
(2016) 12 KL CK 0045

In the High Court Of Kerala

Case No : W.P.(C) Nos. 21068 of 2006 & 226 of 2014

Secretary, Kerala State Electricity Board

APPELLANT

Vs

The Industrial Tribunal

RESPONDENT

Date of Decision : 17-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2

Citation : (2017) 1 LLJ 744

Hon'ble Judges : A. Muhamed Mustaque, J.

Bench : Single Bench

Advocate : Sri. P. Santhalingam, Senior Advocate, Sri. Raju Joseph, Senior Advocate, Smt. Aneetha A.G., SC, Sri. C.K. Karunakaran, Sri. S. Sharan, SC, K.S.E. Board, Sri. K.T. Paulose, SC, KSEB, for the Petitioner; Sri. S. Gopinathan, Government Pleader, for the Resp

Final Decision : Dismissed

Judgement

A. Muhamed Mustaque, J.—These writ petitions are arising from the award passed in ID No.12/1998 of the Industrial Tribunal, Idukki. Therefore, both writ petitions are heard together and disposed of, as follows, by a common judgment.

2. WP(C) No.21068/2006 is filed by the Kerala State Electricity Board (hereinafter referred to as, "the Board") and WP(C) No.226/2014 is filed by the workmen, whose dispute was espoused by the union in ID No.12/1998.

3. The Board engaged 14 persons as petty contractors in the inspection bungalows of the Board at Vazhathoppu, Karimanal and Pambla in Idukki. These petty contractors raised the industrial dispute claiming absorption in regular service of the Board. The Government referred the dispute for adjudication by the Industrial Tribunal, Idukki, as follows;

"Whether the 14 persons engaged in the inspection bungalows of Kerala State Electricity Board at Vazhathoppu, Karimanal and Pambla, Idukki can be termed

as workman as defined in the Industrial Disputes Act, 1947 and whether they are to be absorbed in the Kerala State Electricity Board in the posts in which they are working? If not, the benefit to which they are entitled?"

4. The tribunal, holding that these petty contractors, though styled as contractors, are engaged on a contract of service and therefore, they are workmen as referable under the Industrial Disputes Act, found that these workmen are not eligible for regularization and their service has to be terminated on completion of the contract. It was also noted that the post, in which the workmen were engaged, is liable to be filled up through Kerala Public Service Commission. It was further ordered that in the event of these workmen happen to be retrenched for appointment by the Public Service Commission, they shall be paid retrenchment compensation. Challenging this award, the Board has come up with WP(C) No.21068/2006. The workmen have come up with WP(C) No.226/2014 to implement the award and to extend the benefits due to them under the award.

5. The Board contended before the Tribunal that they have engaged these workmen as petty contractors and their contract is being extended from time to time. It was their case that considering the nature of the work being carried on by the workmen, they are provisionally engaged as petty contractors. It was also argued that the inspection bungalows, in which the petty contractors are engaged, are not permanent establishments of the Board. It was the case of the Board that they have put up temporary constructions and the said temporary constructions are intended for accommodation of the officers, who will have to travel for official purposes in connection with the inspection of the work in respect of the Lower Periyar H.E. Project. Therefore, according to the Board, as soon as the construction is over, they will dismantle the entire temporary structures. Thus, it was contended that the petty contractors are provisionally engaged till the completion of the project and as soon as the project is completed their service will be terminated. To sum up the contentions of the Board, the Board's case is that these persons were engaged as petty contractors provisionally till the completion of the project. The relationship, according to the Board, is, thus, a contract for service with the persons engaged.

6. On the other hand, the workmen claimed that though they are styled as petty contractors, actually, the work they perform and the duties they discharge are that of a workman, under the direct supervision and control of the officers of the Board. It was their case that most of them have completed more than 3 to 10 years under the Board.

7. The tribunal overruled the contention of the Board that the relationship between the persons engaged by the Board is that of under contract for service and found that the relationship is of contract of service, thereby implying that there exists employer and workman relationship. However, the tribunal declined the relief of absorption into regular service, finding that the post in which the persons were engaged as petty contractors, is liable to be filled up by the PSC. It

is to be noted that there is no challenge against this finding of the tribunal. Therefore, the only question now remains is whether the award of the tribunal is liable to be interfered with to the extent it holds that there is employer - workman relationship between the Board and the 14 persons referred therein.

8. It is to be noted the 14 persons are engaged in connection with the Lower Periyar H.E. Project at the inspection bungalows of the Board. There is no dispute as to the fact that the inspection bungalows are of temporary nature and erected only for the purpose of commission of the Lower Periyar H.E. Project. The tribunal had found that these 14 persons are not liable to be absorbed into regular service taking note of the nature of engagement. The definite finding of the tribunal is that these 14 persons are engaged under a contract of service. Therefore, they would be entitled for retrenchment compensation if their service happens to be terminated after the completion of the contract. The findings of the tribunal is that the 14 persons shall be paid retrenchment compensation if their service is terminated to accommodate the candidates by PSC or in the event of the project is completed.

9. The learned Standing Counsel for the Board would submit that having found that these 14 persons are engaged under contract of service, in the light of the definition of "retrenchment" as referred under Section 2 (oo)(bb) of the Industrial Disputes Act, 1947, compensation ought to have been rejected. It is further argued that the engagement of the 14 persons was as petty contractors and there was no employer-employee relationship.

10. On the other hand, the learned counsel for the 14 persons would argue that the tribunal found that there exists employer-employee relationship and therefore, they are entitled for retrenchment compensation if their service is terminated before completion of the project or in the event of the completion of project under Section 25O of the Act (closure).

11. There is hardly any dispute to the fact that these 14 persons were engaged by the Board under a contract. The Board has admitted this contract as a contract for service. This was found against them by the tribunal. The tribunal, after appreciating the evidence on record, found that the nature of contract of service implied that there exists employer-workman relationship. The term, "contract", would mean that the relationship continues till the fulfilment of terms and conditions of the contract. Admittedly, the 14 persons were engaged at the inspection bungalow, which was temporarily erected for the commission of Lower Periyar H.E. Project. Therefore, it is to be understood that the nature of relationship between the Board and 14 persons is that of under a contract to mean that they are engaged till the project is over. The tribunal did not find any "unfair labour practise" on account of the engagement under a contract. If that be so, certainly the tribunal ought to have ordered regularization of the workmen, holding that they are entitled to be absorbed into service in the light of the definition of "unfair labour practise" as referred in Schedule V Clause 10 r/w Section 2(ra). However, there is no such finding by the tribunal. Further, the 14

persons have not chosen to challenge the award. Therefore, it is to be concluded that the engagement of 14 persons can be termed as, "contractual workmen" under a contract of service.

12. The next question is whether they are entitled for retrenchment compensation. Section 2(oo)(bb) of the Act rules out such compensation being paid to the workmen, whose service has been terminated on completion of the contract. But, the learned counsel for the workmen, relying upon the judgment in *S.M. Nilajkar & Others v. Telecom District Manager, Karnataka* [(2003) 4 SCC 27], would argue that since the engagement of the 14 persons was specifically for a project, they would be entitled for retrenchment compensation if their service is terminated prior to the completion of project or on closure in the event of the project is being wound up. In paragraphs 13 & 14 of the above judgment, it was held by the apex court as follows;

"13.The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied :

- (i) that the workman was employed in a project or scheme of temporary duration;
- (ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project;
- (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract; and
- (iv) the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.

14. The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or up to the occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complain that by the act of the employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the above said ingredients so as to attract the applicability of sub-clause (bb) above said. In the case at hand, the respondent employer has failed in alleging and proving the ingredients of sub-clause (bb), as stated herein above. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want of proof attracting applicability of

sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment.

13. This Court is of the view that if the workmen have a case that their service has been terminated prior to the completion of the project, it is for them to seek compensation in the light of the decision in S.M. Nilajkar's (cited supra) case. However, with respect to the claim for retrenchment compensation on account of the completion of the project, this Court is of the view that the workmen will not be entitled for any such benefit in the light of the definition of retrenchment. According to me, the question of paying compensation in the event of winding up of the project, also does not arise in this case. Admittedly, the workmen were engaged under a contract. The term, "closure", is defined under Section 2(cc) of the Act as follows;

"(cc) "closure" means the permanent closing down of a place of employment or part thereof;"

The completion of project, in which the workmen engaged, cannot be considered or treated as a closure of a place of employment. The workmen have no case that they were not engaged under a contract and have no knowledge that this employment was short-lived to claim any compensation in the light of S.M. Nilajkar's (cited supra) case.

14. With the above observation, WP(C) No. 21068/2006 is allowed, setting aside the direction of the tribunal to pay compensation in the event of the project being wound up on its completion.

15. In view of the judgment allowing WP(C) No.21068/2006, WP(C) No.226/2014 has to be dismissed as the prayer therein is for reinstatement, back wages and other benefits. Accordingly, WP(C) No.226/2014 is dismissed.

16. However, if any benefit accrues to the 14 persons in WP (C) No.226/2014 pursuant to the judgment in WP(C) No.21068/2006, they are free to take up the matter in appropriate manner. It is also made clear that if any of the 14 persons is engaged even after the termination of the project, this judgment will not stand in the way of such persons to take up their claim for regularization in appropriate manner.