Centre for Development of Telematcs Vs. D. Suresh and ors.

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Court : Karnataka

Decided On : Aug-05-2003

Reported in : ILR2003KAR3949

Judge : N.K. Jain, C.J. and ;H.G. Ramesh, J.

Acts : Industrial Disputes Act, 1947 - Sections 2 and 25F

Appeal No. : W.A. Nos. 4568 and 4938-41/2002

Appellant : Centre for Development of Telematcs

Respondent : D. Suresh and ors.

Advocate for Def. : V.S. Naik, Adv.

Advocate for Pet/Ap. : K. Shubha Ananthi, Adv. for Kasturi Associates

Judgement :

N.K. Jain, C.J.

1. These appeals are filed against the order of the learned Single Judge, dated 17.07.2002 passed in W.P.No. 24992/2002& W.P. Nos. 26235-38/1995. In all these 5 appeals, the appellant is common. As the facts and points in these appeals are same, the appeals are disposed of by this common judgment.

The brief facts as stated in the appeal are: the appellant-Center for Development of Telematics is an autonomous body set up by the Government of India engaged in developing a wide range of Switching and Transmission Technologies in the area of

Telecommunications. For the specific purpose of conducting field trails in respect of one of the digital exchanges developed by it at the premises of Telephone Exchange at Ulsoor, the five respondents were engaged on daily wage basis. It was also made clear to the respondents that they were engaged for a time bound activity which will cease on completion of the field work. The project work was completed in 1991 and the exchange was handed over. Now it is named as BSNL. As such the services of the respondents were dispensed with. The respondents raised a dispute before the II Additional Labour Court, Bangalore in Ref. No. 18/1994 and the Labour Court by its order dated 16.02.2002 passed an award reinstating the respondents in their posts. Aggrieved by that order the appellant filed the above Writ Petition which were dismissed on 17.07.2002. Hence, the present Writ Appeals.

2. The learned Counsel for the appellant submits that the labour Court as well as the learned Single Judge have failed to appreciate properly the facts and the material on record. It is submitted that the respondents were engaged through a contractor for a specific purpose and as such, there is no privity of contract between the appellant and the respondents. He also submits that even assuming, but not admitting that the respondents were engaged by the appellant, it was only a for specific purpose, on completion of which, the services of the respondents have been dispensed with. Therefore, the Courts below have erred in ordering reinstatement when the respondents have no right to claim reinstatement. It is also submitted that the appellant has only two Research Centres one at Delhi and the other at Bangalore but the Labour Court has wrongly appreciated the fact by holding that the appellant Organisation has other branches. She further submits that the labour Court as well as the learned Single Judge have erred in not properly considering the evidence of M.W.1, who was a consultant and that itself makes it clear that the respondents were engaged for the project work, but on the basis of other materials which are not relevant the Labour Court has discarded the

evidence. She relied on the decision in KARNATAKA STATE ROAD TRANSPORT CORPORATION vs B.B.TABUSI, (W.A.No. 3449/98 & 1348/98 D.D. 25.5.2000) and the decision in MD, UP.LAND DEVELOPMENT CORPORATION & ANOTHER vs AMAR SINGH AND OTHERS, : (2003)IIILLJ220SC .

3. On the other hand, learned Counsel for the respondents submits that the finding of fact cannot be gone into by this Court. More particularly, the points have been raised for the first time in this case, and were never raised on the earlier occasion when the respondents challenged their termination either before the Central Administrative Tribunal in Application No. 866 to 871 of 1990 seeking permanent absorption of their services and also for grant of regular pay scales and got interim order to terminate their service or before the High Court in W.P.Nos. 651-657/1991. However, the said applications were dismissed on the ground that the Tribunal has no jurisdiction to deal with the claims. Thereafter they filed the batch of Writ Petitions which were also dismissed on 19.7.91 ordering to raise an industrial dispute. Thereafter they raised an industrial dispute and the award has been passed as stated. The learned Counsel has not disputed the legal proposition in the above ruling, but submit that they are not applicable. He relied on the decisions in S.M.NILAJKAR & OTHERS vs TELECOM DISTRICT MANAGER, KARNATAKA, 2003 II LLJ 115 (SC) ; K.C.P. EMPLOYEES' ASSOCIATION, MADRAS vs THE MANAGEMENT OF K.C.P. LTD., & OTHERS, AIR 1978 SC 474 ; STATE OF M.P. AND ANOTHER vs DHARAM BIR, : [1998]3SCR511 and the decision in INDIAN OVERSEAS BANK vs I.O.B. STAFF CANTEEN WORKERS UNION, AIR 2000 SC 1508

4. The learned Counsel for the appellant has argued in rejoinder that by efflux of time the project is over and the services of the workmen have been terminated after completion of project work. It is submitted that on completion of 240 days service in a calendar year, compensation has been paid which has been noted in the award. It is also submitted that approaching a wrong forum and getting interim order will not give them any right when there is no work and the learned Single Judge should have interfered with the order of reinstatement. Therefore the impugned order is liable to be set aside.

5. We have heard the learned Counsel for the parties and perused the material placed on record and perused the case laws.

6. The law is well settled that the services of an employee who has completed 240 days of service in a calendar year can be terminated only by following the procedure prescribed under Section 25-F of the Industrial Disputes Act. It is the duty of the employer to prove the necessary ingredients so as to attract sub-clause (bb) of clause (oo) of Section 2 of I.D. Act. This Court being not a Court of appeal, cannot re-appreciate the material on record unless the finding is based on no evidence or perverse. It is also settled that the discretion so exercised cannot be interfered with.

7. It will now be appropriate to consider the cases relied on by the respective parties first. The cases relied upon by the appellant:

8. A Division Bench of this Court in W.A. No. 3449/1998 & 1348/ 1998 (KARNATAKA STATE ROAD TRANSPORT CORPORATION vs B.B. TABUSI .) was considering the case of the respondent who was admittedly employed as casual labour in the year 1982 and was terminated on 8.6.1997. On reference to the Industrial Tribunal the respondent was reinstated. A Writ Petition was filed by the appellant against that order, and the learned single Judge upheld the award of the Labour Court. The Division Bench, on considering the materials on record, observed as follows in para 16:

' With distress we note, in several cases, in a cavalier manner, the Labour Courts and Industrial Tribunals have been handing out the relief of re-instatement to casual and temporary workman in statutory bodies and Governmental Organisations, although there is no sanctioned post. Under the garb of exercise of powers under Section 11-A of the Industrial Disputes Act, the Labour Courts and Industrial Tribunals cannot grant the relief of re-instatement amounting to regularization and appointment to the non-existing post which is otherwise not permitted in law. The provisions of Section 11 cannot be abused and misused to circumvent the legal provisions relating to selection and appointment to statutory bodies and to the Government Departments and Governmental agencies. We strongly feel that the Industrial Tribunals and Labour Courts should be seriously

informed about the basic propositions of law in order to avert and avoid handing out illegal regularization and appointment by way of re-instatement. Hence forth, we sincerely hope and anticipate that such illegal orders would not be repeated by the Labour Courts and Tribunals'.

9. In MD. UP.LAND DEVELOPMENT CORPORATION & ANOTHER vs AMAR SINGH & OTHERS(Supra), their Lordship while holding that the employees working under a scheme/project have no vested right so as to claim regularisation of their services with regular pay scales so also as and when the scheme/project comes to an end, the service of the employees working the project also come to an end, observed as under:

'Reading of these documents and the contentions raised on either side go to show that the appointments of the respondents were temporary under the 'Million Wells Scheme'. When the work of the Scheme had come to an end, the respondents were not entitled to claim regularisation of their services. When the work of the Scheme had come to an end, the respondents were not entitled to claim regularisation of their services. When the project comes to a close, the employees who are working in the project will not get any vested right. In other words, once the project comes to an end, service of the employees also come to an end. Even though their services were continued by virtue of an interim order passed in the Writ Petition, they cannot claim benefit of regularization of their services as a matter of right'.

The cases relied upon by the workmen are:

10. So far as the decision of the Apex Court in S.M.NILAJKARAND OTHERS vs TELECOM DISTRICT MANAGER, KARNATAKA (Supra) is concerned, in that case causal labourers were engaged for expansion of telecom facilities during 1985-86 and 1986-87.

Their services were terminated in 1987 and they were not engaged after completion of the work. It is observed by the Apex Court referring to its earlier decision in DAILY RATED CASUAL LABOUR EMPLOYED UNDER P&T; DEPT. vs UNION OF INDIA & 7 OTHERS, : (1988)ILLJ370SC that the Department had

been directed to formulate a scheme under which all causal labourers who had rendered more than one year's continuous service could be absorbed. Accordingly a list was prepared. As the names of some of the workers were not included under the said scheme, they raised dispute and failed. Several other disputes were also referred for adjudication by the Labour Court in between 1994 & 1997. On completion of enquiry the Tribunal directed the employer to reinstate all the workmen into service with 50% backwages. The employer filed 10 Writ Petition wherein the learned Single Judge by a common judgment held that workers were not project employees as contended by the employer and not governed by sub-clause (bb) of Clause (oo) of Section 2 of Industrial Disputes Act, 1947 and not entitled for reinstatement. It was also held that there was delay and the disputes were not raised promptly and they were not entitled for backwages. Then they filed Writ Appeal. On admitting the case of the parties, the Division Bench considered some circulars and on consideration of sub-clause (bb) of Clause (oo) of Section 2 of I.D. Act held that the question of compliance of Section 25-F of the Act do not arise. Also considering some case laws and unexplained and undue delay, vitiated the proceedings and set aside the award. The appeals filed by the employer were allowed and the award of the Tribunal was set aside. The Apex Court on the basis of the material available without upsetting the finding of the fact arrived at in the impugned judgment that the appellant workers were project employees and not employed in any department and considering Section 2(oo) and Section 25-F held that initiation of proceedings on account of delay will not non-suit the workmen but would disentitle them for back wages. The finding of learned Single Judge is approved to the extent and the order of Division bench was set aside except for the finding that appellants were not project employees. Their Lordships in para 20 have also observed that if the project in which the workers were engaged has come to an end, the Government may consider the appellants being accommodated in some other project or scheme or regular employment, if available, by issuing suitable guidelines or instructions and if it is not possible the respondents therein shall be at liberty to terminate the employment of appellants after reinstating them as directed by the High Court and complying with Section 25-F of the Industrial Disputes Act.

11. The Apex Court in STATE OF M.P. AND ANOTHER vs DHARAM BIR. (Supra) , while considering the case of the respondent who was initially appointed as Senior Instructor and later promoted as Principal, Class II, for a period of six months or till the candidate duly selected by the Public Service Commission for that post became available (whichever was earlier), observed that the nature of appointment does not change with long passage of time and even if the ad-hoc appointment continues for about a decade it continues to be ad- hoc even after long passage of time and held that the respondent was appointed in ad hoc capacity and he would continue to hold the post in that capacity.

12. As regards the decision in K.C.P. EMPLOYEES' ASSOCIATION, MADRAS vs. THE MANAGEMENT OF K.C.P. LTD., & OTHERS(Supra), it deals with the bonus dispute between the management-respondent and the workmen union revolving round the applicability of the proviso to S. 3 of Payment of Bonus Act, 1965. The Apex Court held that the benefit of reasonable doubt on law and facts must go to the weaker section, labour, and directed the Tribunal to dispose of the case making compassionate approach without over-stepping the proved facts, correct the balance-sheets and profit and loss accounts of the Central Workshop justifying by the Act and evidence and to finish the lis and dismissed the appeals.

13. So far as the decision of the Apex Court in INDIANOVERSEAS BANK vs I.O.B. STAFF CANTEEN WORKERS' UNION (Supra) is concerned, in that case the workmen are canteen employees. The canteen is being run in bank premises and the infrastructure, financial assistance, working hours and working days of canteen being maintained by the bank. The Apex Court observed as under:

'On being taken through the findings of the Industrial Tribunal as well as the order of the learned single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken, the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to the Writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen

workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of ones own, altogether giving a complete go-bye even to the facts specifically found by the Tribunal below'.

14. The cases relied on by the learned Counsel for the respondents are not helpful in the facts of the given case. So far as the case in INDIAN OVERSEAS BANK (Supra) is concerned, the principle is not in dispute but is not helpful in the facts of the given case.

15. Considering the above case laws and on the basis of legal position that emerges, this Court is fully aware that this is not a Court of appeal nor can it appreciate the material on record. But this Court can certainly take note of, if the finding is based on no evidence or perverse. In the instant case, no order of appointment has been placed by the respondents nor it is stated that there was any appointment order issued to them. Admittedly, the respondents were engaged for a specific purpose. As submitted they were not employees of the appellant but were engaged by a contractor.

16. It has also come on record that M.W.1 was engaged as a consultant, he was to engage some daily waged casual labourers and to settle their wages and as per the necessity, the five respondents were engaged for a specific purpose. Despite the clear statement, the Labour Court has not taken note of that. Under the circumstances, this Court can certainly take note of the material without considering which, the Labour Court has come to a conclusion. Admittedly, the Apex Court has considered the cases of the workmen who were project employees and not employed in any Department. In view of the above fact situation and as stated since the respondents were not appointed by the appellant-Department, the observations are not helpful when the appellant's services were terminated long back in 1991.

17. As already discussed and as per the facts culled out, it is not a case of permanent appointment but of casual labourers employed for a particular project work from 1986 to 1990. Their services were dispensed with on 21.12.1990. However they got some stay order, but they cannot take advantage of the stay

order which has been obtained from an authority or Court having no jurisdiction. Ultimately, their services were terminated on 21.7.1991 after disposal of the case in the High Court with a direction to raise an industrial dispute. In view of this, they cannot take advantage of the observation made in NILAJKAR's case to terminate their services after reinstatement, following procedure under Section 25-F of the Act. However, without creating any right, the Authority are always free to consider their suitability for some other project, if available, independently in accordance with law.

18. In view of the above discussion, the order of the labour Court as well as of the learned single Judge are not sustainable and are liable to be set aside. Accordingly they are set aside. All the 5 Writ Appeals are followed with no order as to costs.