
(2015) 10 KL CK 0163
In the High Court Of Kerala
Case No : WP(C) No. 28189 of 2009 (P)

Sreekumar K.

APPELLANT

Vs

The Managing Director, K.T.D.C. Ltd. and Others

RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2016) 148 FLR 497 : (2015) 4 LLJ 716

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : T. Rajasekharan Nair, for the Appellant; B. Gopakumar and Chincy Gopakumar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.V. Ramakrishna Pillai, J—Ext. P4 passed by the Labour Court, Kollam is under challenge in this writ petition.

2. The petitioner alleges that he was an employee of the first respondent corporation since 20.12.1990. According to him, the respondent management after a continuous period of about seven years of service, terminated his service on 13.10.1997 without any reason or prior notice. The petitioner raised a dispute which was ultimately referred on 18.11.1998 by the Government to the Labour Court, Kollam for adjudication. The parties entered appearance and filed their statements. The Labour Court after considering the evidence, dismissed the claim by Ext. P4 award. It is with this background, the petitioner has approached this Court.

3. No counter affidavit has been filed by the respondents.

4. I have heard the learned counsel for the petitioner and the learned counsel for the respondent management.

5. The case of the petitioner is that he, who has completed degree course, was

engaged as a waiter on daily wages in Hotel Samudra, Kovalam, which is a unit of respondent management from 20.12.1990. According to the petitioner, from that date, he worked as such in various units of the respondent management till 12.10.1997. According to him, his service as regular workman was terminated on 13.10.1997 without assigning any reason or serving any notice, and without paying any compensation. Therefore, according to the petitioner, it amounts to illegal retrenchment.

6. The case of the petitioner is that though he had continuous service as waiter from 20.12.1990, the respondent management has wrongly described his tenure as waiter trainee during the period from 1.2.1995 to 1.2.1997, only to defeat his claim as a workman. His further case is that ever since his retirement, he remains unemployed and has no means of livelihood.

7. The respondent management contended that the petitioner was engaged as the waiter on daily wages at Agasthya House, Neyyar Dam, Thiruvananthapuram, which is a unit under respondent management from 21.10.1991 to 10.11.1993. However, the engagement was intermittent.

8. It is the further case of the petitioner that he was engaged as casual/seasonal worker at the Sabala Restaurant and Beer Parlor, Kovalam and he was engaged as a waiter-trainee on a monthly stipend of Rs. 600/- for a period of one year as per order dated 30.1.1995 based on his application as per the HRD Training Scheme adopted by the respondent management. Therefore, according to them, the petitioner was not at all a regular or permanent employee appointed following the usual recruitment procedure and his intermittent engagement was only as an casual/seasonal worker. Therefore, he was terminated from his casual engagement and training w.e.f. 13.10.1997. As his engagement being casual/seasonal worker and as he was not appointed on permanent basis, he was not entitled for any notice or other benefits before the termination of his engagement.

9. The learned counsel for the petitioner invited my attention to the decision of the Apex Court in *Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana)*, (2010) 125 FLR 629 : (2010) 4 JT 229 : (2010) 4 SCALE 203 : (2010) 5 SCC 497 : (2010) 3 SLR 663 would submit that non compliance with clauses (a) and (b) of Section 25F of the Industrial Disputes Act, 1947 render retrenchment a nullity and the burden lies on employer to lead tangible evidence as to the compliance with clauses (a) and (b) of Section 25F. The learned counsel also relied on the decision of the Apex Court in *Ramesh Kumar Vs. State of Haryana*, AIR 2010 SC 683 : (2010) 126 FLR 55 : (2010) 3 JT 184 : (2010) 1 LLJ 841 : (2010) 1 SCALE 432 : (2010) 2 SCC 543 : (2010) 1 SCC(L&S) 420 : (2010) 2 SCR 532 : (2010) AIRSCW 897 wherein it was held that in case of termination of casual employee what is required to be seen is whether he has completed 240 days of service in preceding 12 months or not. Referring to the decision of *Bharat Sanchar Nigam Ltd. Vs. Man Singh*, (2012) 132 FLR 500 : (2012) 1 SCC 558 : (2012) 1 SLJ 199 it was argued that though in all cases the relief of reinstatement cannot be said to be justified, monetary

compensation would meet the ends of justice.

10. The Labour Court dismissed the claim for the reason that the petitioner was not having continuous service of atleast one year and he was not a permanent employee, and was not appointed following the procedural formalities and, therefore, it is not entitled for compensation or other reliefs consequent to his termination with effect from 13.10.1997. The learned counsel for the petitioner would submit that the aforesaid finding is wrong as the petitioner, though a casual employee, has worked in the unit of the respondent management for more than 245 days, he should not have been retrenched without any notice and, therefore, the retrenchment is illegal. It was also pointed out that the petitioner was entitled to get monetary compensation.

11. The petitioner, who gave evidence as WW1, has produced Ext. W1 to justify his claim that he was employed as waiter in various units of the management from 20.12.1990 to 12.10.1997. Ext. W1 is the experience certificate issued by the unit in charge of the respondent management wherein it is stated that he has been working as waiter on daily wages from 21.10.1991 to 10.11.1993. However, the Labour Court was not inclined to place reliance on the same.

12. According to the petitioner, he was a waiter and the management has wrongly described him as a waiter trainee during the period from 1.2.1995 to 1.2.1997 and it was deceptive a guise to defeat his claim. Ext. W2 is a letter dated 21.8.1996 issued by the Manager of Agasthya House whereby the petitioner was described as waiter trainee who was relieved with a direction to report before the Mascot Hotel, Thiruvananthapuram for training.

13. The Labour Court placed reliance on the testimony of the petitioner in cross examination, who gave evidence as WW1, that he was not aware of the proceedings of appointment in service of the management and he has not submitted any application for appointment pursuant to the notification inviting application for appointment. He has also admitted in cross examination that he has submitted an application on 31.1.1995 for engagement as waiter trainee with the explanation that submission of such an application was because of the treat posed by the management that the employment would be refused in case of his failure to submit such an application. It was found by the Labour Court that the petitioner, who asserted continuous employment as waiter from 20.12.1990 to 12.10.1997 had not attempted to cause the production of the document showing his employment during the period from the custody of the management. Therefore, the Labour Court found that no weightage could be given to Ext. W1 to substantiate the claim of the petitioner. I see no reason to disturb the said finding.

14. It is an admitted case that the petitioner was only a casual employee. Even for claiming the benefit under Section 25F of the Act, the petitioner has to prove by cogent evidence that he was employed as a workman for 245 days during the period of the one year. As the evidence in this regard is lacking, the Labour Court

was justified in rejecting the petitioners claim in toto. Therefore, this Court of the definite view that there is no reason to interfere with the impugned award.

In the result, the writ petition is dismissed.