

(2008) 10 MAD CK 0071

In the Madras High Court

Case No : Writ Petition No. 4123 of 2001

The Chief General Manager, Maintenance Southern Telecom
Region

APPELLANT

Vs

The Presiding Officer, Industrial Tribunal and Sri R.
Thirunavukkarasu

RESPONDENT

Date of Decision : 29-10-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Industrial Disputes Act, 1947 — Section 17B, 2, 25F

Citation : (2008) 10 MAD CK 0071

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : S. Udaya Kumar, ACGSC, for the Appellant; D. Hariparanthaman, (R2), for the Respondent

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the second respondent.

2. This writ petition has been filed by the petitioner challenging the award of the first respondent Tribunal, dated 4.9.2000, made in I.D. No. 200 of 1994.

3. It has been stated that the second respondent was engaged as a casual worker on temporary basis, in the office of the Assistant Engineer, Regional Spares Organisation, Vepery, Chennai, from 9.5.85. In the order, dated 14.6.85, issued by the Assistant Engineer, it has been mentioned that the second respondent has been engaged purely on a temporary basis and that he is liable to be terminated from service, without any notice and without any reason being assigned.

4. It has been further stated that the Government of India has taken a policy decision to retrench all casual workers who are employed after 31.3.85. Therefore, the Assistant Engineer had issued a notice to the second respondent, on 27.5.87, stating that instructions have been received by him to terminate the

services of all mazdoors recruited after 31.3.85. Hence, it was stated that the service of the second respondent is no longer required. The petitioner management has paid the second respondent his wages for the period 1.6.87 to 26.6.87. After his termination, on 27.6.87, the second respondent did not make any effort to contact the concerned officers, with regard to his service. However, after a lapse of six years thereafter, he had submitted a representation, on 7.1.93, requesting for his reinstatement in service. Thereafter, the second respondent had approached the Labour Commissioner in the month of June, 1993, for initiating the conciliation proceedings. The Department had issued one months notice to the second respondent before terminating him from service, as envisaged u/s 25-F(a) of the Industrial Disputes Act, 1947. The applicability of the provisions of the Industrial Disputes Act, 1947, to the Department of Telecommunications was conveyed officially, only on 22.9.89. In such circumstances, the applicability of the payment of compensation u/s 25-F(b) of the Industrial Disputes Act, 1947, does not arise, since the termination of the second respondent from service was done only in accordance with the Departmental Rules and Regulations. The question of granting the second respondent permanent status and other benefits does not arise. Since the second respondent was engaged in service contrary to the directions issued by the Telecom Directorate, imposing a ban on engagement of mazdoors, the second respondent cannot claim any legal status as a workman. Therefore, the provisions of the Industrial Disputes Act, 1947, cannot be strictly applied to grant him the reliefs as prayed for by him. However, the first respondent industrial Tribunal had come to an erroneous conclusion that the second respondent is to be reinstated in service, with full backwages and other consequential benefits. It has also been stated that since the second respondent had been appointed without following the instructions issued by the Telecom Directorate, imposing a ban on the engagement of mazdoors as a policy decision, the second respondent cannot claim the protection of the provisions of the Industrial Disputes Act, 1947.

5. The learned Counsel appearing on behalf of the petitioner management had further submitted that the second respondent was not engaged in a sanctioned post and his engagement in service was of a purely temporary nature. His engagement contrary to the instructions issued by the telecom directorate, is by itself irregular and illegal. Though such objections had been made in the counter filed by the petitioner management before the first respondent Tribunal, such objections were not taken note of by the first respondent Tribunal before the impugned award, dated 4.9.2000, had been passed. Therefore, the award of the Labour Court, dated 4.9.2000, made in I.D. No. 200 of 1994, is illegal, void and liable to be set aside by this Court.

6. The learned Counsel appearing for the petitioner management had relied on the following decisions in support of his contentions.

6.1. In State of Uttar Pradesh and Another Vs. Atal Behari Shastri and Another, , it had been held that certain relevant factors have to be taken into consideration

while granting backwages to the employee while ordering his reinstatement in service. While taking into consideration various factors arising in the facts and circumstances of the case, the Supreme Court had directed the payment of a lumpsum, instead of the arrears of the monthly wages, to the workmen concerned.

6.2. In Appeal (Civil) 3645 and 3646 of 2002 (Haryana State C.C.C.W. Store Ltd. and Anr. v. Ram Niwas and Anr.), the Supreme Court had held that the question of complying with the conditions precedent to retrenchment of workmen provided in Section 25F of the Industrial Disputes Act, 1947, will not arise as the workmen concerned were engaged or appointed for a specific purpose and for a particular period. Since the purpose of their engagement or appointment was over and the period of their appointment had expired, their disengagement was in terms of the contract and therefore, it would not be retrenchment within the meaning of Section 2(oo) of the Act.

6.3. In M.P. Housing Board and Another Vs. Manoj Shrivastava, , the Supreme Court has held that a daily-wager, does not hold a post, unless, he is appointed in terms of the Act and the Rules framed thereunder. He does not derive any legal right in relation thereto. It was further held that even in case a person had worked for 240 days, he does not derive any legal right to be regularised in service. The Supreme Court had relied on its decision in State of U.P. Vs. Neeraj Awasthi and Others, , wherein it was held that the fact that all appointments have been made without following the procedure, or services of some persons appointed have been regularised in the past, cannot be said to be a normal mode which must receive the seal of the Court. Past practice is not always the best practice. If illegality has been committed in the past it cannot be allowed to perpetuate. Since Article 14 of the Constitution of India has a positive concept, no equality can be claimed in illegality.

6.4. In Branch Manager, M.P. State Agro Industries Development Corpn. Ltd. and Another Vs. Shri S.C. Pandey, , the Supreme Court had held that a daily-wager does not hold a post as he has not been appointed in terms of the provisions of the Act and the rules framed thereunder. Thus, he does not derive any legal right. If an appointment is made contrary to the provisions of the statute, such an appointment would be void.

6.5. In Civil Appeal No. 1322 of 2008 (Ghaziabad Development Authority and Anr. v. Ashok Kumar and Anr.), the Supreme Court had held that any appointment in violation of the Constitutional Scheme envisaged in Articles 14 and 16 of the Constitution of India and the statutory Recruitment Rules would be void. Such facts were required to be kept in mind by the Labour Court before passing an order of reinstatement.

6.6. The management of Crompton Engineering Company (Madras) Private Limited v. The Presiding Officer, Additional Labour Court, Madras and 3 Ors. 1974 I L.L.J.) 459, a learned single Judge of this Court had held that the Labour Court

had committed an error in coming to the conclusion that even casual labourers are included in the definition of Workmen 2(s) and that they are entitled to reinstatement. It was further held that the question of non-employment will arise only when the employer refuses to give work to a person who is entitled to work. If the appointment is only for a specific period or for a particular work, as soon as the period was over or the work was over their employment would automatically come to an end and there is no rule or law which contemplates that such an employee must be given work again by the employer.

7. No counter affidavit has been filed on behalf of the second respondent. The learned Counsel appearing on behalf of the second respondent had submitted that the order appointing the second respondent does not state that the appointment is of a temporary nature. The petitioner management had not raised the plea that the post in which the second respondent was appointed had not been sanctioned except before this Court in the present writ petition. The reason stated by the petitioner management that the appointment of the second respondent is illegal due to the fact that there was a direction issued by the Telecom Directorate, imposing a ban on the engagement of mazdoors, cannot be held to be valid. Having engaged the second respondent, the petitioner management cannot take shelter under the alleged instructions of the Telecom Directorate, banning the engagement of mazdoors. The petitioner management is estopped from raising the plea that the engagement of the second respondent in service of the petitioner is irregular or illegal.

8. The learned Counsel appearing on behalf of the second respondent had produced a circular, dated 23.10.92, issued by the Department of the Telecommunications, Government of India, wherein, certain guidelines had been formulated with regard to the procedures to be followed while terminating the casual labourers and temporary status mazdoors. In the case of the second respondent, the guidelines issued by the Department of Telecommunications have not been followed.

9. The learned Counsel appearing on behalf of the second respondent had relied on the following decisions in support of his contentions.

9.1. In *The President, Srirangam Co-operative Urban Bank Ltd. Vs. The Presiding Officer, Labour Court and K. Nagarajan*, the Division Bench of this Court had held that Section 25-F of the Industrial Disputes Act, 1947, does not make any difference whether the appointment has been made in accordance with law or not. The expression used in that Section is "workman employed in any industry who has been in continuous service for not less than one year under an employer" therefore, the factum of employment is relevant and not the legality or otherwise of it.

9.2. In *W.A. No. 912 of 2001*, dated 14.8.2008, a Division Bench of this Court had held that it cannot be said that the appointment of a workmen on a daily wages basis is illegal. If the workmen does not fall within the explanations of

Section 2(oo) of the Industrial Disputes Act, 1947, the retrenchment of such a workmen, without following the provisions of Section 25-F of the Act, cannot be upheld.

10. The learned Counsel for the petitioner Management had also raised the plea that there has been an inordinate delay on the part of the second respondent in raising a dispute before the first respondent Tribunal. When the order of termination, terminating the second respondent, was passed on 27.6.87, he has approached the industrial Tribunal, raising an industrial dispute in I.D. No. 200 of 1994, only in the year 1994. After the conciliation failure report had been submitted by the Assistant Labour Commissioner, Chennai, the inordinate delay in raising the Industrial dispute before the first respondent Tribunal, by the second respondent, has not been sufficiently explained by him. In such circumstances, the first respondent Industrial Tribunal has misdirected itself in passing an award ordering the reinstatement of the second respondent in service, with full backwages and all other attendant benefits. Even if the first respondent Tribunal had ordered the reinstatement of the second respondent in service, backwages could not have been awarded in his favour due to the unexplained delay caused by the second respondent in raising the industrial dispute.

11. The learned Counsel appearing on behalf of the second respondent had submitted that after the second respondent was terminated from service by the petitioner management by an order, dated 27.6.87, the second respondent had approached the Assistant Labour Commissioner. The dispute was placed before a Conciliation Officer immediately thereon. The failure report of the Conciliation Officer was sent to the Secretary to the Government of India, Ministry of Labour, New Delhi, by the Assistant Labour Commissioner, Chennai, on 30.8.93. Thereafter, the second respondent had approached the first respondent industrial Tribunal, Chennai, by raising an industrial Dispute in I.D. No. 200 of 1994. Thus, there is no unexplained delay, as alleged by the petitioner.

12. In view of the contentions raised by the learned Counsels appearing on behalf of the petitioner management, as well as the second respondent, and on a perusal of the records available, this Court is of the view that the petitioner management has not shown sufficient cause or reason for this Court to interfere with the award of the first respondent Tribunal, dated 4.9.2000, made in I.D. No. 200 of 1994. It cannot be said that the appointment of the second respondent by the petitioner management is illegal only for the reason that certain instructions had been issued by the Telecom Directorate, imposing a ban on the engagement of mazdoors. Though the second respondent had been engaged by the petitioner management purely on a temporary basis, by an order, dated 14.6.85, he has been continued in service till he was terminated, on 27.6.87.

13. Based on the evidence available, the first respondent Tribunal had held that the termination of the second respondent is arbitrary and illegal and that the petitioner management had not complied with the provisions of Section 25-F of

the Industrial Disputes Act, 1947, before terminating the second respondent from service. The petitioner management had not paid the average of 15 days salary for every year the second respondent had worked, in compliance with the proviso to Section 25-F(b), and therefore, the retrenchment or termination of the second respondent is invalid in law. The petitioner management has not been in a position to substantiate the claims that the appointment of the second respondent is illegal. Merely because the second respondent had been appointed, contravening the instructions issued by the Telecom Directorate, it cannot be said that the appointment of the second respondent was illegal.

14. Once it is found that the second respondent is a workman, u/s 2(oo) of the Industrial Disputes Act, 1947, his retrenchment from service can be made only after following the procedures prescribed, u/s 25F of the Act. Since the petitioner management had not complied with Section 25F(b) of the Act, the termination of the second respondent by an order, dated 27.6.87, would be unsustainable in the eye of law.

15. In such circumstances, it is clear that the first respondent Tribunal was right in coming to its conclusions and ordering reinstatement of the second respondent in service. However, with regard to the issue of backwages, the second respondent has not shown that he had taken sufficiently prompt steps to raise an industrial dispute, in accordance with the provisions of law. Even otherwise, granting of backwages cannot be automatic. From the award of the first respondent Tribunal no specific reasons can be seen for the granting of the full backwages to the second respondent while reinstating him in service with all attendant benefits. Since nothing is available on record to show that the second respondent was not gainfully employed during the period of his disengagement from service, the granting of full backwages cannot be justified. In spite of the fact that this Court had permitted the second respondent to file a petition u/s 17B of the Industrial Disputes Act, 1947, for the payment of the last drawn wages, no such petition has been produced by the petitioner before this Court. Hence, the award of the first respondent Labour Court, dated 4.9.2000, made in I.D. No. 200 of 1994, is confirmed, except with regard to the payment of backwages to the second respondent. In respect of the payment of backwages this Court is of the considered view that ends of justice would be met by modifying the award by granting 50% of the backwages to the second respondent instead of the full backwages awarded by the first respondent Labour Court by its award, dated 4.9.2000.

Accordingly, the writ petition is partly allowed. No costs.