

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.15556 OF 2001

ORDER:

The petitioner-workman being aggrieved by the Award dated 17.01.2001 passed by the Labour Court-II, Hyderabad, in I.D.No.104/1997 rejecting his claim to reinstate him into service with continuity of service and back wages, filed this writ petition.

The case of the petitioner is that he joined in the second respondent-Andhra Pradesh State Road Transport Corporation (for short 'Corporation') as a Cleaner on 01.12.1998 and continuously worked till he was orally and illegally terminated on 23.12.1989. The services of the petitioner were again utilized by the Corporation as Cleaner from 24.05.1991 to 30.10.1991. Petitioner claims to have worked along with Sri Anjaneyulu, Sri M.Abraham, Sri Ameeruddin, Sri N.Pratap Reddy and Sri Ch.Basavaiah, who filed I.D.Nos.2/1995, 3/1995, 4/1995, 5/1995 and 21/1995 before the Labour Court-II and they were reinstated into service in view of the Awards passed by the Labour Court-II and as the writ petitions filed by the Corporation against the said IDs were dismissed by this Court. Petitioner herein was orally terminated on 23.11.1989 and again on 30.10.1991 without notice and contrary to the provisions of Section 25-F of the Industrial Disputes Act (for short 'the I.D. Act'). Questioning the said termination, petitioner after issuing legal notice dated 23.08.1997, raised I.D.No.104/1997 before the Labour Court.

The Corporation filed a counter affidavit before the Labour Court stating that there was no relationship of employer and employee between the Corporation and the petitioner. Hence, the

dispute is not maintainable. The job of sweeping and washing of the busses was entrusted to a contractor but not to the petitioner as stated by him in the petition. The petitioner might have worked under the contractor and as such there was no direct relationship of employer and employee between the petitioner and the Corporation. As the petitioner was never engaged by the Corporation, the question of terminating his services does not arise.

Based on the above pleadings, the Labour Court framed the following points for consideration:

- 1) Whether there was relationship of employer and employee between the respondent and the petitioner?
- 2) If so, whether the petitioner was in continuous service of the respondent for not less than one year?
- 3) If so, whether the action of the respondent in terminating the services of the petitioner is legal and valid?
- 4) If not, to what relief is the petitioner entitled?

During the course of enquiry, the workman got examined himself as W.W.1 and got marked Exs.W.1 to W.4. On behalf of the Corporation, M.Ws.1 and 2 were examined and Exs.M.1 to M.7 were got marked. On consideration of the oral and documentary evidence, referred supra, the Labour Court answered point No.1 in favour of the petitioner stating that Sri Bhooma Goud said to be the contractor and through him the petitioner and others were engaged as contract labour; Corporation failed to produce any documentary evidence to the effect that Bhooma Goud is a licensed contractor and there was an agreement between the said contractor and the Corporation and any sort of documentary evidence required under Contract Labour (Regulation and

Abolition) Act was not filed before the Labour Court. As such, the Labour Court disbelieved the version of the Corporation that the petitioner was a contract labour contracted through the contractor Bhooma Goud and there was no relationship of employer and employee and as such the notice and notice pay as required under Section 25-F of the I.D. Act are not required. However, the Labour Court in respect of point No.2 found that the petitioner worked as Cleaner from 01.12.1988 to 23.11.1989 and again from 24.05.1991 to 30.10.1991. As such, the petitioner was not in continuous service of the Corporation for 240 days in an year as required under Sections 25-F and 25-B of the I.D. Act. Hence, the contention of the petitioner that he was in continuous service for 240 days in an year preceding his termination as on 30.10.1991 is not tenable and thereby held that there is no necessity of issuing notice or notice pay as required under Section 25-F of the I.D. Act and accordingly answered point No.2 against the petitioner. In view of the findings arrived by the Labour Court in respect of point Nos.1 and 2, point Nos.3 and 4 were answered against the petitioner. Aggrieved by the same, the present writ petition came to be filed by the petitioner-workman.

Sri A.K.Jaya Prakash Rao, learned counsel for the petitioner, would contend that the petitioner had worked as a Cleaner in the Corporation continuously from 01.12.1989 to 30.10.1991. His engagement in the Corporation is not in dispute as held by the Labour Court and the relationship of employer and employee exist between the Corporation and petitioner. The Labour Court dismissed the I.D. only on the ground that the petitioner has not worked continuously for a period of 240 days in a 12 months'

calendar year preceding the date of termination. The Labour Court denied the contention of the petitioner that he had worked more than 240 days in an year during the period from 01.12.1988 to 30.10.1991 and therefore the Corporation has to observe the provisions of Section 25-F of the I.D. Act before terminating his services. The counsel further vehemently contended that the petitioner had worked as a cleaner from 01.12.1988 to 30.10.1991 but the Corporation has created an artificial break from 24.11.1989 to 23.05.1991. As such, the petitioner was out of service during the said period. The artificial break has to be taken into consideration for counting of 240 days in a period of 12 months from the preceding date of termination as it is only an artificial break. In Section 25B (1) of the I.D. Act is defined that a workman shall be said to be in continuous service for a period if he is, or that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a 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 and it further stipulates that the artificial break in service amounts to artificial secessions or working, the same has to be counted for calculation of 240 days and thereby the Labour Court has committed error of law and fact in holding that the petitioner had not worked for 240 days as required under Section 25-F of the I.D. Act to follow the provisions of Section 25-F of the I.D. Act before terminating the services of the petitioner. The learned counsel for the petitioner relied on the decisions reported in ***General Manager, Haryana Roadways vs. Rudhan Singh***¹,

¹ (2005) 5 SCC 591

Naresh Kumar vs. State of Haryana & Panjab², Director, Fisheries Terminal Department vs. Bhikubhai Meghajibhai Chavda³, Assistant Engineer, Rajasthan Development Corporation and another vs. Gitam Singh⁴ and Commissioner, Ongole Municipality, Ongole vs. Kunchala Sreenu and another⁵ and contend that in view of the above decisions, once the workman *prima facie* proves that he had worked in the Corporation continuously for a period of 240 days, the burden of disproving the same shifts on the employer to show that the workman had not worked for 240 days continuously as required under the provisions of 25-F and 25-B of the I.D. Act as held by the Supreme Court and this Court in the above referred judgments. The Labour Court has to treat the artificial break or secession as the illegal termination has to be taken as deemed service of the petitioner and Labour Court has to hold that the petitioner-workman has worked for 240 days continuously within 12 months' calendar year from the date of termination. The Labour Court has to allow the dispute directing the Corporation to reinstate the petitioner with continuity of service and back wages and the Corporation has not followed the provision of Section 25-F of the I.D. Act. He would further submit that the persons along with whom the petitioner had worked in the Corporation have filed I.D.Nos.2 to 5 and 21 of 1995 before the Labour Court-II, Hyderabad, and they were reinstated on dismissal of the writ petitions filed by the Corporation. One of the petitioners in said I.Ds. by name Bhooma Goud, who is stated to be the contractor through whom the petitioner herein was engaged, also

² 2007 Law Suit (HP) 228

³ (2010) 1 SCC 47

⁴ (2013) 5 SCC 136

⁵ 2000 (1) ALD 97

filed I.D. and he was reinstated into service disbelieving the version of the Corporation. Thus, he prayed to allow the writ petition.

Per contra, Sri K.Vasudeva Reddy, learned Standing Counsel for the Corporation, would contend that as the petitioner was engaged as a contract labour through the contractor Bhooma Goud, there is no employer and employee relationship between the Corporation and the petitioner, the Labour Court rightly rejected the contention of the petitioner that he worked for 240 days in an year preceding the date of his termination. He would further contend that the contention of the petitioner that he had worked from 24.11.1989 to 30.10.1991 with an artificial break from 24.11.1989 to 23.05.1991 and the period of artificial break could not be taken into consideration for calculating 240 days as per Section 25-F and 25-B of the I.D. Act, cannot be considered. From a conjoint reading of Sections 25-F and 25-B of the I.D. Act it can easily be concluded that the petitioner has to work for 240 days continuously in an year preceding the date of termination to attract the provisions of Section 25-F of the I.D. Act to give notice and notice pay before terminating the workman and the workman has to prove by cogent evidence that he had completed 240 days continuously in the Corporation, but the burden not rests on the employer. He relied on the decisions reported in ***Range Forest Officer vs. S.T.Hadimani***⁶, ***Rajasthan State Ganganagar's Mills Ltd., vs. State of Rajasthan***⁷, ***Chennai Metropolitan Water Supply and Sewerage Board vs. T.T. Murali Babu***⁸, ***Bharat Sanchar Nigam Limited vs. Bhurumal***⁹ and

⁶ AIR 2002 SC 1147

⁷ 2004 Law Suit (SC) 1025

⁸ (2014) 4 SCC 108

⁹ (2014) 7 SCC 177

Management of Divisional Engineer, Telecommunications, Mahaboobnagar District vs. Venkataiah¹⁰ wherein this Court held that the burden is entirely rests on the workman to prove that he had worked 240 days continuously as required under Sections 25-F and 25-B of the I.D. Act by producing cogent evidence. No burden lies on the employer to disprove the engagement. This Court in **Venkataiah (10 supra)** held that unless the workman completed minimum period of 240 days of service during 12 months prior to termination of his services, he is entitled to seek protection under Section 25-F of the I.D. Act. He would also contend that the break in service could not be clubbed with the services rendered preceding the date of termination for counting of 240 days of continuous service as required under Sections 25-F and 25-B of the I.D. Act. Hence, the break in service, whether it is artificial or real, is not due to the fault of the workman but the employer as created artificial break or secession to exclude the workman from the purview of provisions of Sections 25-F and 25-B of the I.D. Act. Learned counsel would further contend that the Labour Court rightly dismissed the petition filed by the petitioner under Section 2-A(2) of the I.D. Act and the impugned Award does not call for any interference of this Court.

In the facts and circumstances of the case and in considered view of this Court, even though the Labour Court held that there is a relationship of employer and employee between the Corporation and petitioner, however, it is held that the petitioner has not worked continuously for 240 days as required under Sections 25-F and 25-B of the I.D. Act on the ground that the petitioner was

¹⁰ 2006 (5) ALD 372

engaged as cleaner from 01.12.1988 to 23.11.1989 and again from 24.05.1991 to 30.10.1991. If the later period of engagement i.e. 24.05.1991 to 30.10.1991 is taken into consideration, the petitioner could be able to complete 240 days of continuous services immediately preceding the date of his termination on 30.10.1991. The contention of the petitioner's counsel that there is an artificial break in service from 24.11.1989 to 23.05.1991 and that artificial break or secession had happened for no fault of the petitioner and as such, the said period is also to be taken into consideration for counting 240 days continuous work in an year preceding the date of termination for the purpose of Sections 25-F and 25-B of the I.D. Act, could not be countenanced in view of the decision of this Court in **Venkataiah (10 supra)** wherein this Court held that *"break in service could not be clubbed with the subsequent engagement period to come to a conclusion that the petitioner has completed 240 days of continuous service as required under Sections 25-F and 25-B of the I.D. Act"*. In view of the same, this Court found that there is no merit in the contention of the petitioner that the workman had worked 240 days in an year preceding the date of his termination or secession as termination is for no fault of the petitioner and it is artificially created by the Corporation to avoid application of Sections 25-F and 25-B of the I.D. Act. Therefore, there is no error of law and error of fact, which calls for interference of this Court, in the impugned Award passed by the Labour Court.

For the afore-stated reasons, the Writ Petition is dismissed.

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

(M.GANGA RAO, J)

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