

(2012) 04 DEL CK 0029

In the Delhi High Court

Case No : LPA 1071 of 2011 and W.P. (C) 4105 of 2007

The Management of Kerala House

APPELLANT

Vs

Sanjay Kumar and Another

RESPONDENT

Date of Decision : 20-04-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 2, 25F, 25J, 3

Citation : (2012) 4 AD 303 : (2012) 189 DLT 79 : (2012) 130 DRJ 78 : (2012) 134 FLR 390 : (2012) 4 LLJ 720 : (2012) LLR 686 : (2013) 2 SLJ 241

Hon'ble Judges : Rajiv Sahai Endlaw, J; A.K. Sikri, J

Bench : Division Bench

Advocate : R. Satish, for the Appellant; Anjana Gosain, for the Respondent

Judgement

A.K. Sikri, Acting Chief Justice

1. The respondents who are two in number were appointed by the appellant i.e. Kerala House having its establishment at 3, Janter Manter Road, New Delhi. After they had put in 9 & 8 years of service, as Peon and Safaiwala, respectively their services were terminated in the year 2002. Particulars of their services are stated in brief are as under:-

S. No.

Name

Designation & Place of work

Wages p.m.

Date of termination

1.

Sanjay Kumar

Posted at the Information Office, Kerala House as Peon

` 3480

9 years

2.

Mangal Singh

Safaiwala posted at the Controller Office, Kerala House and doing duties in the Guest House as well as in Canteen Kitchen

` 3330

8 years.

They were employed on daily wages/adhoc and their services were terminated by the management on 25.1.2002 and 01.2.2002 respectively without holding any inquiry and they were also not given any notice, or pay in lieu of notice or retrenchment compensation etc. These workmen raised dispute about their termination which were referred to by the Secretary,

Labour, Govt. of NCT of Delhi to the labour Court for adjudication with the following term of reference:-

"Whether the service of Sh. Sanjay & seven others as per Annexure "A" have been terminated illegally and/or unjustifiably by the management and if so, to what sum of money as monetary relief alongwith consequential benefit in terms of existing laws/Govt. Notification and to what other relief are they entitled and what directions are necessary in this respect?

Before the labour Court, the appellant took preliminary objection that it was not an "industry" within the meaning of the Section 2 (j) of the Industrial Disputes Act. Thus, following two issues were framed on the basis of the pleadings:-

(i) Whether the management is not an industry within the meaning of Section 2 (j) of the I.D. Act?

(ii) As per terms of reference.

The first issue was decided by the Labour Court against the appellant holding it to be an industry within the meaning of the Industrial Disputes Act. We record that it is not the subject matter of dispute before us as these findings are not challenged further. As far as termination is concerned, it was held that there was a violation of provision u/s 25F of I.D. Act. The termination was thus found to be illegal. As a result, the Labour Court passed the award granting reinstatement with continuity in service and full back wages@ last drawn wage of ` 3480/- and ` 3330/- per month respectively or the minimum wages fixed for that by the appropriate government from time to time whichever is higher.

2. The appellant challenged the Award by filing the writ petition in which notice was issued to the respondents. The respondent workmen filed application u/s

17B of the ID Act. In this application, orders dated 26.2.2009 were passed directing the appellant to deposit the amount in the Court. After that order was passed, the workmen moved the application for release of the amount. This application was opposed by the appellant on the ground that award passed by the Industrial Tribunal is a nullity inasmuch as the provision of Industrial Disputes Act were not applicable in view of the provision of Kerala Public Service (Management) Act, 1983. The learned Single Judge has repelled the objections observing that this is an issue which has to be decided in the writ petition and the payment u/s 17B of the Act cannot be stopped on this ground. Thus, direction is issued that the amount deposited be released to the workmen. Challenging this order, appeal is preferred i.e. LPA 1071/2011.

3. When this appeal came up for hearing, counsel for the workmen appeared on advance notice. Initially attempts were made to get the matter amicably settled. However, the amount offered by the appellant was not acceptable to the respondent, and therefore settlement talks failed. On 23.2.2012 followed orders were passed:-

"1. The offer for amicable settlement given by the appellant is not acceptable to the respondents as they are demanding more amount than what is offered by the appellant. Because of this reason, settlement talks have failed.

2. We have heard learned counsels for the parties on admission of this appeal. The main contention of learned counsel for the appellant is that since the provisions of Kerala Public Services Act, 1968 as amended vide Amendment Act, 1983 are applicable, the applicability of Industrial Disputes Act, 1947 was excluded. On this basis, it is argued that there was lack of inherent jurisdiction with the Labour Court and thus, the impugned award passed by the Labour Court is null and void.

3. Admit.

4. Copy of the paper book be supplied to Mr. Tandon. Since the aforesaid issue is purely legal, counsels for both the parties request for a short date.

5. Since this is the principal ground on which the impugned award is challenged in the writ petition and therefore decision on this issue even determines the fate of the writ petition, with the consent of counsel for the parties, Writ Petition No. 4105/2007 shall also be listed along with this appeal for hearing.

List for final hearing on 10th April, 2012."

In these circumstances the writ petition has also been finally heard.

4. We may record that the only ground on which the award is challenged in the writ petition is that the Labour Court has no jurisdiction in view of the provisions of Kerala Public Services Act, 1968 as amended vide Kerala Public Services (Amendment) Act, 1983. The original Act, as introduced in 1968 consisted of three sections only. Section 2 provides that the government may make rules

either prospectively or retrospectively to regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of State of Kerala. u/s 3, existing rules were continued as deemed to be made under this Act. By way of Amendment in 1983 Act, Section 4 was added which reads as under:-

"4. Act and rules thereunder to apply to certain persons notwithstanding anything in the Industrial Disputes Act or any other law-Notwithstanding anything contained in Chapter VA or in any other provision of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) or in any other law for the time being in force, or in any judgment, decree or order of any court, the appointment of any person to any public service or post in connection with the affairs of the State of Kerala and the conditions of Service(including termination of service) of any person appointed to any such service or post shall be governed by the provisions of this Act and the rules made or deemed to have been made thereunder." Relevant portion of the Statement of Objects and Reasons for incorporating the aforesaid provisions are as under:- "STATEMENT OF OBJECTS AND REASONS A Full Bench of the Kerala High Court, in its Judgment dated the 7th October, 1982, in certain Original Petitions filed by provisional or temporary employees working in Government Departments, Government Companies, statutory Corporations and local bodies has held that the petitioners, excluding those discharging inalienable Constitutional functions like administration of justice, are entitled to the benefit of protection of chapter VA of the Industrial Disputes Act, 1947 and that their services could be terminated, except to give place to permanent hands regularly recruited by the PSC, only in accordance with the provisions of the said Act. The High Court has also observed that inspite of Section 25J of the I.D. Act, 1947 it may be possible to exclude the operation of the provision of Chapter VA of that Act by a positive provision in any new legislation.

2. According to the rules now in force in the State, temporary employees are allowed to continue in service only for a period of 180 days and cannot, in the normal course, be re-employed even if the vacancies continue to exist beyond that period. If more than one temporary employees are working in a Department or office, the persons to be discharged as per those rules are those who are appointed first.

3. The application of I.D. Act to Government servants will cause administrative difficulties to Government. It was, therefore, considered necessary to exclude persons appointed to public services and posts in connection with the affairs of the state from the operation of the I.D. Act by amending the Kerala Public Services Act 1968. Accordingly, the Kerala Public Services (Amendment) Ordinance, 1983 (5 of 1983) was promulgated by the Governor on the 8th day of February, 1983."

5. It is on the basis of aforesaid provision that the contention of the appellant is that provisions of Industrial Disputes Act do not apply and, therefore, the Labour

Court did not have the jurisdiction.

6. A plain reading of Section 4 of the Act makes it clear that Chapter VA or other provision of the Industrial Disputes Act, is excluded by virtue of that provision. Instead, the appointment of any person to any public service or post in connection with the affairs of State of Kerala and conditions of service (including termination of service) is to be governed by the provisions of the said Act. It is manifest that the Act i.e. Kerala Public Services Act deals with recruitment and conditions of service and enables the Government to frame such rules regulating the recruitment and conditions of service of persons in connection with the affairs of the State of Kerala. Therefore, any provisions regarding recruitment and conditions of service, framed by the State Govt. would govern the service of its employees and not the provisions of Chapter VA or other provisions of the Industrial Disputes Act regulating the conditions of service. That is made clear even in the Statement of Objects and Reasons which demonstrates that the State of Kerala was more concerned with benefit of protection of Chapter 5A of the I.D. Act to temporary or adhoc employees. It is stated that according to the rules in force in the State, temporary employees are allowed to continue in service for a period of 180 days and cannot claim re employment even if the vacancies continue to exist.

7. What follows from the above is that the entire I.D. Act including the adjudication machinery is not excluded. It is only the provision of Chapter V A or other provisions of the I.D. Act regarding recruitment and conditions of service, which would not be applicable. Therefore, it cannot be held that the Labour Court would not have any jurisdiction at all in the matter. Of Course, when the matter is raised before the Industrial Adjudicator, in deciding the dispute, the provisions of Chapter VA of the Act shall not be taken into consideration. Likewise, any other provision of ID Act which is contrary to the service conditions framed by the State Government will not be applied. The Labour Court, while deciding the validity of termination, shall be governed by the regulations or rules made by the State of Kerala. Reading otherwise would mean that there would not be any adjudicatory machinery available to the workmen. Matter would have been different if the such adjudicatory machinery was provided under the Kerala Service Act. However, as mentioned above, that Act has limited scope as it only enables the government to prescribe rules regulating the recruitment and conditions of service of its employees.

8. No doubt, the Labour Court has held termination to be bad as violative of Section 25F of the ID Act which falls in Chapter VA of the said Act. However, we find that the appellant had not brought to the notice of the labour Court the provisions of the Service Act. Furthermore, the appellant did not even point out to the Labour Court as to what were the service conditions framed by the State of Kerala which governed the employment of the respondent herein who were appointed on daily wage/adhoc basis. Thus, once we find that the Award of the Labour Court is not without jurisdiction and no such foundation was laid before

the Labour Court, and even in this writ petition it is not stated as to what are the service conditions formulated by the State of Kerala, it is difficult to interfere with the award passed by the Labour Court. Even when we hold that provisions of Section 25F are not applicable as can be seen from the reading of para 2 of the Objects and Reasons, there is a provisions of last come first go in the Recruitment Rules of the State of Kerala. The two workmen herein had rendered for 9 & 8 years of services respectively before their services were terminated. The appellant has not justified this termination any ground whatsoever. Therefore, de hors Section 25F of the Act, this kind of termination would be illegal. To that extent, award of the Labour Court holding the termination as illegal is sustained, though on different grounds.

9. With this, we come to the nature of the relief granted by the Labour Court. We are of the opinion that when two workmen were employed on adhoc and daily wage basis and termination also took place almost 10 years ago i.e. in the year 2002, grant of relief of reinstatement at this stage may not be justified. Instead, the respondent should be awarded lump sum compensation in lieu of back wages. Considering the fact that they have served for a long period, the compensation of ` 2.5 lacs to each of the workmen would subserve the ends of justice. The award is modified to that extent.

10. The appellant has deposited a sum of ` one lakh with the Register General of this Court on 31.3.2008 passed in the writ petition which was directed to be kept in the fixed deposit. Thereafter the appellant also deposited a sum of ` 2,16,480/- pursuant to the orders passed u/s 17B of the I.D. Act and interest accrued thereon shall be released in favour of the workmen. Balance amount shall be paid by the appellant to the workmen within a period of 4 weeks from today. LPA 1071/2011 & and Writ Petition (C) 4105/2007 are disposed of in the aforesaid terms.