

Everestee Vs. District Labour Officer

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Court : Kerala

Decided On : Jun-10-1999

Reported in : (1999)IILLJ851Ker

Judge : Ar. Lakshmanan, Acting C.J. and; S. Sankarasubban, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2

Appeal No. : W.A. No. 1194/1999

Appellant : Everestee

Respondent : District Labour Officer

Advocate for Def. : Antony Dominic and; Alexander Thomas, Adv.

Advocate for Pet/Ap. : R. Pushpangathan Pillai, Adv.

Disposition : Appeal dismissed

Judgement :

Ar. Lakshmanan, Ag. C. J.

1. The question for consideration in this appeal is whether the appellant/petitioner, who has voluntarily retired from service and who has accepted the benefits of the voluntary retirement, can be treated as a workman as defined in Section 2(s) of the [Industrial Disputes Act, 1947](#). We heard Mr. R. Pushpangathan Pillai for the

appellant and Mr. Antony Dominic for the respondent.

2. The appellant filed the present Original Petition to call for the records leading upto Ext. P3 and for a mandamus directing the first respondent District Labour officer, Ernakulam to reconsider the matter and to refer the case to the Government for further necessary action in the matter, or initiate conciliation proceedings as per law. The further prayer is for a declaration that the appellant is a workman under the provisions of law and hence entitled to be dealt with accordingly.

3. The case of the appellant in short is that he took voluntary retirement from the service of respondents 2 and 3 with effect from January 21, 1997 and that the 3rd respondent has also issued Ext. P1 accepting the resignation. It is submitted that the appellant joined the company as an unskilled worker on August 1, 1974 on a temporary basis and was granted permanent appointment with effect from November 1, 1977. He was confirmed in the post of Grade I with effect from August 1, 1978. He was promoted to Grade II with effect from July 15, 1978 and was confirmed in that post with effect from January 15, 1979. The appellant was further promoted to Operator Grade III with effect from January 1, 1981 and was confirmed in that post with effect from June 1, 1981. Since he had completed 20 years and eight months of service, the appellant opted for voluntary retirement as per the scheme in the month of January, 1997, which was accepted by the Company by Ext. P1 letter. Along with the petitioner/appellant herein, a few other workers also opted for voluntary retirement, whose monetary benefits, according to the appellant, were much more than that of the appellant. Therefore, the appellant approached the first respondent District Labour Officer, Ernakulam with a detailed application giving details of employees who retired along with the appellant. The said application is Ext. P2. The 1st respondent, by Ext. P3, rejected the application of the appellant, holding that the appellant would not come under the purview of the Industrial Disputes Act as a workman and hence the application had no sustainability and the first respondent had no jurisdiction in the matter. Aggrieved by the said order, the appellant filed the Original Petition for the reliefs mentioned above.

4. According to counsel for the appellant, the first respondent, who is an authority under Statute, has to act and perform his duties in accordance with law and he cannot overreach and pass orders which are contrary to the provisions of well established law. Therefore, it is submitted that Ext. P3 is unsustainable in the eyes of law.

5. The Writ Petition was contested by the 3rd respondent management by filing a detailed counter affidavit along with Ext. R3(a), which is a memorandum of settlement between the appellant and the management under Section 18(1) of the [Industrial Disputes Act, 1947](#). It is seen from the counter affidavit that the appellant has admittedly accepted the voluntary retirement offered by the 3rd respondent, tendered his resignation in pursuance thereof and the resignation was accepted by the 3rd respondent. The appellant, thereafter, settled his accounts fully and finally with the 3rd respondent. It is also to be noted that the appellant also withdrew his statutory benefits such as Provident Fund and Gratuity. All these were done by the appellant on his own free will and accord and, to witness the same, a Memorandum of Settlement in Form HH under the provisions of the Industrial Disputes Act read with the Industrial Disputes (Kerala) Rules was entered into and duly executed. It is, therefore, submitted by the management that in view of the Voluntary Separation Package offered by the 3rd respondent and accepted by the workman (the appellant herein), he submitted his resignation voluntarily and when the same was accepted by the 3rd respondent, the relationship between the management and the workman, the appellant herein, ceased to exist. Therefore, according to the 3rd respondent, the order Ext. P3 passed by the first respondent herein declined the request made by the appellant treating the appellant as not a workman as per the definition in Section 2(s) of the Industrial Disputes Act is legal and proper and, therefore, it is submitted that the appellant is not entitled to invoke the provisions of the said Act claiming himself as a workman after his voluntary retirement and maintain an application seeking the relief aforementioned.

6. We have carefully considered the rival submissions made by both parties. Ext. P3, which is the subject matter of challenge in this Writ Petition, reads thus:

'Sub:- Hindustan Lever Ltd., Cochin - Anomaly in voluntary retirement benefits-
Complaint - reg.

Ref: Your petition dated 23.12.97.

With reference to the above, I inform that a person who opted voluntary retirement scheme based on specific agreement regarding the terms of retirement and got retired as per the accepted norms will not come under the purview of the I.D. Act as 'workman' and hence the application has no sustainability and this office has no jurisdiction to proceed action in this matter.

Yours faithfully,

Sd/- District Labour Officer'

The appellant opted for voluntary retirement pursuant to the scheme offered by the management, entered into an agreement regarding the terms of his retirement and got retired as per the accepted norms. After his voluntary separation of the relationship with the management as a workman, the appellant cannot claim that he will come under the purview of the Industrial Disputes Act as a workman.

7. RADHAKRISHNAN, J., by his judgment which is impugned in this appeal, held that persons like the appellant, who have accepted voluntary retirement on the basis of certain terms and conditions, cannot claim the benefit under the Industrial Disputes Act. The learned Judge has also followed the judgment of a learned single Judge of this Court reported in Sukumaran v. H.M.T. Ltd. 1999(1) KLT SN 10 wherein this Court held that a workman who had retired from service, will not come under the definition of 'workman' and that the said definition covers only those who are retrenched, dismissed or discharged. Being aggrieved by the above judgment, the petitioner has filed this Writ Appeal. Learned Counsel for the appellant submitted that the judgment relied on by the learned single Judge is not applicable to the case on hand and that since the said decision had dealt with a person who had retired from service whereas in the case of the appellant the anomaly occurred when he was retiring and therefore, the learned single Judge ought to have drawn a definite distinction between these two cases. Counsel

further submitted that the conclusion arrived at by the learned single Judge that persons who have accepted the Voluntary Retirement Scheme on the basis of certain terms and conditions, cannot claim the benefit under the Industrial Disputes Act is not correct and that the learned single Judge has not properly understood the grievance of the appellant. It is submitted that the appellant has prayed before the first respondent only to get rectified as anomaly, which occurred at a point of time when he was retiring.

8. Per contra, Mr. Antony Dominic submitted that the appellant, who has retired from service pursuant to a Voluntary Retirement Scheme, cannot come under the cover of the definition of 'Workman' under Section 2(s) of the Industrial Disputes Act. It is submitted that the appellant, having regard to the terms and conditions as set out in Ext. R3(a) and having signed the said agreement in token of acceptance on January 21, 1997 in the presence of witnesses and also in the presence of the Factory Manager, cannot now turn round and say that he can maintain the prayer sought for in the Original Petition.

9. In order to appreciate the rival contentions, it is beneficial to extract Section 2(s) of the Industrial Disputes Act:

'(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 had 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 one thousand six hundred 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.'

The definition of 'Workman' in Section 2(s) in connection with persons employed in an industry falls in three parts. The first part of the definition gives the statutory meaning of workman. The second part is designed to include something more in what the term primarily denotes. By this part of the definition, persons who have been dismissed, discharged or retrenched in connection with an industrial dispute; or whose dismissal, discharge or retrenchment has led to an industrial dispute. This part specifically excludes the categories of the persons specified in Clauses (i) to (iv) of Section 2(s). The third part connotes that even if a person satisfied the requirements of any of the first two parts, if he falls in any of the four categories in the third part, he shall be excluded from the definition of 'workman'. In our opinion, the appellant, having voluntarily tendered his resignation pursuant to a scheme for voluntary retirement, the resignation having been accepted by the management and all the benefits arising out of such resignation has been paid by the management and received by the appellant, he cannot be treated as a 'workman' coming under Section 2(s) of the Industrial Disputes Act. As already noticed, the definition only includes persons who are presently employed, or who have been dismissed, discharged or retrenched from the service of the employer. In fact, dismissal, discharge or retrenchment is an act of the employer, whereas terminating the contract of service by way of resignation By the workman is his own act. We are, therefore, of the opinion that the claim of the appellant is misconceived and beyond the scope of Section 2(s) of the Industrial Disputes Act. A perusal of the petition submitted by the appellant before the Labour Officer and also the Original Petition filed before this Court reveals that the appellant had accepted the benefits offered to him in pursuance of the Voluntary Retirement Package announced by the management and on being satisfied about the calculation and the quantum thereof, chose to tender his resignation and thereafter, on diverse dates, received benefits confirming each time that the

management had fully and finally settled the accounts, thereby severing the employer-employee relationship once and for all. Counsel for the appellant, however, submitted that the benefits due to the appellant was not properly quantified and paid, and therefore, he would be entitled to maintain a petition before the Labour Officer. As already discussed and decided, the only remedy available to the appellant is to approach the management and not to make a petition before the Labour Officer, who has no jurisdiction to decide the matter. Counsel for the appellant also referred to the payments made to some others who were also workmen in the skilled category. If there is any anomaly in regard to the payments made to the appellant and the other workmen, it is for the appellant to bring the same to the notice of the management by way of a fresh representation. If such a representation is filed within one month from today, the management is directed to consider the same and pass appropriate orders in accordance with law within one month from the date of receipt of the representation. Learned counsel for the management submitted that though the matter is concluded between parties the management is willing to consider the representation, if any made by the appellant, as per the directions now issued by this Court.

10. For the foregoing reasons, we hold that the appellant cannot come within the purview of the definition of 'workman' as contained in Section 2(s) of the [Industrial Disputes Act, 1947](#) and that the District Labour Officer was right in passing Ext. P3 order stating that he had no jurisdiction to proceed in the matter.

The Writ Appeal, therefore, fails and is hereby dismissed.

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