

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

WP.No.15991 of 2009

ORDER :

This Writ Petition has been filed by the Tirumala Tirupathi Devasthanam (for short, 'T.T.D.'), Tirupathi, Chittoor District to call for the records from the Industrial Tribunal –cum- Labour court, Ananthapur (1st respondent) relating to Award dt.31.03.2009 passed by it in I.D.No.186/2007, 187/2007, 188/2007, 189/2007, 190/2007, 191/2007, 192/2007, 193/2007, 194/2007, 195/2007, 196/2007, 197/2007, 198/2007, 199/2007, 210/2007, 211/2007, 212/2007, 213/2007 and 214/2007 published on 18.05.2009 and to quash the same.

2. Heard Sri A.K. Jaya Prakash Rao, Counsel for petitioner and Sri M. Srikanth, counsel for respondent no.s 2-18.

3. Though the Court entertained a serious doubt as to whether a single Writ Petition is maintainable challenging common Award in 17 Industrial Disputes arising under Section 2-A(2) of the Industrial Disputes Act, 1947 (**for short, 'the Act'**), since both counsel stated their respective clients would be put to serious disadvantage if this contention is upheld, without going into the said issue, the matter is decided on merits.

THE APPLICATIONS UNDER Sec.2-A OF THE ACT BY RESPONDENT NO.S 2-18.

4. Respondent nos.2 to 18 had filed individually 17 applications along with 2 others invoking Section 2-A of the Act against the Executive Officer of petitioner in 2007 contending that they were appointed as volunteers in 1985 by the petitioner at Annadanam Canteen; that they were attending to duties in the kitchen, dining hall, apart from cleaning dining tables, utensils and performing other works as workmen; that the petitioner had introduced the *Nitya Annadanam Scheme* in which they were appointed for rendering service to pilgrims; that this work is continuous, permanent and perennial in nature starting at 08:00 a.m. and ending at 11:00 p.m. every day; that they worked for more than 240 days for a period of 12 calendar months and are entitled for regularization of their services. They alleged that the petitioner had orally terminated their services on 30.04.1988; this action on the part of petitioner violates Section 25-F and G and Rules 78 and 79 of the Act; that the petitioner had retained about 160 persons similarly situated to them and in the year 1988 regularized their services; that the petitioner was engaging workers on contract basis in the Canteen in violation of various orders passed by this Court as well as the provisions of the Act; that the Limitation Act, 1963 had no application; and therefore, the 1st respondent should pass an Award holding that their termination from services by petitioner with effect from 30.04.1988 was illegal, invalid and arbitrary; and

should direct the petitioner to reinstate them into service with continuity of service, full back-wages and all attendant benefits.

THE COUNTER-AFFIDAVIT FILED BY PETITIONER

5. The petitioner herein filed a counter-affidavit denying that the provisions of the Act apply to it and contending that the applications under Section 2-A(2) of the Act filed by respondent nos.2 to 18 were not maintainable. The petitioner contended that respondent nos.2 to 18 were rendering voluntary service on their own part and there was no appointment order given to them. It was denied that the appointment by the petitioner of respondent nos.2 to 18 commenced in 1985 and they had been orally terminated on 30.04.1988. According to the petitioner, there was a ban imposed on filling up of posts and so it was contemplating to go in for appointments on contract basis / outsourcing to run the *Nitya Annadanam Scheme*; that since respondent nos.2 to 18 were not on its rolls, there was no necessity to pay compensation or issue one months' notice to them. It however admitted that respondents were paid wages. According to petitioner, the volunteers like respondent no.s 2-18 are not appointed in any sanctioned post of the petitioner duly following the selection process; that there was no such cadre in the T.T.D. Service Rules; and since the services of the volunteers was voluntary, there is no question of termination or reinstatement into service. It was also contended that there was a decision taken to reduce the number of volunteers to 160 with effect from 01.04.1988, and services of 140 persons were

dispensed with for want of sufficient workload. It was also contended that the first 50 persons out of 140 persons, whose services were dispensed with, were taken back to duty in September, 1991 and persons engaged on daily wages up to 31.03.1988 and continuing in T.T.D. service were regularized as per G.O.Ms.No.390 dt.06.05.1991, and that since the respondent nos.2 to 18 were not on its rolls during the relevant period, their services were not regularized. It also contended that petitioner had approached the 1st respondent 19 years after the alleged termination of their services; and therefore, the applications ought not to have been entertained by the 1st respondent.

THE AWARD OF 1ST RESPONDENT

6. A common Award was passed on 31.03.2009 in I.D.No.186 of 2007 and batch by the 1st respondent directing reinstatement of respondent nos.2 to 14 into service on the ground that there is violation of Section 25-F of the Act. *It however denied back-wages.*

7. It held that the petitioner was engaged in systematic activity in organized way and its work was continuous, perennial and ever-increasing, and therefore, it falls within the definition of the term 'industry' as defined in Section 2(j) of the Act; that there is relationship of 'employer' and 'employee' between them since there was an admission in the counter filed by the petitioner that respondent nos.2 to 18 were engaged as volunteers; and petitioner had also admitted that regular monthly amount was paid to those employed in different categories depending upon the nature of work. It rejected the

plea of petitioner that there was 19 years delay in approaching the 1st respondent by placing reliance on the judgment of the Supreme Court in **Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Ltd.**¹ and in **Indian Iron and Steel Co. Ltd. v. Prahlad Singh**². It however dismissed I.D.No.199 of 2007 and I.D.No.210 of 2007 filed by 2 others.

THE PRESENT WRIT PETITION

8. Challenging the same, the present Writ Petition is filed.

9. Sri A.K. Jaya Prakash Rao, counsel for petitioner, contended firstly that the 1st respondent ought not to have entertained applications under Section 2-A of the Act when the respondent nos.2 to 18 had approached it after 19 years of alleged termination of service; that respondent nos.2 to 18 were only engaged as volunteers and so there was no question of termination of their service; that in any event, the 1st respondent ought not to have granted relief of reinstatement to respondent nos.2 to 18. He relied upon the decisions in **Sita Ram and others v. Moti Lal Nehru Farmers Training Institute**³ and **Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal and others**⁴. He also referred to the order dt.27.09.2013 in W.A.No.827 of 2010 and batch wherein a Division Bench of this Court in a similar case had substituted compensation of Rs.40,000/- which according to him was subsequently enhanced by

¹ AIR 1999 SC 1351

² (2001) 1 SCC 424

³ (2008) 5 SCC 75

⁴ (2010) 6 SCC 773

the Supreme Court to Rs.1,00,000/- in a Special Leave Petition filed by the workmen in the Supreme Court. He also relied upon order dt.17.03.2016 in Writ Appeal No.1110 of 2015.

10. On the other hand, the counsel for respondent nos.2 to 18, contended that the Limitation Act, 1963 does not apply to proceedings under the Industrial Disputes Act, 1947, and therefore, the petitioner cannot raise the plea of delay without showing any prejudice caused to it; that respondent nos.2 to 18 have filed W.P.No.14611 of 1990 before this Court seeking reinstatement into service, and the said Writ Petition was disposed of on 24.12.1990 stating that if it is necessary for the petitioner to have more volunteers in the Canteen under the *Nitya Annadanam Scheme*, the respondent nos.2 to 18 have to be taken first if there is nothing adverse against them and if the petitioner was considering any scheme of regularization in regard to volunteers who were there by 31.03.1988, the case of the respondent nos.2 to 18 who would be eligible for such a scheme of regularization also may be considered. He also contended that the *Nitya Annadanam Scheme* is permanent in nature, that the respondent nos.2 to 18 had rendered services for more than 240 days as found by the 1st respondent in its Award; that there is a finding at para.42 of the Award that the witness examined on behalf of petitioner (MW.1) has not denied specifically that respondent nos.2 to 18 were not appointed on the day or month as mentioned by them in their evidence; that no appointment order was issued by petitioner; that even though the 1st respondent called for

documents from the custody of petitioner to verify whether the respondent nos.2 to 18 worked 240 days or more, the records pertaining to respondent nos.2 to 18 were not filed by the petitioner. Therefore, adverse inference was rightly drawn by the 1st respondent against the petitioner that if such records were produced it would show that respondent nos.2 to 18 worked for 240 days in 12 calendar months as required under Section 25-F of the Act. He contended that there was no illegality in the order passed by the Court below warranting interference by this Court in exercise of its power under Article 226 of the Constitution of India.

11. From the contentions put forth by the counsel for petitioner, the following points arise for consideration :

- (a) *Whether the 1st respondent was correct in law in entertaining applications under Section 2-A of the Act filed by respondent nos.2 to 18 after a lapse of 19 years ?*
- (b) *Whether the fact that respondent nos.2 to 18 have been engaged as volunteers would exclude them from category of 'workman' under S.2(s) of the Act ?*
- (c) *Whether the respondent nos.2 to 18 had worked for more than 240 days, and whether their termination was violative of Section 25-F of the Act ? and*
- (d) *Whether the 1st respondent erred in law in granting relief of reinstatement to respondent nos.2 to 18 ?*

Point (a) :

12. I shall now consider the question whether the 1st respondent was correct in law in entertaining applications under Section 2-A filed by respondent nos.2 to 18 complaining that they were terminated from service in September, 1988 by petitioner.

13. There is no dispute that provisions of the Limitation Act, 1963 do not apply to proceedings under the Industrial Disputes Act, 1947.

14. In **Ajaib Singh** (1 supra), the Supreme Court held that provisions of Article 137 of the Schedule to the Limitation Act, 1963 do not apply to proceedings under the Act, and that relief under it cannot be denied to a workman merely on the ground of delay. It held that plea of delay, if raised by the employer, is required to be proved as a matter of fact by showing real prejudice and not as a mere hypothetical defence. It held that no reference to the Labour Court can be generally questioned on the ground of delay alone and even in a case where delay is shown to be existing the Labour Court dealing with the case can appropriately mould the relief by declining to grant back-wages to the workman till the date he raised the demand regarding his illegal retrenchment / termination or dismissal. It observed that the Court may also, in appropriate cases, direct the payment of part of the back wages instead of full back-wages.

15. This decision has been followed in several cases, the last of which is reported in **Jasmer Singh v. State of Haryana and another**⁵.

16. In the present case, though there is no explanation on the part of respondent nos.2 to 18 for the delay in approaching the 1st respondent, since there is no plea of prejudice raised by petitioner, merely on the ground of delay the applications filed by respondent nos.2 to 18 could not have been rejected by the 1st respondent. So the 1st respondent was correct in law in entertaining the said applications filed by respondent nos.2 to 18.

17. Accordingly, point (a) is answered in favour of respondent nos.2 to 18 and against the petitioner and it is held that 1st respondent rightly entertained the applications under S.2A of the act filed by respondent nos.2 to 18.

Points (b) and (c) :

18. Though the respondent nos.2 to 18 had raised contentions that they had worked for various periods between 1985 to 30.04.1988 in the petitioner-Organization at the Annadanam Canteen run by petitioner, in para no.38 of the Award the period/duration of engagement as stated by respondent nos.2 to 18, is mentioned.

19. It is not in dispute applications were filed by respondent nos.2 to 18 before the 1st respondent to direct the petitioner to produce the

⁵ (2015) 4 SCC 458

records in relation to them so that it can be verified as to whether they worked for 230 days or not. The petitioner produced certain records, but they did not relate to respondent nos.2 to 18. Therefore, adverse inference was rightly drawn by the 1st respondent against the petitioner that if such records were produced, they would prove that respondent nos.2 to 18 had worked for 240 days in 12 calendar months as required under Section 25-F of the Act.

20. Therefore, the finding of 1st respondent that respondent nos.2 to 18 worked for more than 240 days in a calendar year of 12 months is a finding of fact arrived at by the 1st respondent on consideration of the evidence before it and cannot be said to be perverse or based on no evidence. So it does not warrant interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

21. It may be that petitioner had given to respondent nos.2 to 18 the nomenclature of 'Volunteers'. It is unnatural for any young person, unless he has renounced the world and accepted to be a monk, to work continuously for an employer as a volunteer for more than 240 days in 12 calendar months. A finding has been recorded by the 1st respondent that regular wages were being paid to persons like the petitioners even though they were called 'volunteers'. Thus there was employer-employee relationship between the petitioner and respondent nos.2-18.

22. It is not in dispute that the petitioner had not complied with S.25 F of the Act before terminating their services.

23. Therefore, by merely calling them ‘volunteers’, the petitioner cannot avoid any liability under the provisions of the Act by simply terminating their services in violation of Section 25-F of the Act.

24. Therefore, Points (b) and (c) are both answered in favour of respondent nos.2 to 18 and against the petitioner and it is held that the fact that respondent nos.2 to 18 have been engaged as volunteers would not exclude them from category of ‘workman’ under S.2(s) of the Act; and the respondent nos.2 to 18 had worked for more than 240 days, and that their termination was violative of Section 25-F of the Act.

Point (d) :

25. It is not in dispute that the 1st respondent had not granted any back-wages to respondent nos.2 to 18 and had only granted reinstatement.

26. In **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyala (D.Ed.) and others**⁶, the Supreme Court considered the question whether reinstatement could be awarded for wrongful / illegal termination of service. After reviewing the entire case law on the subject, it held that in case of wrongful termination of service, reinstatement to the continuity of service and back-wages is the

⁶ (2013) 10 SCC 324

normal rule. It observed that Courts must keep in view that in case of wrongful / illegal termination of service, the wrong-doer is the employer and the sufferer is the employee / workman; and there is no justification to give a premium to the employer of his wrong-doings by relieving him of the burden to pay the employee his dues in the form of full back-wages. It held :

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter’s source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages.

*23. A somewhat similar issue was considered by a three-Judge Bench in **Hindustan Tin Works (P) Ltd. v. Employees**⁷ in the context of termination of services of 56 employees by way of retrenchment due to alleged non-availability of the raw material necessary for utilisation of full installed capacity by the petitioner. The dispute raised by the employees resulted in award of reinstatement with full back wages.*

⁷ (1979) 2 SCC 80

This Court examined the issue at length and held: (SCC pp. 85-86, paras 9 and 11)

“9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law’s proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally

and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. “

27. Similar view was taken in **Jasmer Singh** (5 supra), mentioned above.

28. No doubt, the counsel for petitioner sought to rely on the judgments in **Sita Ram** (3 supra) and **Santosh Kumar Seal** (4 supra) in support of his contention that reinstatement ought not to be ordered and only compensation should be paid.

29. In **Sita Ram** (3 supra), though the termination of the workmen was in December, 1996 and the workmen had immediately approached the Labour Court under the Uttar Pradesh Industrial Disputes Act, 1947 and it directed his re-instatement with 25% of the back-wages in 2002, the employer had approached the Allahabad High Court which set aside the same. The Supreme Court held that since the employer had stopped its operation of bee farming and since the appellants were terminated in December, 1996, it was not a fit case where reinstatement ought not to be ordered. It observed that the nature of appointment, the period of appointment, the availability of job, etc., should weigh with the court for determining whether reinstatement should be granted or not.

30. In the present case, the duration of appointment was certainly more than 240 days in a calendar year. The *Nitya Annadanam Scheme* of the petitioner is indisputably perennial, and therefore, it cannot be said that in the facts and circumstances of the case, the 1st respondent erred in directing reinstatement of respondent nos.2 to 18.

31. In **Santosh Kumar Seal** (4 supra), a view was taken that relief by way of back-wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back-wages in cases of such nature may be appropriate. That was a case where a workman was engaged on daily wages.

32. However, in the present case, the 1st respondent found that respondent nos.2 to 18 were not engaged as daily wage employees and they were being paid regular wages.

33. Also in **Santosh Kumar Seal** (4 supra), the Court had relied on the decision in **Jagbir Singh v. Haryana State Agriculture Mktg. Board**⁸. The latter case was also considered in **Deepali Gundu Surwase** (6 supra), and it was held that in case of wrongful termination of service reinstatement with continuity of service is the normal rule.

34. In the present case, there is no Writ filed by respondent nos.2 to 18 seeking back-wages. Therefore, taking that fact also into account,

⁸ (2009) 15 SCC 327

I am of the opinion that the 1st respondent had not committed any error of law in granting reinstatement of respondent nos.2 to 18 since admittedly their termination from service was found to be in violation of Section 25-F of the Act.

35. I, therefore, do not find any merit in the Writ Petition and it is accordingly dismissed. No order as to costs.

36. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02.06.2017

Ndr/*

