
(1997) 02 AP CK 0048
In the Andhra Pradesh High Court
Case No : W.A. No. 135 of 1997

Yadamma T.

APPELLANT

Vs

National Remote Sensing Agency and Another

RESPONDENT

Date of Decision : 17-02-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 25

Industrial Employment (Standing Orders) Act, 1946 — Section 2

Citation : (1997) 4 ALD 415 : (1997) 4 ALT 578 : (1997) 2 APLJ 107

Hon'ble Judges : Prabha Shankar Mishra, C.J.;D.H. Nasir, J

Bench : Division Bench

Judgement

P.S. Mishra, C.J.—Heard.

2. Industrial dispute, on reference, ended in, the award of reinstatement in service and consequential benefits to the respondent-appellant. The same has been challenged by the employer before this Court. Learned Single Judge has set aside the award on the ground that it is not established that the appellant was in the regular employment of the establishment and thus Section 25-F of the Industrial Disputes Act is not attracted. Appellant - second respondent in the writ petition has invoked this Court's jurisdiction under Clause 15 of the Letters Patent of the Court. Facts as shown from the record are as follows :

3. According to the appellant, she was appointed as a sweeper in May, 1980 on a monthly salary of Rs. 180/-, she was sanctioned maternity leave from December 1, 1985 to March 31, 1986 and after the delivery of a child when she reported to duty on April 1, 1986, she was not permitted to join. The contention of the employer-writ petitioner (respondent before the Tribunal), however, was that she was never appointed in their organisation as a sweeper, but she was working as a casual labour in the Construction and Maintenance Division occasionally on daily wages for petty civil works whenever required. She was not a regular worker and she was never paid monthly salary. They also denied of having granted maternity leave as well as that they ever terminated her services. The

Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, has held that the appellant worked for about five years as casual labour doing the work of sweeping; her plea of continuous service was not contradicted by any evidence on behalf of the respondent-cum-employer. The relevant register said to have been admittedly maintained was not produced and, "it should, therefore, be presumed that her service was continuous". It has, on that basis concluded "It is, therefore, evident that the petitioner continuously served more than five years but her services orally, terminated without holding any enquiry. Such mode of termination amounts to illegal retrenchment contravening Section 25-F of the I.D. Act. Either retrenchment notice or compensation was not given to her and therefore, held that termination of service of the petitioner is illegal.

4. Respondent-management, however, has relied upon a judgment of the Supreme Court in State of H.P., through The Secretary (Rural Development) to the Govt. of Himanchal Pradesh, Shimla Vs. Ashwani Kumar and Others, before the learned single Judge and pointed out that in the case of employees engaged on daily wages they have no vested right for appointment on regular basis. Learned Single Judge has accordingly held "since the second respondent was not appointed on regular basis and she was only a casual labour employed on daily wage basis, the question of applicability of Section 25-F of the Industrial Disputes Act, 1947 does not arise." Appellant is the second respondent in writ petition.

5. Sometimes Courts remain uninformed and/or wrongly informed and if they deliver judgments and decide disputes, injustice occurs. The instant case, in our view, is one such is case. In State of H. P. v. Ashwini Kumar (supra) the Supreme Court has dealt with the case of persons who were engaged on daily wages on muster roll basis in a Central Scheme and were paid out of the funds provided by the Central Government. It was brought to the notice of the Court that after the scheme was closed, their services were dispensed with. When the employees were retrenched on account of the closure of the Scheme, they moved the High Court and the High Court gave interim direction to re-engage them elsewhere. In the appeal by Special Leave the Supreme Court has held at p 876, 870 :

"It is seen that when the project is completed and closed due to nonavailability of funds, consequently, the employees have to go along with the closed project. The High Court was not right in giving the directions to regularise them or to continue them in other places. No vested right is created in temporary employment. Directions cannot be given to regularise their services in the absence of any existing vacancies nor can directions be given to create posts by the State to a non-existent establishment. The Court would adopt pragmatic approach in giving directions. The directions would amount to creating of posts and continuing them in spite of non-availability of the work."

6. Can the above be applied to the case of the appellant who, it is not in dispute has worked, although as a casual workman, continuously for a period of five years.

7. Chapter V-A of the Industrial Disputes Act deals mainly with lay off and retrenchment and defines in Section 25-B continuous service to mean uninterrupted service including service which may be interrupted on account of sickness or authorised leave or an accident or a strike, which is not due to any fault on the part of the workman, and further, as follows :-

"(2) Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer -

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than -

(i) one hundred and ninety days in the case of workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation :- For the purposes of Clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which

(i) he has been laid off under an agreement or as permitted by Standing Orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed twelve weeks."

8. "Workman" is defined in Section 2(s) of the Act to mean any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under the Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with; or as a consequence of that dispute or whose dismissal, discharge or retrenchment

has led to that dispute, but does not include any such person - (i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957 in (ii) who is employed in the police service or as an officer or other employee of a prison, or (iii) who is employed mainly in a managerial or administrative capacity; or (iv) who, being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

9. "Retrenchment" has been defined u/s 2(oo) of the Act, to mean.

"The termination by the employer of the service of a workman for any reason what soever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

(a) voluntary retirement of the workman or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf or (bb) termination of service of the workman as a result of non-renewal of the contract of the 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; or

(c) termination of the service of a workman on the ground of continued ill-health".

10. It is not in dispute before us the writ petitioner-respondent is an industry and the employer of the appellant. The only dispute, if at all, is in respect of the employment whether it is casual, ad hoc, or temporary or is in the regular service. Provisions aforementioned do create an obligation upon the employer to honour the contract of service and terminate the same only in accordance with the provisions in Chapter V-A of the Act, if the employee satisfies the definition of continuous service and of course, if Chapter V-A is applicable to the concerned industry or the employer. The judgment and the award of the Industrial Tribunal/Labour Court has made it clear that the appellant has worked continuously for five years and this fact has not been seriously disputed. Contract of service is not denied and once the period of service is more than 240 days in one calendar year the consequences are clear. Nothing has been shown to the Court to hold that Chapter V-A of the Industrial Disputes Act is not applicable to the concerned industry of the writ petitioner respondent. Going by the above provisions of law, when we see Section 25-F in Chapter V-A of the Act, we are left with no alternative but to hold that the view taken by the Industrial Tribunal/Labour Court is the only correct view on the facts of the case. The law stated by the Supreme Court in the aforementioned judgment is obviously not attracted, as no one can claim as of right anything more than what is found subsisting on the date of termination of service. Since the date of termination of service, it is not disputed, the appellant was working as an continuously, as held by the Industrial

Tribunal/Labour Court, for about five years or more, the award is made in accordance with law. For the reasons aforementioned, we have no hesitation in setting aside the impugned judgment and affirming the award.

11. In the result, the appeal is allowed the impugned judgment is set aside and the award of the Industrial Tribunal/Labour Court is affirmed, but without costs.