



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2021

CORAM

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

W.A.No.1810 of 2012

R.Dhanapal

... Appellant/Petitioner

-vs-

1. The Presiding Officer,
I Additional Labour Court,
Chennai.
2. The Management of Regional Training
Institute, Customs & Central Excise,
Kilpauk, Chennai-10.
(Now National Academy of Customs & Excise
and Narcotics, Madras-6) ... Respondents/Respondents

Prayer: Writ appeal filed under Clause 15 of the Letters Patent praying to allow the Writ Appeal by setting aside the order of the learned Single Judge made in W.P.No.8734 of 1994 dated 24.08.2007.

Prayer in W.P.No.8734 of 1994:

Petition filed under Article 226 of the constitution of India, calling for the records relating to the award dated 27/12/1993 in I.D.No.861/1990 by the learned Presiding Officer, 1st Additional Labour Court, Madras, the first respondent herein quash the same and direct the 2nd respondent to reinstate the petitioner in service with backwages, continuity of service and all other attendant benefits and award costs of this writ petition and render justice.

For Appellant : Ms.N.Mala

For 2nd respondent : Mr.A.P.Srinivas
for Mr.R.Gunalan,
Standing Counsel

R1 : Labour Court



JUDGMENT

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

WEB COPY

Aggrieved by the impugned order passed by the learned Single Judge of this Court in W.P.No.8734/1994, dated 24.08.2007, confirming the findings and conclusions reached by the learned Tribunal, thereby dismissing the Claim Petition filed by the appellant herein on the ground that the appellant has not put in 240 days of service, the present Writ Appeal has been filed.

2. Learned Counsel appearing for the appellant argued that the appellant entered into the service of the 2nd respondent on 27.09.1988 as Helper through Employment Exchange, Adyar, Chennai and as a matter of fact, after holding an interview, the 2nd respondent Management, namely, the Regional Training Institute, Customs & Central Excise, Kilpauk, Chennai-10, selected the appellant to work as Helper, therefore, he joined the service on proper selection and started working as helper from 27.09.1988. Although he was continuously, efficiently, faithfully and to the satisfaction of his superiors working as helper from 27.9.1988, his service was terminated by an order dated 22.3.1989. However, thereafter, he was asked to join duty on 25.03.1989. From 25.03.1989, the appellant was working as Office Attender in the Customs Staff College, Anna Nagar, upto 20.06.1989. Again, sadly on 20.06.1989 A.N., the appellant was terminated from service and at that time, he has put in more than 240 days, namely 265 days of service. After terminating his service, one Mr.M.Sureshkumar was appointed in his place. When the appellant was working from 25.3.1989 as Office Attender on all days except Saturdays and Sundays in the Customs Staff College, an artificial break in service was imposed on 20.06.1989 and the final termination of his service on 20.06.1989 only would go to prove the unfair Labour practice by the 2nd respondent Management. Therefore, the act of giving artificial break in service and then terminating the service of the appellant abruptly without following the conditions mentioned in Section 25-F of the Industrial Disputes Act, 1947 is unlawful, therefore, the 2nd respondent is liable to pay the compensation by accepting the request of the appellant for reinstatement in service.

3. Continuing her arguments, learned Counsel for the appellant further argued that even after the appellant was selected and appointed through the Employment Exchange, Adyar, Chennai, for a monthly salary of Rs.600/-, finding that he has been removed from service contrary to Section 25-F of the industrial Disputes Act, a notice was sent through his Counsel



WEB COPY

on 20.10.1989 seeking reinstatement with continuity of service. However, the 2nd respondent failed and neglected to give any reply. Therefore, the appellant approached the Labour Court under Section 2-A(2) of the Industrial Disputes Act, 1947, raising inter alia dispute in I.D.No.861/1990.

4. The 2nd respondent Management filed a Counter Affidavit dated 'Nil' raising various objections. Although, the 2nd respondent has admitted the fact that the appellant was employed through the Employment Exchange as helper and that there was an interview held by the Department, it was stated clearly that the said appointment of the appellant was only on temporary basis, therefore, his temporary services were terminated. It was also admitted in the Counter Affidavit that though there was an artificial break in service on 22.03.1989, but the said termination of the temporary service on 22.03.1989 cannot be attributed as unfair labour practice. Therefore, the appellant was not entitled for the relief claimed by him in the claim petition because the termination of his service cannot be called as unjust and unfair. Moreover, he is not entitled for reinstatement in service.

5. Although the 2nd respondent filed a counter statement, the appellant also filed a Reply Statement dated 31.01.1991 and one another statement dated 'Nil' filed by the 2nd respondent Superintendent, National Academy of Customs, Excise and Narcotics, Madras-6. In the said statement filed by the 2nd respondent before the I Additional Labour Court, Chennai, they have admitted clearly the case of the appellant that after the appellant was employed through the Employment Exchange, he was allowed to work for 265 days from 27.09.1988 to 20.06.1989 as a Contingent Worker. When the statement filed by the 2nd respondent before the Labour Court, Chennai was clear and apparent, nullifying the controversy raised by the 2nd respondent that the appellant has terminated after 240 days of work i.e. 265 days of work during the period from 27.09.1988 till 20.06.1989, it goes without saying that the learned I Additional Labour Court, Chennai ought to have accepted the admission made by the 2nd respondent on the sole ground that the appellant has worked for more than 240 days during the period from the date of joining till the date of termination and passed the award directing the 2nd respondent Management to reinstate him in service with back wages as contemplated under Section 25-F of the Act which has not been done so. Therefore, the appellant was constrained to approach the learned Single Judge of this Court under Article 226 of the Constitution of India, making the point very clear that when the appellant has worked for more than 240 days, the learned Labour Court failed to take into consideration that a person appointed through Employment Exchange and allowed to work for more than 245 days cannot be



sent out without granting the benefits of Section 25-F of the Industrial Disputes Act. However, the learned Single Judge, confirming the order of the Labour court, dismissed the Writ Petition, she pleaded.

WEB COPY

6. Learned Counsel for the appellant further argued that when one Mr.Venkatesh and the appellant herein were issued with a joint appointment order asking them to join on the same day, namely, 27.09.1988 through Employment Exchange after their selection, the said Venkatesh was also removed from service on 20.06.1989 like that of the appellant herein. Aggrieved by the same, the said Venkatesh raised an Industrial Dispute before the very same Labour Court in I.D.No.259/1990 and in that matter, after considering the continuous service rendered by the said Venkatesh for more than 240 days from the date of joining till the date of termination on the basis of the oral and documentary evidence adduced by both the parties, the Labour Court came to the conclusion that the non-employment of Venkatesh was not at all justifiable and he should be reinstated with continuity of service, back wages and all other concessions and accordingly an award was passed on 07.05.1992. But the case of the appellant herein before the Labour Court was that in spite of the counter statement filed by the 2nd respondent management admitting the case of the appellant that he has worked for more than 240 days, without even considering the admitted averments of the 2nd respondent Management, holding against the appellant that he has not worked for 240 days is not only unfair and unjustifiable, but no man of ordinary prudent can accept it, the learned Counsel pleaded.

7. Learned Counsel for the appellant also argued that when the 2nd respondent Management has admitted the case of the appellant that he has worked for 265 days and when the appellant has also established that his claim falls under Section 25-F of the Act and this was also admitted by filing a claim statement before the Labour Court, the Labour Court ought to have passed an award like the award passed in favour of Venkatesh in I.D.No.259/1990. This crucial error committed by the Labour Court has been overlooked by the learned Single Judge. Therefore, the impugned order is liable to go as unjustifiable.

8. Concluding her arguments, learned Counsel for the appellant further contended that Section 25-F puts conditions that 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-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 this mandatory conditions have not been complied



with in the case of the appellant herein. When the appellant has established that he has worked for more than 240 days, i.e. 265 days, he cannot be sent out, without complying with the conditions mentioned under Section 25-F of the Act and more particularly, when the 2nd respondent management has also accepted the case of the appellant that he has worked for more than 240 days, sending the appellant abruptly out without following the procedure contemplated under Section 25-F of the Act is nothing but an unlawful practice, she pleaded.

9. In support of her contention, learned Counsel for the appellant has also relied on two decisions of the Hon'ble Apex Court. Firstly, in the case of H.D.Singh vs. Reserve Bank of India reported in (1985) 4 Supreme Court Cases 201, in which the Apex Court has held that if an employee/workman worked for more than 240 days, striking off his name from the rolls is clearly termination of his service and the dispute in this case squarely comes within Section 2-A of the Industrial Disputes Act and such termination is retrenchment within the meaning of Section 2 (oo) of the Act. In yet another decision in the case of Bharat Sanchar Nigam Limited vs. Bhurumal reported in (2014) 7 Supreme Court Cases 177, the Apex Court has held that when termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation and though the reinstatement with back wages is not automatic, the monetary compensation would meet the ends of justice.

10. Learned Counsel for the 2nd respondent argued that the very basis of the argument advanced by the learned Counsel for the appellant before this Court is that the appellant after joining in the services of the 2nd respondent on 27.09.1988 through Employment Exchange as helper, he was terminated from service that artificial break even after extracting work for more than 240 days is without any evidence, but this case was not pleaded before the learned Labour Court. Secondly, coming to the arguments advanced by the appellant on the admitted averments made in the statement filed by the 2nd respondent before the Labour Court showing that the appellant has worked for 265 days, the same, cannot be accepted, because it is not known whether the statement filed by the 2nd respondent was genuine or forged one. Again disputing the contention made by the learned Counsel for the appellant, the learned Counsel for the 2nd respondent submitted that in the case of one Mr.Venkatesh, the very same learned Labour Court has ordered reinstatement with back wages for the reason that the said Venkatesh was able to satisfy the Labour Court that he has worked for more than 240 days, therefore, the termination of his



service was held to be unfair. But in the case of the appellant herein, no document was produced by the appellant side before the Labour Court or the learned Single Judge of this Court or before this Court to pass the main test that the appellant has worked for more than 240 days. Therefore, the present Writ Appeal is liable to be dismissed, he pleaded.

11. But we are unable to agree with the said submissions of the learned Counsel for the 2nd respondent. The reasons being that firstly, it is an admitted case of both the parties that after sponsoring of the name of the appellant herein by the Employment Exchange to the 2nd respondent management for the post of helper and conducting an interview, he was selected to work as helper and on 27.09.1988 he joined duty in the 2nd respondent Management and from the date of entering into the service of the 2nd respondent, the records show that he was continuing his work efficiently, faithfully and to the satisfaction of his superiors, However, an artificial break came on 22.03.1989. Thereafter, he was also asked to join duty on 25.03.1989. Therefore, from 25.03.1989, he has been working as Office Attender in the Customs Staff College and subsequently, he was allowed to continue his service upto 20.06.1989. But sadly, from the afternoon of 20.06.1989, his service was terminated. Therefore, he laid his claim before the Conciliation Officer under Section 2-A of the Industrial Disputes Act and as there was no amicable settlement arrived at in the Conciliation Proceedings, he approached the Labour Court, the 1st respondent herein raising an Industrial Dispute in I.D.No.861/1990 taking specific pleadings that he was appointed through Employment Exchange, Adyar, Chennai for the post of helper and after selection in the interview, he was appointed on 27.09.1988. When he was allowed to work from the date of joining i.e. 27.09.1988 till 22.03.1989, he was terminated. However, once again, he was asked to join on 25.03.1989 and after joining the service, again on 20.06.1989, he was once again retrenched. Therefore, he claims the benefit of Section 25-F of the Industrial Disputes Act, 1947.

12. Interestingly enough, the 2nd respondent Management filed a statement before the Labour Court, in I.D.No.861/1990 stating that the appellant has worked for 265 days as contingent worker during the period from 27.9.88 to 20.6.89. The relevant portion is given as under:

'12. As regards the number of days the petitioner has worked during the period from 27.9.88 to 29.6.99, it is submitted that from certificates issued by the President-Mass Committee (Group 'A' Probationer) which are enclosed to the contingent bills, it could be observed that the petitioner had worked as mentioned below:



WEB COPY

September 1988	...	4 days
October, 1988	...	31 days
November, 1988	...	30 days
December 1988	...	31 days
January 1989	...	31 days
February 1989	...	28 days
March 1989	...	29 days
April 1989	...	30 days
May 1989	...	31 days
June 1989	...	20 days

Total		265 days

The petitioner had worked as contingent workers for 265 days during the period from 27.9.88 to 20.6.89.''

13. When this statement was filed before the Labour Court, in our considered opinion, the Labour Court, accepting the admitted claim of the appellant should have passed the award holding that the appellant has worked for 265 days. Therefore, he ought not to have been retrenched without complying with the clear conditions mentioned under Section 25-F of the Act that the workman should have been given one month notice indicating the reasons for retrenchment or the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. But, neither any one of the conditions mentioned under Section-25-F has been complied with. On this score alone, not accepting the claim of the appellant, an award could have been passed. Thirdly, when the another colleague of the appellant, namely, Venkatesh who was also appointed on the very same day along with the appellant was treated similarly by terminating his service after extracting 240 days of work, on approaching the Labour Court, the very same Labour Court has allowed the claim petition by passing an award reinstating the said Venkatesh with back wages and continuity of service. Though this case was also pleaded before the Labour Court on the very same ground, for the reasons best known to the Labour Court, the Labour Court has committed a serious error in dismissing the case of the appellant herein. When these facts were not even properly considered by the learned Single Judge of this Court, we are unable to justify or confirm the order passed by the learned Single Judge. Therefore, we are inclined to allow the present Writ Appeal by setting aside the order of the learned Single Judge made in W.P.No.8734 of 1994 dated 24.08.2007.

14. However, learned Counsel for the appellant informed us that the appellant has already reached the age of superannuation. Therefore, following the ratio laid down by the



Hon'ble Apex Court in the case of Bharat Sanchar Nigam Limited vs. Bhurumal reported in (2014) 7 Supreme Court Cases 177 wherein the Apex Court has observed that when termination is found to be illegal because of the non-payment of retrenchment compensation and notice as mandatorily required under Section 25-F of the Act, it is always open to the Management to terminate the service of the employee by paying the retrenchment compensation. The relevant paragraph is given as under:

'34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularization (See State of Karnataka v. Umadevi(3)]. Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too, after a long gap, would not serve any purpose.'

It is obvious that these facts were not even properly considered by the Labour Court as well by the learned Single Judge of this Court in the case on hand.

15. When the appellant was aged about 31 years at the time of filing the Claim Petition before the Labour Court as he has given his age at 31 years in the affidavit filed along with the Interlocutory Application, no doubt, now he would have attained the age of 58 years i.e. the age of superannuation and it appears that for 27 long years, he was deprived of the benefit of his salary etc. Therefore, fairly calculating the wages at the rate of Rs.600/- p.m. which comes to Rs.7,200/- p.a. and for 27 years, it comes to Rs.2,94,000/-. Since we have not included the enhancement of the salary, we direct the 2nd respondent to pay a consolidated sum of Rs.3,00,000/- (Rupees Three Lakhs Only) within a period of eight weeks from the date of receipt of a copy of this Order, failing which, this amount would also attract interest at the rate of 12% p.a.



16. With the above observations and directions, the Writ Appeal is allowed thereby setting aside the impugned order passed in W.P.No.8734 of 1994 dated 24.08.2007 by the learned Single Judge of this Court. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

TSI

To

1. The Presiding Officer,
I Additional Labour Court,
Chennai.
2. The Management of Regional Training
Institute, Customs & Central Excise,
Kilpauk, Chennai-10.

+1cc to M/s.N.Mala, Government Pleader, (Pandicherry) High
Court, Chennai S.R.No.31897

+1cc to Mr.R.Gunaalan, Advocate, S.R.No.31673
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.31812

W.A.No1810/2012

(CO)
SU(01/12/2021)