

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.47532 of 2006

Mrs.Raji Ravishankar

Petitioner

Vs

1.The Management of
New Indian Express Publications (Maudrai)Ltd.
Express Estate, Club House Road, Chennai-600002

2.The Presiding Officer
Principal Labour Court
Chennai

Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the award passed by the presiding Officer, Principal Labour Court, at Chennai, dated 5.7.2005 in ID.No.714 of 2000 and to quash the same and consequently direct the respondent management to reinstate the petitioner in service with continuity of service with full backwages and all other attendant benefits applicable to her.

For petitioner :: Mr. R.Jaikumar

For respondents :: Mr. S.Vijayaraghavan for R1

For R2 :: Court

सत्यमेव जयते
O R D E R

In this Writ Petition, petitioner has challenged the Award dated 5.7.2005 passed by the Labour Court, wherein, the Labour Court refused to entertain the claim petition .

2. The brief facts leading to filing of the claim petition is as follows;

The petitioner filed a petition under section 2A(2) of the Industrial Disputes Act before the Labour Court, Chennai and inter alia averred in the claim petition that she entered service of the respondent on 1.9.1998 and she was working in the Advertisement Department as a Senior Assistant. The last drawn salary of the petitioner was Rs.5,322.60 per month. The

service of the petitioner was meritorious and she has not suffered any punishment. When such being the position, to her shock and surprise, she was suddenly retrenched from service on 29.2.2000 . Thereafter the 1st respondent had sent a cheque of Rs.9,998.54. When the service of the petitioners was meritorious, there was absolutely no ground for termination of her service.

(ii) The petitioner further averred in her claim petition that there were 800 workmen working under the respondent and hence, payment of the amount falls short of the legal dues and without prejudice to her rights and claims and payment of one month's salary towards notice pay is contrary to the provisions of the Industrial Disputes Act and even otherwise, retrenchment is unjust, arbitrary and illegal.

(iii) It is further averred in the petition that the Management has filed a counter stating that they wanted to extend the probation of the petitioner and hence she was terminated from service and the Management has further stated that it will not amount to retrenchment which is baseless. It is further averred that it is a clear case of retrenchment in contravention of Section 25N of the Industrial Disputes Act and various provisions of the Standing Orders and principles of natural justice. Initially the petitioner raised an Industrial Dispute before the Labour Court II, Kuralagam, Chennai who submitted his Failure Report under Section 12(4) of the Industrial Disputes Act .

(iv) The 1st respondent Management has filed its counter stating that no person can claim the right to confirm automatically. Accordingly the claim made by the petitioner about her working faithfully, efficiently and to the satisfaction of her superiors and that her record of service is meritorious free from any blemish are outside the purview of the present case, since it is not a case of any punishment for any act or omission on the part of the employee, this is a simple case of non confirmation of the employee on the expiry of the probationary period.

(v) The Labour Court, after perusing the evidence and materials placed on either side, passed an award dismissing the Industrial Dispute. Aggrieved against the dismissal of the Industrial Dispute, the present Writ Petition is filed by the petitioner.

3. The case of the petitioner is that the petitioner was appointed as Probationer under the 1st respondent Management by appointment order dated 7.9.1998 which provides for terms and conditions of probation duly signed and accepted by the petitioner.

4. As per clause 6 of the said appointment order, the service of the petitioner is liable to be terminated at any

time without notice and without assigning any reason whatsoever. Further, under clause 5 of appointment order, it is made clear that the services of the petitioner shall not be deemed to be confirmed unless a letter in writing confirming her services is issued to the petitioner and unless her services are confirmed, her services will be deemed to be automatically terminated on the expiry of the probationary period or the extension thereof as the case may be.

5. Admittedly, the petitioner who was under probation and who can be terminated any time under clause 6 as well as Clause 5 read with 2 (b) (III) of the Standing Orders.

6. The petitioner's employment is governed by the certified Standing Orders of the Dinamani Press, Madras. The petitioner's probation was extended subsequently for the period of another six months. Again the services were extended for another six months, thus in total 18 months were extended as a probationer, however for the reason best known to the respondent, the service of the petitioner was terminated by the impugned order which is unsustainable which is absolutely retrenchment covered under Section 25N of the Industrial Disputes Act. Once the petitioner satisfactorily completed six months period equivalent to the period of another six months as per definition 2(b), the probationer deemed to have satisfactorily completed her probation on the normal date and the petitioner is entitled to consider on par with the permanent workmen. Hence the termination order issued by the 1st respondent is illegal and without considering all the issues raised by the petitioner before it, the Labour Court arbitrarily and erroneously rejected the claim of the petitioner. Accordingly he prayed for allowing of the writ petition.

7. Learned counsel for the petitioner relied on a decision of this Court reported in (2005) 13 Supreme Court Cases 179 (Rajinder Singh Chauhan and others Vs. State of Haryana and others), wherein in para 11 and 12 it is held as follows;

11. The stand of the respondents was that the appellants were not confirmed employees. The appointment order of each of the appellants contains the stipulations which are as follows:

" 1. Your appointment as salesman is purely temporary.

2. During the period of probation, your services are liable to be terminated without giving any notice or assigning any reason.

3. You shall be governed by the terms and conditions contained in the Staff Service Rules of the Federation, amended from time to time."

This is a case where the period of probation

is fixed having regard to Rule 4(b) read with Rule 10 as quoted above. Rule 10(6) no doubt provides that no employee shall be deemed to have been confirmed in the service unless specific order in this regard is issued. Relying on this provision, learned counsel for the fourth respondent submitted that there were no specific orders of confirmation, and therefore, the appellants should be deemed to have continued as probationers till the date of termination of their services. A similar stand was considered in *Om Parkash maurya v. U.P. Coop. Sugar Factories Federation* 1986 Supp SCC 95. A Constitution bench of this Court in *State of Punjab v. Dharam Singh* (1968) 3 SCR 1 noted as follows: (SCR pp.5 G-6 B)

"Where, as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negated by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication."

12. In *High Court of M.P. v. Satya Narayan Jhavar* (2001) 7 SCC 161 this Court categorised the provisions for probation as follows: (SCC p.169, para 11)

"11. The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject-matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of

probation. The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired." In the above view of the matter, the stand of the appellants that they were deemed to have been confirmed at the end of 24 months and they were permanent employees is on terra firma. "Salesmen" belong to Class III of the category of permanent employees. The definition of "probationer" given in Rule 4(b) fully supports the appellants' stand that the probation period shall not exceed 24 months in all. Therefore, as was held in Om Parkash case 3(2001) 7 SCC 161, Satya Narayan Jhavar case and Dharam Singh case the appellants inferentially have to be treated as permanent employees, and consequently the benefits under Rule 35(b) were available to them. But the same shall not be in addition to what is payable under section 25-F. The amount which is higher of the two i.e. of Section 25-F or Rule 35(b) shall be paid to the appellants. If any amount has already been paid in terms of Section 25-F the same shall be adjusted while making the payment under Rule 35 (b), which shall be made within three months. The appeal is allowed to the aforesaid extent. No costs.

8. Learned counsel appearing for the 1st respondent would submit that the petitioner's employment is governed by the certified standing orders. Initially the petitioner was appointed as probationer on 1.9.1998 and her services were extended periodically enabling the petitioner to complete successfully the probation period. However, the petitioner has

not completed his probation to the satisfaction of the respondent. Hence the respondent decided to terminate her service.

9. After expiry of 18 months, the 1st respondent considered the services of the petitioner not regular for the institution and accordingly, her services were terminated and the learned counsel appearing for the 1st respondent relied upon the certified standing orders of their Management stating that (i) the petitioner is coming under the category of probationers (ii) the employer who extend the probation up to further period/periods equivalent to the period of probation prescribed.

10. Particularly, the learned counsel relied upon clause 2 (b) (iii) of the Standing Orders which read as follows;

'2...

(b)....

(iii) Even after completing the probation satisfactorily he will not acquire the status of a permanent member of the company automatically unless and until he gets a confirmation order in writing from the employer which shall be given within a period of 30 days from the date of completion of probation."

11. By invoking clause 3 of the Standing Orders 2(b) (iii), the petitioner's services were terminated and after considering the available materials on record, the fact finding authority, the Labour Court has arrived at a conclusion that the petitioner's termination does not fall within the purview of Section 25N of the Industrial Disputes Act. Accordingly, the Labour Court dismissed the claim petition.

12. I have considered the rival submissions made by the learned counsel for the petitioner. The admitted fact of the case is that the petitioner was appointed as probationer on 1.9.1998 and also it is the admitted case of the 1st respondent that the petitioner's probation period was extended for 18 months, however after expiry of 18 months, the petitioner's services were terminated on perusal of the certified Standing Orders. The petitioner is an unskilled workmen and he was appointed as probationer on 1.1.1998 and the management have been barred to extend the period/periods of the probation equivalent period of appointment of the probationer. However, on perusal of clause 3 even after completion of the probation satisfactorily the petitioner will not acquire the status of permanent member of the company automatically unless and until he gets a confirmation order in written from the employer which shall be given within a period of 30 days from the date of

completion of the probation and the Labour Court, after considering the materials on record elaborately, rejected the claim made by the petitioner. But however, it is necessary to peruse the decisions referred by the learned counsel appearing for the petitioner in the case stated supra, wherein, Rule 46 (b) fixes the maximum period of probation and after completion of maximum period, he deemed to be continued as probationer and they are entitled for confirmation. In the present case, it is completely different. It is the discretion of the Management. The Management may decide to extend any number of probation as per clause 2(b) (i) of the Standing Orders.

13. Even as per clause 3 of the Standing Order, which clearly states that even after completing the probation, the employer Management have the right to terminate the services of their employers. They are entitled only for compensation to the services rendered in the Management. Accordingly, on payment of compensation, services were terminated.

14. Therefore, I do not find any merits in entertaining the Writ Petition and the order of the Labour Court does not require any interference and accordingly, the Writ petition is dismissed. No costs.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

msr

To

1.The Management of
New Indian Express Publications (Maudrai)Ltd.
Express Estate, Club House Road, Chennai-600002

2.The Presiding Officer
Principal Labour Court
Chennai

+1cc to Mr.T.FENNWALTER ASSO, Advocate, S.R.No. 42950

W.P.No.47532 OF 2006

TR(31/07/2018)