

Kalyani Sharp India Ltd. vs Labour Court No. 1, Gwalior And Anr. on 5 December, 2001

Equivalent citations: AIR2002SC300, [2001(89)FLR321], JT2001(3)SC533, 2002LABLC138, (2001)ILLJ1346SC, (2002)9SCC655, 2002(2)SCT609(SC), AIR 2002 SUPREME COURT 300, 2001 AIR SCW 5021, 2002 LAB. I. C. 138, (2001) 1 LABLJ 1346, 2002 (9) SCC 655, 2002 SCC (L&S) 1101, (2001) 8 SERVLR 732, (2002) 2 SCT 609, (2001) 89 FACLR 321, (2001) 2 LAB LN 853, 2001 LABLR 812, (2001) 3 JT 533 (SC)

Bench: S. Rajendra Babu, S.N. Variava

ORDER

1. The respondent No. 2 (hereinafter referred to as the respondent) was employed as Trainee Technician on the Establishment of the Appellant by an order sent to him on February 29, 1989 which contained Inter alia the following stipulations:

"You will be on training for a period of one year from the date of joining. You are requested to join on or before 1-3-1989. During this period the Management may at its discretion withdraw the above facility of providing training to you at any time without assigning any reason whatsoever.

You will be considered for regular employment on satisfactory completion of your training."

2. The respondent was working as a Trainee Service Technician at Gwalior. He was transferred to work at Pune. On 28-1-1990, a letter was sent to him to the effect that he had absented himself from work from August 10, 1989 when he left Pune and had not returned to work at all. Therefore, in terms of appointment order withdrew the facility of training w.e.f. January 31, 1990. The respondent raised an industrial dispute. The Labour Court which adjudicated the matter in favour of the respondent holding that he had worked for 240 days and termination of his services being contrary to provisions of Section 25F of the Industrial Disputes Act (in short 'the Act'), is bad and directed his reinstatement with back wages. That award was challenged before the High Court. The High Court dismissed the writ petition, observing that the respondent though a probationer was entitled to the protection of Section 25F of the Act. Hence this appeal.

3. Shri V.A. Mohta, learned senior Advocate appearing for the appellant relied on the provisions of Section 2(oo) proviso (bb) of the Act to contend that the services of a workman could be put to an end to in terms of the employment; that in giving effect to those terms if the same had ended in termination of his services it would not amount to retrenchment and therefore, would not attract Section 25F of the Act. He derived support to his contention from the principles set out in the

decisions of this Court in Escorts Ltd. v. Presiding Officer, M. Venogopal v. Divisional Manager, Life Insurance Corporation of India, Machilipetnam A. P., .

4. Ms. Malini Poduval, learned counsel appearing for the respondent submitted that the contention now raised that the termination of services of the respondent is not affected by Section 25F of the Act had not been urged either before the Labour Court or before the High Court much less is it raised in the memorandum of grounds in approaching this Court and this contention has been put forth now in the course of the arguments. Therefore, the appellant should not be permitted to raise this ground at this belated stage of the proceedings. On merits also she submitted that when the respondent had undergone the necessary training and if the ground on which his services were sought to be terminated is that he had absented himself for a particular period, the proper course for the appellant would be to issue a notice and hold an inquiry and thereafter take appropriate action in the matter.

5. So far as the first contention raised on behalf of the respondent is concerned we may state that the argument emerges from the documents upon which the respondent has relied upon before the Labour Court to show about his employment and the termination of his service. No fresh investigation of facts is required. It is a case of simple application of law in the matter. Hence the preliminary objection is rejected.

6. The order of employment itself clearly sets out the terms thereafter which makes it clear that the facility of providing training to him could be put to an end to at any time without assigning any reason whatsoever and his services could be regularised only on satisfactory completion of his training. If these clauses are read together it is clear he was under probation during the relevant time and if his services are not satisfactory, the same could be put an end to. It is clear that the respondent had been appointed as a Trainee Service Technician and for a period he had to undergo the training to the satisfactory during that period the facility could be withdrawn at any time and he would be regularised only on completion of his training. Thus the respondent's services were terminated before expiry of the probationary period. In such a case question of issue of notice before terminating the service as claimed by the respondent does not arise. Escorts' case (supra) Is identical with the present case. Following the said decision and for the reasons stated therein these appeals are allowed. The order made by the High Court affirming the award made by the Labour Court is set aside and the claim made by the respondent is dismissed.