

Sub-Divisional Inspector of Post. Vaikam and others

Vs

Theyyam Joseph, etc.

Civil Appeals Nos. 3385-86 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

02.02.1996

JUDGMENT

1. Leave granted.

2. We have heard the learned counsel on both sides.

3. Shri N. G. Malik, E. D. Packer was recruited on September 21, 1991, and sent for training from September 23, 1991 to October 2, 1991. The respondent came to be appointed as a substitute w. e. f. September 21, 1991 without observing any formality of appointment, as a stop-gap arrangement. It would appear that N. G. Malik had not reported for duty after the training and the respondent continued in the post of E. D. Packer. On August 2, 1993, without notice, he was terminated from service. He approached the C. A. T., Ahmedabad Bench in O. S. No. 51/1994, and same are the facts in all other cases.

4. The Tribunal by its impugned order dated May 12, 1994, allowed the case, set aside the orders of termination of Sailesh Kumar on the ground that the appellant is an industry, the respondent is a workman governed by the Industrial Disputes Act, 1947, (for short, 'the Act'). Under Section 25F, no notice was issued terminating the service nor retrenchment compensation was paid, therefore, the respondent is entitled to reinstatement and it would be open to the appellant to take action against him according to the relevant provisions of the Act. Thus these appeals by special leave. Similar views are expressed by all the Tribunals covered in the batch.

5. Shri Goswami, learned senior counsel for the appellants, contended that appointment of these Extra-Departmental Agents are regulated under the statutory instructions issued by the Director General of Postal and Telecommunication from time to time. Being governed by those statutory rules, they are not permanent employees. They are only part-time employees on contract basis subject to the conditions mentioned therein. Therefore, neither the appellant is an industry nor is the respondent a workman under the provisions of the Act. The Tribunal, therefore, was wrong in its finding that the provisions of the Act are attracted. The learned counsel for the respondent and also Shri Nambiar, counsel appearing for the other respondents, contended that the counsel who appeared for Union of India before the Tribunal have conceded that the appellant is an industry and, therefore, the Tribunal was right in its conclusion that the procedure prescribed in the Act shall be followed. Since no notice under Section 25F of the Act was given, the termination of the service is illegal and, therefore, is consistent with law.

6. Having regard to the contentions, the question arises whether the appellant is an Industry? India as a sovereign socialist, secular democratic republic has to establish an egalitarian social order under

rule of law. The welfare measures partake the character of sovereign functions and the traditional duty to maintain law and order is no longer the concept of the State. Directive principles of State policy enjoin on the State diverse duties under Part IV of the Constitution and the performance of the duties are constitutional functions. One of the duties of the State is to provide telecommunication service to the general public and an amenity, and so is one essential part of the sovereign functions of the State as a welfare State. It is not, therefore, an industry.

7. The appointment of the respondent is governed by the Rules in Section III of the compilation of Swamy's Service Rules for Extra-Departmental Staff in Postal Department. The Rules provide the method of recruitment thereunder. The age qualification has been prescribed between 18 to 65 years. The educational qualifications have been prescribed with. Matriculation as minimum qualification for Extra-Departmental ED Sub-Postmasters and ED Branch Postmasters. VIII Standard as minimum educational qualification has been prescribed for ED Delivery Agents, ED stamp Vendors and all other categories of EDAs and preference is given to the candidates with Matriculation qualification. Income limit and holding of property have been regulated in Rule 3 thereof. It is mentioned that the persons who take over the agency must be one who has an adequate means of livelihood and is a resident of the place as mentioned in the Rules. The persons are selected under the specified conditions, any appointment made is in the nature of a contract liable to be terminated by notice given in writing. Sub-rules (3) to (5) prescribe the verification of the antecedents and medical examination etc. Rule 6 provides that employment to disabled ex-service personnel is to be given. Rule 7 gives preference to the SC and ST in appointments. Rule 8 finds the percentage of posts for the recruitment of the Scheduled Castes and Scheduled Tribes candidates. Rule 9 gives right to appoint even the teachers as Extra Departmental Agents. Rule 10 prescribes the method of appointment of the teachers as Extra-Departmental Agents. Rule 11 prohibits employment of near relation in the same office. Rule 12 prescribes appointment of ED Branch Post Master by Inspectors. Rule 13 prescribes provisional appointment of Extra Departmental Agents.

8. The scale of pay has been prescribed in Section V and for calculation of Consolidated Allowance instructions are issued from time to time under Rule 2.1 dealing with Extra Departmental Sub-postmasters/ED Stores/ED Sub-Record Clerks. The basic allowance payable to them shall be subject to a minimum of Rupees 385/- p. m. and maximum of Rs. 620/- p. m. The workload of them has been mentioned in Rule 2.1 (b) (c) (d). Rule 6 prescribes for Office Maintenance Allowance and Rule 5 for cycle allowance. Rule 7 relates to Fixed Stationary Charge. It would thus be seen that payment of salary has been regulated under these rules elaborated in further rules.

9. Section II provides for EDA Conduct & Service Rules. Rule 6 deals with power of termination and reads as under :-

"6. Termination of Services :- (a) The services of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the employee to the appointing authority or by the appointing authority to the employee;

(b) the period of such notice shall be one month :

Provided that the service of any such employee may be terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his basic allowance plus Dearness Allowance for the period of the notice at the same rates at which he was drawing them immediately before the termination

of his services, or, the case may be, for the period by which such notice falls short of one month.

Note. - Where the intend (sic) effect of such termination has to be immediate, it should be mentioned that one month's basic allowance plus Dearness Allowance is being remitted to the ED Agent in lieu of the notice of one month through money order."

10. Rule 7 prescribes the nature of the penalties which reads as under :-

"7, Nature of penalties - The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on an employee by the appointing authority, namely :-

(i) Censure;

(ii) Debarring of ED Agents from appearing in the recruitment examination for the post of postman and/or from being considered for recruitment as Postal Assistants/Sorting Assistants for a period of one year or two years or for a period not exceeding three years;

(iii) Debarring of ED Agents from being considered for recruitment of Group 'D' for a period not exceeding three years.

(iv) Recovery from allowance of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders;

(v) Removal from service which shall not be a disqualification for future employment;

(vi) Dismissal from service which shall ordinarily be a disqualification for future employment."

11. It would thus be seen that the method of recruitment, the conditions of service, the scale of pay and the conduct rules regulating the service conditions of ED Agents are governed by the statutory regulation. It is now settled law of this Court that these employees are civil servants regulated by these conducts rules. Therefore, by necessary implication, they do not belong to the category of workmen attracting the provisions of the Act. The approach adopted by the Tribunal, therefore, is clearly illegal.

12. It is seen that the respondent was appointed as a substitute to the regular candidate who did not ultimately turn up for duty after training. The respondent having been appointed and having worked de hors the rule, therefore, remains to be an ad hoc Extra Departmental Packer. He will be entitled under the Conduct Rule 6 to the payment of the amount to be calculated for one month allowance plus D. A. The same shall be paid. The Tribunal was wholly wrong in directing the appellant to terminate the services in accordance with the provisions of the Act. The respondent is at liberty to apply for, along with other candidates, when any vacancy arises and is filled up. The appellant is directed to consider his case which will also be done according to the rules. He may be considered if he is found eligible and may be appointed to the post per rules.

13. The appeals are accordingly allowed.

14. Leave granted.

15. The facts of this case are that the respondent was selected on regular basis as substitute to Extra Departmental Packer at Calicut. While he was working, recruitment was made by calling the names from the Employment Exchange. Since his name was not sponsored, he was terminated from employment. In view of the reasoning given above, he being temporary working candidate, he cannot get any right; however his case is directed to be considered along with other candidates and if he is found eligible, he may be considered and appointed according to the rules.

16. The appeal is allowed.

17. Leave granted. Delay condoned.

18. Though the principle of law laid down hereinbefore is settled, since the respondent has been working since 1983, we decline to interfere with the order passed by the Tribunal.

19. Appeals are accordingly dismissed. No costs. Order accordingly.