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**R.Kalidoss Vs. the Managing Director**

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**Court** : Chennai

**Decided On :** Mar-06-2012

**Judge** : K.Chandru, J.

**Acts** : Constitution of India - Article 226 ; Industrial Disputes Act - Section 25-F(a)(b)(1), 2(oo), 11(2)

**Appeal No.** : W.P.Nos.12225 of 2007 and 28011 of 2004

**Appellant** : R.Kalidoss

**Respondent** : The Managing Director

**Advocate for Pet/Ap.** : Mr.S.Thambi, Adv.

**Judgement** :

Prayer in W.P.No.12225 of 2007: Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondents to pass orders for reinstatement of the petitioners as per the award passed in I.D.Nos.40, 41, 42 and 43 of 1998 dated 12.12.2002 within a time to be stipulated by this Hon'ble Court. Prayer in W.P.No.12225 of 2007: Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarifi calling for the records of the 1st respondent in I.D.Nos.40 to 44 of 1998 dated 12.12.2002 received by the petitioner on 22.5.2003, quash the same.

COMMON ORDER

1. The 1st Writ Petition is filed by the four workmen seeking for a direction to the respondents Transport Corporation having their Headquarters at Coimbatore to implement the award in I.D.Nos.40, 41, 42 and 43 of 1998 dated 12.12.2002 within a time frame. That Writ Petition was admitted on 9.4.2007.

2. When that Writ Petition came up for hearing, as there was no proper representation on the side of the respondents Corporation, this Court was constrained to direct the Managing Director of the Transport Corporation at Coimbatore to appear before this Court. Accordingly, the said Managing Director appeared before this Court and it was brought to the notice of this Court that the direction to implement the award cannot be granted since the management has already filed a Writ Petition before this Court in the year 2004 and also obtained an interim order. In the second Writ Petition, the contesting respondents were also served as early as 19.11.2007 and after the notice was served, W.P.12225 of 2007 came to be filed. However, this Court informs the Managing Director of the Corporation that there is hardly any help in the matters concerning with the Transport Corporation and because of non-cooperation, the matter is adjourned from time to time. The said authority agreed that certain corrective steps will be taken for filing the appropriate returns so that the work of the Corporation is not forestalled.

3. In view of the fact that the Award has been challenged in W.P.No.28011 of 2004 and interim stay is also obtained in favour of the Corporation, W.P.No.12225 of 2007 cannot be countenanced. Hence, W.P.12225 of 2007 stands dismissed.

4. However, this Court considering that the matter has been pending for more than 8 years, that Writ Petition itself was directed to be posted to be heard along with the first Writ Petition. W.P.No.28011 of 2004 is filed by State owned Transport Corporation challenging the common award passed by the Labour Court, Coimbatore in I.D.Nos.40 to 44 of 1998 dated 12.12.2002. By the aforesaid award, the Labour Court directed reinstatement of the contesting respondents/workmen with continuity of service but without backwages. That Writ Petition was admitted on 30.9.2004. Pending the Writ Petition, this Court granted an interim stay.

Subsequently, the interim stay was made absolute by a subsequent order dated 12.3.2009.

5. It is seen from the records that the State owned Transport Corporation appointed the contesting respondents on a piece rate basis. All these respondents were children of the employees working in the Corporation and as per the affidavit's averment that the existing running staff were unable to check the invoices then and there and the invoices were received in the office subject to verification subsequently and it required the scrutiny of the invoices. For this purpose, adhoc employment was made without reference to the Employment Exchange. Admittedly the contesting respondents were employed during the year 1985.

6. In the case of one Kalidas,, legal heir of employee Ramasamy, was directed to work in audit section at Mettupalayam Branch. He was paid 30 paise per invoice at the time of joining and he was earning Rs.300/- per month. Thereafter, the services of the employees were transferred to the subsequently formed Bharathiar Transport Corporation, Ooty. But, despite their demand for regularisation, the Transport Corporation was avoiding to regularise their service. According to the contesting respondents, there were more than 20 workers, who were similarly placed and working from 1.2.1992. Some of these workers so appointed were subsequently given posting as Junior Assistant and they cited the case of M.Haridoss, son of Marappan Nadar. The four other workers namely S.Ananthi, P.Geetha, V.Kumarakuruparan and M.Senthilkumar left their service leaving only 16 workers. Though they were given promise, a news item also appeared in 'Malai Malar' Tamil Newsapaper dated 19.9.1995 about the possibility of their confirmation and they also confirmed the services of K.S.Amudha, S.Shanthi, S.Gomathi, J.Ganesh and T.Murugavel as Junior Clerks and deputed them to work in the Transport Corporation, which was functioning after bifurcation in the year 1994. They also subsequently confirmed the service of N.Sreenivasan, P.Mohanraj and G.Natarajan on 30.9.1995 and deputed them to work as Junior Clerk. But only 10 workers including the contesting respondents were left behind and their services were not confirmed. However, all these workers instead of being confirmed, were denied employment from 1.7.1997 and even after several

representations were made, there was no confirmation and they have also been terminated from service. Therefore, they raised an industrial dispute before the Labour Officer for conciliation. The Conciliation Officer after issuing Notice as he could not bring about mediation, gave a failure report.

7. On the strength of the failure report, each one of the workman filed a claim statement on 13.1.1998. Their dispute was registered as I.D.Nos.40 to 44 of 1998 and notices were issued to the Transport Corporation. The Transport Corporation filed identical counter statement dated 29.6.1998.

8. In the counter statement, they have stated that all these employees were not sponsored by the Employment Exchange and they were only adhoc employees and paid on piece-rate wages. It was admitted that M/s.Mallika, Yasoda and Sumathi, who were also similarly engaged on adhoc basis like the contesting respondents were subsequently appointed on regular basis. But, in their cases, their names were sponsored by Employment Exchange for subsequent recruitment and therefore, the workmen cannot compare themselves with those employees, who got their service regularised and subsequently made as Junior Clerks. Merely because they worked for sometime, the workmen cannot seek for any permanency. If any relief is granted to them, it would amount to accepting the back door entry. Thousands of unemployed youth were languishing without any employment and just because the contesting respondents wee employed on an adhoc basis for some time, they could not claim any special right. In Public Sector Enterprise, such back door entry cannot be entertained. Before the Labour Court, all industrial disputes were clubbed together and a joint trial was conducted.

9. In the disputes on behalf of the contesting respondents/workmen, 16 documents were filed and marked as Ex.W.1 to w.16. They also examined M/s.Krishnamoorthy (petitioner in I.D.No.44 of 1998) and Jogarabeevi (petitioner in I.D.NO.43 of 1998) as W.W.1 and W.W.2. On the side of the management, three witnesses were examined, namely M/s.Liagat ali, Swarnakumari and Murugesan as M.W.1 to M.W.3 and they also filed 18 documents and marked as Ex.M.1 to Ex.M.18.

10. The Labour Court on the basis of the materials placed before it came to the conclusion that the workmen having been engaged for more than 10 years, cannot be ousted from service without complying the mandatory requirement of Section 25-F of the Industrial Disputes Act. Since the workmen have completed more than 240 days of service in terms of Section 25-F of the Industrial Disputes Act in one year, in effect they have been working for 10-11 years and since the condition precedent under Section 25-F of the Act was not followed, the order terminating the service was void abinitio. It also found that even after the disengagement of the service of the workmen, audit section still continues to function. Therefore, it is not a case where the establishment was closed, for which they were sent out. Since the Corporation itself is a Government owned Company and it is a State, which comes within the meaning of Article 12 of the Constitution, any deprivation of the service of the workman must conform to Articles 14 and 21 of the Constitution and any illegal termination is a clear violation of Articles 14 and 21 of the Constitution.

11. The Labour Court also relied upon the judgment of the Supreme Court in D.K.Yadav vs. JMA. Industries Ltd., reported in 1993 II LLJ 696. The Court also found that the workmen have been without work for more than 5 years and some of them have crossed 55 years and it will be difficult for them to get any further job. The Court also found that in future, if their names were sponsored by the Employment Exchange, they must be given preference for a permanent employment. But, at the same time, in respect of the existing employment under which they were terminated, they are entitled for restoration of service in the same place as they were working. But, however, the Labour Court has deprived the backwages for the aforesaid period by the impugned award dated 12.12.2002.

12. It is not clear as to why the management chose to challenge the same after a period of two years and in the affidavit filed in support of the Writ Petition, no reason is assigned for their approaching this Court after a period of two years. The contentions raised in the affidavit were that they were casually employed and not sponsored by Employment Exchange. An additional ground is raised that there was no sanction post under which they can be restored to service. However, this Court is not inclined to accept any one of the contentions. Taking the last

contention as a first, namely want of sanction post, it is not a ground under which they can dispense with the service of the workman without complying all the provisions of the Industrial Disputes Act.

13. The Supreme Court had an occasion to consider the result of infraction of Section 25-F of the I.D.Act and not being followed by an employer even in case the persons, who were working in leave vacancy, vide its judgment in The State Bank of India, v. Shri N.Sundara Money reported in AIR 1976 SC 1111. In that case, the Supreme Court held that harmoniously if the workman completes 240 days of service within a period of one year, he is entitled to have protection under Section 25-F of the I.D.Act. Without complying with the mandatory provisions under Section 25F (a) and 25F (b) of the Act, any termination will become void abinitio. In such circumstances, the workmen are entitled to get service to the office, to which they were originally employees and therefore, want of sanction post cannot be a ground to deprive the workmen their legitimate right to get retrenchment compensation as a condition precedent for terminating the service. In paragraph 9, the Supreme Court had observed as follows:

9. A breakdown of Section 2(oo) unmistakably expands the semantics of retrenchment. Termination ... for any reason whatsoeverare the key words. Whatever the reason, every termination spells retrenchment. So the sole question is, has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. Maybe, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25-F and Section 2(oo). Without speculating on possibilities, we may agree that retrenchment is no longer terra incognita but area covered by an expansive definition. It means to end, conclude, cease . In the present case the employment ceased, concluded, ended on the expiration of one year ten months nine days automatically may be, but cessation all the same. That to write into the order of appointment the date of termination

confers no moksha from Section 25-F(b) is inferable from the proviso to Section 25-F(1) [sic 25-F (a)]. True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25-F and automatic extinguishment of service by effluxion of time cannot be sufficient. An English case R. v. Secretary of State3 was relied on, where Lord Denning, M.R. observed: I think that the word terminate or termination is by itself ambiguous. It can refer to either of two things either to termination by notice or to termination by effluxion of time. It is often used in that dual sense in landlord and tenant and in master and servant cases. But there are several indications in this para to show that it refers here only to termination by notice. Buckley, L.J. concurred and said:

In my judgment the words are not capable of bearing that meaning. As Counsel for the Secretary of State has pointed out, the verb terminate can be used either transitively or intransitively. A contract may be said to terminate when it comes to an end by effluxion of time, or it may be said to be terminated when it is determined at notice or otherwise by some act of one of the parties. Here in my judgment the word terminated is used in this passage in para 190 in the transitive sense, and it postulates some act by somebody which is to bring the appointment to an end, and is not applicable to a case in which the appointment comes to an end merely by effluxion of time. Words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened, we hold that the transitive and intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite order, one giving employment and the other ending or limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A pre-emptive provision to terminate is struck by the same vice as the post-appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision." With reference to the relief granted in such circumstances, in paragraph 10, it was observed as follows:

"10. What follows? Had State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the bank has to pay, for no service rendered. Even so,

hard cases cannot make bad law. Reinstatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw were he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be ranked below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any."

14. Very recently, the Supreme Court dealt with the termination of service of a workman working in the State owned Transport Corporation and emphasized the need for the Court to be more sensitive on the right of the deprived sections of the people and their need to keep in mind the Directive Principles of State Policy enshrined in Part IV of the Constitution. The Supreme Court vide its judgment in Harjinder Singh v. Punjab State Warehousing Corporation reported in (2010) 3 SCC 192 had observed as follows: "31. We shall now consider the question whether the provision contained in Section 11(2) of the Act operates against other debts like mortgage, pledge, etc. Answer to this question is clearly discernible from the plain language of Section 11. The priority given to the dues of provident fund, etc. in Section 11 is not hedged with any limitation or condition. Rather, a bare reading of the section makes it clear that the amount due is required to be paid in priority to all other debts. Any doubt on the width and scope of Section 11 qua other debts is removed by the use of expression all other debts in both the sub-sections. This would mean that the priority clause enshrined in Section 11 will operate against statutory as well as non-statutory and secured as well as unsecured debts including a mortgage or pledge. Sub-section (2) was designedly inserted in the Act for ensuring that the provident fund dues of the workers are not defeated by prior claims of secured or unsecured creditors. This is the reason why the legislature took care to declare that irrespective of time when a debt is created in respect of the assets of the establishment, the dues payable under the Act

would always remain first charge and shall be paid first out of the assets of the establishment notwithstanding anything contained in any other law for the time being in force. It is, therefore, reasonable to take the view that the statutory first charge created on the assets of the establishment by sub-section (2) of Section 11 and priority given to the payment of any amount due from an employer will operate against all types of debts.

32. The view we have taken on the interpretation of Section 11(2) is in tune with a series of decisions of this Court in which the provisions contained in different statutes giving priority to the dues of the State and workers have been interpreted. In the first place, we may refer to some decisions relating to dues of the State.

15. In view of the above, this Court do not find any case is made out to interfere with the impugned award. Hence, the Writ Petition No.28011 of 2004 stands dismissed. Since the matter has been pending for more than 10 years from the date of the Award, namely 12.12.2002 and the petitioner Corporation/management has obtained stay order, the petitioner Corporation is directed to comply with the award within a period of eight weeks from the date of receipt of a copy of this order.

16. In the result, both Writ Petitions are dismissed subject to the above directions. However, the parties are allowed to bear their own costs.

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