S. Mohan Vs The Presiding Officer, Labour Court and The Management, Thanthai Periyar Transport Corporation

Court: Madras High Court

Date of Decision: Jan. 30, 2004

Acts Referred: Constitution of India, 1950 â€" Article 226

Citation: (2004) 2 LLJ 923

Hon'ble Judges: K.P. Sivasubramaniam, J

Bench: Single Bench

Advocate: J. Saravana Vel, for P.V. Bakthavatchalam, for the Appellant; J. Arulraj, R-2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.P. Sivasubramaniam, J.
The petitioner prays for the issue of a writ of Certiorarified Mandamus, to call for the award passed by the first

respondent in I.D.No.86/94 dated 23.5.1995,quash the same and to direct the second respondent to appoint the petitioner in a suitable post

protecting his last drawn pay with all the arrears of pay and attendant benefits.

2. The petitioner joined service in the second respondent corporation as driver on 29.6.1990 on daily wages of Rs.40/-. A new order of

appointment dated 5.10.1991 was issued to the petitioner and he was posted to Pondicherry Branch and his posting order was issued on

17.10.1991. He had completed all the requirements of making caution deposit, contribution to Medical College and Engineering College and the

other deposits as required under the order of appointment. On 6.4.1992 at midnight, while he was driving the bus towards Madras, one lorry

coming from the opposite direction in rash and negligent manner, dashed against the bus and the petitioner suffered injuries on his right eye. The

injury resulted in the petitioner completely losing his vision of his right eye.

3. The petitioner was sent for medical examination and the Medical Board certified that the condition of the petitioner"s eye rendered him unfit for

being continued as a driver, though otherwise the petitioner"s physical condition was normal. A show cause notice was issued on 20.1.1993 calling

upon the petitioner why he should not discharged from service. The petitioner sent a reply to the management with also request for an alternate job

after explaining his family situation. According to the petitioner, the management passed an order on 5.3.1993 discharging the petitioner from

service on medical grounds. Therefore the petitioner raised an Industrial Dispute.

4. The Labour Court on an analysis of the mutual contentions held that the petitioner was not entitled for reinstatement. In terms of

G.O.Ms.No.746 dated 2.7.1981 directing the Transport Corporation to provide alternate employment for persons certified as medically unfit, the

said G.O. could be applied only for employees who had put in more than six years of service. As the petitioner did not satisfy the said requirement,

the Labour Court held that the petitioner was not entitled for reinstatement in service. Hence the above writ petition.

5. Learned counsel for the petitioner after referring the facts , contended that the obligation of the employer to provide an alternate employment

was applicable to all the employees irrespective period of service. In the present case, the disability suffered was not due to any personal or

individual reason, but only due to and while discharging his services in the course of employment of the petitioner. He had suffered disability only

while performing his duties and hence the Corporation cannot seek to apply G.O.Ms.No.746 dated 2.7.1981 and the modified

G.O.Ms.NO.1387 dated 11.11.1989 which required a minimum period of six years of service.

6. Learned counsel for the petitioner also relies on the provisions of the The Persons with Disabilities(Equal Opportunities, Protection of Rights and

Full Participation) Act 1995(herein after referred to as ""Act"")and relies particularly on Section 47. In terms of Section 47, the learned counsel for

the petitioner contends that if an employee after acquiring disability is found not suitable for the post , he was holding, he should be shifted to some

other post with the same pay scale and service benefits. Learned Counsel also relies on the Judgment of the Supreme Court in Narendra Kumar

Chandla Vs. State of Haryana and others, . In that case, the arm of the employee had to be amputated and thereafter he was unable to perform the

duties of the post he was holding. The Supreme Court held that the employer must adjust and post him in a suitable post and protect his last drawn

pay. Learned counsel for the petitioner submits that the above Judgment was rendered even before the aforesaid Act came into force.

7. Further reference is made to the Judgment in Kunal Singh Vs. Union of India (UOI) and Another, . While interpreting the provisions of the Act,

Supreme Court held that the Service Rule governing the employee was held to be not applicable in view of the provisions of the Act and that the

petitioner was entitled to be given an alternate employment in terms of Section 47 of the said Act.

8.Reliance is also placed on Judgment of Mr.Y. Venkatachalam,J dated 23.7.1997 in (S. Gopalan -vs- The General Manager, Thiruvallur

Transport Corporation, Pallavan Salai, Madras-2 and others) and also the Judgment of Mr E.Padmanabhan,J, in W.P.No7820 of 1999 dated

10.12.1999 (Allimuthu-vs-State of Tamil Nadu rep.by its Secretary Transport Department, Secretariat, Chennai).

9. Mr.Arulraj, learned counsel appearing for the 2n respondent contends that the said Act is applicable only prospectively and it came into force

with effect from 17.2.1996, whereas the petitioner had incurred the disability in the year 1993 itself. Therefore, the provisions of the Act as well as

the Judgments relied on by the learned counsel for the petitioner which are based only on the provisions of the said Act, cannot be applied to the

facts of the present case.

10. Learned counsel for the respondent also referred to the appointment order dated 5.10.1991 and contends that the petitioner was engaged only

as a casual worker and therefore he was not entitled for the benefits to which only the permanent employees are eligible. Reference is made to

Clause 1(iii)which is to the effect that if he is found unfit by the Medical Board, he will be discharged from duty without any notice. Further

reference is also made to Clause 2(iii) holding that the appointment was liable to be terminated at any time wihtout assigning any reason and

without giving any notice. Therefore, on the strength of the appointment letter, learned counsel for the 2nd respondent contends that the

employment being purely casual and temporary, the petitioner is not entitled to any relief.

10. Reliance is also placed on Section 2(oo)(bb) of the Industrial Disputes Act and learned counsel contends that the definition ""retrenchment"" will

not include termination of the service of a workman as a result of the non renewal of the contract of employment between the employer and the

workman. In this context, reference is also made to the Judgment of Supreme Court in M.Venugopal - vs- L.I.C.Of India reported in 1994(1)

L.L.J.597.

10.I have considered the submissions made by both parties.

11. It is true that the provisions of the Act came into force only on 17.2.1996 but the provisions of the Act relate to welfare measures to provide

relief to the employees who have suffered disability while in the course of performing their duty. In this case, it is not disputed that the petitioner

suffered the disability only while performing his duty and it is also not the case of the respondents that the petitioner was in any manner responsible

for the accident. Therefore,the duty of the employer to provide alternate employment, is obligatory and the employer has to do so even in the

absence of the Act. It is not as though the such a right in the employee was envisaged by the courts only in the context of the provisions of the Act.

Even prior to the passing of the Act such directions have been issued by the Supreme Court and many High Courts in order to ameliorate the living

conditions of the employees. It was felt not proper for the management to discharge the services of the employees who had worked for the

establishment and leave them without any job or livelihood only on the ground that the employee had suffered disability, ignoring that the disability

was incurred only while performing his duties for the employer.

12. Therefore, the principle that the employer should provide an alternate employment is inherent to the service conditions and does not depend

only on the provisions of the Act. The background in which the said Act came to be enacted has to be borne in mind and such a welfare measure

cannot be denied only on the interpretation that the Act was only prospective. A distinction has to be made in favour of employees who had

become disabled only in the course of performance of their duties in contrast with an employee becoming disabled due to his own personal

conduct or health reasons.

13. Now coming to the objection of the learned counsel for the second respondent that the employment of the petitioner was only temporary, a

perusal of the order shows that the employment was not as simple as that of a casual employee. The employment is always initially on temporary

basis. It cannot be denied that after the petitioner completes his probation, his services are entitled to be made permanent. Such an employee

cannot be treated as a casual employee. Otherwise, there is no justification for receiving various deposits from the petitioner not only towards

caution deposit but also contributions for the Medical College and Engineering College which are run by the Corporation. Therefore, the mere fact

that the petitioner had incurred the disability before he could be made permanent cannot result in depriving the petitioner"s rights to be made

permanent and the rights of a permanent employee.

The fact remains that in our counry we are confronted with innumerable instances of employees being kept only in temporary capacity for many

years together without any justification in spite of the courts repeatedly pointing out that it amounts to unfair labour practice. The post to which the

petitioner was appointed is not a seasonal or project based appointment but regular in nature.

14. The ground on which the Labour Court had denied the relief namely in terms of G.O.Ms.No.746 dated 2.7.1991, and G.O.ms.No.1387

dated 11.11.1989 the employee should have put in minimum period of six years of service, cannot also made applicable to the facts of the present

case at least for two reasons. Firstly, the object of the Act is a social Welfare measure and the Act will prevail over the said Government Orders.

Secondly, the disability incurred by the petitioner in this case is not due to his own personal or health causes but while performing his duty to the

Corporation. Therefore, any such artificial requirement of period of six years in service cannot be held to be valid in the case of an employee who

had suffered disability while performing his duties for the benefit of the employer.

15. On the issue of definition of ""retrenchment"" u/s 2(oo)(bb) of Industrial Disputes Act that provision is applicable to only employment under

Contract. The employment under Contract is undoubtedly for a specific period and cannot be treated as a regular employment. Therefore, the

principles relating to the retrenchment of the employees are held to be not applicable in respect of employees under Contract. The petitioner in this

case cannot be termed as an employee under contract. He is a regular employee subject only to the successful completion of the probation and the

prescribed period to be regularised in service. Therefore, the decision of Supreme Court in 1994(1)L.L.J.597 cannot be applied to the facts of the

petitioner"s case.

16. Therefore, I am inclined to hold that the petitioner is entitled to succeed in the writ petition and the 2nd respondent has to be directed to

reinstate the petitioner. However, the claim of backwages cannot be sustained as the petitioner had not rendered any services and hence, there is

no justification for awarding any backwages.

17.With the result, the above writ petition is allowed with a direction to the 2nd respondent to give suitable employment to the petitioner with effect

from 1.1.2004 with continuity of service without any break. It is made clear that he will not be entitled to any wages retrospectively prior to

1.1.2004. No costs.