



W.P. Nos.3860/2019, etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
12.09.2023	27.09.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.3860, 3862, 3868 TO 3871 & 3873 OF 2019

W.P. NO. 3860 OF 2019

G.Raji

.. Petitioner

- Vs -

The Management of
STANADYNE Amalgamations
Pvt. Ltd., 96, Araravoyal Village
Thiruvallur Taluk
Thiruvallur District 602 205.

.. Respondent

W.P. No.3860 of 2019 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the production of records relating to the award dated 16.11.2018 made in I.D. No.94 of 2015 passed by the II Addl. Labour Court, Chennai, quash the same and direct the respondent to reinstate the petitioner with continuity of service backwages and with all other attendant benefits.



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For Petitioners : Mr. S. Senthilnathan

For Respondents : Mr. G.Ravikumar

COMMON ORDER

Aggrieved by the order of the Labour Court dismissing the claim of the petitioners with regard to their continuance in service of the respondent claiming that the termination is not actuated by victimisation, the present writ petitions have been filed.

2. It is the case of the petitioners that they were initially appointed as Trainee on various dates under the respondent for a period of twelve months and upon completion of the training period, the petitioners were appointed as Technical Assistant – Probation for a period of one year, with stipulation that their cases would be considered for regular appointment upon successful completion of probation. It is the further case of the petitioners that all of a sudden, without issuance of any show cause notice or grant of opportunity, the petitioners were terminated from service without following the provisions of the Industrial Disputes Act (for short 'the Act'). It is the further case of the petitioners that only because of the fact that they had joined the Union as



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members, they were terminated from service. Therefore, the petitioners, by their letter, called upon the respondent to reinstate them in service with continuity of service, backwages and all other attendant benefits. However, the said representation elicited no response. Therefore, the petitioners raised an industrial dispute u/s 2 (A) of the Act before the Assistant Commissioner of Labour. However, the respondent did not participate in the conciliation proceedings, which resulted in the conciliation officer filing a failure report. Pursuant to the same, claim statement was filed u/s 2-A (2) of the Act and the same was taken on file as industrial disputes by the II Additional Labour Court, Chennai and after trial, the Labour Court dismissed the claim of the petitioners. Aggrieved by the same, the present writ petitions have been filed by the individual workmen.

3. Learned counsel appearing for the petitioners submitted that on erroneous appreciation of the facts and law, the Labour Court had dismissed the claim of the petitioners by the respective awards, which is wholly unreasonable, arbitrary and perverse. It is the further submission of the learned counsel that the petitioner having worked for more than 240 days,



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compliance of Section 25-F is mandatory, which has not been properly appreciated by the Labour Court, while holding that the petitioners do not fall within the ambit of regular workers and, therefore, erroneously held that they are entitled to the relief provided for u/s 25-F.

4. It is the further case of the petitioners that the irrespective of the fact that the appointment order carries an automatic cessation of service and the act of termination is not on the part of the employer, still compliance of Section 25-F is mandatory. It is the further submission of the learned counsel that once the petitioners have put in a service of 240 days in a period of 12 calendar months, the petitioners services cannot be dispensed without following the mandatory procedure prescribed under the Act.

5. It is the further submission of the learned counsel that Section 2 (s) of the Act does not make any distinction between permanent, temporary or casual workman and the said definition even includes an apprentice. It is the further case of the petitioners that they do not claim confirmation of service,



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but their claim is only with regard to following the procedure prescribed under the Act before a workman can be terminated.

6. It is the further submission of the learned counsel that merely because a finding has been rendered by the Labour Court that the petitioners are not workmen within the meaning of Section 2 (s) of the Act, and that the petitioners are not permanent workmen, they are not entitled to any relief is wholly perverse and the conclusion arrived at is not sustainable. Therefore, without following the mandate u/s 25-F of the Act, the termination of the petitioners is wholly impermissible and, therefore, the dismissal of the claim by the Labour Court deserves to be interfered with.

7. Learned counsel appearing for the petitioner, in support of the aforesaid contentions, placed reliance on the following decisions :-

- i) *State Bank of India – Vs – N.Sundaramoney (1976 LLJ 478);*
- ii) *M/s.Trambak Rubber Industries Ltd. – Vs – Nashik Workers Union &Ors. (CDJ 2003 SC 636);*
- iii) *Workman of PMP Textiles – Vs – Management of PMP Textiles &Anr. (CDJ 2011 MHC 180); and*



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iv) *The Institute of Hotel Management Catering Technology & Applied Nutrition – Vs – The Presiding Officer &Anr. (CDJ 2012 MHC 1723)*

8. Per contra, learned counsel appearing for the respondent submits that the appointment order of the petitioners itself clearly reveals that the satisfactory completion of the period of probation alone would entail consideration of the case of the petitioners for regular employment. It is the further submission of the learned counsel that the petitioners are not regular employees and they are probationers and, therefore, they would not fall within the definition of “workman” as defined u/s 2 (s) of the Act.

9. It is the further submission of the learned counsel that once the petitioners do not come within the definition of workman, then they would not be entitled to the benefit provided u/s 25-F of the Act as the act of termination is due to cessation of service and not due to termination on the part of the employer.



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10. Learned counsel appearing for the respondent further submitted that cessation of service by virtue of the terms of employment cannot be considered as retrenchment falling within the purview of Section 25-F of the Act so as to enable the petitioners to receive retrenchment compensation. It is the further submission of the learned counsel that victimization alleged by the petitioners is wholly a figment of their imagination for none of the persons, who have been on probation were confirmed. It is further submitted that once the petitioners have accepted the terms and conditions mentioned in the appointment order, they are bound by the said terms and due to efflux of time, the service automatically came to an end, which is in terms of the contract and, therefore, not confirming the petitioners cannot be said to be termination falling within Section 25-F of the Act. The Labour Court has rightly appreciated the contention of either side, while dismissing the claim made by the petitioners herein and, therefore, no interference is warranted with the same.



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11. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record as also the decisions relied on, on behalf of the petitioners.

12. The undisputed facts of the case are that the petitioners were initially appointed as Trainees on different dates, initially for a period of twelve months and after the said period, the petitioners were appointed on probation as 'Technical Assistant – Probation'. The term of the probation was for a period of twelve months. The appointment order, which is similar, barring the date of appointment of the respective petitioners, which has relevance to deciding the issue, requires to be extracted, the relevant portions of which are as under :-

"Sub : Employment for the designation of Technical Assistant on a Probationary Basis

With reference to your application mentioned above seeking opportunity for rendering services in our organisation, we are pleased to take you as a Technical Assistant – Probation with effect from 18.10.2023 on the following terms and conditions.

* * * * *



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2. Your probationary period shall initially be for a period of ONE year from 18.10.2013. This period of probation may be extended upon your request and at the discretion of the Company for any further period or periods on such conditions as may be specified.

* * * * *

6. During the probationary period, you may be required to pass such tests as are necessary to assess your performance and progress. If the performance is not found satisfactory, as to which the Company's decision shall be final and binding on you, your services will be terminated with one month's notice or compensation in lieu thereof.

7. While there is no guarantee of confirmation of service as an employee on successful completion of the probationary period or any extension thereof, the Management might consider your case for confirmation of service as an employee for any vacancy on such terms and conditions as may be agreed upon. It should be noted that confirmation of service as an employee in this company cannot be claimed as a matter of right."

13. From the above, there could be no quarrel that the probation period of the petitioners is for a period of twelve months, which shall be extended at the request of the petitioners for any further period or periods,



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which would be at the discretion of the company. However, clause (6) of the appointment order has an imposing mandate on the company, which stipulates that upon assessment of the performance and progress of the petitioners, if found to be not satisfactory, the Company could terminate the service of the petitioners with one month's notice or compensation in lieu thereof.

14. Clause (7) of the appointment order relates to the confirmation of service of an employee on successful completion of the probationary period and it mandates that it is within the realm of the Management to consider confirmation of service as an employee.

15. A careful perusal of clause (6) and (7) of the appointment order reveals that both the clauses should be read holistically and in conjunction and not in isolation. In conjunction, when read, it prescribes that where the services of the petitioners were found to be not satisfactory, even before the completion of one year, the petitioners could be terminated from service with one month's notice or compensation in lieu thereof and where the



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respondent feels that the probationers could be confirmed in the service as an employee, upon successful completion of probation, on reviewing the performance and progress of the petitioners, it is within the purview of the Management to consider the case of such of the persons for confirmation.

16. In this backdrop, the order by which the services of the petitioners are said to have come to an end reads as under :-

"Sub : Probation Completion Letter

This is to confirm that consequent to the expiry of the period of probation on 17.10.2014 your employment with us comes to an end on 17.10.2014 by EFFLUX of TIME.

We shall process your full and final settlement of accounts in due course to the address available in our records which is above. If any change in address kindly intimate to us."

17. From the aforesaid letter, it is evident that upon the expiry of the period of probation, the employment of the petitioners with the respondent were severed, with no strings attached and no reason given. Further, the notice mandated has also been provided to the petitioners and payment in lieu of the said notice period is also provided in the full and final settlement of accounts given to the petitioners. Further it is not the case of the petitioners



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that they have not been paid the compensation in lieu of notice. The claim of the petitioners is that the respondent has not assessed the performance of the petitioners as unsatisfactory, thereby, their termination could only be deemed to be a retrenchment from service, which would attract Section 25-F of the Act. However, a careful perusal of the same reveals that the respondent was not required to provide any reasoning to the employee to show that their performance was unsatisfactory. It was within the domain of the respondent to assess the performance of the petitioners and the continuance of the petitioners, either as extension of their probation or as confirmed employees is at the discretion of the Management. If the respondent wishes to sever the ties with the petitioners, the appointment order provides the armoury for the respondent to sever the relationship with the petitioners, but for their confirmation, the petitioners have no right to continue in the employment if their services were not continued by the Management.

18. However, the basic contention of the petitioners is that they would fall within the definition of “workman” as defined u/s 2 (s) of the Act and,



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therefore, without following the provisions of the Act, their services could not be dispensed with or discharged by the respondent merely on the ground of cessation of service. However, it is countered by the respondent stating that the petitioners are not “workman” as defined u/s 2 (s) of the Act and, therefore, adherence to the provisions of the Act does not stand attracted.

19. The term “workman” is defined u/s 2 (s) of the Act, which is as under :-

“(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 purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has 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 –

** * * * **

20. The types of persons in relation to their work, which would fall within the term “workman” is clearly codified in Section 2 (s). The Parliament



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with clear intent had not included a “probationer” within the purview of workman u/s 2 (s) and what is not included, this Court, by mere usage of its sweeping powers under Article 226 of the Constitution should not try to include so long as there is no ambiguity in the provision. Further, the construction of the letter in and by which the petitioners were taken on probation clearly denote that the said letter is the terms of employment under which the petitioners have been appointed in the service of the respondent. The said letter has to be read as a whole and not separately as would suit the case of the parties.

21. A careful perusal of the letter of appointment of the petitioners as Technical Assistant – Probation reveals that the petitioners have been put on probation for a period of one year and unless and until their services are extended by the respondent, at its discretion, no right accrues to the petitioners to claim any right to the said post, as the link of the petitioners to the said post is only for one year and not thereafter, unless it is extended at the discretion of the Management.



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22. When the terms of employment clearly stipulate that the extension of the petitioners service is at the discretion of the Management, no right accrues to the petitioners to claim anything otherwise. The petitioners cannot be brought within the ambit of workman as found in Section 2 (s). Further, none of the persons, who have been appointed on probation have been given extension and, therefore, there being no exclusion of the petitioners, the question of inequality also cannot be sustained.

23. The decision of the Apex Court in the case of *Trambak Rubber Industries (supra)*, relied on by the petitioners stand on a wholly different footing, as in the said case, the persons were “Trainees” and in that scenario the Apex Court went on to hold as under :-

“The High Court, conscious of its limitations under Article 226/227 of the Constitution of India, went into the question whether the conclusions reached by the Industrial Court were legally sustainable. Incidentally, it went into the question whether the Industrial Court ignored the material evidence on record. The one and only view that could be taken on the basis of the evidence on record, according to the High Court, is that the concerned persons whose engagement was terminated were not trainees but they were 'Workmen' and therefore,



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their services could not have been terminated without following the due procedure. The High Court held that the action taken by the Management was an unfair labour practice within the meaning of the Act and directed reinstatement without backwages.”

24. There is a lot of difference between a Trainee and a Probationer, which has been threadbare analysed by the Apex Court in the aforesaid decision and a Probationer cannot be termed to be a Trainee and, therefore, the aforesaid decision cannot have any application to the case on hand and on the said basis, the petitioners cannot claim any benefit.

25. The Labour Court has clearly delineated the status of the petitioners vis-à-vis the provisions of the Act and on the basis of the settled legal position, which have been taken into consideration in proper perspective by the Labour Court, had gone upon to dismiss the petitions filed by the respective workmen/petitioners herein and the conclusions reached cannot be said to be perverse and are based on reasonable appreciation of evidence on record. The appointment letters and the letters, which were issued terminating the service of the petitioners have been properly appreciated by the Labour Court,



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which formed part of the documentary evidence, which were under the consideration of the Labour Court. If this Court interferes with the said decision, it would be rewriting the Labour Law by disturbing the time-tested ratio on the subject of the definition of workman and this Court cannot be a party to the said act.

26. Further, the findings rendered by the Labour Court that the contract of employment stood terminated as it was not extended by the employer, is also strengthened by the fact that the respondent has, clearly in the order of cessation of service, held that the service of the petitioners have come to a close due to "*efflux of time*". This clearly shows that time is the essence of the contract between the parties and once the contract is not extended by the respondent, the natural consequence thereof is the ouster of the petitioners by way of termination. Further, there is a clear stipulation in the contract of employment that the petitioners cannot claim regular employment as a matter of right is based on proper materials. The Labour Court has placed reliance has been placed on the decisions of the Supreme Court, which are clearly applicable to the present case. Therefore, the parties



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are guided by the terms of the employment order and the fact that the period has not been extended clearly denotes that the petitioners service have not been extended and the contract has come to an end.

27. For the reasons aforesaid, all the writ petitions are dismissed.

There shall be no order as to costs.

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Index : Yes / No

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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
W.P. NOS. 3860 OF 2019,
ETC., BATCH**

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