Kerala High Court
V.Bhaskara Pillai vs State Of Kerala on 4 December, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 12887 of 2005(H)

1. V.BHASKARA PILLAI, MANAGING PARTNER,
... Petitioner

Vs

1. STATE OF KERALA, REPRESENTED BY
... Respondent

2. INDUSTRIAL TRIBUNAL,

3. SMT. A.P.SHYLAJAKUMARI,

For Petitioner :SRI.B.RAGUNATHAN

For Respondent :SRI.S.MOHAMMED AL RAFI

The Hon'ble MR. Justice S.SIRI JAGAN

Dated :04/12/2008

O R D E R

S.SIRI JAGAN, J.

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W.P(C).No.12887 of 2005

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Dated this the 4th day of December, 2008

J U D G M E N T

The management in I.D.No.10/2000 before the Industrial Tribunal, Kollam, is the petitioner in this writ petition. He is challenging Ext.P8 award in that industrial dispute. The issues referred for adjudication were:

> "(i) Whether the denial of employment to Smt.A.P.Shailaja kumari, Accounts Asst. is justifiable ?

(ii) If not, what is the relief entitled to her?"

2. Before the Tribunal the workman claimed that she was working as Accounts Assistant in the management hotel from 20.12.1993 onwards upto 31.3.1999 on which date she was denied employment without assigning any reason. She further submitted that although she was appointed in a permanent post continuously from 20.12.1993, after 31.3.1997, the management converted the appointment into a contract appointment for two years and thereafter on 31.3.1999, she was relieved from service without any reason. According to the workman, this was a ploy of the management to deny the benefits due to her under the Industrial Disputes Act. The workman, therefore, claimed reinstatement in service with backwages. The management took the contention that the appointment of the petitioner was purely a contractual one for a period of two years and the workman was relieved from service on expiry of the period of contract. Therefore, going by Section 2(oo) of the Industrial Disputes Act, such appointment is outside the purview of "retrenchment" and therefore, the workman cannot claim any relief against the management.

3. The workman relied on two certificates issued by the management regarding her service, which are Exts.P6 and P7 produced in this writ petition and marked as Exts.W2 and W3 in the Industrial Dispute. By Ext.P6 issued by the management, they certified that the workman had worked in the management hotel as Accounts Assistant (Ad hoc) for the period from 20.12.1993 to 31.3.1997. On the same date, another certificate, Ext.P7, was issued certifying that the workman had worked in the management hotel as Accounts Assistant (on contract) for two years from 1.4.1997 to 31.3.1999 and that on expiry of contract, she was relieved on 31.3.1999. The workman contended that going by those certificates, the workman was in continuous service for the whole period, which would go to show that after 31.3.1997 the management adopted a ploy to covert the regular appointment into a contract appointment. This was denied by the management contending that the workman worked in the management hotel only for the period from 1.4.1997 to 31.3.1999 and the other certificate for the previous period was obtained by threat and coercion by the husband of the workman.

4. The Tribunal considered the evidence in detail. Since there was no dispute regarding issuance of Exts.P6 and P7 certificates by the management, the Tribunal found that the workman was actually a permanent employee of the management hotel. The Tribunal also came to the finding that the post is still existing. Accordingly, the Tribunal came to the conclusion that the workman was a permanent employee of the management hotel and her services were terminated without complying with the provisions of Section 25F of the Industrial Disputes Act. On that finding the Tribunal directed the management to reinstate the workman in service with attendant benefits. That award is under challenge before me.

5. The contention of the petitioner is that Ext.P8 award is against the evidence in the case. According to the counsel for the petitioner-management, the management had sufficiently proved the fact that the appointment of the workman was purely contractual for a specified period and on expiry of the period of contract, she was relieved from service. That being so, there is no question of retrenchment, since contractual appointments are excluded from the purview of the definition of "retrenchment" under Section 2(oo) of the Industrial Disputes Act, is the contention raised. Therefore, according to the counsel for the management, the action of the management was

perfectly justified and the workman was not entitled to any benefits in the industrial dispute.

6. The contentions of the petitioner are opposed by the counsel for the workman. He would submit that the documents produced by the workman would prove that the workman was continuously in service from 1.4.1997 to 31.3.1999. The conversion of the permanent appointment into that of a contract appointment was a ploy adopted by the management to deny legal benefits due to the workman so as to enable the management to terminate her services. Under the Industrial Disputes Act a person having 240 days of continuous service in an year can be retrenched from service only in accordance with the provisions of Section 25F of the Industrial Disputes Act, which admittedly has not been complied with by the management. Therefore, the counsel for the workman supports Ext.P8 award.

7. I have considered the rival contentions in detail.

8. The fact that Exts.P6 and P7 certificates were issued by them is not disputed by the management. Going by those certificates, the workman had continuous service from 20.12.1993 to 31.3.1999. Although the management took the stand that Ext.P6 was issued under threat and coercion of the husband of the workman, the Tribunal did not accept the same. The Tribunal found that such a contention was never taken by the management in their written statement. Therefore, the Tribunal disbelieved that contention of the management. I cannot say that such finding of the Tribunal is in any way perverse. Once that is accepted, it remains a fact that the workman was in continuous service of the management from 20.12.1993 to 31.3.1999. If that be so, the conversion of that appointment in between as a contract appointment is clearly with ulterior motive. I cannot accept the contention of the counsel for the management that once an appointment is for a specific period, automatically such appointment is taken out from the purview of Section 2(oo). If such a contention is accepted, then any unscrupulous employer can appoint regular workmen on contract basis and escape the consequences of the termination of services under the Industrial Disputes Act, which cannot be the legislative intention behind Section 2(oo). The question as to whether an appointment is contract appointment or not has to be decided depending on the nature of the work. If the work is of a regular nature, the fact that the management appointed the workman for specific period does not enable the management to relieve the workman after the period of appointment without complying with the provisions of the Industrial Disputes Act, if the post and the work still exist. Only if the work also ceases after the specified period, the services of the workman can be terminated on expiry of the contract period. Here the Tribunal has come to the finding that the post is still existing. That being so, clearly the object of converting the appointment into a contract appointment was for the purpose of denying the workman her benefits under the Industrial Disputes Act. That being so, I do not find any merit in the challenge against Ext.P8 award. Accordingly, the original petition is dismissed.

9. The learned counsel for the management submits that on 31.3.2005 the petitioner-management sold of the hotel and therefore, there is no establishment owned by the petitioner to reinstate the workman. I am of opinion that I am not called upon to decide that question in so far as what is challenged before me is only the award. It is for the parties to work out their remedies appropriately in accordance with law.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

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P.A. to Judge