
(2009) 08 BOM CK 0101

In the Bombay High Court

Case No : Writ Petition No. 1976 of 2002

Bhagwan Bhikaji Ghorband

APPELLANT

Vs

The Chief Executive Officer, Zilla Parishad

RESPONDENT

Date of Decision : 26-08-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Industrial Disputes Act, 1947 — Section 10(1), 12(5), 25F, 25G, 25N

Citation : (2009) 123 FLR 918

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : V.P. Golewar, for the Appellant; C.R. Bharaswadkar, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This Writ Petition, taken up for final hearing, takes an exception to the judgment and award dt.7.2.2001 passed by the Labour Court, Jalna in Reference (IDA) No.26 of 1991.

2. The background facts of the case, as disclosed in the petition, are as under :It is the case of the petitioner that he has passed IX Standard examination and he was appointed as a Peon on 1.4.1979 by the respondent. Respondent had issued appointment orders to the petitioner and also services of the petitioner were continued and confirmed by issuing various orders from 11.4.1979 to 18.2.1986. It is further case of the petitioner that services of the petitioner have been terminated by the respondent with effect from 31.3.1986 without assigning any reason and without following the provisions of Sections 25-F, 25G and 25-N of the Industrial Disputes Act, 1947 ("the said Act" hereinafter, for brevity). The petitioner had raised a dispute before the Deputy Commissioner of Labour. The Deputy Commissioner of Labour initiated a conciliation proceeding. The respondent, however, did not respond and therefore, the dispute was referred to the Labour Court under sections 10(1) and 12(5) of the said Act. On 7.12.2001,

the matter came to be referred to the Labour Court, Jalna. The Labour Court issued notices to respondent. Respondent filed its Written Statement and denied the claim of the petitioner. After appreciating the evidence and contentions of the petitioner, the learned Presiding Officer of the Labour Court, Jalna, rejected the reference. Hence this writ petition.

3. Learned Counsel appearing for the petitioner submitted that the contention and evidence led by the petitioner before the Labour Court went unchallenged since the respondent did not step in the witness box and did not lead any evidence. Learned Counsel further submitted that the petitioner was appointed by various orders which are annexed to the petition at Exhibit "A" collectively and submitted that the petitioner was duly appointed and his services were continued from 1979 till his termination. The learned Counsel further submitted that merely because there are technical breaks in between, it cannot be said that the petitioner has not continuously worked. It is further argued that the petitioner has continuously worked and therefore, he is entitled for the reliefs of reinstatement and continuity. Learned Counsel further submitted that even the junior persons to the petitioner are appointed and made permanent, however, the same benefit is denied to the petitioner.

4. Learned Counsel for the petitioner, in support of his submissions, placed reliance on the reported judgments of the Honourable Apex Court in the cases of Deep Chandra Vs. State of U.P. and Another, and Vikramaditya Pandey v. Industrial Tribunal and Anr. 2001 AIR SCW 310 and submitted that even in case of daily wager or ad-hoc employee, the procedure as contemplated u/s 25-F of the said Act is required to be followed. Learned Counsel further submits that the Labour Court has not properly appreciated the contentions raised by the petitioner and erroneously rejected the reference. Therefore, he submitted that this is a fit case in which this Court should exercise its writ jurisdiction and grant the reliefs as prayed in the petition.

5. Though the respondent is duly served, none appears for the respondent. However, the affidavit-in-reply has been filed by the respondent on record. In reply, the respondent has stated that the petition is not maintainable as the petitioner is claiming the post of Peon, which is on the establishment of Zilla Parishad, Parbhani. There is certain procedure laid down to fill up the post as per the Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1967 and being the service matter, the petitioner should not have resorted to the provisions of Industrial Disputes Act. In fact, the petitioner was appointed as daily wager and purely on ad-hoc basis under a Scheme and till the Scheme exhausted under the Animal Husbandry Department, Zilla Parishad, Parbhani. It is further stated that since the scheme is closed and funds are exhausted, the services of the petitioner, as a daily wager, are not necessary and cannot be continued. It is further stated that initial appointment of the petitioner was not on any post nor it was made by adopting the procedure which is to be observed while filling up the posts of permanent nature. In paragraph No.2 of the said

reply, it is further stated that the Government has from time to time issued Standing Orders and directed the respondent not to create new posts and in view of such prohibition, the petitioner cannot claim the continuity in service. Further, there is a reference to the orders issued from time to time by which the petitioner was offered work as a daily wager and it is stated that the petitioner was given work purely on ad-hoc and daily wages basis. The sum and substance of the affidavit in reply is that the petitioner was appointed on daily wages under a particular scheme and not against any post and therefore, according to the well established principles of law, he cannot be granted reinstatement and continuity in the service.

6. I have heard learned Counsel appearing for the petitioner at length. I have also gone through the pleadings in the petition, exhibits thereto, reply and documents of the respondent so also the award passed by the Labour Court.

7. The Presiding Officer, Labour Court has framed necessary issues for determination of the consideration and in paragraph No.9, the findings are recorded that the petitioner was appointed on daily rated basis and in view of the decision of the Apex Court in the case of Himanshu Kumar Vidyarthi and Ors. v. State of Bihar and Ors. 1997 II CLR 15, the termination of the services of the petitioner does not amount to retrenchment though he may have completed service for more than 240 days. While answering issue No.2, the Court below has held that the petitioner has failed to prove that his services have been terminated illegally and he is not entitled for any relief, and therefore, rejected the reference.

8. It is not permissible to enter into the exercise of re- appreciating the evidence in the writ jurisdiction. However, on perusal of Exhibit "A" to the petition (Pages 15 to 23), it appears that the said orders were issued by the respondent according sanction to engage daily wages labourers (un-skilled) and that those orders were issued from time to time. It is further mentioned in the said order that the scheme is operative for that particular year. Though, it is tried to be contended by the learned Counsel for the petitioner that those are the appointment letters, on careful perusal of said orders at Exhibit "A" collectively, it cannot be said that the petitioner was appointed on a particular post or sanctioned post or the post of Peon as claimed by the petitioner in the petition. It is an admitted position that the petitioner was engaged as a Daily Wage Labour and not as a Peon. Therefore, the claim of the petitioner that he was appointed as a Peon does not get support from the annexures to the petition or the findings recorded by the Labour Court.

9. It is assertion of the respondent that the petitioner was appointed under the Scheme and as long as that Scheme was in existence, he was given the work on daily wages and thereafter, since the scheme is over and budgetary provision for the said scheme is exhausted, there is no question of further continuity of the petitioner on daily wages.

10. There is also substance in the contention of the respondent, which is reflected through the affidavit in reply that if the petitioner is claiming the post of Peon on the establishment of the respondent, then a proper procedure is prescribed for appointment and forum to challenge the denial of relief to the petitioner is somewhere else and not the Labour or Industrial Court. There is also substance in the averments in the affidavit in reply that for the sanctioned post, there is a procedure prescribed for appointment by a proper method.

11. On careful perusal of the documents on record, it cannot be said that the petitioner was appointed against any particular post. It is also an admitted position that the petitioner was not appointed in pursuance to any advertisement or by following any procedure. It is also not in dispute that separate appointment order was issued to the petitioner.

12. So far reliance of the learned Counsel for the petitioner on the reported judgment of the Apex Court, cited *supra*, the facts in those cases appear to be different. In fact, in the case of Deep Chandra (*supra*) no facts in that case are available in the said judgment and the learned Counsel for the petitioner is also not able to narrate the facts in that case. Therefore, the said judgment cannot be made applicable in the facts of this case. So far another judgment in the case of Vikramaditya (*supra*) is concerned, the petitioner therein was appointed as a Clerk in the Cooperative Bank on ad-hoc basis and therefore, in that case, the post involved was of Clerk. In the instant case, though it is asserted by the petitioner that he was appointed on the respondent establishment as a Peon, same assertion of the petitioner is totally denied by the respondent and the petitioner has also failed to prove that he was appointed as a Peon.

13. Viewed from any angle, at the most, it can be said that the petitioner was engaged by respondent on daily wages under a particular scheme for the particular period by making a budgetary provision for that year. By any stretch of imagination, it cannot be said that the petitioner was appointed against any sanctioned post. The person working on daily wages or as a Daily Wager, though for number of years, has no right to claim re-instatement or continuity in the service as held by the Honourable Supreme Court in the case of Secretary, State of Karnataka and Ors. v. Umadevi and Ors. 2006 (4) SCALE 1970. In the said judgment, it has been held, in paragraph No.36, as under:

36. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -not at arms length --since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily

or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

14. On careful perusal of paragraph No. 36, as well as remaining part of the judgment cited supra, it is crystal clear that the person appointed on daily wages or on ad-hoc basis cannot claim any continuity or reinstatement in the service. Therefore, it is not possible to agree with the contention of the learned Counsel for the petitioner and to upset the judgment and award passed by the learned Presiding Officer, Labour Court, Jalna in the writ jurisdiction.

15. In the result, Writ Petition is dismissed. Rule discharged. No order as to costs.