

(1994) 07 BOM CK 0131
In the Bombay High Court
Case No : Writ Petition No. 120 of 1981

Chima Shravan Shinde and Others

APPELLANT

Vs

M.V. Patil and Others

RESPONDENT

Date of Decision : 15-07-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B, 33C(2)

Citation : (1994) 07 BOM CK 0131

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

B.N. Srikrishna, J.—This writ petition under Article 227 of the Constitution of India impugns an order dated 10th January, 1980, of the First Labour Court, Pune, made in Application (IDA/LCP) No. 262 of 1977 dismissing the Application. The Application was made u/s 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

2. The petitioners were working in the Building and Communication Department, Public Works Division in Khed Sub-Division, deployed on the work in connection with Shirur-Bhima Shankar Road, Pune, as daily rated workers. They made an Application to the Labour Court alleging that they were entitled to the benefits under the settlement dated 20th July, 1967, between the Building, Communication and Irrigation Department of the Government of Maharashtra and the Trade Unions representing the workmen of the said Department. It was alleged there in that the said settlement such of the workmen who had put in continuous service of five years on the daily rated wages were entitled to have the posts held by them converted into posts of Regular Temporary Establishment and that they were entitled to be appointed on such converted posts and paid pay, allowance and consequent benefits thereupon. In the Schedule to the Application, the petitioners indicated that they were entitled to be placed on the converted posts with effect from 16th December, 1974, in the case of petitioners 1 to 4 and, from 16th April, 1976, in the case of 5th Petitioner. They also claimed

the difference of the pay and allowances which they were entitled as amounting to the total sum of Rs. 14,072/-. The application was opposed by the Employer principally on the ground that each of the concerned workman had not put in five years continuous service as each of them had not rendered 240 days of actual working in the concerned years. This contention was accepted by the Labour Court which dismissed the Application by its order dated 10th January, 1980. Hence, the petition challenging the said order of the Labour Court.

3. Initially, the Registry raised an objection that there was no Vakalatnama filed by the learned Advocate on record for petitioner No. 3. On her application, petitioner No. 3 was transposed as Respondent No. 3 and, for failure to serve the Respondent No. 3, the registration of the petition stands refused as against the Third Respondent by the order of the Additional Registrar dated 1.4.1993. Thus, currently we are left with the cases only of petitioners 1, 2, 4 and 5.

4. The controversy which arises in the petition is no longer *res integra*, at least as far as this Court is concerned. I had occasion to consider the very same point in the case of *The State of Maharashtra v. M. V. Ghalge & Anr.* 1992 LIC 748. In Ghalge's case the effect of Rule 28 has been extensively considered. The view expressed therein is to be found in paragraph 10 as under :

"I am unable to accept the contention of Mr. Bhawnani that this rule would become applicable only after the workman has rendered continuous service of five years on the daily rated establishment. The expression "continues service" has not been defined in the Rules in connection with this rule, though, in connection with lay off and retrenchment, it has been defined to mean rendering of 240 days actual work in a year. In the absence of any definition of the expression "continuous service" for the purpose of Rule 28, a reasonable construction will have to be put on this expression. In my view, the rule contemplates continuation of a workman on the daily rated establishment for a period of at least five years, consecutively and without interruption. The Rule does not contemplate actual working on the part of the daily rated employee for any specified number of days in any case of the requisite five years. In other words, if the employee is on the daily rated establishment in five consecutive years, irrespective of number of days of actual work rendered in each of the said five years, the employee would be entitled to the benefit of Rule 28 of having his post converted to the post of converted temporary establishment."

5. The contention before me is the same, and, therefore the ratio of Ghalge's case must govern. Mr. Rane, learned Assistant Government Pleader, however, raised an additional point. He contends that under the provisions of Section 25B of the Industrial Disputes Act a workmen could not be said to have in continuous service unless he puts in not longer than 240 days of actual working. I am unable to accept the contention for the simple reason that Section 25-B lays down the definition continuous service "for the purposes of this Chapter" (i.e. for the purposes of Chapter VA of the Industrial Disputes act). It is not disputed that the Application made by the workmen to the labour Court did not claim any

benefit under Chapter VA of the Act, but was for the purpose of claiming benefits of five years continuous service under the terms which were settled between the Employer and Workmen. The contention of the Assistant Government Pleader must, therefore, fail.

6. In the result, the petition is allowed. Rule made absolute. It is held that Petitioners 1, 2 and 4 are entitled to have their posts converted to Regular Temporary posts with effect from 16th December, 1974, and to be appointed thereupon as Regular Temporary employees and be given all consequent benefits thereupon. Petitioner No. 5 is entitled to have his post converted to Regular Temporary post with effect from 16th April, 1976, and to be given all consequent benefits thereupon. The calculations made in the Application not having been disputed on merits, each of the petitioners 1, 2, 4 and 5 shall be entitled to the following sums :

Petitioner 1, 2 and 4 shall be entitled to a sum of Rs. 3071/- each while petitioner No. 5 shall be entitled to a sum of Rs. 1788/-.

The order of the Labour Court stands set aside and the Application stands allowed. Rule made absolute in terms as above with costs.

7. Although the petition has been dismissed with regard to the third petitioner, Dadu Tukaram Shinde, since I see no difference in this case, I would recommend to the Government to consider this case also sympathetically give him the benefits on the same terms as applicable to the other Petitioners.

8. The amounts payable to the petitioners shall be paid not later than 15th September, 1994.

9. Certified copy expedited.