
(2010) 12 MAD CK 0262

In the Madras High Court

Case No : W.A. (MD) No's. 726 to 743 of 2007

The Executive Engineer, Tamil Nadu Water Supply and
Drainage Board, Urban Division, Formerly at Kanaka
Apartment

APPELLANT

Vs

K. Anna Lourdu

RESPONDENT

Date of Decision : 23-12-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Industrial Disputes Act, 1947 — Section 2, 25F, 33(1)

Citation : (2010) 12 MAD CK 0262

Hon'ble Judges : T. Raja, J;R. Banumathi, J

Bench : Division Bench

Advocate : M. Ajmal Khan, for the Appellant; G. Dhanalakshmi, for R1 in WA Nos. 726 and 731/07 D. Devaraj, for R1 in WA Nos. 727 to 730, 732 to 734 and 736 to 742/07 and J. Prakash Kumar, for R2 in all the W. As., for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The above writ Appeals, directed against the common order, dated 27.08.2007, passed by the learned single Judge, in W.P. (MD) Nos. 3815 to 3832 of 2005, in and by which, the learned Judge refused to interfere with the Award, dated 23.12.2003, passed by the Labour Court, in I.D. Nos. 84 of 1995 etc., directing reinstatement of the workmen/R1 in these appeals with back-wages, are disposed of by this Common Judgment.

2. For better appreciation of the case, factual aspects involved are concisely narrated here-under:

The workmen/first Respondent in the Appeals were employed by the Appellant-Tamil Nadu Water Supply and Drainage Board (in short "TWAD" Board) through Employment Exchange as Watchman, Cleaner, Electrician and Fitter for execution and maintenance of water supply schemes. In the appointment orders issued, it is stated that they were engaged on Nominal Muster Roll (NMR) basis on daily

wages and their employment was only for a period of 90 days. In the case of Store Watchman, it was stated that their services are for both night and day. In all cases, it is specifically mentioned that the appointment was purely temporary and the same may be terminated at any time without prior notice and the workmen have no right to make claim under any Rule and Regulation. While so, after completion of the Water Supply Scheme for the Dindigul Municipality, the said authority did not take over the scheme for the purpose of maintenance, which necessitated the TWAD Board to continue the maintenance of the scheme by the workmen/R1 recruited by them. As a consequence, notwithstanding the original term of appointment for 90 days, the services of the workmen were continued.

When there was a letter correspondence between the TWAD Board/Appellant and the R2/Municipality, the Board asked the Municipality to take over the Scheme along with the existing employees. The Municipality, by letter dated 14.02.1990, while informing that they would take over the scheme on 16.02.1990, however insisted that the experienced workmen will have to be discontinued from service as it has its own idea for engaging the staff and ultimately, refused to take over the staff deployed by the Board.

The deadlock between the TWAD Board and the Appellant herein gave rise to a strong probability that the TWAD Board was trying to disengage the R1/workmen, whereupon, the Trade Union to which the workmen belong to raised an Industrial Dispute before the Labour Officer, Dindigul, on 14.02.1990, and enquiry notice under Ex.W8 therein came to be issued to all the officers of the TWAD Board. Thus, there was a dispute pending before the Conciliation Officer on the date when the scheme was handed over and when the TWAD Board proposed to disengage the workmen.

Appreciating the contention put forth on behalf of the workmen that having completed 460 days of service within a period of 24 calendar months, in view of Tamil Nadu Act 46 of 1981, the workmen are deemed to be made permanent and that the question of disengaging them from service does not arise at all, the Labour Court rejected the claim of the Appellant herein and passed an Award, dated 23.12.2003, holding that, in view of the fact that the Board had violated Section 33(1) of the Industrial Disputes Act and the Workmen having completed 240 days of service and there being non-fulfilment of the mandatory conditions precedent provided u/s 25F(a) and (b) of the Industrial Disputes Act, the termination is rendered illegal. So holding, the Labour Court directed for reinstatement of the workmen with backwages and other attendant benefits except in case of workman late Venkatasamy covered by I.D. No. 102 of 1995.

Suffered by the Common Award passed by the Labour Court, the Appellant challenged the same before the learned single Judge by preferring writ petitions under Constitution of India of the Constitution of India and, while admitting the Petitions, the learned Judged stayed the orders of reinstatement with a direction to the Board to deposit the entire back-wages covered by the Award within a

period of eight weeks. Challenging the conditional order, the Board preferred W.A. Nos. 421 to 435 of 2006 and a Division Bench of this Court, by order dated 16.11.2006, by refusing to interfere with the interim order, dismissed the Writ Appeals with a request to the learned Judge to dispose of the Writ Petitions at an early date.

In that background, the Writ Petitions were taken up for disposal and, by upholding the Award passed by the Labour Court, the Writ Petitions came to be dismissed by the common impugned order. The said order of the learned Judge, confirming the Award passed by the Labour Court, is under challenge in these Writ Appeals.

3. Mr. Ajmal Khan, learned Counsel appearing for the Appellant/TWAD Board, would submit that both the Labour Court as well as the learned Judge committed a serious error in ordering reinstatement of 18 workmen, who came to be appointed on temporary basis only for a specific period as mentioned in their respective appointment orders.

According to him, inasmuch as engagement of the temporary employees was only for a specified period till completion of the project, they cannot have any vested right to claim regularisation of or reinstatement into service particularly when the Scheme itself was completed.

Adverting to the letter written by the TWAD Board to the 2nd Respondent/Municipality on 05.02.1990 to take over the scheme along with workmen and to the reply made to the effect that the Municipality would only take over the scheme and not the workmen, it is submitted that though the Appellant wanted to continue the said Scheme, left with no other alternative by reason of the stand taken by the Municipality, it was decided to dispense with the services of the workmen. Under such circumstances, if at all any relief was to be granted by the Labour Court by resorting to the provisions u/s 25-F of the Industrial Disputes Act, at best, the 2nd Respondent/Municipality alone should have been directed to reinstate the workmen with back wages and not the Appellant/Board. Since the learned Judge also failed to appreciate this aspect, the impugned judgment is liable to be interfered with.

By referring to Section 2(oo)(bb) of the I.D. Act for the proposition that the word "retrenchment" does not include if termination of service of the workman is caused 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, and by taking us through the appointment order, dated 17.02.1988 issued in respect of Tvl.K. Selvaraj and S. Murugesan as well as the appointment orders in case of other employees, reflecting that the appointment is purely temporary under Nominal Muster Roll basis for a period of 89 days only and termination may take place at any time without any prior notice and the workmen have no right to claim any further, learned Counsel would submit that, since the temporary status of the

workmen even during appointment was made clear and that the Municipality, for whom the water project was carried out, declined to take over the employees despite the honest recommendation made by the Board, there would not be any justification for the Labour Court in passing the Award against the Board for appointment and confirmation of such award by the learned single Judge.

4. Learned Counsels appearing for the Respondents/workmen, *inter alia*, contended by pointing out that the workmen came to be employed through the Employment Exchange and after interview of the candidates by the Assistant Executive Engineers, the selection was made and subsequently, all of them were given proper training in the maintenance of major water scheme projects. After completing the training, they became well-versed and skilled employees in maintaining safety of the pump house and also in operation of HT Transformers, heavy duty pump sets and other Electrical maintenance works. Further, the workmen/Electricians were issued with "B" and "C" Certificates in proof of the fact that they are skilled employees for maintenance of pump-sets and other maintenance works. Besides that, learned Counsels have also brought to the notice of this Court various correspondence and letters between the Executive Engineer of the Board and the Dindigul Municipality. One of the letters dated 05.02.1990 emanated from the Executive Engineer of the Board is highlighted to show that all the employees are performing their duties under the scheme regularly and sincerely. The Board itself certified that the employees are well trained and also, sincere in performing the duties and that the employees had completed 480 days of service with a period of 24 calendar months. It is stressed that, in view of Section 33(1)(a) of the I.D. Act, since the workmen completed more than 240 days of service in a period of 12 months, as held by a Constitution Bench of the Apex Court in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others*, non-compliance of Section 33 will make order of termination void ab initio and in such case, the workmen need not even get their case adjudicated by Labour Courts and they can even seek for monetary payments by having recourse to a claim petition filed u/s 33C(2) of the Industrial Disputes Act. Another decision of the Apex Court in *The State Bank of India Vs. Shri N. Sundara Money*, has also been referred to highlighting the aspect that even a temporary workman with break in service should be deemed to be in continuous service within the meaning of Section 25B of the Industrial Disputes Act and he is entitled to have the benefit of Section 25F of the Industrial Disputes Act. That being so, non-compliance of the mandatory conditions precedent provided under the said provision makes the order of termination void ab initio. According to the learned Counsels, the Labour Court is perfectly justified in passing the Award against the TWAD Board, and rightly, the learned single Judge of this Court declined to interfere with such order; thus, there is no scope for interference at all.

5. Having heard the counsels appearing on either side and perused the impugned order as well as the Award, even at the outset, we are of the view that the impugned order of the learned single Judge, confirming the common award

passed by the Labour Court, does not warrant interference for the reasons given below.

Admittedly, the workmen completed 480 days of service within a period of 24 calendar months and it follows, under the provisions of Act 46 of 1981, that those workmen are deemed to be made permanent. When the workmen have completed 240 days of service within a period of 12 months, notwithstanding the pendency of dispute relating to regularisation before the Conciliation Officer, disengaging the workmen on 16.02.1990 is a clear violation of Section 33(1)(b) of the Industrial Disputes Act. As per the said provision, when an Industrial Dispute is pending before a Conciliation Officer or before the Labour Court, prior approval is required to be obtained. This aspect has been clearly dealt with by the learned single Judge against the Appellant herein. In fact, before the Labour Court when the 2nd Respondent/Municipality raised a contention that they have engaged their own employees to maintain the scheme and therefore, there is no obligation for them to undertake any procedure to dispense with the services of the workmen, the Labour Court accepting the said contention, rejected the relief as against the Municipality, however, reinstatement was ordered, directing the Appellant to take back the employees and, in the absence of any existing vacancy, an alternative direction was also given to create posts to accommodate them;

therefore, there is no quarrel over the proposition that in case the Appellant has no vacancy to accommodate them, since the TWAD Board is formed with a view to execute and maintain water supply schemes all over the State of Tamil Nadu, it cannot be said that on the closure of one single scheme, the workmen will be left as retrenched employees.

It must be highlighted here that these workmen were all recruited through Employment Exchange and they are well experienced in maintaining the scheme and, in fact, by letter dated 05.02.1990, when the Appellant/Board themselves have recommended to the Municipality to absorb them along with the maintenance work by stating as follows:

" In continuation of this office letter No. cited, I wish to inform that 33 Nos of N.M.R. Persons are now working for maintenance of Dindigul WSIS. All of these candidates have been sponsored by the employment exchange and after conducting interview by the Assistant Executive Engineers. The details of persons working and their bio-data are furnished in the Annexure enclosed.

In this connection, I am also inform that these candidates have been given proper training in maintenance of such a major W.S. Project without any complaints and they are performing their duties regularly and sincerely.

Electricians:

The following Electricians having DEE with "C" Certificates 1.G. William Chandrasekaran, Bio. Gr.I 2.P.L. Senthil Kumar -do-Their services are essentially

required to the scheme since safety certificate to all pump house have been obtained from the Chief Electrical Inspector, Madras, as IER act and they are well trained in operation of H.T. Transformers, heavy duty pump sets and other Electrical maintenance work.

The following Electricians having ITI with "B" Certificate holders.

1.K. Alagarsamy Elect. Gr.II 2.A. Balasubramanian -do-

3.N. Prakash -do-

4.K. Thangapandian -do-

5.R. Malukkar -do-The services of the above said Electricians are also essentially required for maintenance of pump sets and other maintenance work since they are holding "B" Certificates and also well trained in operation of heavy duty pump sets.

Pipeline Fitter During the period of trial run and maintenance the Fitters (having ITI certificate) who have been initially recruited through employment were not able to do the skilled work for such a heavy size pipe line and unable to raise up to the emergent occasions which are essentially required to this major W.S. Project. Hence during the period of such emergent occasions the following skilled labourers who have got great experience in the pipe line works have been utilised.

1.M. Paulraj Pipeline fitter (Non-Technical skilled.) 2.T. Patchiappan -do-

3.V. Veeran -do-

4.K. Anna Loorthy -do- (Trhe exchange) For regular maintenance and cleaning the pump sets 3 Nos of pump cleaner have been utilised. For operation of value in "D" systems, S.R., H.W, BS I and II training have also been given to watchmen and they are performing their duties regularly and sincerely under this scheme.

In view of the reasons explained as above, I request that the candidates (NMR persons furnished in the Annexure) who are now working in maintenance of Dindigul WSIS may also be observed in the Municipal Service while taking over the scheme from the TWAD Board and the fact may please be informed to the District Employment Officer, Dindigul. These persons have been well trained in maintenance of this scheme and they will be much useful for operation and maintenance of the scheme.

and when that was not accepted by the 2nd Respondent, having regard to the fact that the workmen were allowed to complete more than 480 days during 24 calendar months, it is legally incumbent upon the Appellant/Board to accommodate them in any one of the schemes undertaken/executed/maintained by them.

6. Further, a plain reading of the above referred letter clearly shows that the R1-

workmen were all absorbed by the Employment Exchange after having been interviewed by the Assistant Executive Engineers of the Board and further, they were given proper training in the maintenance of such major water schemes and they were discharging their duties sincerely without room for any complaint and that is why, a very positive recommendation was made stating that their services are essentially required for execution and maintenance of the schemes. Under the above circumstances, for the simple reason that the Municipality refused to accept the employees while taking over the scheme, the poor workmen, who have got employment protection for having rendered 480 days of service in 24 calendar months and continued the services for such period in spite of the restriction specified as 89 days in the appointment orders at the instance of the Board themselves, should not be subjected to victimization.

7. One another factor also needs to be kept in mind is, when the Appellant addressed the letter dated 05.02.1990 to absorb the trained workmen while taking over the water scheme, by letter dated 14.12.1990, the 2nd Respondent-Municipality expressed its desire to recruit persons only in terms of the District Municipalities Act and the Special Rules framed in respect of appointment of the staff and for that purpose, the order of the Government was necessary and also made it clear that, once the scheme is entrusted to them, they will appoint their own staff.

When the second Respondent/Municipality expressed certain administrative difficulties citing the Rules, the Appellant, who is also a statutory Board, should have taken up the matter departmentally to the Government for obtaining necessary orders for absorption of the poor employees along with the scheme by the Municipality themselves. That being so, for the mistake committed by them in not taking up the matter to the Government thereby failing in bringing an amenable quietus to the issue, the Appellant/Board cannot now cite the reply by the Municipality to alleviate the burden saddled on it.

Therefore, in our opinion, rightly the Labour Court has directed the Board for reinstatement of the employees taking note of various aspects as detailed above.

8. Further, the contentions raised by the learned Counsel for the Petitioner advertent to Rule 2 (bb) (oo) of the Act are liable to be rejected in view of the observation made by the Apex Court in *T.N. State Transport Corporation v. Neethivilangan, Kumbakonam*, to the effect that no employer shall during pendency of any conciliation proceeding before a conciliation officer or a board or any proceeding before an arbitrator or Labour Court or Tribunal in respect of an industrial dispute, in regard to any matter connected with the dispute, alter to the prejudice of the workman concerned with such dispute, conditions of service applicable to them immediately before commencement of the proceedings; or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise any workman concerned with such dispute, save with the express permission in writing of the authority before which the proceeding is pending. The purpose of the prohibitions contained in Section 33 is twofold. On

the one hand, they are designed to protect the workmen concerned during the course of industrial conciliation, arbitration and adjudication, against the employer's harassment and victimization on account of their having raised the industrial dispute or their continuing the "pending proceedings", on the other, they seek to maintain status quo by prescribing management conduct which may give rise to fresh disputes which further exasperate the already strained relations between the employer and the workmen.

9. Considering the factual aspects involved herein, it must be observed that if the Appellant had appointed the R1-workmen only for 89 days as stipulated in the respective appointment orders, then, the workmen, on completion of the 90th day, have no say for their further continuance in the Appellant's project, whereas, even after completion of 90 days, the Appellant does not terminate them and continues to extract their services and such service also continues over a period of 2 years; under such circumstance, legally, it is not open for the Appellant/statutory Board to contend that the Respondents cannot claim the benefit u/s 25F of the Act.

10. It would be of much relevance to refer to the decision of the Supreme Court in Gurmail Singh and Others Vs. State of Punjab and Others, , wherein, the Court had an occasion to delve into an issue where on the closure of one Corporation, the job of digging borewells was entrusted to other body of the State. In that given situation, the Apex Court categorically held that such matters cannot be dealt with purely on the basis of labour Law and the two entities being instrumentalities of the State must also confirm to the principles of natural justice. Relevant portions from the said decision are extracted below:

" 11. This leaves for consideration the principal question in this case as to whether in circumstances such as these, the State is under an obligation to protect the terms and conditions of service of the tubewell operators. The State's case is that it had transferred its tubewells to the Corporation. The operators, therefore, became surplus and they were retrenched.

Retrenchment compensation was duly paid to them. It is suggested that the State's obligation came to an end with this. It was under no obligation to find any fresh or alternative employment to the workers. However, being a welfare State, it did arrange for such alternative employment. It was obviously under the State's directions that the Corporation went out of its way to confer a favour on the Appellants by agreeing to take them into its service. It is submitted that the Corporation had its own terms and conditions of service for its employees and could not change those terms and conditions of service for the benefit of these few employees whose services had been taken over as an act of commiseration. It would be unfair on the part of the Corporation to give the Appellants benefit of their earlier service in the government and make them senior to other employees who had been serving in the Corporation right from the beginning. It is, therefore, submitted that the two chapters of service of the Appellants, one with the government and the other with the Corporation are two separate and

independent chapters. The first chapter has come to a close because the State Government was not able to continue to operate the tubewells by itself. The second chapter has commenced with a totally independent offer by the Corporation to the erstwhile government servants of an employment in the Corporation. This is a fresh employment subject to the normal rules and regulations of the Corporation. The Appellants have no right to claim any continuity of service in the circumstances.

16. ... We think that, certainly, in such circumstances it will be open to this Court to review the arrangement between the State Government and the Corporation and issue appropriate directions. Indeed, such directions could be issued even if the elements of the transfer in the present case fall short of a complete succession to the business or undertaking of the State by the Corporation, as the principle sought to be applied is a constitutional principle flowing from the contours of Article 14 of the Constitution which the State and Corporation are obliged to adhere to. We are making this observation because it was attempted to be argued on behalf of the State and the Corporation that only certain assets of the State "industry", viz.

the tube wells, were taken over by the latter and nothing more.

We do not quite agree with this contention but, in view of the approach we purpose to adopt, this aspect is not very material and need not be further discussed.

17. ... It is true that the State Government was incurring losses and decided to transfer the tube wells to the Corporation.

This decision would have been the most unexceptionable, prudent and perhaps the only decision that the government could have taken, if it had decided to completely cut itself off thereafter from any responsibility or liability arising out of the operation of the tube wells. But that the government did not do.

As pointed out earlier, the State Government, although transferring the tube wells, undertook to recoup any losses that the Corporation might incur as a result of the transfer. The result, therefore, was that, despite the transfer of tube wells to the Corporation the government continues to bear the losses arising from this activity. But, while doing so, it has abridged the rights of the Appellants by purporting to transfer only the tube wells and retrenched the Appellants from service as a consequence.

The conduct of the government in depriving the Appellants of substantial benefits which have accrued to them as a result of their long service with the government, although the tube wells continue to be run at its cost by a Corporation wholly owned by it, is something which is grossly unfair and inequitable. This type of attitude designed to achieve nothing more than to deprive the employees of some benefits which they had earned, can be understood in the case of a private employer but comes ill from a State

Government and smacks of arbitrariness. Acting as a model employer, which the State ought to be, and having regard to the long length of service of most of the Appellants, the State, in our opinion, should have agreed to bear the burden of giving the Appellants credit for their past service with the government. That would not have affected the Corporation or its employees in any way - except to a limited extent indicated below - and, at the same time, it would have done justice to the Appellants. We think, therefore, that this is something which the State ought to be directed to do.

21. ... It is open to a court, in such a situation, to give appropriate directions to ensure that no injustice results from the changeover. In the present case, the parties to the transfer are a State on the one hand and a fully owned State Corporation on the other. That is why we have examined that terms and conditions of the transfer and given appropriate directions to meet the needs of the situation. We, therefore, direct the State Government and the Corporation - which is but a wholly owned State instrumentality bound to act at the behest of the State - to carry out our directions above, the Corporation being at liberty to amend its rules and regulations, if necessary, to give effect to the same."

Ultimately, the Apex Court went to the rescue of the workmen against whom the State had a negative approach in giving credit to their past services. In the present case, it must be pointed out that merely because the workmen have been engaged on NMR Basis, they cannot be forever treated so, particularly when their services are utilised beyond the stipulated period and such services continued over a period which confer upon them a vested right to claim absorption or permanent employment. Therefore, when the Board has committed a grave mistake in not being alive to the situation that had arisen, adversely affecting the livelihood of the poor workmen on the reply given by the Municipality citing the Rules and provisions, by not bringing the issue immediately to the attention of the Government/Welfare State, now, it cannot even be allowed to plead pointing the finger at the 2nd Respondent/Municipality. Hence, it is for the Appellant Board to accommodate and employ the workmen in the schemes undertaken/executed/maintained by them.

Insofar as the Award of the Labour Court regarding back wages and other attendant benefits is concerned, while noting that there is no discussion on this aspect by the learned single Judge, considering the fact that the workmen, after their disengagement, have not been given employment; to meet the ends of justice, we direct the Appellant/TWAD Board to reinstate the workmen only with 50% of the back wages. The direction of the labour court to pay lump sum compensation of Rs. 75,000/- to the legal representative of the deceased Venkatasamy-Workman in I.D.

No. 102 of 1995 is sustained. Accordingly, the impugned order of the learned single Judge, confirming the Award passed by the Labour Court, is upheld except in respect of back wages, which is reduced to 50% as stated above.

11. In the result, the Writ Appeals stand dismissed with modification only in respect of back wages payable by the Board to the workmen as 50%. No costs.