
(2001) 07 BOM CK 0112
In the Bombay High Court
Case No : Writ Petition No. 555 of 1998

Union of India (UOI)

APPELLANT

Vs

Subhash P. Dunagu and Others

RESPONDENT

Date of Decision : 31-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 2, 25F

Citation : (2002) 104 BOMLR 61

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.Y. Chandrachud, J.—The Union of India challenges an award of the Central Government Industrial Tribunal dated 12th April, 1996 in a reference to adjudication u/s 10 of the Industrial Disputes Act, 1947. The First Respondent Was employed as a casual worker by the Central Railway on 24th March, 1978 and was assigned the work of a "casual painter". There is no dispute about the fact that the First Respondent worked with the railways between the following periods viz.

24th March, 1978 to 18th June, 1978.

21st June, 1978 to 18th August, 1978.

25th September, 1978 to 18th January, 1985.

According to the workman, he had also worked during the period 26th August, 1985 and 29th July, 1986. On the other hand, the case of the railway administration was that the workman had left services on his own on 19th January, 1985 and was subsequently engaged on 26th August, 1985 and that he was in service until 5th August, 1986. Be that as it may, the grievance of the workman was that on 30th July, 1986, his services came to be terminated wrongfully and illegally without complying with the mandatory requirements u/s

25-F of the Industrial Disputes Act, 1947. In the statement of claim, the workman had adverted to the fact that he had been sent for medical examination, but that he was declared as unfit for absorption in Grade C-I. The relief which was prayed for was for a declaration that the action of the railways in terminating his services from 30th July, 1986 was illegal and wrongful and that reinstatement with full back wages together with continuity of service be allowed.

2. The case of the railway administration was that the First Respondent was initially considered for placement in B-I category. Though the workman was sent up for medical examination with reference to the aforesaid category on 26th December, 1984, he ultimately reported at the Railway Hospital at Byculla only on 6th April, 1985 stating that he had lost the medical memo. Thereafter, according to the railway administration, the workman was re-engaged on humanitarian grounds on 26th August, 1985 and was once again sent for medical examination on 8th August, 1986. On 8th October, 1986, the workman was found to be unfit for employment in the B-I category. Subsequently, on 26th April, 1988, the workman was sent up for medical examination in the C-I category and there also, he was reported to have failed the medical examination on 21st February, 1989. According to the administration, efforts were also made to explore the possibility of re-engaging the workman in medical category Oil, but there was no vacancy and the workman himself refused to opt for the aforesaid medical category. Finally, it was also stated that on 21st July, 1989, the workman had collected his Casual Labour Service Card. The workman was not allowed to resume duty as he did not fulfil the medical requirement.

3. Evidence was adduced before the Industrial Court. By its award dated 12th April, 1996, the Industrial Court came to the conclusion that from the material on the record it emerged that the workman had continued in service until 29th July, 1986 on which date his services were dispensed with. The Court noted that during the course of cross-examination, the management witness had admitted that the workman had in fact served for a period of more than 240 days in the calendar year preceding the date of his termination i.e. 29th July, 1986. The railway administration had taken the plea that the workman could not be regularised in its service since he was not found fit medically and, that being the position, it was not necessary to comply with the requirements of Section 25-F of the Industrial Disputes Act, 1947 before effecting retrenchment. The Tribunal held that the management was within its rights in declining to regularise the services of the workman on the ground that he had not fulfilled the medical requirements. But, even if the workman was not to be regularized in the services of the railways, that would not ipso facto put an end to his existing position as a casual worker which could only be terminated in accordance with law. In order to terminate his employment as a casual workman, a recourse to the requirement of Section 25-F was necessary and admittedly, the provisions of Section 25-F were not complied with. In the circumstances, the Tribunal was of the view that the workman will be deemed to have continued in his job as a casual workman with effect from 29th July, 1986 and would also be entitled to back wages. The

Tribunal has clarified that the railway administration would be at liberty to terminate the engagement of the worker in accordance with the provisions of Section 25-F. Finally, the Tribunal has held that the workman would not be entitled to claim regularisation in service.

4. From the material which has emerged on the record of the case, the admitted position is that the workman had been engaged by the railway administration as a casual workman between March and June, 1978 and thereafter after a short break of service between June and August, 1978. The name of the workman was thereafter borne on the rolls of the administration as a casual workman again after September, 1978 and according to the railway administration this continued to be the position until January, 1985. The Industrial Tribunal had recorded a finding of fact that the services of the workman had been continued as a casual workman until 29th July, 1986 and the witness for the administration admitted in the course of his cross-examination that the workman had completed 240 days in the calendar year immediately preceding the termination of service on 29th July, 1986. While the Industrial Tribunal has accepted the case of the administration that the workman was re-engaged on 26th August, 1985, the Tribunal has found that he had continued in service until 29th July, 1986. These are essentially findings of fact which do not call for any interference under Article 226 of the Constitution.

5. Insofar as the issue of regularisation was concerned, it has also emerged from the evidence that the workman was declared as medically unfit for the B-I category on 8th October, 1986 and for the C-I category on 21st February, 1989. This was admitted in terms by the workman during the course of the cross-examination. In the affidavit filed on behalf of the railway administration in lieu of the examination in chief of its witness Shri P.G. Neklikar, Chief Telecommunications Inspector (Construction), it was also averred in paragraph 7 that during the pendency of the reference before the Tribunal, the workman was once again examined medically by the Divisional Medical Officer (Central Railway) Parel, for being placed in the C-II category, but he was once again declared unfit and a certificate to that effect was issued on 14th October, 1985. There was no cross-examination in regard to this statement. The Tribunal has in the circumstances concluded and, to my mind quite correctly that the workman was considered for regularisation, but it was not possible to do so in view of the fact that he was not found to be medically fit with reference to all the three categories, B-I, C-I and C-II, with reference to which his case came to be considered. In these circumstances, as already noted earlier, the Tribunal has held that the workman was not entitled to regularisation.

6. The learned Counsel appearing on behalf of the petitioners submitted that in view of these findings of the Tribunal, the provisions of Section 25-F of the Industrial Disputes Act, 1947 were not attracted. The submission which was sought to be urged was that the definition of retrenchment under the Industrial Disputes Act, 1947 expressly exclude the termination of the service of a

workman on the ground of continued ill-health under Sub-clause (c) of Clause (oo) of Section 2. In the circumstances, it was sought to be urged that the authorities were not required to comply with the provisions of Section 25-F before retrenching the First Respondent from service.

7. There can be no dispute about the proposition that the termination of the service of a workman on the ground of continued ill-health would not amount to retrenchment within the meaning of Section 2(oo). In *Anand Bihari v. Rajasthan State Road Transport Corporation* 1991 L. I.C. 4949 : 1991 (62) F.L.R. 81 : 1991 (1) L.L.R. 101 : 1991 C.L.R. 525, the Supreme Court, while construing the provisions of Sub-clause (c) of Clause (oo) of Section 2 held that the expression ill-health used in Sub-clause (c) has to be construed relatively so as to have a bearing on the normal discharge of duties. In that context, the Supreme Court held as follows:

Therefore, any disorder in health which incapacitates an individual from discharging the duties entrusted to him or affects his work adversely or comes in the way of his normal and effective functioning can be covered by the said phrase. The phrase has also to be construed from the point of view of the consumers of the concerned products and services. If on account of a workmen's disease or incapacity or debility in functioning, the resultant product or the service is likely to be affected in any way or to become a risk for the health, life or property of the consumer, the disease or incapacity has to be categorised as ill-health for the purpose of the said sub-clause. Otherwise, the purpose of production for which the services of the workman are engaged will be frustrated and worst still in cases such as the present one they will endanger the lives and the property of the consumers.

8. Now in the facts and circumstances of the present case, the First Respondent was considered for regularisation and he was upon medical examination not found to be fit for absorption in Grades B-I, C-I and C-II. The learned Counsel appearing on behalf of the Petitioner sought to submit that medical unfitness of the First Respondent which was a ground for not regularising him in service, would also constitute a reason for termination of the service of the workman on the ground of continued ill-health within the meaning of Sub-clause (c) of Clause (oo) of Section 2. There is no merit in this submission. The medical examination which the First Respondent was required to undergo was for the purpose of establishing whether he was fit for permanent absorption and whether in that context he fulfilled all the requirements which are set out for permanent employment in the railways. The fact that the First Respondent was not found to be medically fit for permanent absorption would not ipso facto lead to the conclusion that his services as a casual workman came to be terminated or were liable to be terminated on the ground of continued ill-health. The burden of establishing that the termination of services is on the ground of continued ill-health of the workman and is, therefore, not a retrenchment under Clause (oo) of Section 2 is on the employer. In the present case, there is not an iota of

evidence produced before the Industrial Tribunal to demonstrate. that the First Respondent suffered from continued ill-health or that his services were terminated on that ground. The ground of continued ill-health within the meaning of Sub-clause (c) of Section 2(oo) must be of a kind adverted to by the Supreme Court in Anand Bihari's case (supra). No such factual foundation or material was placed before the Tribunal by the Petitioner or the railway administration. Indeed, the First Respondent had worked as a casual workman ever since 1978 and for the 7 years that he was in service as a casual workman, there was not even a whisper of the First Respondent suffering from continued ill-health. In these circumstances, I am of the view that there is no basis in the contention that the termination of the services of the First Respondent did not amount to retrenchment on the ground that it was a termination on the ground of continued ill-health.

9. Insofar as the grant of relief is concerned, the Industrial Tribunal has come to the conclusion that the First Respondent was entitled to his full back wages for the period during which he has been kept out of employment. The Industrial Tribunal has, however, granted permission to the authorities to retrench the First Respondent after due compliance with the provisions of Section 25-F of the Industrial Disputes Act, 1947.

10. Having regard to the facts and circumstances of the preset case, it would be clear that the services of the First Respondent were unlawfully dispensed with without due compliance with the provisions of Section 25-F. The necessary consequences must, therefore, follow under the law. There is, therefore, no infirmity in the order passed by the Industrial Tribunal. The writ petition is accordingly rejected.

No order as to costs.