



W.A.No. 1690 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 01.11.2022	Delivered on 16.12.2022
-----------------------------------	------------------------------------

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

Writ Appeal No.1690 of 2013

Thamizhanbane

..Appellant/Petitioner

Vs.

1. The Sub Divisional Engineer-in-Charge,
Central Telegraph Office,
Pondicherry 605 001.

2. The Presiding Officer,
Ministry of Labour
The Central Government Industrial – cum-
Labour Court,
Shastri Bhavan, Chennai 600 034.

.. Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court dated 20.09.2012 passed in W.P.No.35102 of 2002.



WEB COPY



W.A.No. 1690 of 2013

For Appellant : Mr.P.V.S.Giridhar
for M/s.PVS Giridhar & Sai Associates

For Respondents : Mr. R.Priyakumar, for R1

R2 - Labour Court

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

Challenge in this Appeal is to the dismissal of the Writ Petition filed by the appellant questioning the award in ID No.146 of 2001 dated 16.05.2002 passed by the Central Government Industrial Tribunal cum Labour Court, Chennai.

2. The facts that led to the filing of the Writ Petition are as follows:

2.1. The appellant who was working as a full time casual labourer in the Central Telegraph Office at Pondicherry was terminated with effect from the afternoon of 05.04.1998. An order to the effect was issued on 04.04.1998 by the Sub Divisional Engineer, Central Telegraph Office,



W.A.No. 1690 of 2013

Pondicherry.

WEB COPY

2.2. Contending that the termination amounted to retrenchment without complying with the provisions of Section 25(F) of the Industrial Disputes Act, 1947, the appellant raised the industrial dispute under Section 2(A) of the Industrial Disputes Act, 1947. The appellant would claim that he was appointed as a full-time casual labourer on 15.12.1994 and he had worked for more than 240 days in a calendar year. He had also attended the literacy test for regularisation conducted by the Department on 20.02.1996. The appellant sent in a representation seeking regularisation on 20.03.1997. However, when he went for work on 06.03.1998, he was served with a notice of termination.

2.3. Claiming that the said termination is illegal, the appellant sought to raise a dispute under Section 2(A) of the Industrial Disputes Act, 1947. Upon failure of conciliation, the matter was referred to the Industrial Tribunal by the Central Government on 26.07.1999.

2.4 Before the Industrial Tribunal, the appellant contended that he



was entitled to regularisation, since he has served for 240 days in a calendar year for more than two years consecutively. He would also dispute the claim of the employer at his employment was purely on an *ad hoc* basis and therefore, he is not entitled to claim regularisation. An undertaking given by the appellant at the time of joining, to the effect that he would not claim regularisation, was also pressed into service by the employer.

2.5 The Industrial Tribunal found that the claim of the appellant that he was appointed as a full time temporary employee is not acceptable. The Tribunal concluded that the removal would not amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947. On the said finding, the Tribunal concluded that the appellant would not be entitled to the benefits of Section 25(F) of the Act. Ultimately, the Tribunal rejected the claim of the appellant/workmen and passed an award concluding that he would not be entitled to any relief.

3. Aggrieved the appellant filed the Writ Petition in WP No.35102 of 2002 seeking to quash the award of the Industrial Tribunal. Before the Writ Court the appellant mainly contended that the termination would



W.A.No. 1690 of 2013

WEB C

amount to retrenchment without complying with the provisions of Section 25(F) of the Industrial Disputes Act, 1947 and therefore, the Tribunal was not right in concluding that he is not entitled to any relief.

4. The Management reiterated its contention before the Industrial Tribunal, apart from contending that the appellant was appointed as a temporary employee in part-time daily wages basis, since his father who was in service and died and he was over aged to be accommodated on compassionate grounds also. Therefore, his termination would not amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947. The Writ Court agreed with the contentions of the Management mainly on the ground that there was a ban on the engagement of a casual labourer imposed in the Department from 22.06.1988. Therefore, the very employment having been irregular, he cannot claim the status of a workman and therefore, the provisions of Section 25(F) would not stand attract. The Writ Court also concluded that the appellant has not established that he had worked for 240 days consecutively during a calendar year prior to 01.10.1989. On the above conclusions, the Writ Court dismissed the Writ Petition. Aggrieved the appellant is before us.



W.A.No. 1690 of 2013

WEB COPY

5. We have heard Mr.P.V.S.Gridhar, learned counsel appearing for M/s.P.V.S.Gridhar & Sai Associates, for the appellant and Mr.R.Priyakumar, learned counsel appearing for the first respondent.

6. Mr.P.V.S.Gridhar, learned counsel appearing for the appellant would vehemently contend that the definition of 'workman' under the Industrial Disputes Act does not make any distinction between a full-time and a part-time employee. Even assuming that the appellant was a part-time employee, once it is conceded that he was employed for hire to discharge the work whether manual, skilled or unskilled in any Industry, he would be a 'workman' within the meaning of 2(s) of the Industrial Disputes Act 1947. Once it is found that the appellant is a workman and his disengagement would fall within the meaning of retrenchment the provisions of Section 25(F) would have to be complied with by the employer and any non-compliance would automatically entail him to an award for reinstatement with back wages.

7. The learned counsel for the petitioner would also further



W.A.No. 1690 of 2013

contend that termination of a service of any workman for any reason would constitute retrenchment except in cases excepted by the Section itself. Once it is found that the procedure prescribed under Section 25(F) has not been followed, the workman would be entitled to an award for reinstatement. The learned counsel would also draw our attention to the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Rules, 1981, to contend that the appellant having worked for 240 days in a calendar year is entitled to regularisation.

8. In support of his submissions, the learned counsel would rely upon the judgment of the Hon'ble Supreme Court in ***Divisional Manager, New India Assurance Company Limited v. A.Sankaralingam***, reported in ***(2008) 10 SCC 698***; ***Mohan Lal v. The Management of M/s.Bharat Electronics, Ltd***, reported in ***AIR 1981 SCC 1253***; and ***Ramesh Kumar v. State of Haryana***, reported in ***(2010) 2 SCC 543***.

9. Contending contra Mr.R.Priyakumar, learned counsel appearing for the first respondent would submit that the termination of the appellant would not amount to retrenchment, inasmuch as the appellant was only



W.A.No. 1690 of 2013

employed as a part-time daily wages employee and therefore, he could not be properly termed as a 'workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947. Arguing further, the learned counsel would submit that even assuming that it is a retrenchment, it does not follow that there should be an award for reinstatement with back wages. In support of his second submission, the learned counsel would rely upon the judgments of the Hon'ble Supreme Court in ***Bharat Sanchar Nigam Limited v. Man Singh***, reported in (2012) 1 SCC 558 and ***Bharat Sanchar Nigam Limited v. Bhurumal***, reported in (2014) 7 SCC 177.

10. The learned counsel would contend that though originally the Hon'ble Supreme Court had held that a retrenchment without complying with the provisions of Section 25(F) is *per se* void and the natural consequence of a finding that it is a retrenchment without complying with the provisions of Section 25(F) was reinstatement with back wages, the recent trend or the march of Law is to the effect that a retrenchment without complying with the provisions of Section 25(F) does not automatically entail reinstatement with back wages. The Court can in appropriate cases award compensation in lieu of reinstatement also. It is also contended that the



W.A.No. 1690 of 2013

petitioner has been out of service from at least 04.04.1998 that is for more than 24 years as of today. Therefore, a reinstatement at this point of time would not be in interest of any party. It is also pointed out that the appellant his aged almost 56 years old as of today.

11. We have considered the rival submissions.

12. The petitioner sought for employment as a part time casual labourer on 30.07.1993 on compassionate grounds since his father who was working with the employer died in harness. The petitioner could not be accommodated in regular service since he was over aged on that date. Therefore, taking pity, the petitioner was appointed as a casual labourer and hence, he is not eligible for even temporary status. Merely because the petitioner was permitted to undertake the language test that would not confer him any right. Therefore, the employer would contend that the termination on 04.04.1998 does not amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947 and therefore, compliance with the provisions of Section 25(F) would not arise. This contention of the employer found favour with the Tribunal and the Writ Court.



W.A.No. 1690 of 2013

WEB COPY

13. The Writ Court has also recorded a finding that the appellant has not established that he worked for more than 240 days prior to 1989. The appellant was taken in service only in 1993 and therefore, his serving for more than 240 days prior to 1989 does not arise. Even though, the appellant may not be entitled to conferment of permanent status, if it is found that he is a 'workman' within the meaning of Section 2(s) of the Act, the employer should have complied with the provisions of Section 25(F) of the Act, for retrenching him.

14. The definition of 'workman' under Section 2(s) of the Industrial Disputes Act, which reads as follows:

2 (s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has



WEB COPY



W.A.No. 1690 of 2013

been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

is wide enough to include even a temporary employee.

Section 2(oo) defines 'retrenchment' and it reads as follows:



W.A.No. 1690 of 2013

“2(oo) “retrenchment” means the termination by

WEB COPY

the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health.”

15. A reading of the above two provisions makes it clear that even a temporary employee who has been engaged for hire or reward would be



W.A.No. 1690 of 2013

termed as a workman unless he falls within the exceptions provided in the very Section. Similarly any termination of a workman which does not fall within the exceptions found in Section 2(oo) would amount to retrenchment. If we are to construe both the provisions in the light of the decisions of the Hon'ble Supreme Court relied on by Mr.P.V.S.Gridhar, the inescapable conclusion would be that the appellant was a workman and the termination of the services on 04.04.1998 would amount to retrenchment.

16. In *Divisional Manager, New India Assurance Company Limited v. A.Sankaralingam*, reported in (2008) 10 SCC 698, the Hon'ble Supreme Court while pronouncing upon the scope of these provisions after referring to the Telecom case i.e. *Telecom v. Naresh Brijlal Charote*, reported in 2001 Lab IC 2127, up held the conclusions of the Bombay, Delhi, Rajasthan and Gujarat High Courts, wherein it was held that the definition of 'workman' as given in the Act does not make any distinction between a full-time employee and a part-time employee and therefore, once it is shown that a person is employed for hire to discharge the work manual, skilled or unskilled in any Industry whether part-time or full-time such person would be termed as a workman.



W.A.No. 1690 of 2013

WEB COPY

17. In *Mohan Lal v. The Management of M/s.Bharat Electronics, Ltd*, reported in *AIR 1981 SCC 1253*, the Hon'ble Supreme Court held that a termination which is not covered by the exceptions to Section 2(oo) of the Industrial Disputes Act, would be a retrenchment. Once it is found that the appellant was employed with the respondent for almost more than three years even on a part-time basis and his services were terminated it would follow that there was a retrenchment. If there is a retrenchment and provisions of Section 25(F) of the Industrial Disputes Act, had not been complied with then the retrenchment becomes illegal. It is not the case of the employer that the provisions of Section 25(F) of the Industrial Disputes Act, were complied with. On the contrary, it is the specific plea of the employer that being a part-time employee, the appellant cannot insist on compliance with Section 25(F) of the Industrial Disputes Act, since his removal would not amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act.

17. Once we find that the termination would amount to retrenchment, the next question that would prop up is the relief that the



appellant would be entitled to. It is at this juncture the decisions relied upon by the learned counsel for the employer assume significance. In ***Bharat Sanchar Nigam Limited v. Bhurumal***, reported in (2014) 7 SCC 177, the Hon'ble Supreme Court held that if termination of a daily wager becomes illegal due to some procedural defect, he should not be favoured with an order for reinstatement but he should be awarded monetary compensation. While doing so, the Honble Supreme Court observed as follows:

“33. It is clear from the reading of the aforesaid judgment that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and / or mala fide and / or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court



WEB COPY



W.A.No. 1690 of 2013

is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice.

Rationale for shifting in this direction is obvious.

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 regularisation [State of Karnataka v. Umadevi reported in (2006) 4 SCC 1]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no



WEB COPY



W.A.No. 1690 of 2013

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.”

19. In fact the Hon'ble Supreme Court followed the earlier judgment in ***Bharat Sanchar Nigam Limited v. Man Singh***, reported in ***(2012) 1 SCC 558***, wherein it was held that the workman, being a daily wager non-compliance with Section 25(F) would not lead to automatic reinstatement. For the above reasons, we conclude that the Writ Court was not right in its conclusion that the appellant was not a workman and the termination would not amount to retrenchment. Once we conclude that the termination would amount to retrenchment without following the provisions



W.A.No. 1690 of 2013

of Section 25(F) of the Act, the employee in the case on hand would be entitled to cash compensation.

20. The learned counsel for the appellant had also filed a memo of calculation showing the minimum wages that would have been paid to the appellant if he had been in service till the date of superannuation i.e. 20.05.2016, the calculation works out to Rs.6,18,212/- at the minimum wages. We are not persuaded to conclude that the appellant would be entitled to the entire minimum wages for the period, since he had not worked throughout. We therefore deem it fit to award a cash compensation of Rs.4,00,000/- to be paid by the respondent employer.

21. In fine, the Writ Appeal is partly allowed, there will be an award for payment of cash compensation of Rs.4,00,000/- to be paid by the employer within four months from the date of receipt of a copy of this order. If the award amount is not paid within the said period, the employee would be entitled to interest from interest at 9% per annum on the said sum of Rs.4,00,000/- from the date of the order in the Writ Petition i.e. 20.09.2012



W.A.No. 1690 of 2013

till date of payment. Parties shall bear their own costs in this Writ Appeal.

WEB COPY

(R.SUBRAMANIAN, J.) (K.KUMARESH BABU, J.)

16.12.2022

jv

Index: Yes

Internet: Yes

Speaking Order



W.A.No. 1690 of 2013

WEB COPY To

1. The Sub Divisional Engineer-in-Charge,
Central Telegraph Office,
Pondicherry 605 001.
2. The Presiding Officer,
Ministry of Labour
The Central Government Industrial – cum-
Labour Court,
Shastri Bhavan, Chennai 600 034.



WEB COPY



W.A.No. 1690 of 2013

R.SUBRAMANIAN, J.
and
K.KUMARESH BABU, J.
(jv)

Writ Appeal No.1690 of 2013

16.12.2022