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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2021

CORAM

THE HONOURABLE MR.JUSTICE T. RAJA
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A. Nos. 1235, 1544 & 1545 of 2012

W.A. No. 1235 of 2012

A.S. Ramanarayanan

..Appellant/2nd Respondent

Vs.

1. The Principal,
Kendriya Vidyalaya,
IIT Campus,
Chennai - 600 036.

..1st Respondent/Petitioner

2. The Central Government Industrial
Tribunal cum Labour Court,
I Floor, 'B' Wing,
26, Haddows Road, Shastri Bhavan,
Chennai - 600 006.

..2nd Respondent/1st Respondent

Prayer:Writ Appeal as against the order dated 08.02.2012 in
W.P.No. 20948 of 2004.

Prayer in W.P.No.20948 of 2004 : Writ Petition filed under
Article 226 of the constitution of India to issue a writ of
certiorari calling for the records of the first respondent
culminating with the award dated 08.12.2003 passed in
I.D.No.596 of 2002 and quash the same.

For Appellant :: Mr.V. Ajoy Khose

For Respondents:: Mr.M. Vaidyanathan for R1
R2 Tribunal.



W.A.No. 1544 & 545 of 2012

Venkatesan

..Appellant in both appeals

Vs.

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1. The Central Government Industrial
Tribunal cum Labour Court,
I Floor, 'B' Wing,
26, Haddows Road,
Shastri Bhavan,
Chennai - 600 006.

2. The Principal,
Kendriya Vidyalaya,
IIT Campus,
Chennai - 600 036.

..Respondents in both
the appeals

Prayer in W.A. No.1544 of 2012: Writ Appeal as against the
order dated 12.01.2012 passed in W.P.No. 20922 of 2004.

Prayer in W.A. No. 1545 of 2012: Writ Appeal as against the
order dated 12.01.2012 in W.P. No. 14795 of 2007.

Prayer in W.P.20922/2004 & 14795/2007: Writ Petition filed under
Article 226 of the Constitution of India for the issuance of
writ of certiorari calling for the records of the first and
second respondent respectively culminating with the award dated
08.12.2003 passed in I.D.No.597/2001 and order dated 06.06.2006
passed in C.P.No.5/2006 and quash the same.

For Appellant in both
appeals :: Mr.V. Ajoy Khose

For Respondents in
both appeals :: R1 Tribunal
Mr.M. Vaidyanathan for
R2

COMMON JUDGMENT

(Judgment of the Court was delivered by T. RAJA,J.)

W.A. No. 1234 of 2012 has been filed challenging the order
passed by the learned Single Judge dated 08.02.2012 in W.P. No.
20948 of 2004 by which the award of the Labour Court dated
08.12.2003 in I.D.No. 596 of 2001 granting reinstatement to the
appellant in Grade D post with continuity of service and 50% of
backwages was modified and instead, a direction was issued to
pay a lumpsum compensation of Rs.25,000/- along with any other
balance amount payable under Section 17(b) of Industrial



Disputes Act, 1947.

2.W.A. No. 1544 of 2012 has been filed by one Venkatesan challenging the order dated 12.01.2012 in W.P. No. 20922 of 2004 by which the award of the Labour Court dated 08.12.2003 in I.D. No. 597/2001 was set aside and instead, the Management was directed to pay a compensation of Rs.25,000/- to the said Venkatesan.

3.W.A. No. 1545 of 2012 has also been filed by the said Venkatesan aggrieved over the order dated 12.01.2012 passed by the learned Single Judge in W.P. No. 14795 of 2007 setting aside the order dated 06.06.2006 passed by the Tribunal in C.P. No. 5 of 2005 filed under Section 33(c)(2) of I.D. Act granting Rs.1,58,338/- as monetary benefits payable to the workman.

4.Briefly stated, the facts of the case are as hereunder:

(i)The respondent school is affiliated to CBSE run by Kendriya Vidyalaya Sangathan, in short, K.V.S. The school was running a General Hostel and a Sports Hostel for the benefit of the students. In the hostel, one Cook, one Bearer, one Masalchi, one LDC and one Nurse were employed. Since one Mr. Sankaranarayanan @ Mani and Mr.Antony, who were working as Bearer and Masalchi respectively in the hostel were given Group-D posts and were given postings in KVS at Trichy and Trissur, based on their service in the hostel, at the end of the year 1987, in the vacancies caused due to the posting of the above said individuals, in the canteen attached to the Sports Hostel, Mr.Venkatesan, the appellant in W.A. Nos. 1544 & 1545 of 2012, was offered the post of Masalchi and Mr. A.S. Ramanarayanan, the appellant in W.A. No. 1235 of 2012 was offered the post of Bearer by orders dated 23.12.1987 and 07.12.1987 respectively on a consolidated salary of Rs.250/- per month. Although, it was stated in the orders that they were appointed on temporary basis, they were given assurance that their service would be regularised in due course as the posts were permanent posts. Based on the assurance given, both of them joined the hostel. Apart from doing their normal work attached to their posts, they were also involved in other works as instructed by the Principal and the Assistant Commissioner, like gardening, plumbing and electrical work, etc. Since they had to stay in the hostel, they had to work round the clock. Initially, they were paid wages from the Hostel Fund and subsequently, they were paid wages from the School Fund. They were also paid bonus from the year 1991 onwards.

(ii) After sometime, they came to know that the Sports hostel was going to be closed. Therefore, the appellants made representations dated 09.03.1998 to the Commissioner, K.V.S.,



through the Principal for their deployment as a Group D employee in anyone of the Vidyalayas or Regional Office followed by another representation dated 26.02.1999 to the Assistant Commissioner, K.V.S. Subsequently, on 05.07.1999, representations were sent by the appellants along with their bio data through the Principal to the Assistant Commissioner, K.V.S, seeking regular appointment as a Group "D" employee in Kendriya Vidyalaya, Kayamkulam. The same was also forwarded by the Principal to the Assistant Commissioner, K.V.S by letter dated 05.07.1999 and thereafter, from 01.02.1999, as there were no students in the hostel, A.S. Ramanarayanan, the appellant in W.A. No. 1235 of 2012 was exclusively assigned the work of Group D employee such as office work, Typing, Despatching, Cleaning, Library Assignment Work, Arranging of Bills in the Library, Escort Work, etc and so also, C. Venkatesan was asked to carry out the work of Group D employee such as office work, dusting, cleaning gardening, going to Bank and post office, etc.

(iii) While so, the services of both the workmen were dispensed with by order dated 08.11.1999. As the respondent school did not issue any notice in writing informing the reasons for termination and no compensation was given for as per law, they gave representations on 23.12.1999 to the Assistant Commissioner requesting him to re-consider them for deployment, which were also forwarded by the Principal of the respondent school along with his recommendation. As there was no reply, both of them raised industrial disputes against their non-employment before the Assistant Commissioner of Labour and the respondent School filed their remarks on 06.04.2000 contending that they are not regular employees and therefore, they are not eligible for re-employment or alternate employment under the Rules. As the Conciliation ended in failure, a failure report dated 28.08.2000 was sent by the Conciliation Officer to the Government of India, which, in turn, by order dated 06.07.2001, referred the dispute as to the non-employment of the appellants herein for adjudication by the Central Government Industrial Tribunal cum Labour Court, Chennai and on receipt of the reference, the same was taken on file as I.D.Nos. 596 & 597 of 2001.

(iv) The Government of India, Ministry of Labour, New Delhi, by order dated 06.07.2001, referred the following issues for adjudication, in respect of the workmen:

"Whether the action of the Principal, Kendriya Vidyalaya, IIT Campus, Chennai in terminating the services of Shri C. Venkatesan, workman with effect from 08.11.1999 is legal and justified? If not, to what relief he is entitled to?"

"Whether the action of the Principal, Kendriya Vidyalaya, IIT Campus, Chennai in terminating the



services of Shri Ramanarayanan workman with effect from 08.11.1999 is legal and justified? If not, to what relief he is entitled to?"

(v) With regard to the issues referred for adjudication, the respondent School filed a detailed counter affidavit stating that as there was no one interested to join the Sports Hostel, its continuance became a question mark and the hostel could not be run. Finally, it was closed. Owing to closure of the Sports Hostel, the canteen attached to the Sports Hostel had to be closed as well. The efforts to relocate the casual labourers working in the canteen attached to the Sports Hostel were unsuccessful. Left with no other alternative, the services of the appellants were terminated because there was no hostel fund. Without hostel fund, the appellants could not be paid any wages. Therefore, the appellants, who were employed only as temporary employees, on the basis of the terms and conditions mentioned in the appointment order, were terminated and therefore, the question of reinstatement does not arise and the I.D.s raised by the appellants are not sustainable.

(vi) Based on the oral and documentary evidence adduced by either parties, the Central Government Industrial Tribunal came to the conclusion that the appellants, namely, A.S. Ramanarayanan and C. Venkatesan, though were appointed as Bearer and Masalchi on a temporary basis, had been working for a long time and when there were 58 schools in Chennai region coming under the control of K.V.S. and the staff of the Sangathan could be transferred from one school to another, the appellants could have been accommodated in any one of the schools. Therefore, brushing aside the objections raised by the respondent school that it is difficult for them to accommodate the appellants in any one of their schools, invoking legitimate expectation that they are entitled to be reinstated, the Tribunal, by award dated 08.12.2003, ordered reinstatement of the appellants in Group D posts with continuity of service and other attendant benefits while holding that the appellants would be entitled only to half of the backwages from the year 1999.

(vii) Challenging the award of the Tribunal, the respondent School filed W.P. Nos. 20922 of 2004 (I.D. No. 597/2001) and W.P. No. 20948/2004 (I.D. No. 596/2001) before this Court. During the pendency of the writ petitions, an application under Section 33(C)(2) of I.D. Act was filed by C. Venkatesan before the Tribunal to compute the monetary benefits payable to him, pursuant to the award of the Tribunal granting 50% backwages and the said application in C.P. No. 5 of 2005 was also ordered by the Tribunal on 06.06.2006. As against the same, another writ petition in W.P. No. 14795 of 2007 was filed by the respondent School.



(viii) The learned Single Judge, who dealt with W.P. Nos. 20922 of 2004 & 14795 of 2007, relying upon the ratio laid down by the Honourable Apex Court in the case of State of Rajasthan and Others V. Daya Lal and Others reported in (2011) 2 SCC 429, by order dated 12.01.2012, set aside the award passed by the Tribunal in I.D.No. 597 of 2001 as well as the order passed in C.P.No.5 of 2005 and instead, granted a sum of Rs.25,000/- as retrenchment compensation payable in respect of the workman Venkatesan. Following the said order, W.P. No. 20948 of 2004 filed by the respondent School against the award of the Tribunal in I.D.No. 596 of 2001, in respect of A.S. Ramanarayanan, was also allowed by another learned Single Judge of this Court and the respondent School was directed to pay a sum of Rs.25,000/- as compensation together with any other balance amount payable under Section 17(b) of the Industrial Disputes Act.

(ix) Challenging the said orders, as aforesaid, the workmen have come forward with the above writ appeals.

5.Mr.V. Ajoy Khose, learned counsel appearing for the appellants, in assailing the orders under challenge, would submit that the Tribunal was right in holding that when the appellants had put in continuous service for 12 long years and they had been paid wages from the School Fund and not from the Hostel Fund from 1990 onwards, the action of the respondent school in keeping them as temporary employees for so long a period, is nothing but unfair labour practice. He would contend that when two other employees of the Hostel, in spite of the closure of the Hostel, were transferred and re-deployed in other Schools of the Sangathan, it is not known as to how the award passed by the Labour Court in ordering reinstatement with continuity of service and 50% of backwages could be found fault with by the learned Single Judge observing that the Tribunal had traversed beyond its jurisdiction in doing so, when altogether, a different yardstick has been adopted by the respondent school only in respect of the appellants, which is discriminatory in nature. He would further submit that the approach adopted by the learned Single Judge is not in consonance with the equity clause and the same is liable to be interfered with by this Court. It is his further submission that having rendered service for a continuous period of 12 years and having been assigned the work of Group D post, even after the closure of the Sports Hostel, the reasonable and legitimate expectation of the appellants that they would be absorbed in Group D post as assured at the time of employment and as given in the case of people, who had worked earlier in the hostel, has been frustrated by the conduct of the respondent school and the award passed by the Tribunal ought not to have been set aside.

6.Continuing further, Mr.V. Ajoy Khose, learned counsel for



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the appellants would submit that the learned Single Judge, while allowing W.P. Nos. 20922 of 2004 & 14795 of 2007, had taken into account the fact that the workman Venkatesan was temporarily appointed as Masalchi in the canteen attached to the Sports Hostel and owing to closure of the Sports Hostel for want of students, his service could not be continued and held that the termination could not be found fault with. To infer thus, the learned Single Judge had relied upon the judgment of the Honourable Supreme Court reported in (2011) 2 SCC 429, which according to the learned counsel for the appellants, does not apply to the facts of the present case. The judgment of the Honourable Apex Court, stated supra, pertains to employees of a hostel run by a Private Management and part time employees and full time employees who had rendered only two to three years of service and they sought regularisation of service and equal pay on par with the Government Servants and the Apex Court held that temporary employees are not entitled to get regularisation if they are not recruited in the manner known to law. But in the case on hand, it has been admitted by the Management witness before the Tribunal that both the appellants were continuously employed for a period of 12 long years. Moreover, their services were utilised not only in the hostel, but also outside the hostel, i.e., for gardening, cleaning and other important works within the school campus. Therefore, the Management witness, who stepped into the witness box has also supported the case of the appellants that the service of both the appellants were continuously utilised, not only as Bearer and Masalchi respectively, but also in other school works, the learned Tribunal had rightly come to the conclusion that eventhough the appellants were employed as temporary employees, their services were continuously utilised for a long period of time exceeding 10 years, i.e., 12 years. Therefore, termination of their service without issuing notice and without even paying the compensation is against Section 25F of I.D. Act, This legal position has not been taken into consideration by both the learned Single Judges and he would further contend that the termination of the appellants by an organisation like the respondent school, without issuing notice and without complying with the provisions of Section 25F of I.D. Act cannot be tolerated. Therefore, the reasoned order passed by the Tribunal requires to be restored by setting aside the impugned orders.

7. Per contra, Mr.M.Vaidyanathan, learned counsel appearing for the respondent School, opposing the above arguments, drew our notice to the reference order passed by the Government of India, Ministry of Labour, New Delhi dated 06.07.2001 and stated that no doubt, both the appellants were employed in the 2nd respondent school as Bearer and Msalachi, the order of appointment clearly shows that they were employed only on temporary basis with further indication that they can be



terminated at any point of time without notice with further condition mentioned therein that temporary appointment is further subject to the declaration by a Medical Officer that the appellants are medically fit. Though they were continuously employed, as argued by the learned counsel for the appellants, for a period of 12 long years, unfortunately, the School which was running a Sports Hostel, could not get any students for the hostel. Therefore, when the School has been running the Sports hostel for the benefit of the students, in the absence of any students willing to join the hostel, there was no other choice left for the 2nd respondent school except to close the hostel. Hence, finally, the Sports Hostel came to be closed and the service of the appellants, who were appointed as temporary employees, were terminated. At no point of time, their services were considered for regularisation as they were not even appointed through the employment exchange or by legally sponsored recruitment process. The School was not in a position to regularise their services in view of the judgment of the Honourable Apex Court reported in (2011) 2 SCC 429 (cited supra) wherein it has been held categorically that mere continuation of service by a temporary or ad hoc or daily wage employee, under cover of some interim orders of the Court, would not confer any right upon him, to be absorbed into service. When the Apex Court has laid down the law holding clearly that the Courts cannot issue any direction for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts, ignoring this dictum of the Honourable Apex Court, the Industrial Tribunal has erroneously invoked legitimate expectation, may be under the wrong premise, that temporary employees were working for 12 long years and set aside the termination order and ordered reinstatement in service. He would further submit that two other employees referred by the learned counsel for the appellants, who were re-deployed in other institutions of the Sangathan, were regular employees unlike the appellants. According to the learned counsel, the Sports Hostel, which was run by the 2nd respondent school was closed pursuant to the order received from the Office of the Commissioner, Kendriya Vidyalaya Sangathan, New Delhi dated 28.10.1999 for the reason that there were no students available and along with it, the canteen attached to the Hostel was also closed. This crucial aspect was put forth before the learned Single Judge. Therefore, when the conclusions reached by the learned Single Judge are based on the ratio laid down by the Honourable Apex Court in the judgment reported in (2011) 2 SCC 429, it is not open to the learned counsel for the appellants to make any endeavour to impress upon this Court to restore the order passed by the Industrial Tribunal, which is not implementable by virtue of the ratio laid



down by the Honourable Apex Court.

8. Heard the submissions of the learned counsel on either side, in extenso. In the context of the submissions made, it would be appropriate to extract the appointment order issued to the respective appellants and they are as hereunder:

Offer of appointment to A.S. Ramanarayanan to the post of Bearer dated 07.12.1987:

"1. With reference to his application dated 05.12.1987, Sri.A.S.

Ramanarayanan is hereby informed that he has been appointed for the post of Bearer in the Consolidated Salary of Rs: 250-00 (Rupees Two Hundred and Fifty only) per month on purely Temporary Basis and can be terminated any time without notice. The Temporary appointment is further subject to his declared medically fit by the medical officer.

2.No T.A. will be admissible for joining this post.

3.Other terms and condition of service governing the appointment are as laid down in the Education Code for Kendriya Vidyalayas' as amended from time to time.

4.No other leave is admissible other than 12 days casual leave for year.

5.If he accepts the offer on the terms and conditions stipulated, he should send his acceptance immediately on receipt of this memorandum, to the undersigned however not later than 16.12.1987, failing which this offer will be treated as cancelled."

Offer of appointment to C. Venkatesan to the post of Masalchi dated 23.12.1987:

"1. With reference to his application dated 23.12.1987, Sri.C. Venkatesan is hereby informed that he has been appointed for the post of Masalchi in the Consolidated Salary of Rs: 250/- (Rupees Two Hundred and Fifty only) per month on purely Temporary Basis and can be terminated any time without notice. The Temporary appointment is further subject to his declared medically fit by the medical officer.

2.No T.A. will be admissible for joining this post.

3.Other terms and condition of service governing the appointment are as laid down in the Education Code for Kendriya Vidyalayas' as amended from time to time.

4.No other leave is admissible other than 12 days casual leave for year.

5.If he accepts the offer on the terms and



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conditiions stipulated, he should send his acceptance immediately on receipt of this memorandum, to the undersigned however not later than 30.12.1987, failing which this offer will be treated as cancelled."

From the above extracted portions, it is manifestly clear that both the appellants were appointed purely on temporary basis and that their service could be terminated any time without notice. Though the school had continuously employed them, for the reasons best known to both parties, when no one came forward to join the Sports hostel, the School was not able to run the hostel. Therefore, when the hostel was closed, it goes without saying that the temporary employees working in the hostel also had to work out their remedy in the manner known to law. It is also the admitted case that both the appellants were neither appointed through employment exchange nor in pursuance of a regular recruitment in accordance with the relevant Rules in an open competitive process, against sanctioned vacant posts. Therefore, as per the ratio laid down by the Honourable Apex Court, which has been rightly brought to our notice, we are unable to find any infirmity in the orders under challenge. Hence, the writ appeals fail and they are dismissed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nv

To

1. The Principal,
Kendriya Vidyalaya,
IIT Campus,
Chennai - 600 036.
2. The Central Government Industrial
Tribunal Cum Labour Court,
I Floor, "B" wing,
26, Haddows Road, Shastri Bhavan,
Chennai - 600 006.

+3cc to Mr.M.Vaidhiyanathan, Advocate, S.R.No.35531

W.A. Nos.1235, 1544 & 1545 of 2012

SVI(CO)

RGA(10/01/2022)