

Thanikachalam and ors. Vs. Presiding Officer I, Additional Labour Court, Madras and ors.

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Court : Chennai

Decided On : Jul-18-1994

Reported in : [1995(70)FLR215]

Judge : Mishra, J.

Appeal No. : W.P. No. 10439 of 1984

Appellant : Thanikachalam and ors.

Respondent : Presiding Officer I, Additional Labour Court, Madras and ors.

Judgement :

ORDER

Mishra, J.

1. The petitioners it is not in dispute, were originally appointed as drivers in the Civil Supplies Department of the Government of Tamil Nadu wherein existed a lorry unit and served in the said capacity in the Lorry Unit and Supply Department of the Government ever since their there recruitment in the year 1968. Prior to 1972, it is also not in dispute the Government of Tamil Nadu had many buses operated as part of the Government's functions having accordingly a Transport Department and employees as drivers in the said Department. In January, 1972,

the entire city operations of the buses were handed over to the 2nd respondent herein i.e. Pallavan Transport Corporation (Metro) vide G.O. No. 86. Transport Department, dated 8.11.1972, the Government treated all employees of the Transport Department including the drivers transferred to the service of the 2nd respondent with effect from 1.1.1972, thus extending the application of the fundamental rights to benefit such employees. From 1.5.1972, the Government introduced a scheme called Longevity Pay Scheme and the deputationists were given the option to join the 2nd respondent-Corporation. In accordance with the said scheme their pay was refixed based on a minimum qualifying service. According to the petitioners, the Government abolished the lorry wing of the Civil Supplies Department and introduced a scheme under G.O. Ms. No. 439, dated 27.11.1972 for absorption of the employees facing retrenchment in the suitable vacancies in the Transport Department and when such employees of the Transport Department was transferred to the 2nd respondent-corporation, the petitioners herein in terms of the said Government order after becoming employees of the Transport Department as such stood transferred to the service of the 2nd respondent. They however, were not extended the benefit of the Longevity Pay Scheme whereas others transferred from the Transport Department to the service of the 2nd respondent were given the said benefit and interest and their (petitioners) pay was fixed at Rs. 250 p.m. causing a substantial loss of pay and emoluments and putting them below other drivers transferred to the 2nd respondent's service from the Government Transport-Department and thus caused to them, according to the petitioners, immense legal injury. The petitioners made representation and finally invoked the provisions of Sec. 33(C)(2) of the Industrial Disputes Act (hereinafter referred to as 'the Act') for redressal of their grievances in this behalf. The 1st respondent/First Additional Labour Court, Madras, has, however, held that the petition under Sec. 33(C)(2) of the Act is not maintainable.

2. According to the respondents, since the petitioners were appointed in the Civil Supplies Department and it was in process of winding up the Lorry wing of the Supply Department that the Drivers were to be retrenched, they are not entitled to any benefit intended for the employees of the Transport Department of the Government of Tamil Nadu. They are according to the respondents, covered by G.O. Ms. No. 439, (Food Department), dated 27.11.1972, which only envisaged

that they would be absorbed in the Transport Department of the Government and the Government as a gesture to give support to the employees like the petitioners ordered that as and when vacancies were available, they would be absorbed in the services of the 2nd respondent.

3. I will advert to the question whether the I Additional Labour Court has correctly held that the application of the petitioners under Sec. 33(C)(2) of the Act is not maintainable later. It is conceded however before me that the 2nd respondent is a State under Art. 12 of the Constitution of India (hereinafter referred to as 'the Constitution' for short) and is amenable to the writ jurisdiction of this Court under Art. 226 of the Constitution. If there is any violation of any of the fundamental rights of the petitioners, that is, a right guaranteed under Part III of the Constitution, it is obvious they have a right to invoke the writ jurisdiction of this Court, notwithstanding the fact that the petitioners had elected the remedy before the Labour Court and when the Labour Court had held that the application under Sec. 33(C)(2) of the Act is not maintainable, they have come to this Court. I hold for the said reason that the action before this Court on behalf of the petitioners, is also one, in which this Court can exercise its jurisdiction under Art. 226 of the Constitution and if the petitioners are not guilty of laches and have been pursuing a remedy in right earnest, they are entitled to seek appropriate relief before this Court and this Court can see, irrespective of the proceeding before the Labour Court, whether the petitioners are entitled to any relief and mould the relief accordingly.

4. Action under Sec. 33(C)(2) of the Act is taken, where any workmen is entitled to receive from the employer any money or any benefit, which is capable of being computed in terms of money, and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed. Since in the instance case, a further dispute has arisen whether the petitioners are entitled to the benefits, as other employees of the Transport Department transferred to the service of the 2nd respondent, have received or not, it is a case in which the action under Sec. 33(C)(2) of the Act may not be competent. Such a dispute will of course be an industrial dispute as defined under Sec. 2(k) of the Act. In such a situation, it is a dispute covered by Sec. 10 and other provisions in

chapter III of the Act.

5. It has now become a well known rule that a contract of service of a person, is protected by Arts. 14 and 16 of the Constitution, that is a person, who is employed under a State under Art. 12 of the Constitution that the principle of equal pay for equal work, is a constitutional goal and those, who are employed under a person which is a State for the purposes of Part III of the Constitution of India must receive equal protection of pay for equal work. In *Randir Singh v. Union of India* : (1982)ILLJ344SC , the Supreme Court has pronounced as follows :

'It is true that principle of equal pay for equal work is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Art. 39(d) of the Constitution proclaims 'equal pay for equal work' for both men and women is a Directive Principles of State Policy. 'Equal pay for equal work for both men and women means equal pay for equal work for everyone and as between the sexes, Directive Principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Art. 14 of the Constitution enjoins the State not deny any person equality before the law or the equal protection of the laws and Art. 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality of clause will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for trying alleged robber-barons and smuggler kings or for dealings with tax evaders is discriminatory, whether 'a particular governmental policy in the matter of grant of licences of permits confers unfettered discretion on the executive whether the takeover of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leaves the millions of people of this country untouched. Question concerning wages and the like mundane they may be, are yet matters of vital concern to them and it is there if at all that the equality clauses of the Constitution have any significance to them...

Construing Arts. 14 and 16 of the Constitution in the light of the preamble and Art. 39(d) we are of the view that the principle equal pay for equal work is deducible from those articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer.'

That was a case of Delhi police drivers. In the cases of *Dhirendra Chamoli v. State of U.P.* : (1986)ILLJ134SC , *Surender Singh v. Engineer-In-Chief, P.W.D.*, 1986 I CLR 124 R. D. Gupta v. Lt. Governor, Delhi Administration, : [1987]3SCR808 and several other cases including the case in *Dharwad District, P.W.D. Literate Daily Wage Employees Association v. State of Karnataka* 1990 I CLR 534 this aspect of the law has been examined and it has been pointed out that equal pay for equal work and providing security for service by regularising casual employees within a reasonable period have been uniformly accepted by the Supreme Court as a constitutional goal to our social polity.

6. As the Supreme Court has pointed out this Constitutional philosophy must be allowed to become a part of every person in our Country. Then only the Constitution would reach everyone and he or she should be nearer the goals set by it, that is, the Constitution. If for the governance of the State, the Governments, their instrumentalities or such Authorities and Bodies, which are created by or under a Statute and have some independent functions to perform as a body corporate, are not realising that they have to function under the Constitutional mandate of providing to every employee under them equal pay for equal work and further that they have an obligation to ensure that the Directive Principles in this behalf in Art. 39(d) of the Constitution does not remain only as a promise, but become also a part of the guarantee under Art. 14 of the Constitution of the equal protection of law and equality before law and Art. 16(1) of equal opportunity of employment and appointment, they are failing in discharging their duty and they alone shall be held responsible for violations of such fundamental rights that are attached to every service or employment under them. The Law's development in our Country has also taken any violation of such obligation, which an employee must receive from the employer, as a violation of affecting the employees, right of life as understood under Art. 21 of the Constitution thus, any State violating the

rule of equal pay for equal work, thus would violate Arts. 14, 16(1) and 21 of the Constitution. Although it may not be necessary to dilate to the right under Art. 23 of the Constitution in the matter of employment under the State and the conditions of service in this behalf, when it comes to pay sanctioned for an employee by employer, it is indeed a matter, which would attract Art. 23 of the Constitution as while placing a person at a lower pay for the reason that he does not have the means to force his own terms upon the employer and paying to him less than the admissible pay to others performing the same kind of work, would stand as an act of exploitation by the employer and may be treated as one of the forms of forced labour as envisaged under Art. 23 of the Constitution. (see : People's Union for Democratic Rights v. Union of India, A.I.R. 1982 S.C. 1437 .

7. Adverting to the facts of the instant case, I am inclined to accept all the facts, as the purpose of this case that while abolishing the lorry unit of Civil Supplies Department the Government of the State resolved that employees in the said unit of the Supply Department would be absorbed in the Transport Department and when the Pallavan Transport Corporation was created, all employees of the Transport Department were transferred to the Corporation. I am also inclined to hold in agreement with the 2nd respondent-Corporation that the petitioners were absorbed in the scheme to take the retrenched employees (Drivers) of the Lorry Unit of the Civil Supplies Department of the Government of Tamil Nadu and they were absorbed in the services of the 2nd respondent-Corporation as and when vacancies became available for such absorption. In that sense, the petitioners may have to concede that they will stand on the same footing for the purpose of continuous service under the 2nd respondent along with such of the Transport Department employees, who were transferred on the creation or initiation of the transferred service under the 2nd respondent. Does it then mean that for the same work, the 2nd respondent-Corporation shall create one scale of pay for those who were transferred from the Transport Department and another scale of pay for those, who were appointed by it for the same kind of work who were retrenched by the Civil Supplies Department on the closure of the Lorry Unit. The answer is in emphatic 'no'. If this is allowed to be done, the employer will get the freedom of dividing the employees for the purposes of pay and emoluments against the very constitutional scheme that all the persons should be paid equal pay for equal work.

The very fact that the 2nd respondent-Corporation has chosen to give to the petitioners a fixed starting emoluments, much below the emoluments paid the other persons working from before, goes to show that the 2nd respondent has completely disregarded the aforementioned rule and violated Arts. 14, 16(1), 21 and 23 of the Constitution. The petitioners are entitled to reckon their service from the date of their respective appointment itself in the 2nd respondent Corporation, which may be later than that of the employees who have been absorbed in the services of the 2nd respondent-Corporation from before but are entitled to be fitted in the same scale of pay as are given to other transferred employees and are entitled to be benefited by such schemes which are extended by the Corporation to its employees including the transferees.

8. On the facts of this case, I am satisfied that the instant petition cannot be rejected merely on the ground that the petitioners had chosen to move the Labour Court, under Sec. 33(C)(2) of the Act earlier, or that it has not raised an industrial dispute in accordance with law. Since the 2nd respondent is a State under the Constitution and is amenable to the writ jurisdiction of this Court, it will amount to ignoring the fundamental rights of the petitioners a protection guaranteed under the Constitution to them, if appropriate relief is not granted to them. I am inclined on the facts of the instant case to issue a mandamus to the respondents directing them to forthwith fix pay of the petitioners in the scale of pay admissible to the drivers, whether working from before or appointed later and pay to all the drivers equal pay for equal work, i.e., fix them in the scale of pay and grade, which would give to them similar benefits of emoluments for their services under the 2nd respondent. Since the petitioner have suffered for some period because they wrongly elected to raise a dispute under Sec. 33(C)(2) of the Act and for substantial period of time on account of law's delay, i.e., delay in the disposal of the instant petition, the 2nd respondent is directed to complete all the formalities as to a fresh fixation of pay of the petitioners and accordingly pay to them their respective emoluments in accordance with law from the due dates, within a period of two months from to-day. On the facts of the instant case, however, will be no order as to costs.

