
(2018) 07 MP CK 0253

In the Madhya Pradesh High Court

Case No : Writ Petition No.1719 OF 2012

Commissioner, M.P. Housing Board Bhopal & Another

APPELLANT

Vs

Hakim Singh Rajak

RESPONDENT

Date of Decision : 26-07-2018

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 25(N), 29(N)
Factories Act, 1948 — Section 2(1), 2(k)

Citation : (2018) 07 MP CK 0253

Hon'ble Judges : S.A.Dharmadhikari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. In this petition under Article 227 of the Constitution of India, the petitioners have inter-alia assailed the order dated 13/09/2011 passed in case No.

103/A/ID Act/ 2004 (Reference) passed by Labour Court No.1 Gwalior whereby the Labour Court has held that termination of service of the

respondent is illegal and has directed the petitioners to reinstate the respondent in service without any back wages.

2. Brief facts leading to filing of this case are that respondent had submitted the statement of claim before the Deputy Labour Commissioner Madhya

Pradesh Indore. The respondent was working as a Muster Roll Employee in the M.P. Housing Board w.e.f 05/05/1991. It was further contended that

record of attendance and salary of respondent was being kept by the M.P. Housing Board. The petitioners/Board is engaged in the construction of

buildings and shops which comes under the category of 'Industry'. The respondent was terminated from service on 28/02/2000 without giving

any opportunity of hearing and without conducting any departmental enquiry. The provision of Section 25-N of the Industrial Disputes Act, 1947

(hereinafter referred to as Act) were not complied with. The petitioners had been performing manufacturing work and had engaged more than 100

employees. It was specifically stated in the application that the petitioners had been in the construction business and was constructing the houses

laying down sewer lines and roads thereafter selling the constructed houses to the customers. No permission has been obtained from the government

regarding termination of service of the petitioners. On these grounds, respondents prayed for reinstatement in service with full back wages.

3. The petitioners submitted their reply to the aforesaid statement of the claim in which the allegations were denied. The respondent was engaged on

daily wage basis. His services were terminated w.e.f 28/02/2000 since there was no further requirement in the petitioners- Board. He was terminated

as per the orders of the Government after paying retrenchment compensation. The directions were issued by the government to retrench the

employees who were appointed on daily wages after 31/12/1998.

4. On going through the writ petition, it is seen that the same has been filed on the following grounds :-

1. No permission for retrenchment was required under Section 25(N) of the Act since the State Government had issued the order for removal of daily

wager employees who were engaged after 31/12/1998.

2. Section 29(N) of the Act is not applicable in the present case as the M.P. Housing Board is not an "Industry".

3. The petitioners had complied with provision of Section 25(N) by paying salary in lieu of notice period, compensation and gratuity which aspect was

not considered by the court-below, therefore, the "court below has committed an error of law in allowing the application of the petitioner.

4. Respondent has taken a plea that provision of Chapter V-B of the Act are applicable in the present case, since the petitioner was engaged in

manufacturing process. Provision of the same has not been complied with before terminating services of the respondent. The provisions are penal in

nature, therefore, court below rightly ordered reinstatement without any back wages. There is no order of the government to take "the employees

like the respondent back in service. The employees have been terminated since

there was no further requirement. On these grounds, petition deserves to be dismissed.

5. Before Labour Court, it was stated that respondent was engaged on daily wages w.e.f 05/05/1991 as Muster Roll Employee and he was discontinued w.e.f 28/02/2000. It was further stated that more than 100 employees were working in the department engaged for development of land, construction of houses, roads, laying down of sewer lines and construction of roads.

6. In the reply before court below, petitioner had categorically stated that respondent was initially employed on daily wages and work was taken according to need. It is clear from the attendance register that respondent had continuously worked as a Muster Roll Employee and he was being paid salary. On the basis of reply submitted by the petitioner, the Labour Court has held that termination of service of the respondent was in violation of the provision of the Act. No appropriate permission was taken by the petitioner before terminating the service. It is an admitted fact that respondent had worked for 240 days in calendar year prior to his termination. The Labour Court had ordered without any back wages.

6. Chapter V-B of industrial disputes act, 1947 prescribes special provisions relating to retrenchment and closure in certain establishments. Section 25k of the industrial disputes act prescribes conditions for application of chapter v (b) which is as under: -

25-K. Application of chapter V-B. - (1) the provisions of this chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than (one) hundred workmen were employed on an average per working day for the preceding twelve months.

7. Industrial establishment has been defined in section 25I which is as under: 25I. Definitions - for the purpose of this chapter. - (a) 'industrial establishment' means - (i) a factory as defined in clause (m) of section 2 of the factories act, 1948 (63 of 1948); (ii) a mine as defined in clause (j) of sub section (1) of section 2 of the mines act, 1952 (33 of 1952); or (iii) a plantation as defined in clause (f) of section 2 of the plantation labour act, 1951 (69 of 1951).

8. section 2 (m) of the factory act, 1948 defines factory as under: -

(m) "factory" means any premises including the precinct thereof -

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing

process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a

manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, and section 2 (k) of factory act, 1948 defines

manufacturing process, which is as under: -

(k) "manufacturing process" means any process for -

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any

article or substance with a view to use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance; or (iii) generating, transforming or transmitting power, or

(iv) composing types for printing by letterpress, lithography, photo - gravure of other similar process or book binding; (or)

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels, (or)

(vi) preserving or storing any article in cold storage

9. It is clear from the aforesaid definitions that manufacturing process means making, altering, repairing and adopting any article and substance with a

view to use, sale, transport, deliver or disposal. In the present case the petitioner was constructing houses. It had been using raw material for the

purpose of construction of houses and also developing the land and constructing roads. Thereafter the petitioner has been selling the newly

constructed houses to the consumers. 7. The respondent has filed IA No. 3780/2018, an application for disposal of the case in the light of decision in

the case of M.P. Housing Board Vs Jyoti Chitnis and others, 2008 (3) MPLJ 560 wherein coordinate Bench of this Court relying on the judgment of

the Apex Court has held that petitioners-Board fell within the definition of manufacturing process, construction, selling of houses, roads, sewer etc,

therefore, the employees so working in the construction company were squarely covered within the definition of "workman" as defined in

Section 2(1) of the Factories Act.

8. The provision of Section 25-N of the Act prescribes condition precedent for retrenchment of workers which is reproduced below :-

25-N. Conditions precedent to retrenchment of workman. - (1) no workman employed in any industrial establishment to which this chapter applies,

who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until, -

(a) the workman has been given threemonths notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the

workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate government or such authority as may be specified by that government by notification in the official gazette

(hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under subsection (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the

intended retrenchment and a copy of such application also be served simultaneously on the workman concerned in the prescribed manner.

(9) Hon'ble supreme court in Lal mohammad and others v. Indian Railway Construction co. Ltd. And others, 1999 SC 355 has held as under with

regard to manufacturing process: - -

while railway lines are being constructed on a given site no article or substance is being made or repaired, maintained, finished etc. Raw materials like

railway sleepers, bolts and loose railway rails, when bought by the construction company from open market and brought on site articles visible to eyes

and are movable articles. These articles are adapted for their use. Their use is for ultimately laying down a railway line. In that process sleepers, bolts

and rails would get used up. If this happens, the definition of 'manufacturing process' dealing with adaptations of these articles for use would squarely

get attracted. It is true that the ultimate product of this exercise or process is the bringing into existence a railway track which is embedded in the

earth which cannot be sold, transported, delivered or disposed of like a movable property. However, as the definition is worded, it cannot be said of

necessity that any end product which results after adapting any raw material,

article or substance ""with a view to its use"" must necessarily result into a movable final product or a commodity. It has to be kept in view that the definition of 'manufacturing process' in section 2 (k) of the factories act has nothing to do with manufacturing of goods which may attract excise duty under the central excises and salt act, 1944. For the definition of manufacturing process"" under section 2 (k) end product may be goods or otherwise. It is not necessary that the end product must be marketable. Even accepting that the final product namely, construction of railway line embedded in earth is not the subject - matter of sale, transfer, delivery or disposal, still the raw - materials which are adapted for their use with a view to constructing railway line which is the final product could be said to have fallen within the sweep of the definition of the term 'manufacturing process' as found in section 2 (k) of the factories act.

All the workers employed by the construction company would squarely attract the definition of the term ""workmen' as found in section 2 (1) of the factories act as they are working for remuneration in a manufacturing process carried out by the project. Thus all the requirements of the term 'factory' as defined by section 2 (m) of the factories act are satisfied on the facts of the present case.

(10) Constitution Bench of hon'ble supremecourt in Ardeshir H. Bhiwandiwalla Vs. State of Bombay, AIR 1962 SC 29 has held as under with regard

to manufacturing of salt from sea water that whether it is manufacturing process or not: -

â??The sea water in the sea never becomes salt merely on account of the play of sun's rays on it. Labourers are employed for (i) admitting sea water

to the reservoirs by working sluice gates, sometimes at night also, or the pump; (h) filling crystallizing beds; (iii) watching the density of brine in the

crystallizing beds; (iv) seeing that the density does not exceed certain limits and that salts other than sodium chloride (common salt) are not formed;

(v) scraping and collecting salt crystals; (vi) grading the salt crystals by 'saving' and (vii) putting salt into gunny bags. It follows that it is due to human

agency, aided by natural, forces, that salt is extracted from sea water. The processes carried out in the salt works and described above, come within

the definition of 'manufacturing process' in section 2 (k) inasmuch as salt can be said to have been manufactured from sea water by the process of

treatment and adaptation of sea water into salt. The sea water, a non commercial article, has been adapted to salt, a commercial article. Case law discussed.

9. After considering the facts and circumstances of the case as well as principle of law laid-down by the Apex Court, it is clear that work of

construction of houses by the petitioners Â for the purpose of selling comes within the definition of â??manufacturing processâ?. The respondent was

working as a Muster Roll Employee with the petitioners at the relevant time, therefore, he falls within the definition of â??workmenâ?. It is an

admitted position that more than 100 employees were working in the petitioners' organization, therefore, provision of Chapter V-B of the Act was

required to be mandatorily followed before retrenching and terminating the service of the respondent. It is also clear that petitioners have not followed

the mandatory provision of Section 25-N of the Act before terminating the service, hence, findings recorded by the labour Court is in accordance with

law and can not be faulted with. The Labour Court has rightly come to the conclusion and directed reinstatement without any back wages. It is also an

admitted fact that the petitioners failed to establish that respondent was gainfully employed during retrenchment.

10. Accordingly, having found no error in the findings of the Labour Court, no interference is called for. The writ petition is hereby dismissed. No

order as to cost.