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Court : Chennai

Decided On : Feb-24-1969

Reported in : AIR1970Mad432

Judge : Ismail, J.

Acts : Madras Shops and Establishments Act, 1947 - Sections 6 and 41; Constitution of India - Article 14

Appeal No. : Writ Petn. No. 540 of 1969

Appellant : D. Paul David

Respondent : State of Madras Represented by Secretary, Industries, Labour and Co-operation Dept., Madras and ors.

Advocate for Pet/Ap. : B.R. Dolia, Adv. of Aiyar and Dolia, Advs.

Disposition : Petition dismissed

Judgement :
ORDER

Ismail, J.

1. The petitioner herein was appointed as Works Manager of the second respondent's factory near the city of Madras from 1-6-1962 on a monthly salary of Rs. 950 plus certain commission. He was originally appointed foe a fixed period of three years under a contract of service dated 16-6-1962. The said contract was renewed for a further period of three years with effect from 1-6-1965 under the contract dated 12-7-1965 and the petitioner's salary was increased to Rs. 1100 per month plus certain commission. By a letter dated 22-2-1963, the petitioner's services were terminated with effect from 1-3-1968, by the second respondent, on payment of three months' salary in lieu of notice. Thereafter, the petitioner herein preferred an appeal under Section 41 of the Madras Shops and Establishments Act, 1947, to the third respondent herein. Before the third respondent, the second respondent raised an objection that Section 41 of the Madras Shops and Establishments Act. 1947, had no application to the petitioner herein, since the petitioner was employed on contract for a fixed period. This was based upon an order of the Government of Madras in G. O. Ms. No. 1410 Development Department dated 20-3-1948, made under Section 6 of the Madras Shops and Establishments Act 1947 (Madras Act 36 of 1947). The third respondent without deciding the question whether the appeal filed by the petitioner herein was in time or not or without deciding the appeal on merits, dismissed the appeal solely on the basis of the said Government order, holding that Section 41 of the Act was not applicable to the petitioner herein. It isto quash this order of the third respondent herein, the present writ petition has been filed under Article 226 of the Constitution of India.

2. The sole and the angle argument advanced on behalf of the petitioner herein is that the said G. O. of 1948 is violative of Art. 14 of the Constitution of India, since it discriminates the petitioner herein as against the other employees, solely on the basis that the petitioner's services are governed by a contract for a fixed period. For the purpose of appreciating this contention, it is necessary to refer to one or two provisions of the Madras Shops and Establishments Act 1947, (Madras Act 36 of 1947), This Act was brought into force on 1-4-1948. by G. O. Ms. 1323, Development, dated 17-3-1948. Section 4(1) (a) of that Act provides that nothing contained in the Act shall apply to persons employed in any establishment in a position of management and the other sub-clauses refer to other categories of

persons to whom the provisions contained in the Act do not apply. Section 5 states that notwithstanding anything contained in Section 4, the State Government may, by notification, apply all or any of the provisions of this Act to any class of persons or establishments mentioned in that section, other than those mentioned in Clauses (c) and (f) of Sub-section (1) and modify or cancel any such notification, Section 6 provides:--

'The State Government may, by notification, exempt either permanently or for any specified period, any establishment or class of establishments, or person or class of persons, from all or any of the provisions of this Act, subject to such conditions as the State Government deem fit.'

Section 41 of the Act under which the petitioner purported to prefer the appeal is in the following terms:

'Section 41 (1): No employer shall dispense with the services of a person employed continuously for a period of not less than six months except for a reasonable cause and without giving such person at least one month's notice or wages in lieu of such notice provided, however, that such notice shall not bo necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an inquiry held for the purpose.'

3. It may be mentioned that by G. O. Ms. 4074 Industries, Labour and Housing (Labour) dated 5-10-1966, in the exercise of the powers conferred by Section 5 of the Madras Shops and Establishments Act, 1947 (Madras Act 36 of 1947), the Government applied all the provisions of the said Act to the class of persons mentioned in Clause (a) of Sub-section (1) of Section 4.

4. Before proceeding to consider the argument advanced on behalf of the petitioner, it is better to give the impugned G. O. itself and that G, O. is:

'In exercise of the powers conferred by Section 6 of the Madras Shops and Establishments Act (Madras Act 36 of 1947), His Excellency the Governor of Madras hereby exempts, permanently persons employed on contract for fixed

periods from the provisions of Section 41 of the said Act.'

Mr. B.R. Dolia, learned counsel for the petitioner, sought to sustain his argument

on two different grounds. The first is that the case of the persons, in possession of management has changed as a result of the G. O. of the year 1966 and that therefore, there is no justification for excluding the petitioner from the scope of Section 41. According to him, the petitioner is the Manager of the second respondent's factory governed by a contract, while there is another person who is also a manager, not governed by a contract and while that other person will have the benefit of Section 41, the petitioner himself will not have the benefit of Section 41. The other ground put forward by the learned counsel is that it has been settled by industrial adjudication that even if there is a contract entered into between an employer and an employee, the terms of the contract are not the last words and even in relation to such a contract and against the terms of the contract, an employee can raise an industrial dispute and the matter can be agitated under the provisions of the Industrial Disputes Act. I shall consider the validity of these two contentions.

5. As far as the first contention is concerned, it proceeds on a fallacy. The G. O. does not make any distinction between persons in the position of management and other persons. The G. O. in question merely makes a distinction between persons employed on contract for fixed periods and persons not so employed and all persons employed on a contract for fixed periods fall outside Section 41. Once a person is employed on contract for a fixed period, whether that person is in the position of management or not, he will be outside the scope of Section 41. If the G. O. has merely provided that only a manager employed on a contract for a fixed period will be outside the scope of Section 41, there may be some scope for the argument that there is no justification or necessity for singling out managers alone for taking them out of the scope of Section 41, solely with reference to the fact that their terms of employment are governed by a contract. Here, the position is entirely different. Whatever might be the position occupied by an employee, so long as he is employed on contract for a fixed period, he is outside the scope of Section 41. Consequently, the classification is between persons employed on

contract for fixed periods and persons not so employed. That classification has a reasonable nexus to the object of Section 41. The language of Section 41. which I have already extracted, clearly indicates that it was intended to secure or safeguard the tenure of an employee. Where the employment of a person is governed by a contract entered into between the parties, and his services are terminated contrary to the terms of the contract certainly he will have other remedies available to him, arising as a result of the alleged breach of the contract committed by the employer. Under these circumstances, if a classification is made between persons employed on contract for fixed periods and persons not so employed, it cannot be contended that such a classification violates Article 14 of the Constitution of India or constitutes a hostile discrimination against the person concerned. Hence. I am unable to accept the argument of the learned counsel for the petitioner. In the case of a person who is employed on a contract for a fixed period, the rights and liabilities and obligations, of the employer and the employee flow from the terms of the contract voluntarily entered into between the parties, and the tenure of the employment is the subject-matter of specific agreement between them, while in the case of a person who is not employed on a contract for fixed period, but whose tenure is governed by the rules and regulations applicable to the particular institution or establishment, the position is entirely different. Consequently, it cannot be contended that there is no reasonable basis for classifying persons employed on contract for fixed period separately and distinctly from those who are not so employed and as I pointed out' already, there is a reasonable nexus or connection between such classification and the object sought to be achieved by Section 41 of the Act, namely, protection or safeguarding of the tenure of the employee concern-fid. The other argument of the learned counsel regarding the settled result of industrial adjudication has no relevancy to a consideration of the scope of the impugned G. O. with reference to Article 14 of the Constitution and Section 41 of the Act,

6. Mr. Dolia contended that the exemption is only with reference to Section 41 of the Act and with regard to the other terms of the contract the other provisions of the Act will be applicable and consequently the contract not being the last word in regard to the relationship between the parties, the classification for the purpose of Section 41 is not a valid one. I am unable to appreciate this argument as well. The

relationship of employer and (employee gives rise to rights and obligations between them in respect of severalmatters, one of them being the tenure and another being the other condition's of service. If the law makes a distinction between the tenure and the other conditions of service, it cannot be contended that such a distinction is discriminatory and is not valid. As I pointed out already. Section 41 deals with the tenure only and for the purposes of that section, only those employed on contract for fixed period have been exempted and such an exemption cannot be said to be in any way violative of Article 14 of the Constitution of India.

7. Under these circumstances, this writ petition fails and is dismissed.

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