

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

Writ Petition No.19038 of 2002

ORDER: (per Hon'ble the Acting Chief Justice Sri Ramesh Ranganathan)

This Writ Petition is filed by the Life Insurance Corporation of India aggrieved by the Award passed by the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad ("the Tribunal" for short) in L.C.I.D.No.9 of 2001 dated 29.04.2002.

The 2nd respondent-workman invoked the jurisdiction of the Tribunal under Section 2-A(2) of the Industrial Disputes Act, 1947 ("the ID Act" for short) contending that he had joined the services of the petitioner-Corporation on 30.03.1994 as a Watchman, and had worked continuously till he was removed from service on 05.02.2001; at the time of removal, he was drawing a basic pay of Rs.1,000/- per month; he had requested the petitioner-Corporation to reconsider the decision, and revoke the order of removal; and since the Appellate Authority had rejected his appeal, he had approached the Tribunal. He further contended that the petitioner-Corporation had issued a notification in December, 1994 for temporary appointments in the cadre of Security Guards and Watchman in various city branches of Hyderabad; he was sponsored by the employment exchange, and was interviewed and selected for the post of Watchman; his appointment on 30.03.1994 was on a permanent basis in a permanent vacancy; but he was issued a temporary appointment order; after dispensing with his services, the petitioner-Corporation was engaging security persons on a temporary basis; he was terminated from service on 05.02.2001 without assigning any reasons; the petitioner-Corporation had neither given him a notice nor had paid him any compensation as required under Section 25-F of the ID Act; and, hence, he should be reinstated

with continuity of service and back-wages. Before the Tribunal, the respondent-workman examined himself as WW.1 and marked Exs.W1 to W6 on his behalf. On behalf of the petitioner-Corporation, one witness was examined and Exs.M1 to M6 were marked. Exs.X1 and X2 were marked by the Tribunal.

In the Award, impugned in the Writ Petition, the Tribunal referred to an Award passed by the Central Government Industrial Tribunal, New Delhi whereby the terminated employee's services were directed to be absorbed; and observed that, therefore, a similar direction with some modifications should be granted in the present case also. The Tribunal held that the respondent-workman had put in 7 years of service from 30.03.1994 till 05.02.2001; taking into consideration his service of 7 years, he should be absorbed and be given appointment as a watchman or sub-staff within 30 days from the publication of the Award; in due course, when a regular vacancy arises, his date of appointment should be taken into consideration as 30.03.1994; and he should be appointed on his being found eligible and suitable.

Section 2-A(1) of the ID Act stipulates that, where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer concerned with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute. Section 2-A(2) of the I.D. Act enables the workman to make an application directly to the Labour Court or the Tribunal to adjudicate the dispute. Consequently, in cases where an employee is discharged or retrenched from service, he is entitled to raise an industrial dispute, and directly approach the

Industrial Tribunal-cum-Labour Court questioning his illegal discharge, retrenchment or termination.

In the present case, the respondent-workman was, admittedly, appointed on 30.03.1994 as a temporary watchman, and worked continuously as such till 05.02.2001. While he had contended, before the Tribunal, that his termination was illegal as neither was he put on notice nor paid retrenchment compensation under Section 25-F of the I.D. Act, the Tribunal, instead of adjudicating the claim of the workman on its merits, had relied on another Award passed by the Central Government Industrial Tribunal, New Delhi, and had directed his absorption into the services of the petitioner-Corporation.

Before us Sri K.Srinivas, Learned Counsel for the petitioner-Corporation, would submit that, even if the respondent-workman's services are held to have been terminated without fulfilling the conditions stipulated in Section 25-F of the Industrial Disputes Act, the Tribunal could not have directed his absorption into the services of the petitioner-Corporation; and the relief granted by the Tribunal goes far beyond what the workman would have been entitled to even if it is held that his termination or retrenchment is contrary to Section 25-F of the ID Act.

While Sri G.Ravi Mohan, Learned Counsel for the 2nd respondent-workman, initially sought to sustain the Award passed by the Tribunal, he later agreed that the consequences, of non-compliance of Section 25-F of the I.D. Act, would only result in the employee being put back in the same position which he was in before the date of his termination contrary to Section 25-F of the Industrial Disputes Act.

Section 25-F of the I.D. Act prescribes the conditions precedent to retrenchment of workmen and, thereunder, 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; and (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. Section 25-B of the I.D. Act defines 'continuous service' and under clause (1) thereof, for the purpose of Chapter-VA, a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or as strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. Section 25-B(2) stipulates that, where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer (a) for a period of one year, if the workman, during a period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days.

In the present case, the respondent-workman was in continuous service ever since 30.03.1994 till 05.02.2001 for a period of nearly 7 years. Consequently, in terms of Section 25-F (a) & (b) of the I.D. Act, the petitioner-Corporation was obligated to retrench him from service only after giving him one month's notice in writing indicating the reasons for retrenchment or to pay, in lieu of such notice, wages for the period of notice; and (b) retrenchment compensation, equivalent to 15 days average pay, for every completed year of continuous service or

any part thereof in excess of six months. Admittedly, the petitioner-Corporation has not complied with these requirements. Consequently, retrenchment of the respondent-workman from service is in violation of Section 25-F of the I.D. Act rendering his termination illegal and void ab-initio. As a result, the respondent-workman is entitled to be put back into service as a temporary watchman i.e., in the same post he held prior to the date of his termination i.e. 05.02.2001.

While the respondent-workman would have been entitled for back-wages, it must be borne in mind that the Tribunal has denied the workman back-wages. The respondent-workman has chosen not to question the Award of the Tribunal, and it is only the petitioner-Corporation which has invoked the jurisdiction of this Court seeking to have the award set aside. Consequently, while the respondent-workman shall be entitled to be reinstated as a temporary watchman pursuant to the Award of the Tribunal dated 29.04.2002, he shall not be entitled for wages prior thereto.

The Writ Petition is, accordingly, disposed of. The miscellaneous petitions, if any pending, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, ACJ

J. UMA DEVI, J.

Date:07.06.2018.
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