

The Manager Vs. P.E.Amaravathi and anr.

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Court : Chennai

Decided On : Jan-28-2011

Judge : R.Banumathi, J.

Acts : Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workers) Act, 1981; Industrial Disputes Act - Section 33-C(2)

Appeal No. : W.P.No.10988 of 2003

Appellant : The Manager

Respondent : P.E.Amaravathi and anr.

Advocate for Def. : M/s.T.Fennwalter, Adv.

Advocate for Pet/Ap. : Mr.C.R.Dhasarathan, Adv.

Judgement :

ORDER

1. The petitioner seeks writ of certiorari to call for the records on the file of the second respondent viz., I Additional Labour Court, Chennai dated 11.9.2002 and made in C.P.No.313 of 1998 and set aside the same.

2. The case of the petitioner is that the respondent has entered into service of the petitioner's Federation as a part time Sweeper on 26.9.1975. Initially the petitioner was paid a sum of Rs.45/- only per mensem as consolidated pay and

subsequently the same was enhanced to Rs.60/- per mensum and thereafter to Rs.300/- per mensum with effect from 1.4.1991 and further enhanced to Rs.500/- per mensum with effect from 20.1.1997. For a part time sweeper, the working hours prescribed for her in a day is only 2 hours and the first respondent is not subject to any disciplinary action if she seeks employment anywhere else during the remaining hours. When the first respondent was not confirmed in her service as a part-time sweeper, she moved the appropriate authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workers) Act, 1981 and the said authority has passed an order on 18.11.1997 conferring permanent status to the petitioner with effect from 1.1.1982. The first respondent has been treated as a deemed permanent sweeper from 1.1.1982 and passed orders to the effect that the first respondent is entitled for the proportionate payment of arrears of salary at the rate of 1/4th of the salary fixed for the contingency post as well as in the time scale with effect from 1.6.1988. The said order was passed on 31.3.1998 and the same was served by the first respondent on 15.4.1998 and an amount of Rs.15,990-50 has already been paid to the petitioner on that account. Since the first respondent is a permanent part-time sweeper she is not entitled for other benefit as given to the full time employee of federation who are appointed in accordance with rules. In the Claim petition filed by the first respondent before the Second Respondent under Section 33-C(2) of the Industrial Disputes Act for computing the money value, the second respondent without considering the law, facts and circumstances of the case allowed the claim petition filed by the first respondent. Aggrieved by the same, the writ petition is filed.

3. Learned counsel for the petitioner submitted that based on the order passed by the Deputy Chief Inspector of Factories, permanent status was conferred upon the 1st respondent as part time sweeper with effect from 1.1.1982 and while so the first respondent cannot seek the benefits of full time sweeper. The learned counsel would further contend that from 1.1.1982 or on the date of passing order by the Deputy Chief Inspector of Factories on 18.11.1997, there was no sanctioned post of Full Time Sweeper and while so, the 2nd respondent erred in directing the petitioner to pay the salary to the 1st respondent as that of a full time sweeper. The main contention of the petitioner is that when there was no enforceable

existing right to receive the monetary benefit, petition filed under Section 33-C(2) of the Industrial Disputes Act is not maintainable.

4. Laying emphasis upon the order of Deputy Chief inspector of Factories dated 18.11.1997, the learned counsel for 1st respondent submitted that the 1st respondent was working as part time sweeper for more than two decades and permanent status was ordered to be conferred with effect from 1.1.1982 and the 1st respondent is entitled to receive the salary as that of full time sweeper. The 1st respondent was paid only a consolidated salary of Rs.400/- per month, whereas her juniors were being paid wages ranging from Rs.4,000/- to Rs.5,000/- per month in the time scale of pay, whereas the 1st respondent has not been given any other benefit given to other permanent workmen.

5. On the above submissions, the following two points arise for consideration:

"1. Whether the Labour Court had jurisdiction to entertain the petition filed under Section 33-C(2) of the Industrial Disputes Act and decide the undetermined claim?

2. Whether the Labour Court has erred in allowing the petition filed by the 1st respondent under Section 33-C(2) of the Industrial Disputes Act."

6. Points No.1 and 2:- Since the 1st respondent has been proved to be continuously working for 480 days in 24 months, by order dated 18.11.1997, the Deputy Chief Inspector of Factories passed the order directing conferment of permanent status from 1.1.1982 and further directed the writ petitioner to enter the name of the 1st respondent in form I. It is pertinent to note that even though the Deputy Chief Inspector of Factories ordered conferment of permanent status, there was no specific direction to regularise the services of 1st respondent and to bring her in the regular time scale of pay.

7. Based on the order of the Deputy Chief Inspector of Factories dated 18.11.1997, by the proceedings dated 31.3.1998, the writ petitioner Federation has passed the order conferring permanent status and posed the 1st respondent as "permanent part time sweeper". In the said proceedings, Federation has directed payment of 1/4th salary of the time scale of pay to the 1st respondent as

she has been working as part time sweeper. The said proceedings reads as under: "... Since Tmt. P.E. Amaravathy is only a part-time sweeper working only for two hours a day (for sweeping work) it is hereby ordered to pay her 1/4th of the salary in Rs.20/ + allowances with effect from 1.1.82 and 1/4th of the salary in the pre-revised time scale of pay of Rs.450-10-570-15-720 + allowances with effect from 1.1.87 and in the revised time scale of pay of Rs.750-12-870-15-945 + allowances with effect from 1.6.88 onwards, towards payment of arrears to Tmt. P.E. Amaravathy, Part-time Sweeper. Whenever there is revision in the time scale applicable to lower categories, 1/4th of the salary shall be paid on the enhanced scale of pay to her."

8. According to the petitioner - Management, the above said order has been served on the 1st respondent on 15.4.1998 and as per the said proceedings, a sum of Rs.15,990.50 was also paid to the 1st respondent. The case of Management is that since the 1st respondent is a permanent part time sweeper she is not entitled to other benefits, which are given to full time employees of the Federation, who are appointed in accordance with the rules.

9. According to the petitioner - management, there was no vacancy of any substantive post and the 1st respondent, being part-time sweeper, permanency was conferred as part time sweeper. It is pertinent to note that the 1st respondent has not challenged the above said order. But on 20.4.1998, she has straight away filed the petition under Section 33-C(2) of Industrial Disputes Act.

10. It is fairly well settled that a proceeding under Section 33-C(2) of the Industrial Disputes Act is in the nature of execution proceeding, wherein Labour Court calculates the amount of money due to workman from his employer or if the workman is entitled to any benefit, which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefits thereof. In State of U.P. v. Brijpal Singh ((2005) 8 SCC 58), the Supreme Court has held as under: "10. It is well settled that the workman can proceed under Section 33-C(2) only after the Tribunal has adjudicated on a complaint under Section 33-A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the

case of Punjab Beverages (P) Ltd. v. Suresh Chand (1978) 2 SCC 144 held that a proceeding under Section 33-C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. This Court further held as follows: (SCC p.150, para 4) It is not competent to the Labour Court exercising jurisdiction under Section 33-C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference under Section 10 of the Act.

11. According to the petitioner Management, in compliance with the order passed by the Deputy Chief Inspector of Factories, an order was passed conferring permanent status to the 1st respondent as part time sweeper. The right of 1st respondent to claim wages as full time sweeper is disputed. Whether by the order of the Deputy Chief Inspector of Factories, dated 18.11.1997 directing to confer permanent status to the 1st respondent, the services of 1st respondent are to be regularised and whether she has to be brought in the scale of pay are questions to be determined by the Labour Court. Normally, resolving of adjudication of those questions are the functions of the labour Court and not in a proceeding under Section 33-C(2), which are in the nature of execution proceedings. Since the proceedings under Section 33-C(2) of Industrial Disputes Act is more in the nature of execution proceeding, the Labour Court ought to have arrogated itself to the functions of the Labour Court in an Industrial Dispute.

12. Learned counsel for the 1st respondent forcibly contended that the juniors of the 1st respondent viz., Ariyamala and Nagammal are being paid wages as full time sweepers, but only the petitioner has not been given any other benefit as given to the other permanent workmen. According to the management, those two

sweepers were employed as full time sweepers against the substantive vacancy and the 1st respondent cannot claim salary on par with those regular sweepers. As pointed out earlier, the 1st respondent has not chosen to challenge the said proceedings dated 31.3.1998.

13. When the claim of 1st respondent and the amount payable to her were not determined and when serious questions were raised as to the quantum of amount payable to her, the Labour Court ought to have relegated the parties to work out the remedy in accordance with law. The labour Court erred in assuming jurisdiction in determining the disputed claim in the petition filed under Section 33-C(2) and therefore the impugned order of the Labour Court cannot be sustained.

14. As per the interim orders dated 9.4.2003 and 21.6.2004, the entire amount as awarded by the 2nd respondent has been deposited to the credit of C.P.No.313 of 1998 and further, as per the orders of the Court, the 1st respondent has also withdrawn 25 percent of the entire amount deposited.

15. For the fore-going reasons, the order of the Labour Court dated 11.9.2002 made in C.P.No.313 of 1998 is set aside and the writ petition is allowed. However, it is open to the 1st respondent to establish her right in accordance with law and it is made clear that the writ petitioner - Management shall not proceed to recover the amount withdrawn by the 1st respondent. No costs.

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