

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : December 10, 2009

Decided on: December 18, 2009

LPA No. 511 of 2009

RAM KISHAN

.... Appellant

Through: Mr. Sanjay Ghose, Advocate.

versus

MANAGEMENT OF M/S AMERICAN EXPRESS BANKING
CORPORATION & ANR. Respondents

Through: Ms. Raavi Birbal and

Mr. Narender Kumar Sharma, Advocates for
R-1.

Mr. Atul Batra, Advocate for R-2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether reporters of the local newspapers be allowed to see
the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

S. MURALIDHAR, J.

1. This appeal is directed against the judgment dated 27th August 2009
passed by the learned Single Judge dismissing Writ Petition (C) No.
3387-88 of 2006.

2. The Appellant was appointed with the Respondent No.1 American Express Banking Corporation as a Cleaner for a fixed term of three years from 15th October 1999 to 14th October 2002. The dispute arising over the termination of the services of the Appellant at the end of the contractual period was taken up for conciliation. The Assistant Labour Court, Faridabad submitted a failure report on 30th September 2003. Thereafter by a communication dated 21st November 2003, the Government of India in the Ministry of Labour informed the Appellant that the Ministry did not consider the dispute fit for adjudication for the following reason:

“Since the applicant was appointed for a fixed period of three years from 15.10.1999 to 14.10.2002 and these terms/conditions were accepted by the Complainant, hence, dispute has no merit to refer.”

3. It appears that an attempt was made to have the said decision reviewed. This was declined by an order dated 14th December 2005. Aggrieved by the said two orders, the aforementioned writ petition was filed by the Appellant in this Court.

4. According to the Appellant, his appointment for a period of three years on contractual basis was in fact a camouflage since the work of cleaning was of a perennial nature, the work was still available and in fact the Respondent No.1 had employed more than ten workers for the said work through a contractor. It was contended that the Government

could not decline to make the reference as there was a prima facie dispute on the issue whether the termination was lawful. Respondent No.1 countered the above submission by pointing out that the termination of the services of the Appellant was not retrenchment within the meaning of Section 2(oo) (bb) of the Industrial Disputes Act, 1947 ('ID Act') and, therefore, Section 25G and/or Section 25H of the ID Act were not attracted. Further this was not even a case of unfair labour practice under Clause 10 of Schedule 5 to the ID Act.

5. The learned Single Judge has, by the impugned order dated 27th August 2009, held that the Central Government was justified in declining to refer the dispute for adjudication as the termination of the Appellant's services did not amount to retrenchment within the meaning of the ID Act. Consequently, there was no industrial dispute which was required to be referred to the Tribunal for adjudication.

6. It is submitted by Mr. Sanjay Ghose, learned counsel appearing for the Appellant, that for the purposes of examining if an industrial dispute should, in terms of Section 10 of the ID Act, be referred to a Tribunal for adjudication, the Government had to be satisfied only as to whether there was a prima facie case. It was not expected to examine the merits of the case. Reference is made to the judgment of the Supreme Court in *S.M. Nilajkar v. Telecom District Manager, Karnataka* 2003 SCC (L&S) 380, *Bombay Union of Journalists v.*

State of Bombay [1964] 6 SCR 22 and *Telco Convoy Drivers Mazdoor Sangh v. State of Bihar (1989) 3 SCC 271*. Reliance is also placed on the judgments of this Court in *Subhash Chand v. Govt. of NCT 2005 III AD (DELHI) 206*, *Ganesh Kumar v. Union of India 2007 VII AD (DELHI) 700*.

7. On the other hand, Ms. Raavi Birbal, learned counsel appearing for the Respondent No.1 relies on the judgments in *Punjab State Electricity Board v. Sudesh Kumar Puri (2007) 2 SCC 428*, *Birla VXL Ltd. v. State of Punjab (1998) 5 SCC 632*, *Escorts Limited v. Presiding Officer (1997) 11 SCC 521* and *M. Venugopal v. The Divisional Manager, Life Insurance Corporation of India (1994) 2 SCC 323* to contend that the appointment of the Appellant was purely contractual and, therefore, in terms of Section 2(oo)(bb) of the ID Act, the termination of his services as a result of the non-renewal of the contract fell outside the purview of retrenchment. It was further submitted that there was no industrial dispute to be referred for adjudication.

8. We have considered the submissions of learned counsel for the parties. It must be noted at the outset that it is not in dispute that the Appellant was appointed only on a contractual basis. The contention on behalf of the Appellant that the contract was a camouflage since the work was of a perennial nature is really not supported by any

material placed on record. However, the fact remains that the contract of the Appellant was not renewed. Also it is not as if the Appellant was employed as contract labour in which case a different set of factors would have to be considered.

9. The question that arises is whether the Government was justified in declining to refer the dispute for adjudication to the Tribunal. The law in regard to the nature of the functions performed by the Government under Section 10 ID Act is well settled. In *Bombay Union of Journalists*, it was held that the Government should only consider prima facie the merits of the dispute and take in to account “other relevant considerations which would help it to decide whether making a reference would be expedient or not.” It was further pointed out that if the dispute raised a question of law or disputed question of facts “the Government should not purport to reach final conclusion because these are matters which would normally be within the jurisdiction of Industrial Tribunal.” It was not as if that the Government has to necessarily refer every dispute for adjudication to the Industrial Tribunal. “The Government has to prima facie be satisfied that the dispute in question partakes the character of an industrial dispute.”

10. As far as the present case is concerned, there is no factual dispute that the Appellant was appointed as a Cleaner on a contract basis for a fixed period of three years. The contract was not renewed resulting in

the termination of his services at the end of the contract period. In our considered view, the provisions of Clause (bb) of Section 2(oo) of the ID Act stand attracted and the termination of the services of the Appellant, as a result of non-renewal of the contract of employment on its expiry, does not amount to retrenchment under Section 2(oo) of the ID Act.

11. The decision in *S.M. Nilajkar* was in the context of employment of casual workers and daily wagers in a project and the termination of their services resulted from the project coming to an end. It was held that all that had been proved by the employer was that the workmen there were engaged as a casual worker in a project. It was held that the onus was on the employer to show that sub-clause (bb) was attracted for which the employer had to further show that the workman had been apprised of the fact that the employment would come to an end simultaneously with the termination or completion of the project. Since the employer had failed to prove the above factor, it was held that the termination of the services of the workman amounted to retrenchment. We do not see how the above decision helps the Appellant in the present case. Unlike the said case, the Petitioner here was not a casual or daily-rated worker. It is not the case of the Appellant that he was not informed by the employer Respondent No.1 that the appointment was purely on a contractual basis for a fixed term and that the employment would come to an end

at the end of the period of contract. Secondly, the decision in *S.M. Nilajkar* was not concerned with the failure of the Government to make a reference of the dispute for adjudication under Section 10 ID Act. Thirdly, the said case involved engagement of casual workers in a project without any indication of the period of employment whereas in the present case admittedly the appointment of the Appellant was on a contract basis for a fixed term.

12. The decision in *Telco Convoy Drivers Mazdoor Sangh* is also distinguishable on facts. The question there was whether the Convoy Drivers were workmen of Telco. It was held that in opining that the Convoy Drivers were workmen, the Government had adjudicated the dispute itself whereas that dispute ought to have been adjudicated by the Tribunal. It is not clear from the judgment in the *Telco Convoy Drivers Mazdoor Sangh* whether the Convoy Drivers were in fact employed on a contract basis for a fixed period. It, therefore, cannot be a precedent for the proposition that irrespective of the nature of employment, the Government will always be precluded from satisfying itself that prima facie the person seeking reference of the dispute falls outside the purview of Section 2(oo)(bb) of the ID Act. Moreover, in the said judgment there was no occasion for the Court to consider the applicability of Section 2(oo)(bb) ID Act. Consequently, we do not find how the aforementioned judgment also comes to the aid of the Appellant. The decisions of this Court in *Subhash Chand*

and ***Ganesh Kumar*** also appear to have turned on the facts of those cases and are distinguishable in their application with the present case.

13. A perusal of the judgment of the Supreme Court in ***Punjab State Electricity Board*** shows that Section 2(oo)(bb) of the ID Act would clearly apply to cases where the termination of services was brought about by the expiry of the period of contract. It was pointed out in the said decision that the criteria that would apply to determine if the engagement of contract labour was a sham or a device to camouflage a continuous employment would not apply to a case where the appointment is on a contract basis. Likewise, in ***Escorts Ltd.*** also it was held that the termination of the services at the expiry of a fixed period of appointment did not attract Section 25F and Section 25G of the ID Act.

14. In our considered view, as far as the present case is concerned, the Government was justified in coming to the conclusion that the dispute arising out of the termination of services of the Appellant as a result of the expiry of the period of contract under which he was appointed, was not required to be referred for adjudication by the Industrial Tribunal.

15. We concur with both the reasoning and the conclusion arrived at by the learned Single Judge in the impugned judgment.

Consequently, the appeal is dismissed with no order as to costs.

S. MURALIDHAR, J

CHIEF JUSTICE

DECEMBER 18, 2009
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