

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.GANGA RAO

+ Writ Appeal No.1772 of 2017

% Date: 27-11-2017

1. The Depot Manager, APSRTC,
Nellore-II Depot, Nellore

2. The Regional Manager, APSRTC, Nellore

... Appellants

Vs.

\$ 1. P.Hari, S/o Radhakrishnaiah, Aged about 35 years,
R/o Srinivasamangapuram, Chandragiri Mandal,
Chittoor District

... Respondent/Writ Petitioner

2. The Presiding Officer, Labour Court, Guntur

... Respondent

! Counsel for Appellants: Mr. P.Durga Prasad,
Standing Counsel

Counsel for Respondent No.1: Mr. M.Pitchaiah

Counsel for Respondent No.2: ---

< Gist:

> Head Note:

? Cases referred:

1. (2005) 5 SCC 591

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.GANGA RAO

Writ Appeal No.1772 of 2017

Judgment: (per V.Ramasubramanian, J.)

The Andhra Pradesh State Road Transport Corporation has come up with the above writ appeal, challenging an order of the learned single Judge, setting aside an award of the Labour Court and directing the Corporation to reinstate the 1st respondent with all consequential benefits.

2. Heard Mr. P.Durga Prasad, learned Standing Counsel for the appellant and Mr. M.Pitchaiah, learned counsel for the 1st respondent/workman.

3. The 1st respondent/workman raised an industrial dispute in I.D.No.344 of 2001, challenging his termination on the ground that the same was done without following the procedure prescribed by law. The appellant/Management raised a contention that the 1st respondent was employed through a contractor and that there was no employer-employee relationship.

4. Before the Labour Court, the 1st respondent examined himself as W.W.1. A retired employee of the Transport Corporation was examined as W.W.2, to speak to the fact that the 1st respondent was sent out when he sought regularisation. The Assistant Commissioner of Labour, who inspected the Depot of the Transport Corporation and

prepared an inspection report containing the names of workers, was examined as W.W.3.

5. On behalf of the Management, the Mechanical Foreman was examined as M.W.1. 10 documents were marked on the side of the workman and 4 documents were marked on the side of the Management.

6. The Labour Court held that the 1st respondent was employed only through a contractor and that therefore there was no relation of employer and employee between the Corporation and the 1st respondent. Accordingly, the Labour Court dismissed the claim of the 1st respondent.

7. The 1st respondent filed a writ petition in W.P.No.7145 of 2007. The learned single Judge, after taking note of the decision of the Supreme Court in ***Dharangadhara Chemical Works Ltd. V. State of Saurashtra*** (AIR 1957 SC 264), wherein the definition of the expression “workman” was given an expansive meaning, held that there was relationship of employer and employee. After finding that the theory of engagement through contractor propounded by the Management was a farce, the learned single Judge found that the termination of the services, of the 1st respondent, was without following the procedure prescribed under Section 25-F of the Industrial Disputes Act, 1947. Therefore, the learned single Judge allowed the writ petition directing the Corporation to reinstate the

1st respondent with all consequential benefits. Aggrieved by the said order, the Corporation is before us.

8. As rightly pointed out by Mr. M.Pitchaiah, learned counsel for the 1st respondent, the Labour Court framed 3 issues for consideration viz., (1) Whether the 1st respondent was a workman?, (2) Whether the termination of his services was in violation of Section 25-F and (3) If so, to what relief he would be entitled?

9. Despite the fact that the termination was obviously without following the mandate of Section 25-F, the Labour Court solely went on the basis of Ex.W-5, the inspection report prepared by the Assistant Commissioner of Labour who deposed as W.W.3. In Ex.W-5 report, there were 25 columns. One of the columns was intended to provide the name of the contractor if any. Merely because the name of one G.Venkateswarlu was found therein, the Labour Court came to the conclusion that the 1st respondent was employed through a contractor.

10. But the Management did not even examine the said contractor viz., G.Venkateswarlu. The Management did not produce a contract as required under the Contract Labour (Regulation of Abolition) Act, 1970. In fact, the Assistant Commissioner of Labour was examined on the side of the workman and the inspection report was also filed only by the workman as Ex.W-5. Ex.W-5 was relied upon by the workman to show that not even minimum wages were paid and that

therefore the Assistant Commissioner was forced to issue a notice.

11. Therefore, the finding of the Labour Court that there was no relationship of employer and employee, was obviously perverse and the learned single Judge did well to set aside the said finding of the Labour Court. We find that the learned single Judge was left with no alternative except to set aside this finding of the Labour Court on the question of relationship of employer and employee.

12. That would take us to the next issue viz., whether the termination was in accordance with the law. This question cannot detain us for a long time, since it is not the case of the Management that the procedure prescribed by Section 25F was followed. Once it is clear that the procedure prescribed by Section 25F was not followed, it should follow as a consequence that the termination order should be set aside. Any retrenchment or termination in violation of the procedure prescribed by Section 25F, will automatically lead to the relief of reinstatement with all consequential benefits. Though this was the position of law for a long time, the law took a *de tour* after the year 2000. In **General Manager, Haryana Roadways v. Rudhan Singh**¹, a 3-member Bench of the Supreme Court held that there is no rule of thumb that in every case where the termination of services is in violation of Section 25F, the entire back wages should be awarded. Paragraph-8 of the said decision reads as follows:

¹ (2005) 5 SCC 591

“8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, i.e., whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period, i.e., from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year.”

13. If the parameters indicated above are applied, it could be seen that the 1st respondent was in service from 15-11-1998 to 21-02-2001. In the year 2000, he filed a writ petition in W.P.No.20157 of 2000 on the file of this Court seeking regularisation of service. It is only thereafter that termination had taken place.

14. In other words, the 1st respondent had worked for a period of 3 years. Therefore, the award of full back wages

from the year 2001 for a period of 17 years, may not be in tune with the law laid down by the Supreme Court in **Rudhan Singh**. The decision in **Rudhan Singh** also arose out of termination of services of a person working in the Haryana Roadways.

15. Therefore, taking into account the circumstances, we are of the considered view that the order of the learned single Judge can be confirmed, with the only modification that the 1st respondent will not be entitled to back wages.

16. Accordingly, the writ appeal is allowed and the impugned order of the learned single Judge is modified to the following effect:

(i) The order of the learned single Judge directing the reinstatement is confirmed, and

(ii) The 1st respondent will be entitled to all other benefits except back wages from the date of termination till the date of the judgment of the learned single Judge. But the 1st respondent will be entitled to back wages from the date of the judgment of the learned single Judge together with all consequential benefits.

The miscellaneous petitions, if any, pending in this writ appeal shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

M.GANGA RAO, J.

27th November, 2017.

Ak

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.GANGA RAO

Writ Appeal No.1772 of 2017
(per VRS, J.)



27th November, 2017.
(Ak)