A. Krishnan kutty and 10 Others Vs General Manager, K.S.R.T.C. and 5 Others

Court: High Court Of Kerala

Date of Decision: July 13, 1981

Acts Referred: Industrial Disputes Act, 1947 â€" Section 2(a), 2(j), 2(oo), 25(j), 25F

Citation: (1982) KLJ 119

Hon'ble Judges: T. Chandrasekhara Menon, J

Bench: Single Bench

Advocate: M. M. Cheriyan, George Jacob and Asok M. Cheriyan, for the Appellant; George Mathew Kalapurakkal, for the Respondent

Judgement

T. Chandrasekhara Menon J.

1. Petitioners were functioning as Reserve Drivers recruited through the Employment Exchange under the Kerala State Road Transport

Corporation. They were Originally appointed for a period of 89 days, then immediately re-appointed with the break of a day for a period of one

or two similar terms. Their services terminated on different dates during the period from June 1980 to December 1980. Petitioners contend that

such termination is retrenchment in accordance with the provisions of the Industrial Disputes Act, 1947, here in after called "the Act". Therefore,

such retrenchment retaining their juniors in the same category are illegal and ab initio void. Therefore it is contended that the petitioners are entitled

to be declared as continuing in service without any break and entitled for reinstatement with back wages.

2. According to them, Kerala State Road Transport Corporation is a "State" coming under Article 12 of the Constitution of India. It is also an

Industry falling within the definition of section 2(j) of the Act. The petitioners are workmen u/s 2(a) of the Act. It is contended that their services

cannot be terminated in violation of the provisions of Chapter VA of the Act. The provisions of that Chapter shall have effect notwithstanding

anything inconsistent therewith contained in any other law or contract as laid down in Section 25 (j) of the Act. The termination, as earlier pointed

out, the petitioners would contend were retrenchment as defined u/s 2(oo) of the Act When the services of the petitioners were terminated,

persons recruited as Reserve Drivers through the Employment Exchange subsequent to the petitioners'' recruitment, who were juniors to the

petitioners, were continuing in service. The termination of the petitioners'' services retaining their juniors would render the termination illegal and

void since it violates the mandatory provisions contained in Section 25G of the Act.

3. Where an employee even in cases where he has not completed one year continuous service is sent out, he is entitled to the protection of Section

25G of the Act. Though he may not be entitled to protection u/s 25F of the Act, the procedure laid down therein insisting on the observance of the

principle of last come first go will have to be strictly followed by the employer if the retrenchment is to be regarded as valid. It is contended that

section 25G like section 25F is also mandatory, and violation of which would render the termination ab initio void and no nest in law. When the

petitioner''s services were terminated there existed permanent vacancies to the post of Drivers. The petitioners services were terminated not

because they have become surplus in the undertaking. In fact their services were terminated to appoint fresh recruitees from the Employment

Exchange and other sources and such recruitees were taken also after retrenching the petitioners. The employer''s right to retrench his employee

can be validly exercised only where it is shown that any employee has become surplus in the undertaking. It is contended that the retrenchment of

the petitioners'' services were invalid because they have not become surplus in the undertaking when they were retrenched.

4. Further it is submitted that u/s 25H of the Act, where any workmen are retrenched, and the employer proposes to take into his employment any

persons, he shall give an opportunity to retrenched workmen to offer themselves for re-employment before taking fresh hands. This procedure had

not been followed by the respondents while taking fresh hands in the same category of Reserve Drivers on purely a temporary basis. It is therefore

submitted on behalf of the petitioners that in not appointing the petitioners in the post of Reserve Drivers in preference to new hands though

recruited through the P.S.C. which is only another agency like the Employment Exchange for recruitment, violates Section 25H of the Act. Persons

recruited through the P.S.C. cannot have any better rights than persons recruited through the Employment Exchange if the recruitment is to the

same category, namely temporary Reserve Drivers.

5. Petitioners pray for a declaration that the termination of services of petitioners retaining their juniors in the category of Reserve Drivers violated

Section 25G of the Act and are illegal and void. It is also prayed to issue a writ in the nature of mandamus directing the respondents to reinstate the

petitioners in service and treat them as continuing in service without any break from the date of termination and pay them all arrears of wages; to

issue a declaration that the petitioners are entitled to be reappointed u/s 25H of the Act before any other new person is appointed to the category

of Reserve Drivers, and for a writ of prohibition restraining the respondents from appointing any person as Reserve Drivers through whatever

source they are recruited, before the petitioners are recruited.

6. The respondents are the General Manager, Kerala State Road Transport Corporation, Trivandrum and five District Transport Corporation

Officers under whom the petitioners work.

7. A detailed counter affidavit had been filed by the Law Officer of the K.S.R.T. Corporation. It is stated therein that the petitioners were Reserve

Drivers appointed temporarily for various periods through the Employment Exchange, and they were not employed as Reserve Conductors as

stated in the petition. Their services were terminated at that time as they were employees temporarily appointed under 9(a)(i) of the K.S.S.R. Such

appointees do not get any right to the posts to which they are appointed, except to the remuneration as per the contract of appointment. The

extension of the definition of retrenchment to temporary employees was not available to the petitioners, at the time of termination of their services.

This Court in O.P. No. 3747(79 etc. had repelled the contention raised on behalf of the petitioners therein that the termination of their services

would constitute retrenchment under the Act. It is therefore submitted that the contention, that their services were terminated in violation of Section

25G of the Act is without merit. In fact, what the first respondent contents is that the termination did not constitute retrenchment according to the

law as it then stood. The petitioners'' at the time of termination of their services were governed by the law as it stood then. It is pointed out that the

first respondent Corporation has disputed the applicability of the provisions of the Act to the petitioners in those cases similar to the petitioners in

this O.P. and had contended that the decision of the Supreme Court reported in AIR 1980 S.C. 1219 is not applicable to the facts of the case

which decision had been relied on by the Division Bench of this Court. Appeals had been filed in the matter before the Supreme Court, which are

now pending. It is also pointed out that the petitioners in the O.P.s where they got a favourable decision and where the Corporation had taken up

the matter in appeal to the Supreme Court, are still forced to stand out of service on account of the order of the Supreme Court of India, copy of

which is marked as Ext. R1. It is stated in Ext. R1 that the status quo as obtaining between the parties in the case regarding the subject matter of

dispute shall continue pending further orders.

8. The Corporation also contends that this Court had refused to pronounce upon the applicability of section 25H of the Act in the case of the

petitioners in O.P. Nos. 2134 of 1980 and 1951 of 1980 where the applicability of Section 25G alone was declared. About 20 writ petitions have

been allowed by this court following the judgment in the above O.P.s. In spite of the applicability of Section 25H of the Act, having been

canvassed in quite a few of those petitions, this court has not so far thought fit to declare that Section 25H is applicable in the case of temporary

employees who have not put in one year"s continuous service. Therefore, the petitioners are not entitled to any of the reliefs prayed for. It is also

submitted that P.S.C. recruits are permanent appointees, unlike the petitioners who are only temporary hands appointed through the Employment

Exchange. They belong to different categories standing on entirely different footing. On no account can the employment exchange hands be said to

have preferential claims over the P.S.C. recruits. Such a contention, if conceded would also undermine the basis of the principle of appointment

through the P.S.C. (ADDITIONAL Functions as Respects the K.S.R.T.C.) Act, 1970. It is also brought to the notice of the court that the

Corporation have made various appointments of Reserve Driver from the Employment Exchange subsequent to the dates on which the petitioners''

services were terminated. The petitioners have not chosen to challenge those appointments so far. In fact, by their conduct they have acquiesced in

the subsequent appointments and have forfeited their claim, if any, to any preferential treatment u/s 25H of the Act. They are also estopped from

claiming any such benefit at this distance of time. It is also stated that they have not attempted to explain in the affidavit or in the O.P. the long delay

in seeking redressal of their grievances if any. As such they are guilty of inexcusable delay and laches in approaching this court and they should be

denied the reliefs.

9. After hearing counsel for the petitioners and the Corporation, I am of opinion that the petitioners should be entitled to get the benefits u/s 25H .

Though the petitioners could have got the benefits u/s 25G and they would have been entitled to the relief of reinstatement, treating them as

continuing in service without any break from the date of termination, further getting entitled to all the arrears of wages, by their laches in not coming

to the court in time, the petitioners cannot get themselves reinstated now. They have come to the court after periods ranging from 8 to 4 months

after the termination of their services. Nor could these temporary hands be equated to the regular recruits selected by the P.S.C. I agree with the

contentions raised on behalf of the Corporation that while P.S.C. recruits are permanent appointees unlike the petitioners who are only temporary

hands appointed through the Employment Exchange, belonging to a different category their rights stand on entirely different footing and cannot be

equated. But as between subsequently selected employment exchange hands and the petitioners, both of whom are to fill up temporary posts,

petitioners should be entitled to benefit of Section 25H . This follows from the decision in Santosh Gupta Vs. State Bank of Patiala, the impact of

which in the case of temporary employees similarly situated as petitioners has been explained in Prabhakaran v. General Manager, K.S.R.T.C. (

1981 KLT 164) I would quote the head note in full in that case.

The termination of their service would constitute retrenchment notwithstanding the fact that they are temporary employees appointed only for the

duration of the time specified in orders of appointment. The expression ''retrenchment'' must include every termination of the service of a workman

by an act of the employer irrespective of the nature of the reason for such termination.

The legislative intent and purport underlying in S. 25F is distinct and different from that of S. 25G and we see no warrant whatever for restricting

the scope of S. 25G by reading into it a limitation that the benefit of the Section would be available only in respect of workmen who satisfy the

condition regarding the length of continuous service specified in S. 25F . Such an interpretation which involves adding into the Section words which

are not there has to be avoided by the court particularly in the matter of construction of a piece of social legislation intended to confer benefits such

as security of tenure and other safeguards in favour of workmen. In our opinion S. 25F will get attracted to all cases of retrenchment and the

procedure laid down therein insisting on the observance of the principle of last come first go will have to be strictly followed by the employer if the

retrenchment is to be regarded as valid save in cases covered by the last portion of the Section namely, where for reasons to be recorded, the

employer retrenches any other workman.

R. 9(a)(i) being totally silent about the manner and order in which termination of the service of temporary employees, appointed under that rule if to

be effected, we do not see how it could be successfully contended by the respondent that the provisions in the said rule, when read into contracts

of appointment of the petitioners, constitute an agreement to the contrary between the employer and the workmen so as to exclude the applicability

to S. 25G .

What is enjoined by S. 25G is that while effecting retrenchment from amongst personnel belonging to any particular category the procedure laid

down there should be followed and having regard to the object and purpose underlying the said prescription made by Parliament it is wholly

immaterial whether the employment of the workmen concerned is on a temporary or permanent basis. Accordingly, we hold that the provisions of

S. 25G are applicable in respect of temporary employees.

10. What is said about Section 25G of the Act would be applicable to Section 25H ; I would here quote Section 25G and 25H .

25G. Procedure for retrenchment - Where any workman in an industrial establishment who is a citizen of India, is to be retrenched and he belongs

to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf,

the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the

employer retrenches any other workman.

Section 25H . Re-employment of retrenched workmen - Where any workmen are retrenched, and the employer purposes to take into his employ

any persons, he shall, in such manner may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer

themselves for re-employment and such retrenched workmen who offer themselves for re-employment shall have preference over other persons.

11. The fact that benefits u/s 25H were not canvassed in some earlier writ petitions is no ground for denying the petitioners relief here. I am not

able to understand the contention raised on behalf of the first respondent that the extension of the definition of ''retrenchment'' to temporary

employees was not available to the petitioners. The decisions in Santosh Gupta Vs. State Bank of Patiala, and 1981 KLT 164 should be taken to

be the declaration of the correct law on the matter and the plea advanced that the termination of the service of the petitioners being before the

pronouncement of the judgment in 1981 KLT 164, they cannot contend that they should have been given the benefit of a subsequent judgment, is

only to be stated to be rejected. In the circumstances I would declare that the petitioners are entitled to be reappointed u/s 25H of the Act before

any other new person is appointed on a temporary basis on the advice of the Employment Exchange to the Category of Reserve Drivers and a writ

of prohibition is issued restraining the respondents from appointing any other person as temporary Reserve Driver as advised by the Employment

Exchange before the petitioners are absorbed to such post.