

(2012) 07 JH CK 0021
In the Jharkhand High Court
Case No : L.P.A. No. 275 of 2007

Ashok Kumar Singh

APPELLANT

Vs

Jharkhand State Mineral Development Corporation, Union of
India and Secretary, Metaliferous Mines Worker-Association,
Koderma

RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 2(oo), 25F, 25F(bb)(oo)

Citation : (2013) 136 FLR 425 : (2013) LLR 324

Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : Indrajit Sinha, for the Appellant; Sidhartha Ranjan, Advocate for the
JSMDC, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties. This Letters Patent Appeal has been filed against the judgment dated 10th July, 2007 passed in W.P. (S) No. 6517 of 2006, whereby the writ petition of the respondent-employer has been allowed and the award passed by the Central Government Industrial Tribunal (No. 2), Dhanbad dated 17th April, 2006, has been set aside. The following was the dispute referred for adjudication to the Industrial Tribunal:-

Whether the action of the management of M/s Bihar State Mineral Development Corporation P.O. Jhumri Tilaiya, Distt. Koderma in terminating justified? If not to what relief the workman is entitled?

2. The appellant claimed that he was appointed as Accounts Clerk from 12.02.1990 and he worked upto 30.06.1993, and therefore, he worked for more than 240 days in a year continuously. Appellant's contention is that his services has been terminated absolutely illegally and without paying any retrenchment compensation. The Management submitted that the appellant though was given appointment on 07.02.1990 but his services were temporary as well as

appointment was given for fix period of six months only. However, admittedly the extensions were given by virtue of which the appellant continued to serve the establishment for about three years. The appellant's contention therefore is not disputed that he was given appointment on 07.02.1990 and his services were taken in the Accounts Department of the employer and he worked upto 1993, however, with some minor break hear and there. The Tribunal reached to the conclusion that the appellant was given appointment and he was discharging his duties in Accounts Section and he completed more than 240 days and his services has not been terminated, not concerned in any of the exception provided u/s 2(oo) of the Industrial Disputes Act, 1947, and therefore, the Tribunal held that the termination of the services of the appellant was illegal and directed to reinstate the appellant-petitioner.

3. Aggrieved against the award dated 17.04.2006, the Management preferred writ petition being W.P. (S) No. 6517 of 2006, wherein learned Single Judge after considering the judgment of Supreme Court held, that the appellant-workman's engagement was temporary for a fixed period. He was aware that his services may be discontinued after expiry of the period without any notice and payment of compensation, and therefore, the termination was justified in the second part of Clause (oo) (bb) of Section 2 of the Industrial Disputes Act.

4. Learned counsel for the appellant submitted that learned Single Judge committed serious error of law in drawing wrong inference from the proved i.e. admitted facts. It is submitted that the appellant admittedly was given appointment on 07.02.1990 and thereafter, his service was extended by several orders and he continued till 30.06.1993. It is also submitted that the last document, by which the appellant's services were sought to be terminated is dated 19.06.1993, whereby the appellant, for the first time alleged to have been informed that his appointment is in continuation to the previous order of appointment and his services is being extended for further six months from 01.01.1993. This letter of alleged extension of services upto 30.06.1993 was alleged to have been issued on 19.06.1993, which extension of service is not within the earlier period of continuation of service of the appellant, therefore, in fact, by this letter, which alleged to have been issued on 19.06.1993 to make the services of the appellant from 01.01.1993 to 30.06.1993 as a fixed term appointment was issued only to come out from the clutches of the Provisions of Industrial Dispute Act, 1947, and the appellant was admittedly working much prior to 01.01.1993 or 19.06.1993 and was not working under any fixed period service contract. It is submitted that from the letter dated 19.06.1993, no new contract has come into existence from 01.01.1993. It is also submitted that in fact all these letters are nothing but only a device and mode to avoid the provisions of the Industrial Disputes Act, 1947 and the appellant in fact continuously worked for more than 240 days in any of calendar years from 1991 to 1993 and in this case, for about three years and that too in the Accounts Section, where the work was very much there in the Accounts Section where the appellant was discharging duties, and therefore, learned Single Judge committed

error of law by holding that the appellant's engagement was a temporary engagement for a fixed period whereas, in fact, that Clause was never invoked by the respondent-employer, otherwise his services would have been discontinued immediately after expiry of the period given in the first appointment letter or even as given in subsequent letters. It is also submitted that last letter dated 19.06.1993 was never served upon the appellant.

5. Learned counsel for the respondent-management submitted one document in this L.P.A. today to show that the appellant was given appointment temporarily and for a fixed period. Learned counsel for the respondent vehemently submitted that in view of the decision of Hon''ble Supreme Court in the case of Kishore Chandra Samal Vs. The Divisional Manager, Orissa State Cashew Development Corporation Ltd., Dhenkanal, , it is a settled law that when a person is engaged on daily wages basis and his engagement expired after the period specified in the contract, then that is not the retrenchment under the Definition of Section 25F of Industrial Disputes Act and is covered by exception carved out in (oo)(bb) of Section 25F.

6. We considered the submission of learned counsel for the parties and perused the facts as well as the evidence which have been relied upon by the learned counsel for the respondent, copies of which have been placed on record.

7. It is not disputed that the appellant was given appointment on 07.02.1990 by a written order. This order demonstrates that initially the appointment was for six months and admittedly the appellant's service was not terminated because of the end of the term of the contract. The appellant's thereafter, shifted to another department and posted in the Accounts Department. This fact has been admitted by non else the witnesses produced by the management itself who categorically admitted that appellant had worked in the Accounts Section and the services of the appellant was taken in the Accounts Section. The appellant's contention is therefore, that he was working in the Accounts Section since 12.2.1993 and from the evidence produced by the management itself, the appellant continued in service for more than 240 days in any calendar year. However, the contention of the respondent-management is that the workman was engaged on fixed term post and extension of his services will not amount to continuation of his services without any rider of the period stipulated in the contract.

8. We have perused the documents placed on record wherein it has been mentioned that the appellant's services has been extended in terms of the original appointment order, however, that is factually wrong in view of the fact that initially the appointment order was for six months and admittedly after sometime the appellant's services has been extended for two-three months to say, that the petitioner continued to work on the post in the same manner but there is no continuous extension of his service and appellant continued in service without any contract of fixed term, subsequent to these orders. Therefore, it is not a case of fixed term appointment so as to result into the termination of the services of the employee at the end of the contract so as to come out of the

clutches of Section 25F by virtue of Section 25F (bb)(oo).

9. In view of the above reasons, we cannot subscribe to the views expressed by the learned Single Judge that simply because first order and two more earlier orders of the appointment of the appellant were for a fixed period, therefore, at the time of retrenchment of appellant, appellant was fixed term contract appointee. It will be worthwhile to mention that the appellant was paid salary month-wise and his services were taken in the Accounts Section. From the relevant fact and the evidence it clearly indicates that the appellant's services were terminated without paying his compensation as provided u/s 25F, therefore, the impugned order of the learned Single Judge passed on 10.7.2007 is set aside and the writ petition is dismissed. No orders as to cost.