

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.9223 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner assailing the Award, dated 15.02.2005, in I.D.No.3 of 1997, published in the Gazette of India Weekly, New Delhi May-8 to May-14, 2005, Part II.

2. I have heard the submissions of Sri William Burra, learned counsel appearing for the writ petitioner, and of Sri Gowri Shankar Sanghi, learned Standing Counsel for Railways representing the 1st respondent. I have perused the material record.

3. The case of the petitioner as per the pleadings and submissions made before this Court, in brief, is as follows:

He belongs to Scheduled Caste community. He was appointed as a Bungalow Peon *vide* proceedings, dated 22.09.1992, of the 1st respondent and was posted at the house of Secretary to the General Manager, S.C Railway, Secunderabad. He was removed from service *vide* proceedings, dated 14.12.1993, with effect from 17.12.1993 without assigning any reasons. He was paid only one month notice pay and salary for seven days but was not paid retrenchment compensation while dispensing with his services. After his termination, many persons were appointed as Bungalow Peons but the case of the petitioner was not considered. He was not reappointed though he was entitled for such reappointment under Section 25-H of the Industrial Disputes Act, 1947, (hereinafter, 'the Act'). Therefore, he filed O.A.No.1632 of 1993 before the Central Administrative Tribunal, Hyderabad Bench. The Tribunal opined that he ought to have availed the remedy available under the Act.

Having withdrawn the said OA, he raised an industrial dispute before the Assistant Labour Commissioner (C), on 30.10.1994. After joint discussions with the petitioner and the 1st respondent, the matter was admitted for conciliation. Though the petitioner was willing to work at any place on his reinstatement, the 1st respondent did not agree for the said course. Therefore, the conciliation failed. The Conciliation Officer sent a report *vide* proceedings, dated 21.04.1995, recommending for referring the matter to the Industrial Tribunal for adjudication. As no steps were taken by the Ministry of Labour in that regard, the petitioner filed W.P.No.84442 of 1996 and the writ petition was disposed of permitting the petitioner to file a petition before the Labour Court directly. In the meanwhile, Government of India referred the dispute to the Industrial Tribunal-I and the same was numbered as I.D.No.3 of 1997. Despite service of notice on the 1st respondent in the said ID, he failed to appear before the Tribunal. The petitioner adduced evidence. Thereafter, the Award, dated 09.07.1997, was passed by the Tribunal directing the 1st respondent-South Central Railway, to reinstate the petitioner into service with continuity of service, back wages and all other attendant benefits. The Award was published, on 30.08.1997. Since the 1st respondent failed to implement the said Award, the petitioner filed Execution Petition No.2 of 1998 before the Tribunal. At that stage, the 1st respondent filed W.P.No.7696 of 1998 against the Award, dated 09.07.1997. The said petition was dismissed keeping it open to the 1st respondent to file an application before the Tribunal for setting aside the *ex parte* Award. Thereafter, 1st respondent filed two applications before the Tribunal; one (IA.No.76 of 1998) for condonation of delay and the other for setting aside the *ex parte* Award. The application for condonation of delay of 263 days was dismissed, on 13.11.1998, by the Tribunal. Questioning the said order, the 1st respondent filed W.P.No.2059 of 1999 and the same was disposed of by order, dated 01.08.2003, and the case was remitted to the Industrial Tribunal to reconsider

and dispose of I.A.No.76 of 1998 afresh. Thereafter, the said application was allowed and eventually the *ex parte* Award, dated 09.07.1997, was set aside and the ID was taken up for hearing and disposal on merits. At that stage the petitioner filed a claim statement. Evidence was adduced. On merits, the Award, dated 15.02.2005, was passed and sent for publication. But the published Award copy was not received by any of the parties to the ID. When the petitioner addressed a letter, dated 08.02.2006, to the Ministry of Labour, Government of India, through his counsel, no reply was given to the said letter. Another letter, dated 15.12.2007, was addressed to the Ministry of Labour, Government of India. He was informed that the Award was published in the Gazette of India weekly dated 8 to 15 May, 2005. Thereafter, the petitioner applied for CC of the Award, on 10.03.2008; his copy application was returned, on 25.03.2008, stating that the Award was not published and hence, certified copy cannot be granted. Then the petitioner obtained the copy of Gazette of India weekly dated 8 to 15 May, 2005 and obtained copy of the Award. By the said Award, the Tribunal rejected the claim of the petitioner and held that he is not entitled to any relief. Aggrieved thereof, the petitioner is before this Court. The Award is contrary to law and facts. The Tribunal erred in holding that the petitioner was paid compensation. The Tribunal failed to see that the provision of Section 25-F of the Act was not complied with and that the retrenchment compensation was not paid. The Tribunal also failed to consider the fact that termination order was issued without giving any reasons. However, the 1st respondent tried to improve the case before the Tribunal by stating that the petitioner was terminated from service as his services were unsatisfactory. Such improved defence raised for the first time before the Tribunal ought not to have been permitted when reasons for termination are conspicuously absent in the termination order. No notice was given and no enquiry was conducted before the termination order was passed. When the termination is for misconduct an enquiry ought to have

been conducted as per the Discipline & Appeal Rules. The Tribunal ought to have seen that the petitioner, being a poor unemployed person, was obliged to accept the terms and conditions of the appointment order, which are arbitrary and illegal. After the petitioner was illegally terminated from service, many persons were employed as Bungalow Peons and such persons were also absorbed into regular establishment. The petitioner is also entitled to the same benefit. Even the provision of Section 11-A of the Act was not considered by the Tribunal. Since 1993, the petitioner is not able to get any alternative employment inspite of his best efforts and he is not able to maintain his family and is facing severe hardship. The delay in filing the writ petition has occasioned for various reasons stated in the writ petition. Hence, the writ petition may be allowed by setting aside the Award and by directing reinstatement of the petitioner into service and granting consequential benefits.

4. The case of the 1st respondent-Railways and the submissions made on its behalf are as follows:

The material allegations in the affidavit filed in support of the writ petition and the contentions urged are all false. The petitioner was appointed as substitute Bungalow Peon to the Secretary, General Manager, South Central Railway, *vide* letter, dated 22.09.1992, and his appointment was as per the conditions stipulated in Letter No.P/R.564/BP, dated 27.03.1985. The relevant clauses in the said letter, dated 27.03.1985, specifically provide that his appointment is initially as a Bungalow Peon and that if his services are found suitable for absorption in class IV service, he will be transferred to regular establishment as per the conditions mentioned in his letter of appointment, dated 22.09.1992; and, it was also made clear that he will have no right or title to be absorbed or transferred to the regular establishment and that his services will be terminated without assigning any

reasons or giving him the requisite notice or paying retrenchment compensation as admissible under the Rules, in the event his services as Bungalow Peon are not required by the officer either before or after completion of three years service or in the event if he is found unsuitable for absorption in regular class IV establishment. As his services were not required and as he has not completed three years of service, his services were terminated by letter, dated 14.12.1993, invoking the terms of appointment. It was also directed to pay him, on the date of termination, the amount for one month in lieu of one month notice period. The services of the petitioner are terminated on the ground of unsatisfactory service. It is true that the petitioner first filed OA before the Central Administrative Tribunal and that he later withdrew the same and raised an industrial dispute and that by the orders impugned in this writ petition his claim petition was dismissed by the Tribunal. The Award was published in the Gazette of India in weekly volume of May 8-14 of 2005; but, the present writ petition is filed in April, 2008, after lapse of more than three years without assigning any reasons for the delay. The petitioner was not regularly employed but his employment is temporary subject to conditions enumerated in the appointment letter. Having accepted the temporary appointment and the terms and conditions mentioned therein and having not challenged the terms and conditions in the letter of appointment, the petitioner cannot question the terms and conditions of his appointment at this belated stage. The allegations that after termination of the services of the petitioner many Bungalow Peons have been appointed by the Railways and they were absorbed into regular establishment are all vague allegations and the said allegations do not contain any details of such appointments and absorptions. The petitioner is out of service since 1993. His contention that during the last 15 years he is unemployed is unbelievable. The petition is liable for dismissal on the ground of laches. When the Execution Petition was earlier filed pursuant to the *ex parte* Award and when

the Railways filed W.P.No.2059 of 1999 and sought for grant of stay orders of all further proceedings, the Railways deposited initially an amount of Rs.1,17,472/- before the Labour Court as per Section 17-B of the Act. Further, an amount of Rs.15,294/- was also deposited. The petitioner received Rs.1,32,766/- without any work. The said fact has been suppressed by the petitioner. He has not received any compensation is incorrect. On the ground of suppression of material facts also, the writ petition is liable to be dismissed. The petitioner was paid Rs.1,630/- per month from 01.11.2000, that is, during the pendency of W.P.No.2059 of 1999 till its disposal on 01.08.2003. Hence, the writ petition may be dismissed.

5. Learned counsel for both the parties advanced arguments in line with the pleadings of the parties.

6. Since learned counsel for the petitioner has drawn the attention of the Court to Section 25-H and Section 25(f) of the Act, it is necessary to first refer to the said provisions, which read as under:

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

25H. Re-employment of retrenched workmen.- Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched

workman who offer themselves for re-employment shall have preference over other persons.

7. I have given detailed and thoughtful consideration to the facts and submissions.

8. The facts borne out by the material record reflect that the petitioner was appointed as a substitute Bungalow Peon by an office order, dated 22.09.1992, and was attached to the bungalow of Secretary to General Manager, subject to the conditions stipulated in the office letter, dated 27.03.1985. The stipulations in letter dated 27.03.1985, which are referred in the office order, dated 22.9.1992 read as under:

1. If while serving as Bungalow Peon and before completion of 3 years as Bungalow Peon, he applies for and gets selected for appointment to Class IV post, he will be assigned proforma position in such post according to his turn on panel.
2. On completion of 3 years continuous service as Bungalow Peon, his absorption will initially be only as Bungalow Peon, and if he is found suitable for absorption in Class IV service he will be transferred to the regular establishment when the Officer to whom he is attached is transferred to another station on S.C.Rly, or to other Railway or ceased to be eligible to have a Bungalow Peon attached to his post. In case no vacancy is available he shall continue to work as such against Gazetted post from which the Officer is transferred out of the Railway or to a post which a Bungalow Peon is not attached.

Insofar as absorption of Bungalow Peons, the clarification issued by the General Manager's office vide Proceedings no.P(R)564/ BP, dated 28.09.1984, are as follows:

2. As already decided in the O.O dated 10.07.84, the B/Peons will be screened for absorption in regular establishment on completion of 3 years service and that initially their regularisation in Railway Service as Class IV (Group 'D') will be only as a B/Peon. The B/Peons so screened and found suitable for absorption in Class IV service will, however, be transferred to the regular establishment only when the officer to whom he is attached is transferred to any other station on S.C.Railway or to other Rly. Or ceases to be eligible to have a B/Peon attached to his post.

3. It is further clarified that the screening of B/Peon for assessing his suitability for absorption in regular Cl.IV service on completion of 3 years service is subject to the condition that his service as B/Peon is satisfactory and required by the officer whom the B/Peon is attached, even after completion of 3 years service. In the event, the services of a B/Peon is not required by an officer even after completion of 3 years service and the B/Peon is declared unsuitable for absorption in regular Class-IV establishment by the officer, the B/Peon will have no title to be transferred to the regular establishment, even though the B/Peon might have completed 3 years service.

It is pertinent to note that to the said letter giving clarifications in regard to absorption of Bungalow Peons, a model office order for appointment of Bungalow Peons is also attached. As per the model order only, the office order appointing the petitioner as a substitute Bungalow Peon was issued. Thus, the petitioner is a temporary employee and he has not completed continuous service as Bungalow Peon for a period three years by the time his services were terminated by the letter, dated 14.12.1993, and with effect from 17.12.1993 is not in dispute. The said order, dated 14.12.1993, reads that the services are terminated with effect from 17.12.1993 AN and that he should be paid a sum equivalent to the amount of pay and allowances for one month in lieu of period of notice by calculating the same at the rate at which he was drawing on the date of termination and also retrenchment compensation equivalent to 15 days average pay for each completed year of service or part thereof in excess of six months. In the termination order it is stated that the retrenchment compensation as due under Section 25 f(b) of the Act will be paid at GM's office, on 17.12.1993, in the presence of an officer concerned. The Rules and Regulations governing 'termination of service and period of notice of temporary railway servants' postulates as under: 'When a person without a lien on a permanent post under Government is appointed to hold a temporary post or to officiate in a permanent post, he is entitled to no notice of the termination of his service if such termination is due to the expiry of the sanction to the post which he holds or the expiry of officiating vacancy, or to his compulsory retirement due to mental or physical

incapacity or to his removal or dismissal as a disciplinary measure after compliance with the provisions of Clause (2) of Article 311 of the Constitution of India. If the termination of his service is due to some other cause, he shall be entitled to one month's notice provided he was engaged on a contract for a definite period and the contract does not provide for any other period of notice; and to a notice of 14 days if he was not engaged on a contract. Temporary railway servants with over three years continuous service, shall, however, be entitled to a month's notice. The period of notice specified above shall apply on either side, and steps should be taken to bring this condition to the notice of the railway servants concerned.' Insofar as Apprentices, except as otherwise provided in service agreement, the service of an apprentice shall be liable to termination on one week's notice. The petitioner's contention is that he was not given any notice of termination and was also not paid any amount in lieu of notice and also retrenchment compensation and, therefore, the termination is illegal, arbitrary and is liable to be set aside. The termination order is a simple order without stating any reasons which cast a stigma. Though in the evidence before the Industrial Tribunal and in the counter it is stated that the services of the petitioner as substitute Bungalow Peon are not satisfactory, no such reason was mentioned in the order of termination. However, in view of the evidence of the officer of the Railways given before the Tribunal and the averment in the counter of the Railways that the petitioner's services are unsatisfactory it is sought to be contended that the said testimony and the counter averments certainly and expressly cast a stigma and, therefore, the termination is not a simple termination or discharge and therefore, it is idle for the 1st respondent to contend that it is a simple order of termination or discharge. In the well considered view of this Court, the said contention needs no countenance as the termination order is a simple termination order. The law is well settled that when the termination is termination simpliciter, no enquiry would be

necessary. In this case, the order of termination does not indicate it's punitive nature as no reason like the services of the petitioner are unsatisfactory was mentioned in the termination order simpliciter. Further, the termination orders have been passed in accordance with the conditions mentioned in the appointment order by which the petitioner had been appointed as substitute Bungalow Peon purely on temporary basis. When the terms and conditions of appointment and the order of termination are read in harmony, it appears that the termination of the services of the petitioner is in accordance with the terms and conditions mentioned in his appointment order and by exercising the power which is conferred upon the appointment authority to terminate the petitioner's services and that the termination was not by way of punishment. In the well considered view of this Court, when the termination is not punitive and is not by way of punishment and the order of termination on the face of it does not cast a stigma on the petitioner, the testimony of the officer of the Railways before the Tribunal and the allegation made against the petitioner in the counter filed by way of defence on behalf of the Railways do not change the nature and character of the order of termination which is termination order simpliciter. (See: State of UP v. Kaushal kishore Shukla [(1991) 1 SCC 691]). Ordinarily and generally the Court is required to look to the order on the face of it and find whether it casts any stigma on the employee whose services are terminated. This Court need not go behind the termination order and see if there was any motivating fact behind that order. (See: S.P. Vasudeva v. state of Haryana [(1976) 1 SCC 236]). The petitioner's appointment order also shows his absorption initially to the post of Bungalow Peon is subject to his suitability on completion of three years and the further condition that the services must be satisfactory. Therefore, even his temporary appointment is only as a probationer. Placing an individual on probation is to enable the employer to find out such individual's suitability for continuation and confirmation in service. And, on

the basis of his overall performance during the period of probation a decision is generally taken as to whether his services should be continued or not and whether he should be confirmed in the post to which he is appointed or he should be released from service. Generally, after adjudging the suitability or otherwise of the probationer, when the probationer is released from service by an order of termination simpliciter, such probationer cannot be heard to say that it is a removal from service on the grounds of discipline or misconduct and such case of termination would be only the termination simpliciter and would not be a case of stigmatic termination. The employer can always terminate the probationer's appointment if the probationer is unfit for a job on the ground of unsuitability for the job. The ground of unsuitability for job does not amount to a stigma more particularly when such language was also not employed in the termination order like the termination order of the petitioner. As rightly contended by the learned Standing Counsel for the Railways, if, for termination of the services of a probationer on the ground of unsuitability an enquiry has to be held by considering the said reason as a stigma then the fundamental difference between a probationer or a temporary employee and a permanent employee would be completely obliterated. In the case on hand, the authority chose not to hold a disciplinary enquiry against the petitioner but chose to exercise the powers under the terms and conditions of the appointment order and issued a simple termination order, which does not cast any stigma upon the petitioner; and the termination order also does not visit him with any civil consequences. The termination order itself says that the petitioner is entitled to pay and allowances for one month (in lieu of the period of notice) calculating the same at the rate at which he was drawing on the date of termination and also retrenchment compensation equivalent to 15 days average pay for each completed year of service or part thereof in excess of six months. And the petitioner was also informed by the said order that the same would be paid to

him, on 17.12.1993, at the General Manager's office in the presence of an officer concerned as the termination is with effect from 17.12.1993 AN. It is not the case of the petitioner that despite his attending the office of the General Manager the retrenchment compensation was not paid to him. On the other hand, the petitioner suppressed a material fact in this writ petition in regard to receipt of certain monies from the Railways. As per the earlier orders of this Court in the earlier round of litigation between the same parties, the Railways deposited initially an amount of Rs.1,17,472/- before the Labour Court as per Section 17-B of the Act. Further, an amount of Rs.15,294/- was also deposited. The petitioner in fact received the said amount of Rs.1,32,766/- and deliberately suppressed the said fact in this writ petition. Though the petitioner baldly pleaded that subsequent to his retrenchment, some individuals were employed as Bungalow Peons and they were later absorbed into the regular establishment he did not give details of such employments and absorptions in his pleading and also failed to establish the said contention.

9. Before parting, it is to be noted that the learned counsel for the petitioner relied upon a decision in Mohan Lal v. Management of M/s.Bharat Electronics Ltd.,¹. It is a case where the appellant therein was appointed as salesman in the respondent-company which described the appointment as temporary in the first instance which was likely to be made permanent. He joined duty on December 8, 1973, but his service was abruptly terminated by a letter dated 12.10.1974 with effect from 19.10.1974. He raised an industrial dispute. The Labour Court found that his services were terminated during the extended period of probation as he was not found suitable for the post. The Labour Court, therefore, held that termination did not constitute retrenchment within the meaning of Section 2(oo) read with Section 25-F of the Industrial Disputes Act. The Supreme Court found on facts that after his

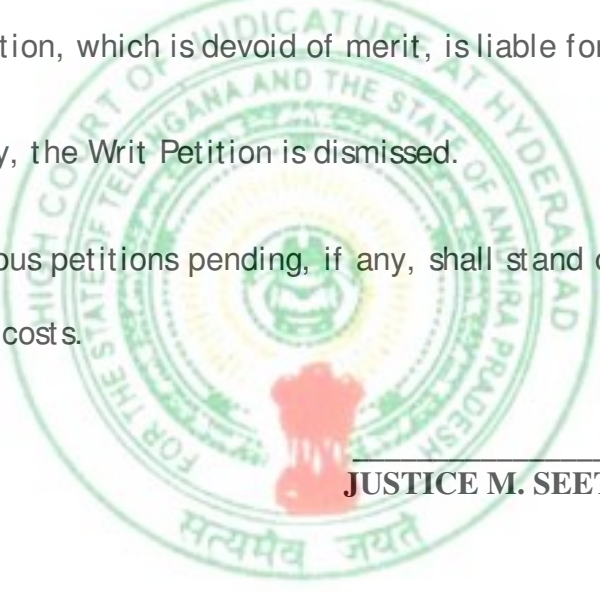
¹ (1981) 3 SCC 225

probation was once extended it was not further extended nor his services were terminated within the probation period or at the end of the probationary period on the ground of unsuitability and the consequence of law is that either he would be a temporary employee or a permanent employee as per the rules governing the contract of employment between the appellant and the respondent. From the above facts, it is obvious that the termination was not during the probation or extended probation and that the decision in the cited case turned on the facts of that case. Hence, the cited decision is not helpful to advance the case of the petitioner herein.

10. On the above analysis of facts, events and contentions, this Court finds that the writ petition, which is devoid of merit, is liable for dismissal.

11. Accordingly, the Writ Petition is dismissed.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.



JUSTICE M. SEETHARAMA MURTI

01.06.2017
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