Sivakumar R. and ors. Vs. Presiding Officer, Iii Additional Labour Court and anr.

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SooperKanoon Citation : sooperkanoon.com/818521

Court : Chennai

Decided On : Apr-22-1999

Reported in : (2000)IIILLJ644Mad

Judge : Y. Venkatachalam, J.

Acts : Industrial Disputes Act, 1947 - Sections 25F

Appeal No. : W.P. Nos. 8416, 8418 and 8618/1991

Appellant : Sivakumar R. and ors.

Respondent : Presiding Officer, Iii Additional Labour Court and anr.

Disposition : Petition allowed

Judgement :
ORDER

Y. Venkatachalam, J.

1. Since the subject matter involved in all these cases and also the respondents are common, all these writ petitions have been taken up together and are disposed of by this common order with the consent of the parties concerned.

2. The petitioners herein have filed these writs invoking Article 226 of the Constitution of India, seeking for a writ of certiorari to call for the records in Award dated April 17, 1989 in I.D.No. 172 of 1985 and two others passed by the first respondent and to quash the same.

3. In support of their writ petitions, the petitioner herein have filed separate affidavits wherein they have stated all the facts and circumstances that forced them to file the present writ petitions and requested this Court to allow their writ petitions as prayed for. Though no counter affidavit has been filed by the 2nd respondent, the learned counsel appearing for the 2nd respondent argued the matter and ultimately requested this Court to dismiss these writ petitions for want of merits.

4. Heard the arguments advanced by the learned counsel appearing for the parties. I have also perused the contents of the affidavit and all other relevant material documents available on record in the form of typed set of papers. I have also taken into consideration the various points raised by the learned counsel appearing for the respective parties during the course of their arguments. I have also perused the various decisions relied on by both the sides.

5. In the above facts and circumstances of these cases, the only common point that arises for consideration, is as to whether there are any valid grounds to allow these writ petitions or not.

6. The brief facts of the case of the petitioners herein as seen from their affidavit are as follows: These petitioners have been working in the various establishments of the 2nd respondent establishments as typist and sales assistants since 1981, 1978 and 1978 respectively. Their last drawn wages were Rs. 10 per day usually paid at the end of the month. All of them had been in service for more than 480 days in 24 months immediately preceding August 9, 1984, August 10, 1984 and August 21, 1984 respectively and hence all of them were entitled to be made permanent by the 2nd respondent as per the provisions of Sections (1) of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 which was applicable to the respondent. Apart from this they had been requesting the 2nd respondent to confirm and regularise their services.

They were paid wages at the end of the month for the number of days they had worked in the month and their signatures used to be obtained in vouchers. Later these voucher numbers and amounts paid used to be entered in the account books. They were not allowed to sign in any Attendance Register or Wage Register. In spite of their request for regularisation and with a view to evading compliance with the aforesaid provision of law, the first respondent terminated their service with effect from August 9, 1984, August 10, 1984 and August 21, 1984 respectively without complying with the provisions of Section 25-F of the Industrial Disputes Act. Therefore they state that their termination of employment is arbitrary, illegal and was liable to be set aside.

7. It is stated by the petitioners herein that on April 6, 1984. The 2nd respondent had appointed a number of persons vide G.O.Ms. No. 464, dated April 6, 1984 of the Department of Industries. Most of them were juniors to these petitioners in service with the 2nd respondent. According to the petitioners herein this act of the 2nd respondent renders their appointment illegal apart from making illegal their (petitioner's) non confirmation and their termination. On the strength of several documents it is stated by these petitioners that they had worked for more than 480 days required by Section 3(1) of the Act and they had become entitled to permanency on the following dates; April 31, 1981, July 31, 1983 and August 20, 1984 respectively. It is also stated by them that they were one of the sales assistants/typists who had represented to the Government on January 12, 1985 and January 12, 1985 respectively for permanent absorption as during the period of 24 months prior to that date they had worked for 480 days. However, the Government passed an order vide G.O.Ms.No. 464, dated April 6, 1984 making 10 Sales Assistant permanent exempting them from the conditions imposed by various other G.Os., of these 10 persons about 3 persons were juniors to these petitioners. So they represented to the 2nd respondent protesting against this illegal discrimination and praying for permanency both under the G.O. as well as the Act. However, the 2nd respondent had terminated their services. This was in pursuance of a circular dated August 8, 1984 of the 2nd respondent to oust all the temporary hands. So these writ petitioners raised separate Industrial Disputes. They were referred to the 1st respondent herein and were numbered as I.D.Nos. 172 of 1985, 138 of 1985 and 154 of 1985. The 2nd respondent defendant the I.D.

pleading inter alia that the petitioners herein were employed as a casual for a particular period, that the respondent being unable to meet the demand during festival from Deepavali to Tamil New year, used to recruit temporary staff for the season, and that the petitioners herein were one of such temporary hands recruited on temporary basis and that the respondent except by any order from the Government did not have power to confer permanency on anyone. Whereas it is contended by the petitioners herein that they were more regular than even a permanent employee and for most of the period, continuously without any break. It is their specific case that the statute viz., Section 3(1) of the Act confers permanency on them, and according to them no Government Order can prevail over a statute. As the issues involved were identical in all these I.Ds. they were jointly taken for trial. The 1st respondent Labour Court passed the common award on April 17, 1989 about 6 months after the arguments were heard dismissing the petitioners' claim. Challenging the said award, the petitioners have filed the present writ petitions.

8. The impugned award of the 1st respondent is challenged on the grounds that the same is illegal, against law and is liable to be set aside, that the 1st respondent acted on surmises and with material irregularities resulting in illegality. It is contended by the petitioners that it was never admitted by the petitioners that they were employed only during festival season. They said that the case of the petitioners as established by record was that they were employed almost regularly for more than 240 days in a period of 12 months. They also contend that the 1st respondent acted illegally in rejecting Ex.W-1 the certificate issued by the 2nd respondent showing the total number of days worked by the petitioner, that the 1st respondent acted illegally and perversely in observing that the said certificate was not supported by vouchers which were not produced by 2nd respondent and so cannot be relied upon, and that the 1st respondent acted illegally in not drawing adverse inference (sic) against the 2nd respondent for not producing all the payment vouchers and account books in spite of a notice to produce them and a memo filed by the petitioner pointing out the falsehood in 2nd respondent's affidavit that they were filed, without actually filing them. It is the case of the petitioners that it should have drawn adverse inference against the 1st respondent as per the decisions of Supreme Court reported in H.D. Singh v. Reserve Bank of

India : (1986)ILLJ127SC and Gogai Krishnaji v. Mohammed Haji Lathif, : [1968]3SCR862 .

9. It is also their grievance that the 1st respondent acted illegally in not relying upon and acting upon Ex.W-1 certificate and acted illegally in not holding that the petitioner had worked for more than 480 days in 24 months and hence was deemed to have become permanent as per the provisions of Section 3 of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, and that the 1st respondent acted illegally in not holding that having completed 240 days in 12 months, the petitioners are entitled to the protection of Section 25-F of the Industrial Disputes Act and the resultant termination amounts to illegal retrenchment. According to them the 1st respondent acted illegally in not holding that by reason of failure to observe the conditions laid down in Section 25-F of ID Act, the termination of the petitioners is illegal. It is also their contention that the 1st respondent failed to see that as held by the Supreme Court in State Bank of India v. Sundaramoney, : (1976)ILLJ478SC and in H.D. Singh v. Reserve Bank India, (supra), even if the period is fixed in order of employment, if the period of service is more than 240 days, the provisions of Section 25-F of the Industrial Disputes Act have to be complied with failing which the termination is illegal. It is also the grievance of the petitioners herein that the 1st respondent had forgotten all the arguments during a lapse of 6 months between the date of argument and the date of judgment.

10. Having seen the entire material available on record and from the claims and counter claims of the respective parties, it is clear that the petitioners herein claim that they had worked before the 2nd respondent management for more than 480 days in 24 months immediately preceding their termination and that therefore they are entitled to be made permanent by the 2nd respondent as per the provisions of Section 3(1) of the Act. The management rejected such request of the petitioners herein and justified their termination. The petitioners raised industrial disputes and the matter went before the 1st respondent Labour Court and the said Labour Court after trial once again rejected the claim of the petitioners and passed an award against their interest and challenging the said award the petitioners have filed the present writ petitions.

11. It is seen from the records, the petitioner Sivakumar worked with the 2nd respondent from September 3, 1981 to August 9, 1984 i.e., for about 920 days. Further as seen from Ex. W-1 in that case it has been certified by the Manager of the 2nd respondent that the said petitioner had worked in their unit on daily wages from August 3, 1981 to March 10, 1982 and from April 1, 1982 to June 30, 1982 and from August 1, 1982 to February 15, 1983 and from March 25, 1983 till September 21, 1983. That apart it has been claimed by said petitioner that from August 3, 1981 onwards he worked under 2nd respondent management till August 9, 1984 i.e., for about 920 days, In the case of the other petitioner Revathi also she had worked from July, 1983 to August, 1984. Apart from that previously also she had worked from October 11, 1978 to May 9, 1979. She had given voucher numbers also under which she received the wages. In the case of petitioner Vijayakumari, there is an appointment order also dated February 1, 1982. After that she had worked in the Vanavil unit from April, 1982 to March, 1983 as Sales Assistant. Thereafter she had worked from June 15, 1983 till June 29, 1984 for about 311 days and she has also produced the voucher numbers under which she received the wages. On the basis of the above the petitioners herein claimed before the 1st respondent Labour Court that they had worked for 480 days in 24 months and that therefore their termination is illegal. The Labour Court observed that it was unable to know the actual number of days the petitioners worked in a year or in two years from any documentary evidence, as there were no appointment orders, termination orders or even the attendance register. But at the same time it is clearly admitted by the Labour Court as follows:

'Although Ex.W-1 stands for more than 480 days in two years, it is not supported as such by payment vouchers and by any other documentary evidence. Therefore Ex.W-1 cannot be much relied even though it is issued by the respondent.'

Here it is significant to note that all the petitioners herein have clearly given all the voucher Nos. under which they received the Wages. Also they have filed an application to direct the 2nd respondent management to produce the vouchers that had been signed by the petitioners herein during the periods mentioned in the certificate given by the 2nd respondent. But they were not produced. Here it is the categoric contention of the petitioners herein that the 2nd respondent filed a

counter stating that they were being filed along with the counter but deliberately and fraudulently failed and neglected to file them, and that the first respondent without checking up whether they had been filed or not, closed the said application. I see every force in the said contention of the petitioners. Because there is no mention about this aspect in the award passed by the 1st respondent, when admittedly such an application for direction to the 2nd respondent has been filed and disposed of. That being so, there is no reason at all for the Labour Court to come to a conclusion that the claim of the petitioners herein is not supported as such by payment vouchers and by any other documentary evidence. It is the clear case of the petitioners herein that they were paid wages at the end of the month for the number of days they had worked in the month and their signatures used to be obtained in vouchers and later these voucher numbers and amounts paid used to be entered into the account books and they were not allowed to sign in any attendance register or wage register. This clearly shows the intention of the management. Therefore, it is rightly contended by the petitioners that the 1st respondent acted illegally and perversely in observing that the said certificate was not supported by vouchers (which were not produced by the 2nd respondent) and so cannot be relied upon.

12. It is next contended by the petitioners that the first respondent acted illegally in not drawing adverse inference against the 2nd respondent for not producing all the payment vouchers and account books in spite of a notice to produced them and a memo filed by the petitioner pointing out the falsehood in the 2nd respondent's affidavit that they were filed without actually filing them and that therefore it should have drawn adverse inference against the 1 st respondent as per the decisions of Supreme Court reported in H.D. Singh v. Reserve Bank of India (supra), and Gogai Krishnaji v. Mohammed Haji Lathif (supra). I see every force in the said contention of the petitioners. It is significant to note that in the above decision it has been held as follows:

'Workmen in Reserve Bank claiming to have worked for more than 240 days in a period of 12 months, Bank failing to produce record, inference has to be drawn that workman's case is true.'

The above decision squarely applied to the facts and circumstances of this case since in this case also the management failed and neglected to produced the vouchers pointed put by the petitioners in support of their claim. Therefore, under the above circumstances I am of the clear view that in this respect the Labour Court miserably failed, to consider the claim made by the petitioners and that therefore the 2nd respondent acted illegally in not holding that having completed 240 days in 12 months, the petitioner herein are entitled to the protection of Section 25-F of the Industrial Disputes Act and the termination amounts to illegal retrenchment, and that therefore they are entitled for reinstatement.

13. Further it is the settled law by the various pronouncements of various High Courts and even the Supreme Court that when a person falls within the definition of workman and has completed service of 240 days as such he is entitled to be regularised by the respondents. That being so, in this case the petitioners herein have worked on daily wage basis for about two years and and after completion of 240 days of service, their service cannot be terminated without complying with Section 25-F of the I.D Act. But, in the above case the Labour Court has failed to look into all these aspects and has erroneously rejected the claim of the petitioners herein. Even as per the various decisions relied on by the respondent it is seen that the Allahabad High Court in C.S.K. Sangh v. State of U.P., (1999) I L.L.J. 117, while considering a similar case directed the Government to frame a scheme and Rules on the subject prescribing which category of daily wagers can be regularised. That apart even in cases of ad hoc appointments, in the decision reported in Director, Institute of Management Development v. Pushpa Srivastava, : (1993)ILLJ190SC , the Supreme Court directed the management to consider sympathetically if regularisation in service is possible. Under such circumstances of the legal position, it is significant to note that the Government passed order making permanent certain persons and among them 3 persons were juniors of these petitioners. That apart it is seen even earlier, there were appointments without reference to all those G.Os. as was observed in Auditor's report for the year 1982-83. This itself shows that the management has been adopting unfair labour practice to deprive the petitioners herein, of their lawful claims. Termination of the service of employees on the verge of their completing the necessary period itself was held to be an unfair labour practice by Punjab and Haryana High Court

in the Kapurthala Central Cooperative Bank Ltd., 1984 L.I.C. 974. All these aspects have not at all been taken into consideration by the Labour Court while rejecting the claim of the petitioners herein. It is contended by the petitioners that the 1st respondent had forgotten all the arguments during a lapse of 6 months between the date of argument and the date of judgment. In the above facts and circumstances of the present case such contention also cannot be brushed aside.

14. Therefore for all the aforesaid reasons and in the peculiar facts and circumstances of the present case and in view of my above discussions with regard to the various aspects of this case, and also in the light of the various decisions relied on by both the parties, I am of the clear view that the 1st respondent Labour Court has miserably failed to take into consideration the various crucial aspects of the matter and erroneously rejected the claim made by the petitioners herein and that therefore, the impugned award is liable to be quashed.

15. However, coming to the claim made by the petitioners herein, their prayer is for reinstatement with back-wages, as this Court has already come to the conclusion, these petitioners have been illegally retrenched without complying with the provisions of Section 25-F of the Industrial Disputes Act, the petitioners herein are entitled for reinstatement in the interest of justice. But at the same time, as far as the prayer for back wages is concerned, it is significant to note that the back wages can be awarded only in cases where it is proved beyond doubt that the persons in question were out of employment all these days. However, in the case on hand the petitioners herein are typist/sales assistants and nobody can say that such persons remained unemployed or out of employment all these days. That being so, in the case of the petitioners herein, back wages cannot be ordered. In this view of the matter I am of the considered view that the petitioners herein are entitled for reinstatement alone and they are not entitled to any back wages.

16. In the result, all the writ petitions are allowed. Consequently, the impugned Award dated April 17, 1989 in I.D.Nos. 172 of 1985, 138 of 1985 and 154 of 1985 passed by the 1st respondent is hereby quashed and the 2nd respondent management is hereby directed to reinstate all these petitioners herein within a

period of sixty days from the date of receipt of copy of this order. However, it is made dear that the petitioners herein are not entitled to any back wages. No costs.