

The Superintending Engineer and Others Vs. Sree Ramulu and Others

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Court : Andhra Pradesh

Decided On : Aug-07-2012

Judge : L. Narasimha Reddy

Appeal No. : Writ Petition Nos.6080, 6092 & 6094 of 2001

Appellant : The Superintending Engineer and Others

Respondent : Sree Ramulu and Others

Judgement :

Common Order

The subject-matter of this batch of writ petitions is similar. Hence, they are disposed of through a common order.

The petitioners are Superintending Engineer and Executive Engineer, respectively, of Public Works Department, working in the Priyadarshini Jurala Project, Gadwal, Mahabubnagar District. The 1st respondent, in each of the writ petitions ((for short 'the workmen), raised Industrial Disputes, under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act'), before the Labour Court-III, Hyderabad. It was pleaded that they have been engaged as Man Mazdoor, on 26-03-1988, 26-02-1988 and 26-07-1988, respectively, on wages of Rs.14/- per day, and thereafter, the wages were increased to Rs.16.10 ps. It was also pleaded that they approached this Court complaining that their services have been terminated with effect from 28-06-1989, without following the procedure prescribed by law, though

they have completed 240 days of continuous service, by that time. The writ petitions were disposed of directing that the petitioners be continued in service, till terminated, in accordance with law.

The petitioners herein filed counters, opposing the cases. They pleaded that the workmen were engaged occasionally; purely on contract basis, and that daily wages were paid as and when their services were availed. The plea of the workmen, that they were in continuous service for more than 240 days, was denied. According to the petitioners, the question of following the procedure prescribed under Section 25 of the Act did not arise, since the workmen were not engaged on continuous basis, at all. The claim of the workmen that there existed vacancies, was also denied.

Through the awards dated 23-10-2000, 20-10-2000 and 24-10-2000 passed in I.D.Nos.184 of 1996, 183 of 1996 and 185 of 1996, respectively, the Labour Court has set aside the oral termination of the workmen and directed their reinstatement into service. Direction was given to treat their services continuously as NMRs from the date of filing of the industrial disputes. However, the back-wages were denied. The petitioners challenge the said awards.

Learned Government Pleader for Labour submits that the awards passed by the Labour Court are contrary to law and without any factual basis. According to him, the workmen did not adduce any evidence, to prove that they have been appointed on continuous basis, or that they have paid wages once in a month. He submits that they failed to prove that they continued in service for a period of 240 days. He submits that through catena of judgments, the Hon'ble Supreme Court held that even where the termination of a workman from service is found to be in violation of Section 25-F of the Act, the relief should have been granted only in the form of a direction for payment of lump sum amount and not reinstatement, that too, in a Government department, when no vacancies existed. He placed reliance upon some of the judgments of the Supreme Court.

Sri G. Vidyasagar, learned counsel for the workmen, on the other hand, submits that, an Officer, who worked as Executive Engineer, when the industrial disputes were taken up for hearing, has not only deposed as a witness, admitting the

factum of the engagement of the workmen, but also filed documentary proof, regarding payment of wages. He contends that the Labour Court has taken the correct view of the matter, and no exception can be taken to the awards.

The workmen raised industrial disputes under Section 2-A(2) of the Act, complaining of termination of their services, contrary to Section 25-F of the Act. The petitioners pleaded that the workmen were engaged occasionally, on daily wage basis, and that they were not appointed, much less on NMR basis.

In a dispute raised under Section 2-A(2) of the Act, with the complaint of violation of Section 25-F, the workman has to establish that he has been engaged by the employer, worked for a continuous period of 240 days, and that the employer terminated the services, without issuing notice of one month, or payment of wages, in lieu thereof. It is not necessary that the appointment must be through a written order, or payment of wages must be in a particular form. It would be sufficient, if the employment, even made through oral orders, and payment of wages, from time to time; are proved by adducing admissible evidence. In the instant case, except that the respective workmen deposed that they have been engaged orally, and were paid salaries from time to time, they did not adduce any other oral or documentary evidence, touching on the two important aspects, referred to above.

One curious aspect is that on reporting of closure of evidence by the workmen, a similar representation on behalf of the petitioners was made. However, at a later point of time, an application was filed on behalf of the petitioners, i.e., the employer, with a request to re-open the evidence. The application was ordered and an officer, by name, K. Suresh, deposed as a witness and filed a statement, dated 25-06-1989, pertaining to the service particulars of the workmen. It was marked as Ex.M1. No reference was made in the counter, filed by the petitioners herein to Ex.M1. It has originated from somewhere, and made its way to the Labour Court. Further, the person, who deposed as MW-1 did not work at that place, at the relevant point of time. Except the evidence of this gentleman, there is nothing, which could have come to the rescue of the workmen.

It may be true that an industrial dispute, raised before the Labour Court must be decided on the basis of the evidence on record, in its entirety. At the same time, the workman cannot be relieved from his obligation to prove the basic facts. He cannot depend upon the case of the other party. Things would have been different, had any statement been made in the counter, by the petitioners, admitting the case of the workmen. In such an event, the workmen would certainly be relieved of the obligation to prove their case, since admitted facts need not be proved. It is in this peculiar circumstances, that the case on hand stands.

The manner in which a statute, particularly, the one, providing for any welfare measures must be implemented or the nature of relief, to be granted in such matters, would mostly depend upon the interpretation placed by the Hon'ble Supreme Court and the High Courts, on the relevant provisions. More often than not, precedents fill life into the provisions, and indicate the nature of relief and the circumstances under which, it can be granted, under the provisions of the Act. The concepts of equal work for equal pay, regularization of services of an employee, who worked for a considerable time against an existing vacancy, and the other subsidiary principles were evolved through the catena of decisions. It is in this context, that the precedents relied upon by the petitioners, on the one hand, and workmen, on the other hand, need to be analyzed.

In **STATE OF MAHARASHTRA v. DATTATRAYA DIGAMBER BIRAJDAR** ((2007) 12 SCC 172), the Supreme Court held that neither the Labour Court, nor the High Courts can place the burden, to prove the basic facts, pertaining to initial employment or alleged wrongful termination; on the employer. In **SENIOR SUPERINTENDENT TELEGRAPH (TRAFFIC) BHOPAL v. SANTOSH KUMAR SEAL AND OTHERS** ((2010) 6 SCC 773), their Lordships of the Supreme Court were dealing with a case, where the workmen were said to have been in service for two or three years. Granting of relief of reinstatement into service was held to be justified. Instead, monetary compensation of Rs.40,000/-, to each of the workman, was granted. Similar approach was adopted in **BHARAT SANCHAR NIGAM LIMITED v. MAN SINGH** ((2012) 1 SCC 558).

In **DEVINDER SINGH v. MUNICIPAL COUNCIL, SANAUR** ((2011) 6 SCC 584), the Hon'ble Supreme Court explained the purport of Section 25-F of the Act, and held that once the infraction is proved, the relief of reinstatement into service is to be granted.

The facts of the present case disclose that the workmen did not prove that they have been in service, continuously for a period of 240 days, or that their services have been terminated. Further, the Labour Court has exceeded the scope of dispute before it, by directing that the workmen shall be treated as working on NMR basis. Even where the initial appointment and subsequent termination, contrary to Section 25-F of the Act are proved, such relief cannot be granted. Further, the cadre in a department of Government is fixed, and no person can be continued in service, unless the post is governed by an order. If the engagement is against the casual or seasonal vacancies, the concerned department can be required to avail the services of the same individuals, who have been engaged earlier.

Taking the totality of the circumstances into account, this Court is of the view that ends of justice would be met, if the awards are modified, providing for a direction to the petitioners to pay the lump sum of Rs.1 lakh (Rupees one lakh only) to each of the workman, and a further direction to avail the services of the workmen, in case the persons are appointed or engaged for works, for which they were engaged earlier.

Hence, the writ petitions are partly allowed, modifying the awards passed by the Labour Court to the one of payment of lump sum of Rs.1 lakh (Rupees one lakh only) to each of the workman, within a period of two months from today; in lieu of the relief of reinstatement into service. It is also directed that, in case the necessity arises for the petitioners to avail the services of the persons for the works, which were entrusted to the workmen earlier, they alone shall be engaged.

The miscellaneous petitions filed in these writ petitions shall also stand disposed of.

There shall be no order as costs.

