
(2009) 08 BOM CK 0064
In the Bombay High Court
Case No : Second Appeal No. 171 of 1992

Dagadu Sakharam Lad	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2010) 124 FLR 257 : (2009) 6 MhLj 693

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : H.E. Palwe, for the Appellant; S.P. Manchekar, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The Second Appeal challenges the judgment and order of the appellate court in Civil Appeal No. 62 of 1991. That Appeal was filed by the State of Maharashtra i.e. the respondents herein against the decree passed by the trial court on 23rd January, 1991.

2. The grounds on which the present Second Appeal has been admitted are as follows:

(a). Whether the Civil Court has jurisdiction to entertain and try a suit filed by the person who is governed by the provisions of Industrial Disputes Act, 1947?

(b). Whether the burden lies on the appellant to prove that juniors are retained in the employment in the absence of preparing seniority list and displaying the same on the notice board and or circulating amongst the employees ?

3. The facts giving rise to the present Second Appeal are as follows:

4. The plaintiff was employed, being a project affected person, as a "Majdoor" with defendant No. 1 i.e. the State of Maharashtra on 16th June, 1986. He was being paid daily wages and from 30th April, 1988, he was promoted as a

"Helper". The plaintiff was working in the office of the Deputy Engineer, Bhira Hydroelectric Sub-Division No. 1, Ravalje, Tal. Mangaon, Dist. Raigad. He received a communication from the defendants on 25th June, 1988 informing him and other employees that they were relieved from employment with effect from 28th July, 1988. The reason given for their termination of service was that there was not enough work for them. The plaintiff had reason to believe that the defendants have discriminated in terminating his service because daily wagers who were junior to him were retained in employment. According to the plaintiff since he was a project affected person, he should have been continued in employment in preference to others. The plaintiff, therefore, filed Suit No. 1 of 1989 in which he prayed that it be declared that the defendants had discriminated against him in continuing junior employees in service in preference to himself although he was a project affected person. The plaintiff also sought a declaration that he was not liable to be removed from service by treating him as a temporary employee. A mandatory injunction was also sought by the plaintiff against the defendants directing them to restore him in service with all the benefits as a permanent employee.

5. A written statement was filed by the State of Maharashtra contending that a Civil Court had no jurisdiction to entertain a suit for reinstatement of the plaintiff. A further contention was raised that the suit was barred by limitation. The defendants also denied all the averments of the plaintiff made in the plaint and contended that the surplus staff, including the plaintiff, had been retrenched from service on completion of the project and, therefore, the question of reemployment did not arise.

6. Issues were framed and evidence was led by the plaintiff. The trial court did not frame any issue with respect to the jurisdiction of the court to entertain the suit. It held that the plaintiff was entitled to the declaration that he had sought and also for a mandatory injunction against the defendants. The trial court further held that the suit was not barred by limitation.

7. Aggrieved by this decision, the respondents herein filed Civil Appeal No. 62 of 1991. They contended that the Civil Court had no jurisdiction to entertain the suit as the plaintiff was a daily wage labourer and that the Civil Court had no jurisdiction to direct his reinstatement in employment and, therefore, no decree for specific performance of a contract of personal service could be passed.

8. The appellate court framed the issue as to whether the suit was maintainable and answered it in the affirmative. However, it held that the termination of services of the plaintiff was not illegal and that there was no discrimination against the plaintiff in terminating his services.

9. As stated earlier, the substantial question of law on which the Second Appeal has been admitted is whether the Civil Court had jurisdiction to entertain and try a suit filed by a person who is governed by the provisions of the Industrial Disputes Act, 1947.

10. There is an evidence on record to indicate that the plaintiff was employed on a Hydroelectric Power Project, first as a "Mazdoor" and then as a "Helper". This would indicate that the plaintiff was an industrial workman as defined u/s 2(s) of the Industrial Disputes Act, 1947. It is now well settled that an industrial workman cannot seek redress against his employer for reinstatement in service in a Civil Court. In the case of Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi, , the Supreme Court has held that a contract of personal service cannot be specifically enforced and, therefore, the suit filed by the plaintiff for - restoration in service with all the benefits as a permanent employee. would not lie before the Civil Court. Although the appellate court has held that it has jurisdiction to investigate as to whether the defendants have followed the proper procedure to terminate the services of the plaintiff, in my opinion, this finding of the appellate court is erroneous in view of the aforesaid judgment of the Supreme Court. The declaration as to whether the plaintiff was terminated from service, rightly and in accordance with law is a relief which can be granted either by the Labour Court or the Industrial Tribunal. Therefore, in my opinion, the Second Appeal must fail.

11. Accordingly, the Second Appeal is dismissed.