(2009) 10 MAD CK 0171

Madras High Court

Case No: Writ Petition No. 4403 of 2000 and W.P.M.P. No. 13290 of 2004

Chief Personnel Officer Southern Railway and Deputy Chief Commercial Manager (Catering) Southern Railway		APPELLANT
	Vs	
The Presiding Officer, Central Govt. Labour Court, K. Kalimuthu, A. Kathirvelu and P. Madhu respondents 2 to 4 rep. by the President of the Southern Railway Catering Cleaners Union R.K. Swainathan		RESPONDENT

Date of Decision: Oct. 30, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226
- Contract Labour (Regulation and Abolition) Act, 1970 - Section 10
- Industrial Disputes Act, 1947 - Section 33(C)(2)

Hon'ble Judges: T.S. Sivagnanam, J

Bench: Single Bench

Advocate: V.G. Sureshkumar, for the Appellant; K.M. Ramesh, for R2 to R4, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T.S. Sivagnanam, J.
The Railway administration is the Writ petitioner in the present Writ petition and they have challenged the order passed by the Central Government Labour Court in Claim Petition No. 49 of 1994 dated 01.11.1999. The respondents 2 to 4 herein were the petitioners in the Claim Petition 49 of 1994 before the Labour Court.

2. The case of the claimants was that the work of cleaning in the Catering Establishment of Southern Railway were run by Contract System prior to 04.02.1997 and the said system was abolished by an order passed by the Honourable Supreme Court in W.P. No. 19 of 1986. The claimants were also the petitioners before the Honourable Supreme Court. The Honourable Supreme Court in its order dated 04.02.1997 directed the Southern Railway to do cleaning work in the Catering Establishment and Pantry Cars departmentally by engaging workmen who were previously employed by the Contractors. It was further ordered that if there is any dispute whether any individual workman was or was not employed by the contractor, such dispute shall be referred to the Deputy Commissioner of Labour, Madras. As ordered by the Honourable Supreme Court, the Southern Railway absorbed all the Catering Cleaners during the year 1997. However, the claimants, respondents 2 to 4 herein and few others were left out. Therefore, the respondents 2 to 4 herein filed individual Petitions before Deputy Commissioner of Labour, Chennai seeking to reinstate them as per order of the Honourable Supreme Court. The Deputy Commissioner of Labour, after conducting thorough enquiry, by an Award dated 25.09.1989 held that the respondents 2 to 3 herein were in the employment as Catering Cleaner on contract basis as on 04.02.1987 and by another order dated 29.09.1989, the 4th respondent herein was also held to be in service as Catering Cleaner as on 04.02.1987. Such Awards of the Deputy Commissioner of Labour dated 25.09.1989 and 29.09.1989 had become final. Based on such Award, all the three respondents were entitled for reinstatement in the services of Southern Railway as Catering Cleaners. However, Southern Railway did not implement the Award and therefore, the respondents 2 to 4 herein filed a contempt petition before the Honourable Supreme Court in C.M.P. 28079 of 1988 in W.P. No. 19 of 1986. It is further stated that the Honourable Supreme Court imposed cost on Railway administration and ultimately, the Railway administration issued orders of appointment to the respondents 2 & 3 on 25.09.1989 and in respect of 4th respondent on 28.09.1989. Their services were also regularized on 11.02.1994 and 14.02.1994 respectively. The respondents 2 to 4 herein had thereafter filed a petition in C.C.P. No. 48 of 1994 u/s 33(C)(2) of the Industrial Dispute Act, claiming backwages from the period 25.09.1989 to 10.02.1994 and 28.09.1989 to 13.02.1994 respectively.

3. This claim petition was resisted by the Railway administration by filing a counter stating that since claimants have not discharged duties from their date of engagement i.e. from 25.09.1989 and 28.09.1989, they are not entitled for any pay and arrears by applying the principle "No Work No Pay". It was further stated that such period will be counted as CPC scale for other purposes. Hence, they are not eligible for any backwages for such period. The Labour Court took up the claim of the petitioners for adjudication and by an Award dated 01.11.1999 held that the respondents 2 to 4 herein are entitled for backwages and computed the quantum payable and fixed the same at Rs. 1,03,664/- for each of the respondents 2 & 3 and

Rs. 1,03,742/- for the 4th respondent. Aggrieved by such order, the present petition has been filed by the Railway administration.

4. Mr. V.G. Sureshkumar, learned Counsel appearing for Railway administration would contend that the Labour Court ought to have seen that the respondents 2 to 4 herein were employed only with effect from 10.02.1994 and 11.02.1994 and prior to the said date, they had not been working and the question of payment of wages for the earlier period from 25.09.1989/28.09.1989 does not arise. It is further stated that the Railway administration had determined the date of services of the respondents 2 to 4 herein as 01.04.1987 in all aspects such as fixing the rate of pay, increment and other benefits, but payment to be effected only from the date on which their services were actually regularized. Learned Counsel would further contend that by applying the principle of "No Work No Pay", the Award passed by the 1st respondent has to be held as illegal and is liable to be set aside.

5. Per Contra, Mr. K.M. Ramesh, learned Counsel for the respondents 2 to 4 would contend that the Honourable Supreme Court in its order dated 04.02.1987 held that the Southern Railway have to regularize their services in the work of Cleaning and Catering Establishment and Pantry Car and if there is any dispute whether any individual workman was or was not employed by the contractor, such dispute shall be decided by the Deputy Commissioner of Labour. Since the dispute arose as regards the employment of respondents 2 to 4, they filed individual petition before the Deputy Commissioner of Labour. After thorough adjudication, the Deputy Commissioner of Labour passed Awards on 25.09.1989 and 29.09.1989 holding that the respondents 2 to 4 were working as Catering Cleaners on contract basis as on date of the pronouncement of the judgment of the Honourable Supreme Court. Learned Counsel would submit that the Award passed by the Deputy Commissioner of Labour had become final and the Award is binding. In spite of such Award, the same was not implemented and contempt proceedings were initiated before the Honourable Supreme Court, and only thereafter, they were appointed and subsequently their services were regularized. The learned Counsel further submits that since they were not paid wages and after the date on which the Award was passed by the Deputy Commissioner of Labour, the workmen had filed computation petition for computing the backwages. The respondents 2 to 4 also submitted representations to the Railway administration to consider their claims and since their representations were not considered, they were justified in filing the petition. Even before the 1st respondent, the Railway administration has not let in any oral or documentary evidence to substantiate their contention. The Labour Court, after considering the entire facts and circumstances of the case had ordered for backwages. Therefore, learned Counsel for the respondents would contend that the Award of the Labour Court is just and fair and there is no unreasonableness or perversity and does not call for any interference by this Court under Article 226 of Constitution of India.

6. I have carefully considered the submissions on either side and perused the materials available on record.

7. It is to be noted that the Honourable Supreme Court in W.P. No. 19 of 1986 etc batch, was considering the claim of the petitioners therein who were Catering Cleaners of Southern Railway. The claim before the Honourable Supreme Court was to issue a direction to extend service benefit presently available to other categories of the employees in the Catering Establishment of the Railway administration. After elaborately considering the matter both on facts as well as question of law, the Honourable Supreme Court by judgment dated 04.02.1987 directed the Central Government to take appropriate action u/s 10 of the Contract Labour (Abolition and Regulation) Act in the matter of prohibiting the employment of contract labour in the work of cleaning catering establishment and pantry cars in the Southern Railway. The Honourable Supreme Court further stated that action must be taken within six months from the date of the order, without waiting for the decision of the Central Government, the administration of the Southern Railway would be free to abolish the contract labour system and to regularize the services of those employed in the work of cleaning and catering establishments and pantry cars. The Honourable Supreme Court also issued a direction that if there is any dispute whether an individual workman was or was not employed by the Contractor, such dispute shall be decided by the Deputy Labour Commissioner, Madras. Since a dispute was raised as regards their prior employment, the respondents 2 to 4 herein had filed petitions before the Deputy Commissioner of Labour. These individual petitions were adjudicated and the Deputy Commissioner of Labour, by Awards dated 25.09.1989 and 29.09.1989 held that the respondents 2 to 4 herein were working as Catering Cleaners on contract basis as on the date of judgment of the Honourable Supreme Court. Learned Counsel for the respondents would submit that against the order passed by the Deputy Commissioner of Labour, the Railway administration had filed W.P. Nos. 1638, 1639 and 1807 of 1994. This Court, by an order dated 03.01.2001 had dismissed the Writ petitions and consequently, the Awards of the Deputy Commissioner of Labour had become final. Therefore, after such Awards by the Deputy Commissioner of Labour, as per the direction issued by the Honourable Supreme Court, they are entitled to be regularised in service. It is further seen that as the consequence of orders passed by the Deputy Commissioner of Labour, the pay of the respondents 2 to 4 were fixed on proforma basis and the request made by the petitioners for wages for the period of non employment was not acceded to. Representations in this regard were sent by registered post to the Railway administration by the respondents 2 to 4 (which were marked as Ex.P-8 and Ex.P-10 before the Labour Court). Since their claim was not accepted, the respondents 2 to 4 filed P.W. No. 63 of 1995 before the Deputy Commissioner of Labour I under the payment of Wages Act, 1938. The Deputy Commissioner of Labour passed an order on 01.02.1996 stating that they are entitled to wages, leave wages, bonus and uniform charges for a period of non-employment from

01.07.1987 to 24.04.1989. It is submitted by the learned Counsel for respondents that an appeal was filed by the Railway administration against such order and the Appellate Authority for Payment of wages-cum-Chief Judge, Small Causes Court, Chennai confirmed the order passed by the Payment of Wages Authority in P.W. No. 63 of 1995. Thereafter, it is to be seen that for the subsequent period from 25.09.1989 till the date of their reinstatement i.e. 10.02.1994, the respondents 2 to 4 have claimed backwages and other allowances. The Railway administration had passed orders on 19.06.1998, which is only a proforma order and that it is not related to payment of backwages from 1989 to 1994. Further, the Labour Court, while computing the backwages, specifically held that the Railway administration has not produced any oral or documentary evidence in support of their claim and the Labour Court proceeded to compute the wages.

8. In my view, after the order passed by the Deputy Commissioner of Labour on 25.09.1989 and 29.09.1989, the respondents 2 to 4 herein are entitled to be absorbed. Delay in their absorption / regularization is solely attributable to the Railway administration and the respondents 2 to 4 cannot be blamed for the same. Having taken period from 01.04.1987 on proforma basis for all other purposes, there is no justification on the part of Railway administration to deny wages for the said period. The non-employment was not attributable to the workmen. In fact, it is the Railway administration which do not regularize their services and they were compelled to file a contempt petition before the Honourable Supreme Court and thereafter orders have been passed. In such view of the matter, there is no justification to deny backwages. Learned Counsel for the Railway administration by placing a reliance " Union of India (UOI) and Another Vs. Tarsem Lal and Others, " submitted that question of payment of arrears would not arise and the benefit can be granted only from the date of actual regularization and there is no error in treating the earlier period on proforma basis.

9. Per contra, learned Counsel appearing for the respondents, by placing reliance of the decisions of Andhra Pradesh High Court in Kothri (Madras) Ltd. Vs. Second Additional Judge-cum-appellate Authority and Others, , submitted that if this Court or Tribunal finds that an employee was not responsible for absence from duty or he was prevented from attending duty, the Management is not entitled to deduct wages. Therefore, learned Counsel would submit that the workmen in the present case were regularized in service despite order passed by the Deputy Commissioner of Labour which also subsequently came to be confirmed by this Court.

10. The case before the Honourable Supreme Court in Union of India v. Tarsem Lal, referred supra, was relating to a Railway employee who claimed that he was entitled to pay and allowances from the date on which proforma promotion was given. The pay and allowance were denied to the said employee on the ground that he has not worked on the promotional post during the said period. Reliance was placed in Para 228 of the Indian Railway Establishment Manual. When the matter went before the

Central Administrative Tribunal, the Tribunal held that stand taken by the Railway administration is unsustainable. Tribunal''s order was assailed by the Railway administration before the High Court of Punjab and Haryana, which came to be dismissed. On appeal before the Honourable Supreme Court, the Honourable Supreme Court examined correctness of the order by considering the scope of Para 228 of the Indian Railway Establishment Manual which deals with erroneous promotion. In the said Para 228, it is stated that each case should be dealt with on its own merits. By relying upon the earlier judgment of the Honourable Supreme Court in the case of "Union of India v. P.O. Abraham in C.A. No. 8904 of 1994 dated 13.08.1997", wherein it was held that "No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts." Therefore, the Honourable Supreme Court allowed the appeal of the administration and set aside the order of High Court and Central Administrative Tribunal (CAT).

11. However, in the facts and circumstances of the present case, it is to be noted that the Honourable Supreme Court in its order dated 04.02.1997 in W.P. No. 19 of 1986 etc batch, directed regularization of the services of those employees in the work of Cleaning and Catering Establishment and Pantry Cars in the Southern Railway. Therefore, there cannot be any dispute of such right of the employees to get regularization of the services. Further direction issued was that if there is any dispute whether any individual workman was or was not employed by the Contractor, such dispute shall be decided by the Deputy Commissioner of Labour.

12. In the instance case, such dispute has already been decided in respect of workmen. Therefore, there is absolutely no justification on the part of the Railway administration in refusing to regularize respondents 2 to 4 based on the said Award of Deputy Commissioner of Labour and any failure / delay to permit them to part of the regular establishment as per orders of the Honourable Supreme Court should be attributable only to the Railway administration. Hence, considering the peculiar facts and circumstances of the case, the application of Para 228 of IREM does not arise in the facts of the present case and the judgment of the Honourable Supreme Court in the case of Union of India v. Tarsem Lal, referred supra, does not lend any support to the case of the petitioners.

13. In a recent decision of this Court in K. Pandi and Ors. v. State rep. by the Secretary to Government, Finance Department in W.P. No. 39866 of 2006 etc dated 30.09.2009, this Court was dealing with an issue where employees there were entitled to pay emolument during a particular period which according to them, employees were prevented from discharging their duties. The Honourable Supreme Court considered the issue as regard the manner in which normal rule of "No Work No Pay" should be applied and held that it must be applied considering the facts of each case. In the case of "Karnataka Housing Board v. C. Muddaiah in (SCC pp. 700-01, paras 33-34), the Honourable Supreme Court held as follows:

33. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a court of law. The court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The court, in the circumstances, directs the authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged.

34. We are conscious and mindful that even in absence of statutory provision, normal rule is ''no work no pay''. In appropriate cases, however, a court of law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the authority to grant him all benefits considering ''as if he had worked''. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant Board, therefore, has no substance and must be rejected.(emphasis in original).

Therefore, by applying the law laid down by the Honourable Supreme Court, it is to be noted in the present case that for no fault of workmen, they have been prevented from attending duty and the rule of "No Work No Pay" cannot be made applicable of the facts and circumstances of the present case.

14. Hence, for all the above reasons, I find that there is no error in the order passed by the 1st respondent and accordingly the Writ petition is dismissed. However, there will be no order as to costs. The petitioners are directed to pay backwages and other benefits to the respondents 2 to 4 as computed by the 1st respondent within a period of three months from receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.