

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 227 1992.

DATE OF DECISION 14.1.1993

Smt. C. Balamma _____ Applicant

Mr Pirappançode V Sreedharan Advocate for the Applicant
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Versus

Union of India (Secretary, Ministry of Labour) & 3 others Respondent (s)

Mr George Joseph Advocate for the Respondent (s) 1 to 3
Mr D Sreekumar " " 4

CORAM :

The Hon'ble Mr. SP Mukerji - Vice Chairman

&

The Hon'ble Mr. AV Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Ys
2. To be referred to the Reporter or not? N
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

In this application, the applicant Smt C Balamma, has challenged the legality, propriety and correctness of the award by the Industrial Tribunal, Kollam, the 4th respondent dated 11.11.1991. The factual matrix is as follows:-

2. The services of the applicant, a part-time sweeper employed to clean the staircase and surroundings of the Employees' Provident Fund quarters at Trivandrum from 23.3.1983 ~~and the services~~ were terminated with effect from 1.12.1987. The industrial dispute arising out of the termination of the services of the applicant was referred by the Government of

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India by order dated 24.7.1989 to the Industrial Tribunal, Kollam for adjudication. The industrial dispute was between the applicant on the one side and the Executive Engineer, CPWD, Trivandrum and the Regional Provident Fund Commissioner, Trivandrum on the other. The Executive Engineer, CPWD and the Regional Provident Fund Commissioner raised contentions that each of them was not the employer of the applicant. The issues referred for adjudication by the Industrial Tribunal were as follows:-

"Whether one of the two agencies viz., C.P.W.D., authorities represented by the Executive Engineer, Trivandrum Central Division, Trivandrum who engaged her service as a part-time Sweeper and R.P.F. Organisation rep. by the Regional Provident Fund Commissioner, who utilised her services as a part-time Sweeper was the actual employer of Smt.C. Balamma, part-time Sweeper, employed to clean the stair case and surroundings of Employees Provident Fund Quarters at Trivandrum during the period from Oct. 1984 to Nov. 1987 and whether the action on the part of her employer, whosoever may be considered her employer, in terminating her services w.e.f. Nov. 1987 is justified? If not, to what relief the workman is entitled to?"

In the claim statement filed before the Industrial Tribunal the applicant had averred that she was engaged by the Executive Engineer, CPWD, Trivandrum and that her services were terminated by that authority. The 2nd respondent, the Executive Engineer, CPWD, Trivandrum contended before the Industrial Tribunal that though the applicant was engaged as part-time Sweeper by the CPWD as a special case with effect from 30.8.1984, as it was found that it was not the duty of the CPWD to maintain the cleanliness of the campus, the Executive Engineer on 18.11.1987 informed the Regional Provident Fund Commissioner that CPWD would not be engaging a part-time Sweeper for that purpose any longer and that therefore, the CPWD cannot be treated as the employer. In the written statement filed by the 3rd respondent, the Regional Provident Fund Commissioner, it was contended that as the applicant was engaged by the Executive Engineer, CPWD, there was no employee-employer

relationship between the applicant and the 3rd respondent. On a consideration of the evidence recorded before it, the 4th respondent, the Industrial Tribunal found that there was an inconsistency in the case pleaded by the applicant and the evidence tendered by her because while she had stated in the claim statement that she was engaged by the 2nd respondent, in her testimony as W.W.I she "deposed" that she was engaged by the second management (3rd respondent) and that in view of the inconsistent stance taken by the applicant her case could not be accepted and that no relief could be granted to her. On the basis of the above finding, the impugned award was passed by the 4th respondent holding that the applicant was not entitled to any relief. It is aggrieved by the above award that the applicant has filed this application.

3. It has been averred in the application that the award of the Industrial Tribunal holding that the applicant is not entitled to any relief did not specifically answer the issues it was whether the first or the second management who employed the applicant and whether the termination of the services was justified and to what relief she was entitled to in case it is found that the termination of her services was not justified, and therefore, is perverse and unjustified.

4. On a careful perusal of all the pleadings and the connected papers and on hearing the arguments of the counsel for the parties, we are of the view that the Industrial Tribunal has committed a grave error in law by not adjudicating the issues referred to it and giving proper findings. The Industrial Tribunal had to adjudicate three questions, namely (i) who was the employer of the applicant, the Executive Engineer or the Regional Provident Fund Commissioner, (ii) whether the termination of services of the applicant was justified or not, and (iii) if the termination of the services

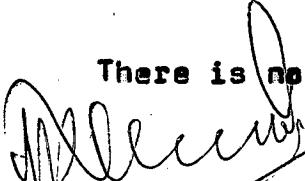
of the applicant is not justified, to what relief the applicant is entitled to? The answer to the third point would depend on the determination on the first two points. We find that the Tribunal has not entered any finding on the points one and two. Obviously, therefore, the Industrial Tribunal could have not answered the third point properly. To say that the applicant took inconsistent stance in her claim statement and in her testimony is no justification for the Tribunal to refuse to answer the issues as to who is the employer of the applicant and whether the termination of her services was justified or unjustified. On the basis of the evidence, the Tribunal in its award at paragraph 6 has given a ^{clear finding} ~~conclusion~~ that it was the Executive Engineer, CPWD who engaged the applicant. It is worthwhile to extract the following sentence from paragraph 6 of the impugned award at Annexure V:-

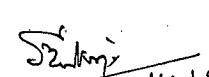
"The deposition of the Asst. Engineer of MW1 and Exts. M4, M5 and M10 to M12 clearly establish that the first management has appointed the workman and paid her wages." (emphasis added)

It is evident from this and also from the pleadings and the statement filed by the 2nd respondent that it was the Executive Engineer, CPWD, Trivandrum who engaged the applicant and paid her wages. On that basis the irresistible conclusion that could be arrived at by the Tribunal was that the Executive Engineer, CPWD is the employer of the applicant. The Industrial Tribunal should have, on the basis of this finding, proceeded to decide the remaining issues, i.e. whether the termination of the services of the applicant was justified and if not to what relief the applicant was entitled to. Since the Industrial Tribunal has not done this, and has not applied its mind to these questions referred to it by the Government, we are of the view that the award has to be set aside and the case remanded to the Industrial Tribunal for fresh disposal in accordance with law in the lines as indicated above.

5. In the result, the impugned award of the Industrial Tribunal dated 11.11.1991 at Annexure V is set aside and the matter is remanded to the 4th respondent for passing a fresh award ^{on the basis} taking that the 2nd respondent is the employer of the applicant and determining the issues referred to it in accordance with law in the light of the observations made in the foregoing paragraphs. Since the matter is a long pending dispute regarding termination of the services of a poor part-time employee, we hope that the Industrial Tribunal, Kollam, will endeavour to dispose of the matter as expeditiously as possible.

6. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


14.1.93.
(SP MUKERJI)
VICE CHAIRMAN

14.1.1993

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