CDJ 2012 Ker HC 1038

Court : High Court of Kerala

Case No : WP(C). No. 16412 of 2009 (V)

Judges: THE HONOURABLE MR. JUSTICE S. SIRI JAGAN

Parties : The Divisional Manager, Syndicate Bank Ernakulam Versus The Assistant Secretary, Syndicate Bank & Others

Appearing Advocates : For the Petitioner: M.P. Ashok Kumar, Advocate. For the Respondents: R2, N. Nagaresh, T.V. Vinu, Advocates, R3, T.P.M. Ibrahim Khan, ASST. S.G of India, P. Parameswaran Nair, ASG of India.

Date of Judgment : 24-07-2012

Head Note :-

Comparative Citation:
2012 (3) KLT 610

Judgment :-

1. The management in I.D.No.172/2006 before the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam, is the petitioner herein. He is challenging Ext.P1 award of the said authority in this writ petition. The Industrial dispute was originally numbered as I.D.No.52/1998 of the Labour Court, Ernakulam and, on constitution of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam, the I.D. was made over to the latter court, who renumbered the same as I.D.No.172/2006 and adjudicated the same passing Ext.P1 award.

2. The issue referred for adjudication in that I.D. was:

"Whether the action of the management of Syndicate Bank to terminate the services of Sh. R.S.Pai, Clerk vide order dated 16.12.96 is legal and justified, and whether the management is justified in not considering the request of the Smt.Pushpa Pai, W/o.R.S.Pai terminated employee due to medical ground for compassionate appointment? If not, what relief the workman is entitled to ?"

3. The workman concerned met with a major accident on 26.8.1993 and sustained very serious injuries. He was afflicted with quadriplegia. The medical board, who examined the workman, certified that he has cent percent disability. Therefore, the petitioner-management decided to terminate the services of the workman after giving him three months' notice. Consequently, the workman's services were terminated. The representation of the workman before the management fell on deaf ears and, therefore, the Union espousing the cause of the workman raised the industrial dispute. The Union also raised a contention that the termination of the service of the workman was prolonged beyond the date of the workman attained the age of 55 years, thus effectively preventing the dependents of the workman from claiming compassionate employment. The management took the contention that clause 522(1) of the Sasthri Award permits banks to terminate services of an employee by giving three months' notice, which has been invoked by the management for terminating the service of the workman, since he was no longer able to do any work in the bank. Therefore, the management contended that the termination of the service of the workman is perfectly legal and valid. After adjudication of the dispute, the Labour Court came to the conclusion that the termination of service of the workman was in violation of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, ("the Disabilities Act" for short) and, therefore, the termination of the service of the workman is unjustified. But on the second question referred to it, the Labour Court entered a finding that the wife of the workman is not entitled to compassionate employment as claimed. Consequently, the Labour Court held that since the termination of service of the workman is illegal, as it is in violation of Section 47 of the above said Act, the workman is entitled to be treated as having continued in service till the date of superannuation. It was further found that he is eligible for all service benefits including continuity of service and arrears of wages from the date when he was terminated from service, viz., 20.3.1997 till his date of superannuation. Ext.P1 is the award passed in that industrial dispute. The petitioner management is challenging Ext.P1 award.

4. The petitioner raises two grounds. The first is that insofar as the Disabilities Act provides for a machinery for considering the claims of employees under the Disabilities Act, the jurisdiction of the Labour Court under the Industrial Disputes Act is impliedly excluded by the provisions of the Disabilities Act. The second is that it is settled law that the Labour Court cannot travel beyond the scope of the issue referred for adjudication. It is submitted that the question as to whether the workman was entitled to the benefits of Section 47 of the Disabilities Act, was not an issue referred for adjudication and, therefore, that question was

beyond the scope of the reference and as such, the Labour Court travelled beyond the scope of the reference and hence the award is patently illegal and unsustainable. In support of that contention, the learned counsel for the petitioner relies on the following decisions:

1. State Bank of India v. Industrial Tribunal, Hyderabad and Another, 2002-II LLJ 703.

2. Mukand Ltd. v. Mukand Staff & Officers' Association, (2004) 10 SCC 460, and

3. State Bank of Bikaner & Jaipur v. Om Prakash Sharma, (2006) 5 SCC 123.

5. In answer to the same, the learned counsel for the Union submits that in the Disabilities Act, there is no exclusion of jurisdiction of the Labour Court. According to him, the Disabilities Act does not provide for an adjudicatory mechanism for adjudicating rights of persons afflicted with disabilities, but only provides for the Chief Commissioner appointed under the Act to look into the complaints with respect to the matters relating to deprivation of rights of persons with disabilities and non-implementation of laws, rules etc. issued by the appropriate Governments and the local authorities for the welfare and protection or rights of persons with disabilities and to take up the matter with the appropriate authorities. That is not an effective mechanism, whereby the Chief Commissioner can grant reliefs to persons who have been deprived of their rights under the Disabilities Act. He further points out that under Section 72 of the Disabilities Act, it has been expressly made clear that the Disabilities Act is in addition to and not in derogation of any other law. Therefore, according to him, the Disabilities Act does not exclude the jurisdiction of the Labour Court under the Industrial Disputes Act in any manner whatsoever and, therefore, it was perfectly within the jurisdiction of the Labour Court to adjudicate the industrial dispute raised by the workman involved.

6. Regarding the second contention of the petitioner- management, the learned counsel for the Union submits that the Labour Court has confined himself within the four corners of the issue referred for adjudication itself, which is the justifiability of the termination of the service of the workman involved and that issue was only adjudicated and answered by the Labour Court. Of course, the reason for granting the relief to the workman was that the termination of service is contrary to Section 47 of the Disabilities Act. Therefore, according to him, the contention that the Labour Court travelled beyond the scope of the issue referred is clearly unsustainable. He points out that simply because the Sasthri Award provides for termination

of service of an employee of a bank by granting three months' notice, provisions of Section 47 of the Disabilities Act does not cease to be applicable and in fact, the same would stand overridden by Section 47 of the Disabilities Act. He, on this point, relies on the Division Bench decision of this Court in F.A.C.T. v. Gopinatha Pankcker, 2004 (2) KLT 455.

7. I have considered the rival contentions in detail.

8. I am of opinion that simply because Section 59 of the Disabilities Act empowers the Chief Commissioner under the Act to look into the complaints in respect of matters relating to deprivation of rights of persons with disabilities, that does not either expressly or impliedly exclude the jurisdiction of the Labour Court under the Industrial Disputes Act in any manner whatsoever. The Disabilities Act confers certain specific rights on the persons with disabilities. The provisions of that Act are applicable to every 'establishment' as defined under the Act. The Bank has no case that the Bank is not an establishment as defined under the Act. Whenever any authority considers the rights of parties coming within the purview of the said Act, that authority is perfectly justified in considering the rights of those parties under the said Act as well. Simply because the Labour Court is established under the Industrial Disputes Act, the Disabilities Act does not cease to be applicable while adjudicating disputes under the Industrial Disputes Act. Whenever a workman as defined under the Industrial Disputes Act raises a claim on the basis of a right conferred on him under the Disabilities Act, the Labour Court is legally duty bound to consider that claim and adjudicate upon the same in accordance with the provisions of the Disabilities Act. That being so, there is no conflict of jurisdiction as between the Industrial Disputes Act and the Disabilities Act. Apart from that, as rightly pointed out by the learned counsel for the Union, the Disabilities Act does not contain an adjudicatory mechanism, whereby an aggrieved person with disabilities can approach the Chief Commissioner appointed under the Act and get his rights established under the Act. Section 59 of the Disabilities Act reads thus:

"59. Chief Commissioner to look into complaints with respect to deprivation of rights of persons with disabilities.- Without prejudice to the the provisions of section 58 the Chief Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to-

(a) deprivation of rights of persons with disabilities.

(b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights or persons with disabilities and take up the matter with appropriate authorities." The language of the said Section makes it clear that what the Chief Commissioner can do is only to consider the complaints with respect to matters referred to in the said Section and to take up the matter with the appropriate authorities. That does not confer any adjudicatory powers on the Commissioner in respect of the compliant received by him and to pass orders directing the establishment concerned to grant the rights conferred by the Act to the complainant. Further, as pointed out by the learned counsel for the Union, under Section 72 of the Act, the provisions of the said Act are in addition to and not in derogation of any other law. Section 72 of the Disabilities Act reads thus:

72. Act to be in addition to and not in derogation of any other law.-

The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefit of persons with disabilities.

In the above circumstances, I am of opinion that it is perfectly within the jurisdiction of the Labour Court to consider rights of any person with disabilities under the Disabilities Act in the course of adjudication of an industrial dispute raised by a Union in respect of a workman as defined under the Industrial Disputes Act against a management as defined under the Act, provided the management answers the definition of 'establishment' under the Disabilities Act.

9. The next contention of the petitioner-management is that in granting the relief given in Ext.P1, the Labour Court has travelled beyond the scope of the issue referred for adjudication and the decisions relied upon by him specifically lay down that the Labour Court or the Industrial Tribunal cannot travel beyond the scope of the issue referred for adjudication to it, insofar as the Labour Court or the Industrial Tribunal is only a creature of the statute, viz., the Industrial Disputes Act. I do not think that anybody can quarrel with the proposition that the Labour Court or the Industrial Tribunal cannot travel beyond the scope of the issue referred for adjudication. Therefore, all what I have to consider is whether in passing Ext.P1 award, the Labour Court has travelled beyond the scope of the issue referred for adjudication. I have already extracted the issue referred for adjudication in the

beginning of this judgment. As is clear from the same, the first issue, which only has been decided in favour of the workman, is as to whether the action of the management of the Syndicate Bank in terminating the service of the workman by order dated 16.12.1996 is legal and justified. The Tribunal has only decided that the termination of service of the workman concerned is illegal and unsustainable. Of course, the reason for coming to that conclusion is that such termination of service is against the provisions of Section 47 of the Disabilities Act. I am of opinion that like any authority in this country, the Labour Court and the Industrial Tribunal are also bound by all the laws including the Disabilities Act and a workman, as defined under the Industrial Disputes Act, is entitled to raise a claim for a right under the Disabilities Act insofar as it is not inconsistent with the provisions of the Industrial Disputes Act. The Labour Court is also bound by the provisions of the Disabilities Act in deciding the question of justifiability of the termination of service of the workman involved. Simply because the rights of the workman under the Act have been considered, that does not amount to travelling beyond the scope of the issue referred for adjudication to the Labour Court. While relying on S.47 of the Disabilities Act, the Labour Court was not deciding an issue not referred to it, but only cited the same as a reason for holding that the termination of service of the workman is not justified, which certainly was an issue referred to it for adjudication.

10. Of course, the learned counsel for the management submits that the rights of the parties are governed by the provisions of the Sasthri Award, which empowers the management to terminate the service of the workman by giving three months' notice. Simply because such a power is conferred on the management, whether they can exercise that power arbitrarily in violation of 47 of the Disabilities Act is also an incidental question, which may arise in that context. The question as to whether the provisions under the Disabilities Act would override the provisions of a standing orders applicable to a workman has been considered by the Division Bench of this Court in Gopinatha Panicker's case (supra), in paragraphs 6 and 7 of which, the Division Bench held thus;

"6. In the case before us the respondent joined service of the Company on 29.7.1997 and he met with an accident on 26.12.2001 when he was in service. Similarly the respondent in W.A. No. 2095 of 2003 joined service in May 1967 and he met with an accident on 16.9.2000 while he was in service. The Company is an establishment within the meaning of clause (k) of S.2 of the Act and is, therefore, obliged to comply with the provisions of S.47 of the Act in the case of the respondents. The respondents in their Writ Petitions had averred

that they were covered by the provisions of the Act and that the employer could not terminate their services in view of the provisions of S.47 of the Act. In reply to these averments the Company in its counter affidavit had merely stated that the disability incurred by the respondent was not attributed to his employment nor did it occur during his employment. It was further averred that the accident which resulted in the physical disability occurred outside the premises of the Company and was not an accident during his employment. We are unable to accept the stand taken by the Company. It is not the requirement of S.47 that the accident resulting in the disability should have arisen out of or in the course of his employment. It is enough if an employee acquires disability "during his service". The words 'during his service' would obviously mean after he has joined the service and before the same is terminated. It is also not necessary that the accident should have taken place within the premises of the Company. In this view of the matter we are satisfied that the case of the respondents is squarely covered by the provisions of S.47 of the Act and that the Company could not dispense with their services merely because they had acquired a disability during their service. It is not the case of the Company that the respondent has not suffered any 'disability' or that the respondent is not a 'person with disability'. Rather the Company itself got the respondents examined through a Board of doctors and found that they were unable to perform the assigned duties on account of the disabilities acquired by them during their service. It cannot be disputed that the Company is an establishment within the meaning of clause (k) of S.2 of the Act being a government company as defined in S.617 of the Companies Act and was, therefore, bound to comply with the provisions of S.47 of the Act.

7. The only question that now remains to be examined is whether the provisions of S.47 of the Act would override clause 2(m) of the certified standing orders which enables the company to discharge an employee if he is found to be medically unfit for the work in the factory by the Company medical officer. The answer to this question, in our opinion, has to be in the affirmative. The certified standing orders no doubt govern the company and its employees but these are general provisions pertaining to all industrial employees including persons acquiring a disability during service. The Act, on the other hand, is a special piece of legislation enacted primarily for the benefit of disabled persons and persons who acquired disabilities during their service. It being a special enactment would apply and override the standing orders. The Company was, therefore, not justified in dispensing with the services of the respondents merely because they had acquired a disability during their services. If it found that they were not suitable for the post they were holding they could be shifted to

some other posts with the same pay scale and service benefits. In case that is not possible the Company should keep them on a supernumerary post until a suitable post is available for them or they attain the age of superannuation." The above decision is a complete answer to the contention raised by the learned counsel for the management on the basis of the provisions of the Sasthri Award. Sasthri Award is akin to Standing Orders, since both contain the service conditions of workmen to whom they are applicable. No other question has been raised before me."

In view of the above findings, I do not find any merit in the writ petition and accordingly, the same is dismissed.