
(1989) 06 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10300 of 1988

V. Venkatram Narsaiah and Others

APPELLANT

Vs

Warrangal Dt. Scheduled Castes Services Cooperative Society
Ltd.

RESPONDENT

Date of Decision : 27-06-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25B, 25F, 25G

Citation : (1990) 1 LLJ 255

Hon'ble Judges : M. Jagannadha Rao, J

Bench : Single Bench

Judgement

1. Three petitioners have been appointed on daily wage basis as Section Writers in the first respondent Society. The first petitioner was appointed on 16th August, 1985 and the second petitioner on 18th November, 1985 and the third petitioner on 2nd June, 1986. According to the petitioners, they have all put in two years continuous service and that they were expecting that their services will be regularised. The 2nd petitioner is a graduate and said to know typewriting while the petitioners 1 and 3 have studied upto graduation. During the strike period of the A. P.N.G.G.O's Association in 1986, the 1st petitioner was deputed to work in the Sub-Collector's Office at Parkal, while the second and 3rd petitioners continued to work under the 1st respondent, when other staff members who were on deputation went of strike. Then the petitioners were not permitted to attend to their duties with effect from 14th June, 1988. Therefore they approached this Court contending that there was violation of Section 25-F of the Industrial Disputes Act. It is further stated that the other persons who were employed subsequent to the petitioners and who were juniors such as Sarvasri T. Ravi, R. Balaraj and M. Suryanarayana were being retained. It is further alleged that the respondent has not sent any notice u/s 25-F(3) of the Industrial Disputes Act and that the termination being contrary to Section 25-F of the Industrial Disputes Act, is ab initio void. It is also stated that the action contrary to Section 25-G of the Industrial Disputes Act. The petitioners further stated that

they sent representation on 17th June, 1988 and 20th June, 1988, but to no effect. The petitioners were paid wages due to them upto 13th June, 1988, on 7th July, 1988. It is stated that the petitioners have no other alternative remedy and that they should be directed to be reinstated with backwages.

2. A counter has been filed by the 1st respondent-Society, stating that the petitioners have been working on daily wage basis and that they were not appointed any service in the Society and they have no continuous service and when the petitioners were appointed, no orders were obtained from the managing Director, A.P. Scheduled Castes Cooperative Finance Corporation Limited, Hyderabad for appointment of "Section-Writers", on casual daily wages. It is further stated that the staffing pattern of the Society does not provide for the appointment of Section Writers on daily wages and that therefore the Collector who is the Chairman of the 1st respondent-Society terminated the petitioners service. It is further stated that there was an audit objection that the society sustained heavy financial commitment. The petitioners are not entitled to the regularisation as there is no post of Section-Writers. The daily wage workers cannot have any right for regularisation and as and when regular vacancies arise, the petitioners can apply for consideration of their cases. Persons appointed on ad hoc basis during N.G.G.O's strike are to be given preference as per G.O. 69, G.A.D. dated 10th February, 1987. The respondent never notified the posts through the employment exchange. In as much as there is no sanction for the appointment of the petitioners and in view of the financial commitment without work-load, the posts cannot be continued. The petitioners have an alternative remedy. So far as the three other persons who were said to be juniors and who are being continued are concerned, it is stated that they are working as "typist" on daily wage basis and that those posts will also be filled up on regular basis after regular panels are issued. Across the bar, it is stated that in a connected writ petition, the said typist obtained stay order from this Court.

3. The point that arise for consideration is whether the petitioners are entitled to the relief of declaration that their termination is illegal and void and for reinstatement with all attendant benefits ?

4. The learned counsel for the petitioners has relied upon the definition of "Workman" in Section 2(5) of the Industrial Disputes Act and also referred to the provisions of Section 25-F and definition of "continuous service" in Section 25-B of the Act. As there is no denial in the counter affidavit that the petitioners are "workman" coming within the above said definition and as there is no denial of the petitioners having service of 240 days, I have come to the conclusion prima facie that the petitioners are workman and that by application of Section 25-B they can be considered by the workman for the purpose of the Industrial Disputes Act.

5. The question however is whether they can claim the relief of reinstatement with backwages u/s 25-F of the Act ? This Court has no doubt decided in several cases that if there is a violation of statutory provisions by an employer

coming within the definition of "State" under Article 12 of the Constitution, this Court can entertain a Writ petition under Article 226 of the Constitution of India without relegating the parties to seek their remedy before the concerned Industrial Court under the Industrial Dispute Act. If no investigation of facts is necessary and if no other consideration exists which might have enabled the Industrial Court to deny one or other of the reliefs of reinstatement or backwages, it would certainly be open to this Court to interfere straightway under Article 226 of the Constitution of India. The question is whether the present case is one such.

6. I have already referred to the allegations in the counter affidavit that the petitioners appointment was without sanction of the Managing Director of the Andhra Pradesh Scheduled Castes Co-operative Finance Corporation Limited. Hyderabad which controls the finances of the various District Societies such as 1st respondent-society. Unless the finances are provided or provision is made by making available such finances, the appointments cannot be made in the District Societies. Further, it is pointed out that there so no post of Section-Writers and that the staffing pattern does not make any provision for appointment of Section Writer on daily wages. It is also stated by the respondent that there is no work load and to direct the petitioners continuance would involve the Society in unreasonable financial commitment.

7. The Supreme Court in Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, had an occasion to consider the jurisdiction of the court in regard to directing reinstatement and payment of backwages. That matter came up before the Supreme Court from the Industrial Tribunal. On the facts of the case, the Supreme Court directed the reinstatement with backwages subjected certain direction relating to seniority. But, in the course of judgment, Chinnappa Reddi, J. pointed out that though ordinarily reinstatement and backwages are the necessary result of setting aside the removal or termination, in certain cases the said result does not follow. These cases are enumerated as follows :

(p. 389)

"But there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and workmen to direct reinstatement with full backwages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the Court to make appropriate consequential orders. The Court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The Court may deny the relief of award of full backwages where that would place an impossible burden on the employer. In such and other exceptional cases the Court may mould the relief but, ordinarily the relief to be awarded must be reinstatement with full backwages. The relief must be awarded where no special impediment in the way of awarding the relief

is clearly shown".

In cases where the employer mentions the facts, which cannot prima facie be rejected as untrue, that there is no work load and and that the finances of the respondent do not permit the continuance of certain employees who might have worked for more than 240 days continuously, and where the industry is closed, or the industry is in financial doldrums, it will be open for the Labour Court or the Industrial Tribunal to exercise its discretion in passing appropriate orders. In such cases, in my view, will not be possible for the High Court under Article 226 of the Constitution of India to exercise discretion one way or the other. It is true that if there is violation of statutory provisions such as Section 25-F, it may be permissible for the employees to approach the High Court without resorting to the remedies under the Industrial Disputes Act. But if the High Court finds that such exceptional circumstances as those mentioned above are prima facie in existence in a particular case; the High Court cannot grant the relief merely because there is violation of Section 25-F. The discretion to pass appropriate orders in such cases vests only in the concerned Labour Court or Industrial Tribunal. For the aforesaid reasons, it has become necessary to direct the petitioners to approach the Industrial Tribunal or Labour Court by seeking appropriate remedies.

8. It is however argued that to go for a reference would be a time consuming process and that this Court would straightaway grant the relief. In the circumstances, mentioned above. I am of the view that it would not be proper for this Court to entertain matters covered by the Industrial Disputes Act under Article 226 of the Constitution of India straightway on the ground that a reference to the Industrial Tribunal through the Government would be delayed. There are methods by which the same can be expedited and if there is unreasonable delay, parties have a remedy to approach this Court for appropriate orders.

9. One other point which has been raised in the case relates to the very question whether the petitioners can be treated as workmen having the relationship of employee and employer. This point has arisen in the context of the contention raised by the respondents that the permission of the Managing Director of the A.P. Scheduled Castes Cooperative Finance Corporation Limited was not obtained before the appointment of the petitioners. In this context, reference is made to the decision of the Kerala High Court in Eranalloor Service Co-operative Bank Ltd. Vs. Labour Court and Others, . In that case it was found that the temporary appointment was itself subject to the approval of the Registrar of Co-operative Societies and that such approval not having been obtained before the temporary appointment was made, there was no relationship of workman and employer for the applicability of Section 25-F or the other provisions of the Industrial Disputes Act. In that context, Kerala High Court referred to the decision of the Supreme Court in Santosh Gupta v. State Bank of Patiala (1980 III LLJ 72). In the latter case, the Supreme Court observed that even if the petitioners were not qualified

and if they had been temporarily appointed earlier, they could still seek benefit of Section 25-F for obtaining reinstatement of temporary employment. The said decision was distinguished by the Kerala High Court, in as much as in the Kerala case, even the temporary appointment was subject to the approval of the Registrar. Having regard to the view I have taken viz., that the petitioners have to approach the concerned Industrial Court for appropriate relief, I do not think it necessary to decide whether the initial appointment of the petitioner was valid one or not or whether there was any statutory or other bar for treating the appointments as void and not merely voidable.

10. The contention raised by the learned counsel for the petitioners that three other persons who are juniors to the petitioners are continuing is not correct because according to the counter they are continuing as typists and not as section writers. Further, it is stated across the bar that those persons obtained stay orders from this Court in the connected writ petition. Therefore, this argument cannot help the petitioners.

11. The writ petition is therefore dismissed on the ground that the petitioners have an alternative remedy of seeking reference to the Industrial Tribunal or Labour Court. No costs.