

(1999) 04 MAD CK 0117

In the Madras High Court

Case No : Writ Petition No's. 8416, 8418 and 8618 of 1991

Vijayakumari R. and Others

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 22-04-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F
Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen)
Act, 1981 — Section 3(1)

Citation : (2001) 3 LLJ 833

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Y. Venkatachalam, J.—Since the subject-matter involved in all these cases and also the respondents are common all these writ petitions have been taken up together and are disposed of by this common order with the consent of the parties concerned.

2. The petitioners herein have filed these writs invoking Article 226 of the Constitution of India, seeking for a writ of certiorari to call for the records in award dated April 17, 1989, in I.D. No. 172 of 1985 and two others passed by the first respondent and to quash the same.

3. In support of their writ petitions, the petitioners herein have filed separate affidavit wherein they have stated all the facts and circumstances that forced them to file the present writ petitions and requested this Court to allow their writ petitions as prayed for. Though no counter affidavit has been filed by the second respondent, learned counsel appearing for the second respondent argued the matter and ultimately requested this Court to dismiss these writ petitions for want of merits.

4. Heard the arguments advanced by learned counsel appearing for the parties. I

have also perused the contents of the affidavit and all other relevant material documents available on record in the form of typed set of papers. I have also taken into consideration the various points raised by learned counsel appearing for the respective parties during the course of their arguments. I have also perused the various decision relied on by both the sides.

5. In the above facts and circumstances of these cases, the only common point that arises for consideration, is as to whether there are any valid ground to allow these writ petitions or not.

6. The brief facts of the case of the petitioners herein as seen from their affidavit are as follows: These petitioners have been working in the various establishments of the second respondent as typist and sales assistants since 1981, 1978 and 1978 respectively. Their last drawn wages were Rs. 10 per day usually paid at the end of the month. All of them had been in service for more than 480 days in 24 months immediately preceding August 9, 1984, August 10, 1984, and August 21, 1984 respectively and hence all of them were entitled to be made permanent by the second respondent as per the provisions of Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, which was applicable to the respondent. Apart from this, they had been requesting the second respondent to confirm and regularise their services. They were paid wages at the end of the month for the number of days they had worked in the month and their signatures used to be obtained in vouchers. Later, these vouchers numbers and amounts paid uses to be entered into the account books. They were not allowed to sign in any attendance register or wage register. In spite of their request for regularisation and with a view to evading compliance with the aforesaid provision of law, the first respondent terminated their service with effect from August 9, 1984, August 10, 1984, and August 21, 1984, respectively, without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947. Therefore, they state that their termination of employment is arbitrary, illegal and was liable to be set aside.

7. It is stated by the petitioners herein that on April 6, 1984, the second respondent had appointed a number of persons, vide G.O.Ms. No. 464, dated April 6, 1984, of the Department of Industries. Most of them were juniors to these petitioners in service with the second respondent. According to the petitioners herein, this act of the second respondent renders their appointment illegal apart from making illegal their (petitioners") non-confirmation and their termination. On the strength of several documents it is stated by these petitioners that they had worked for more than 480 days required by Section 3(1) of the Act and they had become entitled to permanency on the following dates: April 31, 1983, July 31, 1983, and August 20, 1984, respectively. It is also stated by them that they were one of the sales assistants/typists who had represented to the Government on January 12, 1985, and January 12, 1985, respectively for permanent absorption as during the period of 24 months prior to

that date they had worked for 480 days. However, the Government passed an order, vide G.O. Ms. No. 464, dated April 6, 1984, making ten sales assistants permanent exempting them from the conditions imposed by various other Government orders of these ten persons about 3 persons were juniors to these petitioners. So they represented to the second respondent protesting against this illegal discrimination and praying for permanency both under the Government order as well as the Act. However, the second respondent had terminated their services. This was in pursuance of a circular dated August 8, 1984, of the second respondent to oust all the temporary hands. So these writ petitioners raised separate industrial disputes. They were referred to the first respondent herein and were numbered as I.D. Nos. 172 of 1985, 138 of 1985 and 154 of 1985. The second respondent defended the ID pleading, inter alia, that the petitioners herein were employed as casual for a particular period, that the respondent being unable to meet the demand during festival from Deepavali to Tamil new year, used to recruit temporary staff for the season, and that the petitioners herein were one of such temporary hands recruited on temporary basis and that the respondent except by any order from the Government did not have power to confer permanency on anyone. Whereas it is contended by the petitioners herein that they were more regular than even a permanent employee and for most of the period, continuously without any break. It is their specific case that the statute, viz., Section 3(1) of the Act confers permanency on them, and according to them no Government order can prevail over a statute. As the issues involved were identical in all these industrial disputes, they were jointly taken for trial. The first respondent-Labour Court passed the common award on April 17, 1989, about six months after the arguments were heard dismissing the petitioners' claim. Challenging the said award, the petitioners have filed the present writ petitions.

8. The impugned award of the first respondent is challenged on the grounds that the same is illegal, against law and is liable to be set aside, that the first respondent acted on surmises and with material irregularities resulting in illegality. It is contended by the petitioners that it was never admitted by the petitioners that they were employed only during festival season. They said that the case of the petitioners as established by record was that they were employed almost regularly for more than 240 days in a period of 12 months. They also contend that the first respondent acted illegally in rejecting exhibit W-1 the certificate issued by the second respondent showing the total number of days worked by the petitioner, that the first respondent acted illegally and perversely in observing that the said certificate was not supported by vouchers which were not produced by the second respondent and so cannot be relied upon, and that the first respondent acted illegally in not drawing adverse inference against the second respondent for not producing all the payment vouchers and account books in spite of notice to produce them and a memo filed by the petitioner pointing out the falsehood in second respondent's affidavit that they were filed, without actually filing them. It is the case of the petitioners that it should have

drawn adverse inference against the first respondent as per the decisions of the Supreme Court in H.D. Singh Vs. Reserve Bank of India and Others, , and Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, .

9. It is also their grievance that the first respondent acted illegally in not relying upon and acting upon exhibit W-1 certificate and acted illegally in not holding that the petitioner had worked for more than 480 days in 24 months and hence seemed to have become permanent as per the provisions of Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status of Workmen) Act, 1981, and that the first respondent acted illegally in not holding that having completed 240 days in 12 months, the petitioners are entitled to the protection of Section 25F of the Industrial Disputes Act and the resultant termination amounts to illegal retrenchment. According to them, the first respondent acted illegally in not holding that by reason of failure to observe the conditions laid down in Section 25F of the Industrial Disputes Act, the termination of the petitioners is illegal. It is also their contention that the first respondent failed to see that as held by the Supreme Court in The State Bank of India Vs. Shri N. Sundara Money, and in H.D. Singhv. Reserve Bank of India, (supra) even if the period of service is fixed in the order of employment, if the period of service is more than 240 days, the provisions of Section 25F of the Industrial Disputes Act have to be complied with failing which the termination is illegal. It is also the grievance of the petitioners herein that the first respondent had forgotten all the arguments during a lapse of six months between the date of arguments and the date of judgment.

10. Having seen the entire material available on record and from the claims and counter-claims of the respective parties, it is clear that the petitioners herein claim that they had worked before the second respondent-management for more than 480 days in 24 months immediately preceding their termination and that, therefore, they are entitled to be made permanent by the second respondent as per the provisions of Section 3(1) of the Act. The management rejected such request of the petitioners herein and justified their termination. The petitioners raised industrial disputes and the matter went before the first respondent-Labour Court and the said Labour Court after trial once again rejected the claim of the petitioners and passed an award against their interest and challenging the said award the petitioners have filed the present writ petitions.

11. It is seen from the records, the petitioner Sivakumar worked with the second respondent from August 3, 1981, to August 9, 1984, i. e., for about 920 days. Further, as seen from exhibit W-1 in that case it has been certified by the manager of the second respondent that the said petitioner had worked in their unit on daily wages from August 3, 1981, to March 10, 1982, and from April 1, 1982, to June 30, 1982, and from August 1, 1982, to February 15, 1983, and from March 25, 1983, till September 21, 1983. That apart it has been claimed by said petitioner that from August 3, 1981, onwards he worked under the second respondent- management till August 9, 1984, i.e., for about 920 days. In the

case of other petitioner, Revathi, also she had worked from July, 1983, to August, 1984. Apart from that previously also she had worked from October 11, 1978, to May 9, 1979. She had given voucher numbers also under which she received the wages. In the case of petitioner, Vijayakumari, there is an appointment order also dated February 1, 1982. After that she had worked in the Vanavil unit from April, 1982, to March, 1983, as sales assistant. Thereafter, she had worked from June 15, 1983, till June 29, 1984, for about 311 days and she has also produced the voucher numbers under which she received the wages. On the basis of the above the petitioners herein claimed before the first respondent-Labour Court that they had worked for 480 days in 24 months and that, therefore, their termination is illegal. The Labour Court observed that it was unable to know the actual number of days the petitioners worked in a year or in two years from any documentary evidence, as there was no appointment order, termination order or even the attendance register. But, at the same time, it is clearly admitted by the Labour Court as follows:

"Although exhibit W-1 stands for more than 480 days in two years, it is not supported as such by payment vouchers and by any other documentary evidence. Therefore, exhibit W-1 cannot be much relied even though it is issued by the respondent."

Here, it is significant to note that all the petitioners herein have clearly given all the voucher numbers under which they received the wages. Also they have filed an application to direct the second respondent management to produce the vouchers that had been signed by the petitioners herein during the period mentioned in the certificate given by the second respondent. But they were not produced. Here, it is the categoric contention of the petitioners herein that the second respondent filed a counter stating that they were being filed along with the counter but deliberately and fraudulently failed and neglected to file them, and that the first respondent without checking up whether they had been filed or not, closed the said application. I see every force in the said contention of the petitioners. Because there is no mention about this aspect in the award passed by the first respondent, when admittedly such an application for direction to the second respondent has been filed and disposed of. That being so, there is no reason at all for the Labour Court to come to a conclusion that the claim of the petitioners herein is not supported as such by payment vouchers and by any other documentary evidence. It is the clear case of the petitioners herein that they were paid wages at the end of the month for the number of days they had worked in the month and their signatures used to be obtained in vouchers and later these voucher numbers and amounts paid used to be entered in the account books and they were not allowed to sign in any attendance register or wage register. This clearly shows the intention of the management. Therefore, it is rightly contended by the petitioners that the first respondent acted illegally and perversely in observing that the said certificate was not supported by vouchers (which were not produced by the second respondent) and so cannot be relied upon.

12. It is next contended by the petitioners that the first respondent acted illegally in not drawing adverse inference against the second respondent for not producing all the payment vouchers and account books in spite of the notice to produce them and a memo filed by the petitioner pointing out the falsehood in the second respondent's affidavit that they were filed without actually filing them, and that, therefore, it should have drawn adverse inference against the first respondent as per the decisions of the Supreme Court in *H.D. Singh v. Reserve Bank of India*, (supra) and *Gopal Krishnaji Ketkar v. Mohammed Jaji Latif*, (supra). I see every force in the said contention of the petitioners. It is significant to note that in the above decision it has been held as follows (headnote of AIR)

"Workman in Reserve Bank claiming to have worked for more than 240 days in a period of 12 months-Bank failing to produce record - Interference has to be drawn that workman's case is true."

The above decision squarely applies to the facts and circumstances of this case since in this case also the management failed and neglected to produce the vouchers pointed out by the petitioners in support of their claim. Therefore, under the above circumstances I am of the clear view that in this respect the Labour Court miserably failed, to consider the claim made by the petitioner and that, therefore, the second respondent acted illegally in not holding that having completed 240 days in 12 months, the petitioners herein are entitled to the protection of Section 25F of the Industrial Disputes Act and the termination amounts to illegal retrenchment, and that, therefore, they are entitled for reinstatement.

13. Further, it is the settled law by the various pronouncements of various High Courts and even the Supreme Court that when a person falls within the definition of "workman" and has completed service of 240 days, as such he is entitled to be regularised by the respondents. That being so, in this case the petitioners herein have worked on daily wage basis for about two years and since after completion of 240 days of service, their service cannot be terminated without complying with Section 25F of the Industrial Disputes Act. But, in the above case the Labour Court has failed to look into all these aspects and has erroneously rejected the claim of the petitioners herein. Even as per the various decisions relied on by the respondents it is seen that the Allahabad High Court in *C. S, K. Sangh v. State of U P*, 1999 I LLJ 117, while considering a similar matter directed the Government to frame a scheme and rules on the subject prescribing which category of daily wagers can be regularised. That apart, even in cases of ad hoc appointments, in the decision in *Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava*, , the Supreme Court directed the management to consider sympathetically if regularisation in service is possible. Under such circumstances of the legal position, it is significant to note that the Government passed order making permanent certain persons and among them three persons were juniors to these petitioners. That apart, it is seen even earlier, there were appointments

without reference to all those Government orders as was observed in the auditor's report for the year 1982-83. This itself shows that the management has been adopting unfair labour practice to deprive the petitioners herein of their lawful claims. Termination of the service of employee on the verge of their completing the necessary period itself was held to be an unfair labour practice by the Punjab and Haryana High Court in the case of Kapurthala Central Co-operative Bank Ltd., 1984 Lab IC 974. All these aspects have not at all been taken into consideration by the Labour Court while rejecting the claims of the petitioners herein, it is contended by the petitioners that the first respondent had forgotten all the arguments during a lapse of six months between the date of arguments and the date of judgment. In the above facts and circumstances of the present case such contention also cannot be brushed aside.

14. Therefore, for all the aforesaid reasons and in the peculiar facts and circumstances of the present case and in view of my above discussions with regard to the various aspects of this case, and also in the light of the various decisions relied on by both the parties, I am of the clear view that the first respondent-Labour Court has miserably failed to take into consideration the various crucial aspects of the matter and erroneously rejected the claim made by the petitioners herein and that, therefore, the impugned award is liable to be quashed.

15. However, coming to the claim made by the petitioners herein, their prayer is for reinstatement with back-wages. As this court has already come to the conclusion, these petitioners have been illegally retrenched without complying with the provisions of Section 25F of the Industrial Disputes Act, the petitioners herein are entitled for reinstatement in the interest of justice. But, at the same time, as far as the prayer for back wages is concerned, it is significant to note that the back wages can be awarded only in cases where it is proved beyond doubt that the persons in question were not in employment all these days. However, in the case on hand the petitioners herein are typist/sales assistants and nobody can say that such persons remained unemployed or out of employment all these days. That being so, in the case of the petitioners herein, back wages cannot be ordered. In this view of the matter, I am of the considered view that the petitioners herein are entitled for reinstatement alone and they are not entitled to any back wages.

16. In the result, all the writ petitions are allowed. Consequently, the impugned award dated April 17, 1989 in I.D. Nos. 172 of 1985, 138 of 1985 and 154 of 1985 passed by the first respondent is hereby quashed and the second respondent-management is hereby directed to reinstate all these petitioners herein within a period of sixty days from the date of receipt of copy of this order. However, it is made clear that the petitioners herein are not entitled to any back-wages. No costs.