
(1975) 01 MAD CK 0022
In the Madras High Court

State Bank of India

APPELLANT

Vs

The Additional Commissioner for Workmen's Compensation
and Another

RESPONDENT

Date of Decision : 27-01-1975

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33, 33A
Tamil Nadu Shops and Establishments Act, 1947 — Section 25F, 41

Citation : (1975) 1 LLJ 159

Hon'ble Judges : K. Veeraswami, C.J.;Natarajan, J;Ismail, J

Bench : Full Bench

Judgement

Ismail, J.—The second respondent herein was appointed as a temporary cashier in the service of the petitioner-Bank at Coonoor for one month from 10-11-1971 retaining a discretion in the agent of the Bank to extend that period. The second respondent was retained in service till 10-2-1973 on which date his services were terminated. The second respondent preferred an appeal before the first respondent u/s 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 hereinafter referred to as the Act. Before the first respondent, the petitioner contended that the termination of the services of the second respondent was for a reasonable cause, because according to the Regulations applicable to the post of cashier in the Bank, a candidate should have passed a certain test and though the second respondent sat for the test on 30-7-1972 he did not pass the test; that in the vacancy another person, who passed the test, had been appointed; and that, therefore, that would constitute a reasonable cause for terminating the temporary service of the second respondent. In support of this contention, a decision of a Bench of this Court in Janardhanam (S.) Vs. Additional Commissioner for Workmen's Compensation and Another, , was relied on. Notwithstanding this decision, the first respondent herein allowed the appeal of the second respondent and it is to quash this order of the first respondent that the present writ petition has been filed.

2. With reference to the terms of the order, the learned Counsel for the petitioner contended that decision of the Bench referred to above directly applied to the present case; that consequently the first respondent ought to have followed that judgment that he committed an error in holding that the second respondent was appointed as a probationer and, therefore, he became a permanent cashier and that further in the original order appointing the second respondent the petitioner did not impose a condition that he should pass a written test for being appointed as a permanent cashier. The order of the first respondent does not refer to the requirement of one month's notice or pay for one month as provided for in Section 41(1) of the Act, even though the second respondent in the appeal preferred by him before the first respondent raised this point. In view of this, the second respondent filed an additional counter-affidavit before this Court contending that the first respondent failed to consider that point urged by the second respondent and that had the first respondent considered that point, then he would have come to the same conclusion notwithstanding his view on the decision of the Bench of this Court referred to already. It is admitted that one month's notice as contemplated by Section 41(1) of the Act has not been given by the petitioner to the second respondent herein and, therefore, even if the argument advanced by the learned Counsel for the petitioner with regard to the applicability of the Bench decision referred to above is found to be correct, still the order of the petitioner terminating the services of the second respondent may be held to be invalid by the first respondent on the ground of want of notice referred to above. However, Mr. Ramasubramaniam, learned Counsel appearing for the petitioner contended that the question regarding the presence or absence of notice cannot be gone into by the first respondent in an appeal preferred u/s 41(2) of the Act, in view of the express language contained therein, which restricts the scope of the appeal only to the presence or absence of a reasonable cause and not to the presence or absence of notice of one month. Section 41(1) of the Act is as follows:

No employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one month's notice or wages in lieu of such notice, provided, however, that such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an inquiry held for the purpose.

3. Section 41(2) that "the person employed shall have a right to appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer". According to the learned Counsel for the petitioner, the appeal contemplated by Sub-section (2) of Section 41 is not co-terminus with the original proceedings by the employer provided for in Sub-section (1); but the language of Sub-section (2) restricts the scope of appeal; and such restriction, as far as the present case is concerned, is only with regard to the presence or absence of reasonable cause

and it does not extend to any enquiry whether one month's notice was given or not. The justification put forward for this argument, having regard to the language of the section is, that if there is no reasonable cause, the termination itself will have to go, but if there is reasonable cause, and there had been no notice, then the order of termination will stand and the person employed may have a right to file a suit to recover wages for a period of one month.

4. Though the Act has been in force from 1947 onwards, this point has not so far been considered and decided by this Court. There is a decision of Ramaprasada Rao, J. in *Associated Corporation of Industries (India) Pvt. Ltd. v. Additional Commissioner for Workmen's Compensation* 1972 I L.L.J. 108, which assumes that the existence or the sufficiency of notice can be gone into by the appellate authority, even though the argument advanced before me was not advanced before the learned Judge and the learned Judge had no occasion to consider this argument. Having regard to these features and the desirability of having a settled view on the scope of Section 41(2) of the Act, I consider it proper that the matter be heard and disposed of by a Bench of this Court. Consequently, I direct that that papers be placed before the Hon'ble the Chief Justice, for orders as to posting of the writ petition before a Bench.

The Order of the Court was pronounced by the Hon'ble the Chief Justice

This reference by Ismail, J., relates to the scope of Section 41 of the Tamil Nadu Shops and Establishments Act, 1947. The second respondent was terminated from his service, because, according to the Regulations applicable to the post of cashier in the bank, a candidate should have passed a certain test. But the second respondent had not done that. It is common ground that no notice as required by Section 41(1) of the Shops and Establishments Act, 1947, was given ; nor was the second respondent paid wages in lieu of such notice, An appeal u/s 41(2) of that Act was allowed on the ground that there was no reasonable cause for the termination. The bank then came with a petition under Article 226 of the Constitution to have the order quashed. The question was whether the order of termination should be held as void, because notice or wages as contemplated by Sub-section (1) of Section 41 was neither given nor were paid. In *Associated Corporation of Industries v. Additional Commissioner for Workmen's Compensation* 1972 I L.L.J. 108, Ramaprasada Rao, J., was of the view that Sub-section (1) was mandatory. In *Janardhanam (S.) Vs. Additional Commissioner for Workmen's Compensation and Another*, Srinivasan, J., opined that the requirement as to notice or wages in the alternative provided by Section 41(1) should have to be complied with.

2. Mr. V.K. Thiruvengkatachari for the petitioner contends that an order of termination, which did not follow a recorded finding of misconduct, could not be held to be void merely on the ground that the provision as to notice or wages in the alternative was not complied with. Sub-section (2) of Section 41 provides for an appeal "either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of

misconduct as held by the employer." This provision, to our minds, makes it clear that termination of service u/s 41(1) is either on ground of reasonable cause or misconduct, but as part and parcel of reasonable cause, the requirement as to one month's notice or in the alternative wages for one month is made, so that, non-compliance with the requirement as to notice or payment of wages is not treated and cannot figure as a separate ground, That is why Sub-section (2) speaks of only two grounds, namely, termination for reasonable cause or for misconduct. The dichotomy of the grounds of appeal in that manner really points to the grounds on which a termination of an employee can be founded. One month's notice or payment of wages for one month alone will not justify a termination of an employment nor reasonable cause alone will justify the same. Reasonable cause and the requirement of one month's notice or wages for one month are the two limbs of the same ground of termination for reasonable cause, as contrasted with the termination for proved recorded misconduct.

3. The result of our interpretation of Section 41(1) is that, when an appeal is preferred u/s 41(2), it is open to the aggrieved party to show that the requirement as to notice or payment of wages in lieu thereof can well be taken as part of the ground relating to reasonable cause. The emphasis of this is that non-compliance with the requirement of one month's notice or payment of wages in lieu of one month's notice will not by itself render the termination void, but still, the question of reasonable cause will have to be gone into, and as part of it, the question of failure to give one month's notice or non-payment of wages in lieu thereof will have to be considered.

4. Mr. Thiruvengkatachari went further and drew our attention to Section 25F, 33 and 33A. of the Industrial Disputes Act, 1947. In respect of a failure to comply with Section 25F as to notice or payment of wages in lieu of such notice no appeal has been provided, and he contends that a view has been taken that non-compliance with that provision will not by itself render a retrenchment invalid. Just as in the case of Section 33A, it makes a contravention of Section 33 a dispute which could be adjudicated on merits, so too in the case of Section 41(2) of the Shops and Establishments Act, 1947, an appeal is on the merits. We are inclined to agree with this contention. But it is not necessary to confuse the scope of Section 41(2) to adopt the reasoning associated with the sections in the Industrial Disputes Act.

5. Mr. Ramachandran for the second respondent does not contend that mere failure to give one month's notice or make payment of wages for one month would by itself render the termination void, but what he insists is that the requirement of the section in any case will have to be complied with and until then wages will have to be paid including for the notice period. We are of opinion that he is right in his contention.

6. In our view, therefore, the first ground as to reasonable cause u/s 41(2) will cover failure to give notice or pay wages as required by Sub-section (1), and as such, an appeal u/s 41(2) on that ground will be on its merits, with the result

that mere non-compliance with the requirement of notice or payment of wages in lieu thereof will not by itself render the order invalid or void and still the question of reasonable cause will have to be gone into. If there is a reasonable cause found, but the requirement as to notice or payment of wages in lieu thereof is not complied with, its result will only be not that the order of termination will be void, but the wages due to employee up to date including the period of one month's notice will have to be paid, since there is a statutory direction. With this expression of opinion, the petition will now go before the learned Judge dealing with writ petitions for decision.