

(2013) 08 KAR CK 0079

In the Karnataka High Court

Case No : Writ Appeal No's. 319-320 of 2010 C/w Writ Appeal No. 153 of 2010
and Writ Appeal No. 3009 of 2010 (L-TER)

Sri C.M. Suresh and Sri D.R. Satish

APPELLANT

Vs

The Managing Director, BESCOM
 The Managing
Director, BESCOM Vs Sri C.M. Suresh and Sri D.R. Satish

RESPONDENT

Date of Decision : 20-08-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Industrial Disputes Act, 1947 — Section 10(4-A), 2(oo)(bb), 25-F

Citation : (2014) 2 AKR 97 : (2014) LabIC 1595

Hon'ble Judges : V. Suri Appa Rao, J;N. Kumar, J

Bench : Division Bench

Advocate : V.S. Naik, in WA Nos. 319-320/2010 and Sri M.R.C. Ravi, in W.A. No. 153/2010 and W.A. No. 3009/2010, for the Appellant; M.R.C. Ravi in WA Nos. 319-320/2010, Sri V.S. Naik and Smt. Manjula N. Kulkarni for R1 and R2 in W.A. No. 153/2010 and W.A. No. 3009/2010, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—These appeals are preferred against the order passed by the learned Single Judge who upheld the award of the Labour Court, but directed payment of Rs. 75,000/- as compensation to each of the workmen. For the purpose of convenience, the parties are referred to as they are referred to before the Labour Court.

2. The workmen were selected in the interview on 30.12.1999 for execution of works "on contract basis" and were appointed on consolidated remuneration of Rs. 1,553/- p.m. for a period from 17.01.2000 to 31.03.2000. Clause-4 of the appointment order at Annexure "R10" categorically states that if the workmen are found unsuitable for the job on joining the work, the contract is liable for termination, without any notice. After such appointment, clause-3 of the said order makes it mandatory that the workmen should furnish an agreement on a stamped paper of Rs. 100/- conditions of which shall be binding on them during

the period of contract. It also makes it clear that the workmen shall not have any claim/right for continuation of service of permanency in the Board/Corporation and shall have no preference for future appointments to any cadre in the Board/Corporation. Accordingly, the workmen have executed an agreement on 02.05.2000. Clause-6 of the agreement makes it clear that the services of the workmen shall be liable for termination even before the expiry of the period stated in clause-1 above for whatsoever reason without notice. However, if not terminated earlier, the services stand terminated automatically on the expiry of the said period. After the expiry of the said period, the services of the workmen were continued again from 02.05.2000. Again they were called upon to execute an agreement which they have done. Even within the extended period, the work for which they were employed could not be completed from time to time. After obtaining sanction, the services of the workmen were extended for three months or six months. The order according such extension has been produced. However, the workmen were not continued from service from 28.04.2004. As they were denied work, they raised an industrial dispute u/s 10(4-A) of the Industrial Disputes Act, contending that their termination is contrary to Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for short) and therefore, they are entitled to reinstatement with full backwages. The Management contested the matter. It is their specific case that they were all appointed on contract basis. The period of contract was extended from time to time. Once the purpose for which they were appointed was accomplished, their services were not continued. The termination of the services of the workmen on the expiry of the contract period does not amount to retrenchment as it falls under Clause (bb) of Section 2(oo) of the Act and therefore, they are not liable to pay any retrenchment compensation before such termination. The Labour Court framed the following three issues:

1) Whether the second party proves that the services of the first party workman was temporary and on contractual terms?

2) Whether the first party workman proves that he was illegally terminated from service w.e.f., 28/4/2004?

3) To what relief, the first party workman is entitled?

3. The workmen in support of his case adduced evidence. C.M. Suresh was examined as WW1 and he got marked 30 documents which were marked as Exs.W1 to W30. On behalf of the Management an official was examined as MW1 and they also produced 35 documents which are marked as Exs.M1 to M35. Before the Labour Court, three workmen were involved. The Labour Court, on appreciation of the aforesaid oral and documentary evidence on record held that the workmen were appointed on contract basis and in terms of the stipulation contained in the contract their services have been terminated. Therefore, the case falls under clause (bb) of Section 2(oo) of the Act and it does not amount to retrenchment. Therefore, their claims came to be dismissed.

4. Aggrieved by the said award, the workmen preferred writ petition before this Court. The learned Single Judge after hearing the parties though declined to interfere with the award of the Labour Court, was of the view that the Management had exploited the services of the workmen on contract basis and therefore, monetary benefit could be extended to such workmen. Therefore, the learned Single Judge awarded a sum of Rs. 75,000/- to the workmen towards full and final settlement including all the benefits payable within two months from the date of receipt of a copy of the order. Aggrieved by the said order of the learned Single Judge, both the workmen as well as the Management have preferred these appeals.

5. Sri V.S. Naik, learned Counsel appearing for the workmen contended that the fact that the workmen were appointed on contract basis is not in dispute. The order of appointment is before the Court. A specific period is prescribed in the said order of appointment. After the issue of two such appointment orders though the workmen were continued in service for nearly four years two months there was no order of appointment prescribing the period for such appointment. Therefore, admittedly they have worked for more than 240 days in a year. They are "workmen" as defined under the Act and before terminating their services the mandatory requirements contemplated u/s 25F has not been complied with. It is a case of illegal retrenchment. Therefore their termination is liable to be set aside and they ought to have been reinstated into service with full consequential benefits including back wages. Therefore, he submits that both the order of the Labour Court as of well as the learned Single Judge requires to be interfered with and an order of reinstatement with full backwages is to be passed.

6. Per contra, the learned Counsel appearing for the Management contends that, though only two orders were issued initially, the proceedings produced before the Court clearly demonstrates that before the expiry of the term stipulated earlier, a request was made for extension of the services by three months or six months and after obtaining such approval, the period was extended from time to time by three months or six months. Therefore, the argument that no period is stipulated for their continuation and hence, the case would not fall under Clause (bb) of Section 2(oo) of the Act, is not correct. Once in view of the aforesaid facts, if the case falls under Clause (bb) of Section 2(oo) of the Act, it is not retrenchment and therefore, Section 25F is not attracted. The learned Single Judge committed serious error in awarding compensation for a sum of Rs. 75,000/- on the ground that the Management has exploited the services of the workmen. There is no basis for such conclusion. There was no advertisement. These workmen knowing very well at the time of appointment that their term is for specific period, are appointed on contract basis and at the expiry of the term or even before the expiry, their services could be terminated have accepted the employment. Therefore, the order passed by the learned Single Judge awarding Rs. 75,000/- as compensation is liable to be set aside.

7. In the light of the aforesaid facts and rival contentions, the point that arises

for our consideration in this appeal is:

Whether the termination of these workmen falls within the definition of clause (bb) of Section 2(oo) of the I.D. Act, 1947?

8. It is clear from the appointment order, the workman was appointed for a specific period. Two appointment orders are produced before the Court. Thereafter when their services were continued, prior to continuation of the service, request was made to the higher authorities for approval to continue their services for a period of three months or six months as the case may be and after obtaining such permission, the said service was continued for a period of three months or six months. It has been done on several occasions. Therefore, on the expiry of the said extended period when the services of the workmen is terminated, it does not amount to retrenchment. Therefore, they are not liable to pay any compensation. However, the learned Counsel for the workmen points out, though in the two appointment orders period is specifically specified, subsequently no such appointment orders are issued. The material now produced before the Court is in the nature of an internal correspondence. The law expects the stipulation to be contained in the order of appointment. When their services is continued without an order of appointment, there was no stipulation and therefore clause (bb) of Section 2(oo) is not attracted.

9. In support of his contention, he relies on an unreported judgment of this Court in the case of R.R. Kulam v. M/s. Bhagyalakshmi Sahakara Sakkare Karkhane Niyamit Khanapur, in Writ Appeal No. 905/1999 delivered on 21.01.2002 wherein while interpreting the aforesaid provision it has been held at para-11 as under:

11. A careful reading of clause (bb) of Sec. 2(oo) would show that Appellant's case did not fall under the exception stated in clause(bb). The temporary appointment of appellant was for a period of six months. If the temporary appointment had been terminated at the end of six months, or if the appointment had been terminated prior to six months by virtue of the stipulation contained in the order of appointment enabling termination, the matter would have been covered under clause (bb). In this case, as noticed above, the termination was neither at the end of six months nor within six months in pursuance of the stipulation for earlier termination, contained in the letter of appointment. The termination was more than one and a half years after the appointment. Therefore, the contention of the management that the termination of services of appellant does not amount to retrenchment cannot be accepted.

10. Reliance was also placed on the judgment of the Hon''ble Apex Court in the case of Devinder Singh Vs. Municipal Council, Sanaur, wherein it has been held as under:

25. In furtherance of the aforesaid resolution, the respondent engaged the appellant, who was already in its employment, as a Clerk for a period of six months on contract basis on consolidated salary of Rs. 1,000/- per month. At the end of six months, the respondent passed another resolution dated November

30, 1995 and again employed the appellant for a period of six months from November 1, 1995 to April 20, 1996. This exercise was repeated in 1996 and the appellant's term was extended for six months from May 1, 1996. However, his engagement was discontinued w.e.f. September 30, 1996 without giving any notice or pay in lieu thereof and compensation as per the requirement of Clauses (a) and (b) of Section 25F of the Act. It is true that the engagement of the appellant was not preceded by an advertisement and consideration of the competing claims of other eligible persons but that exercise could not be undertaken by the respondent because of the ban imposed by the State Government. It is surprising that the Division Bench of the High Court did not notice this important facet of the employment of the appellant and decided the writ petition by assuming that his appointment/engagement was contrary to the recruitment rules and Articles 14 and 16 of the Constitution. We may also add that failure of the Director, Local Self Government, Punjab to convey his approval to the resolution of the respondent could not be made a ground for bringing an end to the engagement of the appellant and that too without complying with the mandate of Section 25F(a) and (b).

11. Again in the case of Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana), wherein it has been held as under:

18. The stage is now set for considering whether the respondent had offered compensation to the appellant before discontinuing his engagement/employment, which amounts to retrenchment within the meaning of Section 2(oo) of the Act. In his statement, the appellant categorically stated that before discontinuing his service, the respondent did not give him notice pay and retrenchment compensation. Shri Ram Chander, who appeared as the sole witness on behalf of the respondent stated that the compensation amounting to Rs. 5,491/- was offered to the appellant along with letter Exhibit M-1, but he refused to accept the same. The respondent did not examine any other witness to corroborate the testimony of Ram Chander and no contemporaneous document was produced to prove that the compensation was offered to the appellant on April 25, 1998. Not only this, the respondent did not explain as to why the demand draft was sent to the appellant after more than three months of his alleged refusal to accept the compensation on April 25, 1998. If there was any grain of truth in the respondent's assertion that the compensation was offered to the appellant on April 25, 1998 and he refused to accept the same, there could be no justification for not sending the demand draft by post immediately after the appellant's refusal to accept the offer of compensation. The minimum which the respondent ought to have done was to produce the letter with which draft was sent at the appellant's residence. The contents of that letter would have shown whether the offer of compensation was made to the appellant on April 25, 1998 and he refused to accept the same. However, the fact of the matter is that no such document was produced. Therefore, we are convinced that the finding recorded by the Labour Court on the issue of non-compliance of Section 25F of the Act was based on correct appreciation of the

pleadings and evidence of the parties and the High Court committed serious error by setting aside the award of reinstatement.

12. Again in *Harjinder Singh Vs. Punjab State Warehousing Corporation*, , the Apex Court at para-23 wherein it has been held as under:

23. Of late, there has been a visible shift in the Courts approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalization are fast becoming the *raison d'être* of the judicial process and an impression has been created that the constitutional Courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman-employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The Courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood. It need to emphasis that if a man is deprived for his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equity of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the Courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer - public or private.

13. Per contra, the learned Counsel for the Management has relied on a judgment of the Hon'ble Apex Court in the case of *Municipal Council, Samrala Vs. Sukhwinder Kaur*, . After referring to several judgments of the Hon'ble Apex Court, it was held that although there was no fixed period of contract of employment between the employer and the workman concerned and thus, no question of its renewal on its expiry, but there existed a stipulation in the contract that the Executive Officer has the power to dismiss her without issuing any notice.

14. In the case of *Municipal Council, Samrala v. Raj Kumar* reported in (2006) 3 SCC 81, it was held at paras-11 and 12 as under:

11. The appellant is a Municipal Council. It is governed by the provisions of a statute. The matter relating to the appointment of employees as also the terms and conditions of their services indisputably are governed by the provisions of the relevant Municipal Act and/or the rules framed thereunder. Furthermore,

there is no doubt that the matter relating to the employment in the Municipal Council should be governed by the statutory provisions and thus such offer of appointment must be made by a person authorised therefor. The agenda in question was placed before the Executive Council with a view to obtain requisite direction from it wherefor the said letter was written. The reason for such appointment on contract basis has explicitly been stated therein, namely, that one post was vacant and two employees were on leave and in that view of the matter, services of a person were immediately required in the Council. Thus, keeping in view the exigency of the situation, the respondent came to be appointed on the terms and conditions approved by the Municipal Council.

12. We have noticed hereinbefore that the respondent understood that his appointment would be short-lived. He furthermore understood that his services could be terminated at any point of time as it was on a contract basis. It is only in that view of the matter, as noticed hereinbefore, that he affirmed an affidavit stating that the Municipal Council of Samrala could dispense with his services and that they have a right to do so.

15. Again the Hon"ble Apex Court distinguishing the case of S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka, , distinguishing therein at para 13 has held as under:

13. In the decision of this Court in S.M. Nilajkar v. Telecom District Manager whereupon the learned counsel for the respondent placed strong reliance, this Court was concerned with a different fact situation obtaining therein. In that case, a scheme for absorption of the employees who were appointed for digging, laying cables, erecting poles, drawing lines and other connected works was made which came into force with effect from 1-10-1989, and only those whose names were not included for regularisation under the said scheme, raised disputes before the Assistant Labour Commissioner, Mangalore. The termination of the services of casual mazdoors by the management of Telecom District Manager, Belgaum, thus came to be questioned in the reference made by the appropriate Government in exercise of its power conferred upon it u/s 10 of the Industrial Disputes Act. This Court, having regard to the contentions raised by the respondents that the appellant therein was engaged in a particular type of work, namely, digging, laying cables, erecting poles, drawing lines and other connected works in the project and expansion of the Telecom Office in the district of Belgaum was of the opinion: (S.M. Nilajkar case, SCC p.37, para 13)

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 abovesaid terms by the employer at the commencement of employment.

16. Again in the case of The Haryana State Agricultural Marketing Board Vs. Subhash Chand and Another, , the Hon"ble Apex Court held at paras 9 and 11 as under:

9. It is the contention of the appellant that the respondent was appointed during the "wheat season" or the "paddy season". It is also not in dispute that the appellant is a statutory body constituted under the Punjab and Haryana Agriculture Produce Marketing Board Act. In terms of the provisions of the said Act, indisputably, regulations are framed by the Board laying down the terms and conditions of services of the employees working in the Market Committees. A bare perusal of the offer of appointment clearly goes to show that the appointments were made on contract basis. It was not a case where a workman was continuously appointed with artificial gap of 1 day only. Indisputably, the respondent had been re-employed after termination of his services on contract basis after a considerable period(s).

11. The question as to whether Chapter V-A of the Act will apply or not would be dependent on the issue as to whether an order of retrenchment comes within the purview of Section 2(oo)(bb) of the Act or not. If the termination of service in view of the exception contained in clause (bb) of Section 2(oo) of the Act is not a "retrenchment", the question of applicability of Chapter V-A thereof would not arise.

17. In none of the cases the Supreme Court has laid down any law. However in the facts of each case the law is applied and decision is rendered. Therefore, in the light of the aforesaid judgments and in the background of the facts of this case, we have to see whether in the instant case the termination of the workmen constitutes retrenchment.

18. Section 2(oo) defines what a retrenchment means and the same reads as hereunder:

(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

(a) xxxx

(b) xxx

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) xxx

19. A careful reading of the provision makes it clear that termination of the services of an employee by the employer for any reason whatsoever otherwise than as a punishment inflicted by way of a disciplinary action amounts to retrenchment. Though the employer has a right to retrench a workman before such right is exercised, the law mandates that he has to comply with certain legal requirements. Those legal requirements are provided u/s 25F of the Act. Compliance of the said requirement is a condition precedent for retrenchment of a workman. Admittedly in this case, none of the conditions prescribed u/s 25F have been complied with by the Management. Therefore, if it is a case of retrenchment, it is illegal and the same is liable to be set aside in limine.

20. The argument of the Management is that, the termination of the services of the workmen in this case does not amount to retrenchment because their case falls under Clause (bb) of Section 2(oo) of the Act.

21. Clause 2(oo)(bb) has been inserted by the amending Act 49 of 1984 and it was brought into force with effect from 18.08.1994. It purports to exclude from the ambit of the definition of "retrenchment".

(1) Termination of the services of the workmen as a result of the non-renewal of the contract of employment between the employer and the workmen concerned, on its expiry or

(2) Termination of the contract of employment in terms of stipulation contained in the contract of employment in that behalf.

22. The first part relates to termination of a service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry. The second part refers to such contract being terminated under a stipulation in that behalf contained therein. The expression "such contract" used in the second part refers to contract of employment between the employer and the workman mentioned in the first part. Therefore, if there is a stipulation in the contract of employment between the employer and the workman providing the mode and manner of termination of service, such termination of service has now specifically been excluded from the definition of "retrenchment" by this clause. The cases contemplated under both the parts therefore, will not be retrenchment.

23. In the instant case, it is not in dispute between the parties that the appointment of the workmen is purely on contract basis. As is clear from the order of appointment, the workmen were appointed on consolidated remuneration of Rs. 1,553/- p.m. for a period from 17.01.2000 to 31.03.2000 only. After the expiry of the said period again one more appointment order was issued extending the period of contract by a period of three months. Subsequently, no appointment orders have been issued. But the material on record produced by the Management shows that before the expiry of the period

mentioned in the contract, a proposal was sent to the higher authorities for permission to renew the contract for a further period of three months or six months. After obtaining such permission the period was extended by three months or six months and after 28.04.2004 no further extension was granted and therefore, on expiry of the said period the services of the workmen were terminated. The argument is that though permission was requested and permission was granted and the same is produced before the Court, it is in the nature of an internal communication between the Departments to which the workmen are not parties. The workman was not issued with any order of appointment and therefore when he is continued for nearly for a period of four years two months, it cannot be said that he is continued for a particular period and on its expiry their services are terminated. As set out above if the termination of the service of the workmen is bad on account of non-renewal of the contract of employment on its expiry, the statute do not provide that such a condition is to be stipulated in the order of appointment. If the appointment is for a particular period, on its expiry, the services stand terminated. The termination of a service of an employee, is co-terminus with the period for which he is employed. No writing is required. But if such a contract is to be terminated under a stipulation in that behalf contained therein that means there should be an order of appointment. That order of appointment should contain a stipulation for termination. If their services are to be terminated in accordance with the stipulation contained in the order, then the order of appointment is a must. The language employed by the legislature in respect of these two categories makes it very clear that in the case of termination at the expiry of the period, the period need not be stipulated in writing in the appointment order. It is not the requirement of law that there should be a written order of appointment. If the order of appointment is not in writing, then it is for the management to prove the terms of the employment. When there is no written order of employment, it is not possible for the workmen to prove the terms of employment. The burden of proving the non-renewal of the contract of employment on its expiry is squarely on the management. It is a question of fact. The burden could be discharged by producing the acceptable evidence. If the same is proved by acceptable evidence, the Courts and Tribunal can act on the said evidence.

24. In the instant case, in terms of the appointment order the workmen were called upon to execute an agreement which they have done. In the agreement which he has executed the period ending on" is left blank. Therefore it was argued that, no period was stipulated. However in the said agreement there is a stipulation at clause-6 which reads as under:

That the services of the said member of the D.R. Satish shall be liable for termination even before the expiry of the period stated in Clause 1 above, for whatever reason without notice. However, if not terminated earlier, the services stands terminated automatically on the expiry of the said period.

25. Therefore, merely because a written order continuing the services is not

issued, it cannot be said that it is not a contract of employment for a specified period as the orders from time to time obtained by the authorities before extending their period clearly shows their services were extended for a period of three months or six months at a time and on the expiry of the said period, their services automatically stood terminated. Therefore, it satisfies the first limb of clause (bb) of Section 2(oo). The Labour Court was justified in holding that the termination of the workmen do not fall within the definition of retrenchment and therefore Section 25F is not attracted. The management was justified in not paying retrenchment compensation as prescribed under the said provision. Therefore, we do not find any infirmity in the order passed by the Labour Court or the learned Single Judge on this aspect.

26. However, the learned Single Judge after upholding the said order has awarded compensation in a sum of Rs. 75,000/- to each of the workmen. The reason given was that the Management has exploited the service of the workmen and therefore, monetary benefit could be extended. The word "exploited" may not be appropriate. As rightly pointed out by the learned Counsel for the Management, the workmen when they entered into contract of employment, they were fully aware that the employment is only for a period of three months or six months and with their eyes open they accepted the employment. It is also to be noticed that there was no advertisement, no applications were called for and it was not a front door entry into the service. But nonetheless when the appointment was only for a temporary period of three or six months, the material on record discloses that the services have been continued for a period of four years two months and after expiry of four years two months to terminate the services of the workmen without recognizing their services and paying compensation would also be unjust. In that context, the award of Rs. 75,000/- as compensation to these workmen by the learned Single Judge, though not for the reasons stated by him is just and proper. Therefore, we do not see any justification to interfere with the said portion of the order of the learned Single Judge also. In that view of the matter, we do not see any merit in both these appeals. Accordingly, both the appeals are dismissed.

Parties to bear their own costs.

The amount ordered shall be paid within one month from the date of receipt of a copy of this judgment, failing which, the said amount shall be payable with 18% interest.