(2011) 09 MAD CK 0114

Madras High Court

Case No: Writ Petition No. 4517 of 2002

Vijaya Bank Workers Organisation		APPELLANT
	Vs	
Central Government Industrial Tribunal-cum-Labour Court and The Management by Vijaya Bank		RESPONDENT

Date of Decision: Sept. 28, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 16
- Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 - Section 3
- Industrial Disputes (Central) Rules, 1957 - Rule 58
- Industrial Disputes Act, 1947 - Section 12(4), 18(1), 2, 25B, 25F
- Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 - Section 46

Hon'ble Judges: T. Raja, J

Bench: Single Bench

Advocate: K.M. Ramesh, for the Appellant; C.Seethapathy, for R2, R1 - Court, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T. Raja, J.
The Petitioner herein seeks for issuance of writ of certiorari to call for the records relating to I.D. No. 25 of 2000 including the award dated 27.11.2001 and to quash the same.

2. It is seen that Smt. R. Palayammal has worked continuously as a part-time sweeper right from 16.12.1995 onwards and continued to work upto 04.03.1999 and thus, she has completed more than 1175 days of continuous service as temporary part-time sweeper in the Respondent bank. Even before 1995, she was also working in the Respondent bank at various other branches of the Respondent viz., Mount Road, Adyar, Saidapet, Venkatanarayana Road and Vadapalani, and the total service rendered in all the above said branches from 25.10.1990 to 01.09.1994 has again amounted to another 294 days. During the said days, the Respondent bank was paying only a paltry sum of Rs. 20/- to Rs. 25/- per day on weekly basis and this practice commenced since 16.12.1995, which was the initial date of appointment of the said workman, and continued till 04.03.1999. Whileso, they have decided to fill up the above said post of part-time sweeper at the Anna Nagar branch, but without considering the long and continuous services rendered by Smt. R. Palayammal as a part-time sweeper, the Respondent bank, by its order dated 04.02.1999, appointed one Sri. K. Sampath in 1/3rd scale wages in the said branch as part-time sweeper. Thereafter, the Respondent bank had chosen to terminate the services of Smt. R. Palayammal, and as a result of the unjust and unreasonable act of the Respondent bank, the Petitioner-union raised an Industrial Dispute on 19.02.1999, and the first conciliation proceeding was held on 13.03.1999, followed by subsequent meetings held on 12.04.1999, etc., which did not prove any positive results. Finally, the Conciliation Officer submitted a report, on failure of conciliation, to the Ministry of Labour on 18.08.1999, u/s 12(4) of the Industrial Disputes Act, 1947. The Government of India, Ministry of Labour, vide its communication bearing No. L-12011/118/99/IR (B-II), dated 14.01.2000, has informed the Petitioner union that the said dispute is not fit for adjudication, for the reason that the instant dispute has been pending before the High Court, Madras, vide W.P. No. 3345 of 1994. Thereafter, the Petitioner-union submitted a detailed representation dated 28.02.2000, to the Government of India, Ministry of Labour, reiterating that the industrial dispute relating to the termination of concerned workman is an independent one from that of the writ petition pending before the High Court, Chennai, and requested the Government to refer the same for adjudication. On reviewing the matter, the Government of India, Ministry of Labour, by issuing a fresh order dated 21.06.2000, referred the said dispute for adjudication to the Central Government Industrial Tribunal Cum Labour Court, Chennai / first Respondent herein. On consideration, the first Respondent refused to consider the claim made by the Union. Therefore, the Petitioner-Union has filed the present writ petition seeking to quash the order passed by the first Respondent.

3. Learned Counsel appearing for the Petitioner submitted that the first Respondent ought to have seen that, under the provisions of the Industrial Disputes Act, even part-time workmen are entitled to various benefits and they can also raise an Industrial Dispute with regard to the termination and in that regard, Smt. R. Palayammal is entitled to be reinstated as part time sweeper with full backwages and such a relief cannot be denied under the provisions of the Industrial Disputes Act.

4. In his further submission, by citing Section 25-F of the Industrial Disputes Act, wherein it was prescribed that no workman employed in any industry, who has been in continuous service for not less than one year under an employer, shall be retrenched by that employer, contended that the first Respondent should not have dismissed the claim of Smt. R. Palayammal, since she was continuously working right from 16.12.1995 till 04.03.1999 and thus, she has also completed more than 1175 days of continuous service as temporary part-time sweeper in the Respondent bank.

5. In support of his submission, he has also relied upon a judgment of the Apex Court in Harjinder Singh Vs. Punjab State Warehousing Corporation, , and also another judgment of this Court in Syndicate Bank v. The Presiding Officer CGIT Chennai and Anr. 2011 (3) LLN 682 (Mad.), for a preposition that once there is a valid State enactment providing for relief to such of those workmen deemed permanency to those who had completed 480 days of service within a period of two calendar years, then such workmen getting permanent status cannot be questioned by any management and such conferment of permanent status to the said workmen cannot be labelled as violation of Articles 14 and 16 of the Constitution of India.

With the aforesaid submissions, he prayed for setting aside the award passed by the first Respondent-Tribunal.

6. Per contra, Learned Counsel appearing for the Respondents submitted that when the Respondent Bank have taken steps to recruit permanent part-time sweepers, the Petitioner herein has filed a writ petition in W.P. No. 3345/1994 before this Court praying for the issuance of a writ of mandamus directing the Bank not to make appointment of persons other than those who are working or have worked as temporary part-time sweepers in permanent vacancies and other than those who are working as Scavengers permanently until they are made permanent as part-time sweepers in scale wages. In the said writ petition, Smt. R. Palayammal was one of the employees. this Court, by order dated 01.03.1994, granted an order of interim injunction against the Respondent bank, however, the said order made it clear that it was open to the Respondents to first absorb 8 part-time sweepers and then to go for open market recruitment. Aggrieved by the same, the Bank filed a petition to vacate the aforesaid interim order dated 01.03.1994, but the same was rejected, making the interim order dated 01.03.1994 as absolute. Again, when another miscellaneous petition was filed by the Bank, this Court, by order dated 04.09.1998, permitted the Bank to conduct the interview with a condition that the appointments should not be confirmed until further orders. Subsequently, when the Petitioner-union filed another miscellaneous petition praying for an interim injunction restraining the Bank from considering any other person for appointment to the post of part-time sweeper without considering the candidates who were working on temporary basis, pending disposal of the said writ petition No. 3345 of 1994, this Court, by order dated 12.08.1998, rejected the said petition, by making it clear that whatever appointment is made by the Bank, pending disposal of the writ petition, would be subject to the result of the writ petition. The Petitioner deleted her name from the earlier writ proceedings.

However, this Court dismissed the main writ petition itself, namely, W.P. No. 3345 of 1994. He further submitted that the relief claimed in the said writ petition is identical to the one that was claimed before the first Respondent. Moreover, Smt. R. Palayammal was a party to the writ petition, when the I.D. was raised. In the writ petition, the Petitioner has made a prayer only to quash the award dated 27.11.2001 passed by the Tribunal, but has not made any prayer to reinstate Smt. R. Palayammal into the services of the Bank as a part-time sweeper in the services of the Bank with full backwages. Therefore, the Petitioner is not entitled to claim the said relief, and hence, he prayed for dismissal of the writ petition.

7. Heard the Learned Counsel appearing on either side and perused the materials available on record.

8. In the given facts and circumstance of the case, it is useful to refer Section 25-F of the Industrial Disputes Act, 1947, which is extracted as under:

25F.Conditions precedent to retrenchment of workmen---No workman employed in any industry who has been in continuous service for not less than one yea runderan employer shall be retrenched by that employer until---

a) the workman has been given one month''s notice in writing indicating there as ons for retrenchment and the period of notice has expired,or the work man has been paid in lieu of such notice,wages for the period of the notice:

b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days'' average pay for every completed year of continuous service) or any part there of in excess of six months;and

c) notice in the prescribed manner is served on the appropriate Government (or such authority''s may be specified by the appropriate Government by notification in the Official Gazette.

In the instant case, the said Smt. R. Palayammal has been working in the respondent bank right from 16.12.1995 till 04.03.1999, and thus, she has completed more than 1175 days of continuous service as temporary part-time sweeper in the Respondent bank. Even before 1995, she was also working in the respondent bank at various other branches of the Respondent viz., Mount Road, Adyar, Saidapet, Venkatanarayana Road and Vadapalani, and the total service rendered in all the above said branches from 25.10.1990 to 01.09.1994 has again amounted to another 294 days. Yet another admitted fact is that, during the service of Smt. R. Palayammal in the post of part-time sweeper, the Respondent bank has appointed one K. Sampath in the said branch as part-time sweeper on 04.02.1999. After appointing the said person, the Respondent bank has terminated the service of the said Smt. R. Palayammal and, by that time, she has completed more than 1175 days of continuous service and having completed more than 1175 days of continuous service in three consecutive calendar years, I am of the

considered opinion that non employment of R. Palayammal amounts to retrenchment as defined in Section 25-F of the Act, for, at the time of terminating the service of Smt. R. Palayammal as part-time sweeper, they have not complied with the provision of Section 25-F of the Act.

9. One another fact remains herein is that, the Respondent bank has not even disputed that the Petitioner was not in continuous service from 16.12.1995 to 15.12.1998 and even the factum of having worked from 25.10.1990 to 01.09.1994 amounting to 294 days also not in dispute. But the argument advanced by the Learned Counsel for the Respondents that, Smt. R. Palayammal, cannot be treated to attract Section 25-F of the Act has to be held as unsustainable in view of an authoritative pronouncement of the Apex Court in Management of Willcox Buckwell India Ltd. Vs. Jagannath and Others, , wherein the Apex Court has categorically held that even a temporary workman, if retrenched, has got a right to claim retrenchment compensation. While defining "workman", the Apex Court in Divisional Manager New India Assurance Company Ltd. v. A. Snkaralingam (AIR 2009 SC 309) has held that an employee employed on part-time basis but under control and supervision of employer is a "workman" and, thus, entitled to the benefit of continuous service u/s 25-B and protection of Section 25F.

10. Further, in Syndicate Bank''s case (cited supra), while considering A similar issue, I have held already that if a temporary part-time sweeper has completed 480 days of continuous service, the said appointment cannot be considered as irregular and as a result, the said workman has attained the permanent status as per the Tamil Nadu Industrial (Establishment (Conferment of Permanent Status to Workmen) Act, 1981, which is squarely applicable to the case on hand also. Further, it is useful to extract paragraphs 10 and 11 of the said judgment;

10. Further, it is useful to refer to a judgment of this Court in the case of Hindustan Petroleum Corporation Ltd. v. The Presiding Officer Central Government Labour Court cum Industrial Tribunal 2008 (4) CTC 819, wherein paragraphs 34 and 35 hold in favour of the 2nd Respondent, which are extracted as under:

34. Admittedly, the workmen were all either sweepers or scavengers or cleaners. u/s 3 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, any employment to do unskilled office work has been exempted from the purview of the said Act. It is also not shown that the workmen were not appointed by the Appropriate Authority. 35. A Division Bench of this Court in School Committee Tilak Vidyalaya Higher Secondary School Kallakurichi v. District Educational Officer Tirunelveli 1991 TLNJ 1, has held that an Officer Helper need not come through the Employment Exchange and his appointment cannot be considered to be in violation of the 1959 Act.

A mere reading of the above said judgment clears the issue that as per Section 3 of the Act, any employment to do unskilled office work has been exempted from the purview of the said Act. Therefore, the said Amudha, who was appointed as a part-time sweeper,

cannot be even termed to be irregular appointment. Secondly, as per the ratio laid down by the Division Bench of this Court in School Committee''s case (supra), an Office Helper need not come through the Employment Exchange, hence, the said Amudha''s appointment cannot be considered to be in violation of the 1959 Act.

11. Further, it must also be that the constitutional validity of the Tamil Nadu Act 46 of 1981 was upheld by the Supreme Court vide its judgment in State of Tamil Nadu and Others Vs. Nellai Cotton Mills Ltd. and Others, . Therefore, once there is a valid State enactment providing for relief to such of those workmen deemed permanency to those who had completed 480 days of service within a period of two calendar years, then such workmen getting permanent status cannot be questioned by any Management and such conferment of permanent status to the said Amudha cannot be labelled as violation of Articles 14 and 16 of the Constitution of India.

11. Further, the entire focus of the first Respondent-Tribunal for refusing the claim of the Petitioner-union is that the appointment, that has been given to Smt. R. Palayammal is nothing but the stop gap arrangement as an ad-hoc appointment, therefore, when regular appointment was made to the post, she cannot claim it as a right to consider her for that post in preference to the newly appointed person for the permanent post. Further, it is seen that, before retrenching Smt. R. Palayammal on 04.02.1999, one K. Sambath was appointed as a part-time sweeper. These two vital aspects were conveniently overlooked by the Labour Court.

12. It is relevant to refer to a memorandum of settlement entered into on 30.12.1998 under Sections 2(p) and 18(1) of the Industrial Disputes Act, 1947, read with Rule 58 of the Industrial Dispute (Central) Rules, 1957, which deals with full-time/part-time sweepers on 1/3 or 1/2 or 3/4 scale wages, who have put in a minimum 5 years actual or/and notional experience in full scale wages, that aspect has not been kept in mind by the Tribunal, while passing the order of dismissal against the claim of the Petitioner-union, for, Smt. R. Palayammal has put in 1469 days of service in the Respondent bank as I mentioned above.

13. Again, it is seen from the type set of papers filed by the Petitioner-union that the said Smt. R. Palaymmal, on 08.01.1999, has given a letter with a request to consider her representation and to provide an opportunity by absorbing her in the services of the Bank in 1/3rd scale wages as permanent part-time sweeper. Only after this letter, the Respondent Bank has engaged one K. Sambath on 04.02.1999, as part-time sweeper, and subsequent to that, she was disengaged from service, and this is in violation of the rules of ''last come first go'', which gave raise to the Petitioner union to approach the Tribunal, therefore, the Petitioner-union''s prayer for appointment of Smt. R. Palayammal as permanent part-time sweeper cannot be rejected. In this context, it is useful to quote below the observation of the Apex Court in Harjinder Singh''s (cited supra).

Therefore, it was not open for the corporation to contend that the Appellant had not completed 240 days service. Moreover, it is settled law that for attracting the applicability of Section 25G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of ''last come first go'' without any tangible reason.

14. Therefore, in view of the aforesaid reasons, this Court, by setting aside the award dated 27.11.2001 passed in I.D. No. 25 of 2000, allows the present writ petition. Further, it is made it clear that Smt. R. Palayammal would be entitled to get only 50% of the backwages. However, there shall be no order as to costs.