

State of Tamil Nadu and Others

Vs

Nellai Cotton Mills Ltd. and Others

Civil Appeals Nos. 3222-3241 of 1988

(Smt. M. S. Fathima Beevi, K. Jagannatha Shetty JJ)

20.03.1990

JUDGMENT

K. JAGANNATHA SHETTY, J. -

1. The Tamil Nadu Government passed an Act called the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 ("the Act") which came into force on January 1, 1982. The Act was to confer permanent status to workmen in various industrial establishments who have put in continuous service for a period of 480 days in a period of 24 calendar months in an industrial establishment. Section 3 is a crucial provision in the Act. It reads as under :

"S. 3. Conferment of permanent status to workmen. - (1) Notwithstanding anything contained in any law for the time being in force every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty-four calendar months in an industrial establishment shall be made permanent.

(2) A workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike, which is not illegal, or a lockout or on account of non-employment or discharge of such workman for a period which does not exceed three months and during which period a substitute has been employed in his place by the employer, or a cessations of work which is not due to any fault on the part of the workman.

Explanation : For the purposes of this section the number of days on which a workman has worked in an industrial establishment shall include the days on which -

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (Central Act 20 of 1946) or under any other laws applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave, so, however, that the

total period of such maternity leave does not exceed twelve weeks."

2. The constitutional validity of the Act was challenged in a batch of writ petitions by various industrial establishments before the High Court of Madras. The High Court has allowed the writ petitions in part holding, inter alia, as follows :

"The Explanation to Section 3 is incapable of enforcement and must therefore be held to be redundant.

(2) The provisions of Section 3(2) of the Act are valid except that the clause 'or on account of non-employment or discharge of such workman for a period which does not exceed three months and during which period a substitute has been employed in his place by the employer' is void on the ground that it amounts to an unreasonable restriction on the right of the employer.

(3) An apprentice or a badli worker could not be included in the 'workman' referred to in Section 3(1) and (2) of the Act, and they will, therefore, be not entitled to the benefit of Section 3.

(4) The Act will not supersede a settlement between the workers and the employer insofar as it deals with the subject of conferment of permanent status to workmen.

(5) The Act cannot be held to be retrospective in character."

3. On July 7, 1985, the State of Tamil Nadu preferred this appeal challenging the judgment of the High Court. During the pendency of the appeal, the State also amended the principal Act in order to obviate the practical difficulties in implementing the provisions of the Act by reason of the judgment of the High Court.

4. The relevant portion of the Amending Act 44 of 1985 reads as under :

"2. Amendment of Section 3, Tamil Nadu Act 46 of 1981. - In Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (Tamil Nadu Act 46 of 1981) (hereinafter referred to as the 'principal Act') -

(1) in the Explanation, for the opening portion beginning with the words "for the purposes of this section" and ending with the words "include the days on which", the following shall be substituted, namely -

"For the purposes of computing the continuous service referred to in sub-sections (1) and (2), a workman shall be deemed to be in continuous service during the days on which -";

(2) the Explanation shall be numbered as Explanation I and after Explanation I as so numbered, the following Explanation shall be added, namely :

'Explanation II. - For the purposes of this section, 'law' includes any award, agreement, settlement, instrument or contract of service whether made before or after the commencement of this Act'."

5. The Amending Act also contains provision for validation in the following terms :

"3. Validation. - Notwithstanding anything contained in any judgment, decree or order of any court or other authority, all acts done or proceedings taken in pursuance of Section 3 (including the Explanation) of the principal Act at any time on or after the 1st day of January, 1982 and before the date of publication of this Act in the Tamil Nadu Government Gazette in relation to every workman in an industrial establishment for the purpose of conferment of permanent status to such workman by any officer or authority shall, for all purposes, be deemed to be, and to have always been, validly done or taken in accordance with law as if Section 3 of the principal Act as amended by this Act had been in force at all material times when such acts or proceedings were done or taken".

6. Mr. Chidambaran learned counsel for the respondents argued that the legislature while amending the principal Act with retrospective effect and also validating the acts done and proceedings taken under the principal Act appears to have accepted the judgment of the High Court so far as it relates to the offending portion in sub-section (2) of Section 3, since no different meaning has been given to that portion from the one asserted by the High Court. But counsel for the appellant argued that the view taken by the High Court as to the scope of sub-section (2) of Section 3 has to be determined notwithstanding the foregoing amendments. He claimed that non-employment or discharge of any workman for a period which does not exceed three months, and during which period a substitute has been employed in his place by the employer was intended to cover such cases where the employer deliberately discharges a workman in order to effect a break in service and again re-employs him as a fresh candidate without continuity of service.

7. We may first examine whether there is legislative approval of the High Court decision to the extent indicated by Mr. Chidambaram for the respondent. The Statement of Objects and Reasons accompanying the Amending Act 44 of 1985 reads as follows :

"Statement of Objects and Reasons. - The Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (Tamil Nadu Act 46 of 1981) has been enacted with a view to provide for the conferment of permanent status to workmen in the industrial establishments in the State of Tamil Nadu. The judgment of the Madras High Court rendered in a batch of writ petitions [Nellai Cotton Mills Ltd., Tirunelveli v. State of Tamil Nadu (Writ Petition No. 5918 of 1982 etc.)] had given rise to certain practical difficulties in implementing the provisions of the said Act. It has, therefore, been decided to amend Section 3 of the said Act to remove the difficulties caused by the said judgment and confer the intended benefits on workmen."

2. The Bill seeks to achieve the above object."

8. When the Act has been judicially interpreted, courts may study the subsequent action or inaction of the legislature for clues as to legislative approval or disapproval of judicial interpretation. After the statute has been judicially interpreted in a certain way and if the legislature by taking note of the judgment amended the statute appropriately so as to give it a different meaning from the one asserted by the courts, or not giving any different meaning from the view taken by the court, it may be argued with some justification that the legislature has expressly or by implication ratified the judicial interpretation. In the instant case, the legislature has expressly taken note of the High Court

verdict and removed the practical difficulties caused thereby in implementing the provisions of the Act, by appropriate amendments. No provision, however, was inserted to rewrite and validate the portion which was struck down by the High Court. It could therefore, be reasonably held that the legislature has accepted the judgment of the High Court to the extent indicated.

9. That apart, the view taken by the High Court, in striking down a portion of sub-section (2), in our opinion, cannot be found fault with. Sub-section (2) of Section 3 consists of three parts. The first part refers to interruption of service including service which may be interruption on account of sickness or authorised leave or an accident or a strike which is not illegal or a lockout. The second part consists of the portion which has been struck down by the High Court as unreasonable restriction on the right of the employer. The third part refers to cessation of work which is not due to any fault on the part of the workmen. The provisions under the first and the third parts seem to be similar to the terms of Section 25-B of the Industrial Disputes Act which also provides for continuous service of the workman. The second part dealing with non-employment and discharge of a workman is distinct from the first and the third parts. It refers to the period during which there is no subsisting relationship of master and servant. We agree with the High Court that the word 'non-employment' would include retrenchment as well and a person whose services have been terminated or discharged albeit illegal cannot at all be said to be a person in service, much less in continuous service. Therefore, the period of non-employment or the period after discharge cannot be counted for the purpose of giving continuity of service. If the discharge is set aside and workman is reinstated by process known to law the workman automatically gets continuity of service. No special provision is necessary for such purposes.

10. In any view of the matter we cannot therefore, accept this appeal and is accordingly dismissed.

11. In the circumstances of the case, however, we make no order as to costs.

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