved, his services can be dispensed with otherwise, it cannot be said that he had become surplus to the requirements of the respondents.

9. Under the above circumstances, we have no hesitation to hold that the order of the Tribunal dated 30.9.2002 is liable to be set aside and accordingly, it is set aside and the writ petition will stand allowed as prayed for. The respondents are directed to comply with the said order within a period of four weeks from the date of receipt of a copy of this order. However, there will be no order as to costs.