

(1989) 07 BOM CK 0010

In the Bombay High Court

Case No : Writ Petition No. 1580 of 1987

Dilip Hanumantrao Shirke and others

APPELLANT

Vs

Zilla Parishad Yavatmal and others

RESPONDENT

Date of Decision : 25-07-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1989) 2 BomCR 661 : (1990) 1 LLJ 445 : (1989) MhLj 794

Hon'ble Judges : H.D. Patel, J

Bench : Single Bench

Judgement

1. This petition is directed against the interim order passed by the Labour Court, Amaravathi in U.L.P. Case No. 54 of 1987 and other similar cases rejecting the application filed by each of the petitioners in their respective complaints for interim relief claimed under sub-section (2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act No. I of the 1972")

2. Each of the petitioners claiming themselves to be qualified for appointment to the post of Sanitary Inspectors, got themselves registered with the District Employment Exchange, Yavatmal. The first respondent submitted a requisition to the Employment Exchange for sponsoring eligible candidates for consideration of appointment to the post of Sanitary Inspector against the then existing vacancies and in pursuance whereof, after complying with the normal formalities pertaining to recruitment, appointed the petitioners to the posts of Sanitary Inspectors vide order dated 9th January 1986. The appointment was in the pay-scale of Rs. 335-680. The appointment letter, however, contained a stipulation that the appointment of the petitioners as Sanitary inspectors will be for eleven months ending on 30th November 1986 or for such further period or till select list of the candidates is received by the office. The first respondent by individual communication dated 30th November 1986 informed the petitioners that their services stand terminated with effect from 30th November 1986 A.N.

3. Aggrieved by the order of termination, each of the petitioners filed a complaint before the Labour Court, Amravati seeking a declaration that the action resorted to by the first respondent was nothing but an unfair labour practice under various sub-item including (f) of Item No. I of Schedule IV of the Act No. I of 1972. It was alleged in the complaint that the termination of services of all the petitioners was invalid and void since each of them had worked for more than 240 days and their services could not be dispensed with except in accordance with the procedure provided for retrenchment u/s 25-F of the Industrial Disputes Act, 1947. Other contentions were also raised but they are not relevant for my consideration at present. Each of the petitioners simultaneously moved an application under sub-section (2) of Section 30 of Act No. I of 1972 seeking an interim relief for continuing the petitioners in service during the pendency of the complaints.

4. It is a settled law that the termination of services of a workman, who has worked for not less than 240 days within a period of twelve calendar months immediately preceding the date of termination, without requisite payment of retrenchment compensation as envisaged by law, is invalid and void and this entitles a workman to claim the relief of reinstatement with back wages. Therefore, a common defence was raised in all the cases by the first respondent alleging that the contract of employment was only for a specific period and the termination of services with the expiry of the terms stipulated could not be deemed to be retrenchment and the protection claimed by the petitioners was not available to them under the amended clause (00) of Section 2 of the Industrial Disputes Act. Other defences were also raised with which this Court is not presently concerned.

5. The learned Labour Court after hearing the parties on the point of interim relief passed the order impugned rejecting the prayer of each of the petitioners to continue them in service. It appears that the Labour Court was of the opinion that under the amended definition of retrenchment, the petitioners cannot be said to have been retrenched and hence Section 25-F of the Industrial Dispute Act was not attracted. The petitioners feeling aggrieved by the order, finally deciding the point involved, have filed this petition.

6. What is necessary to decide is the scope and ambit of the amended sub-clause (bb) of clause (00) of Section 2 of the Industrial Disputes Act Section 2(00) after amendment reads as under :-

"Section 2(00). "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

(a) voluntary retirement of the workman, or

(b) retirement of the workman on reaching the age of superannuation of the contract of employment between the employer and the workman concerned contains a stipulation in that behalf, or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health".

The expression "termination by the employer of the service of a workman for any reason whatsoever" has been interpreted by the Supreme Court in the case of *State Bank of India v. Shri N. Sundaramoney* (1976-I-LLJ-478). The words "for any reason whatsoever" were given the widest meaning admitting of no exception. It further observes that whatever the reason, every termination spells retrenchment. A termination can take place by either active step of the master or running out of the stipulated term. Therefore, what emerges from the decision is that the termination embraces not merely the act of termination of the employer but the fact of termination howsoever produced. To make appointments for specific periods did not absolve the management from complying with the conditions stipulated u/s 25-F of the Industrial Dispute Act at the time the period of employment comes to an end. The benefit of law laid down by the Supreme Court was extended to all the workmen, even to those who were employed for specific work or for a particular job and even to casual labourers who were engaged merely to complete casual nature of work. It appears that the Legislature with the intention to protect a class of employment enacted one more exception to clause (00) of Section 2 by introducing sub-clause (bb) in addition to the three already existing. The said sub-clause takes out a class of employment from the definition of "retrenchment" and that class is where the termination of service is on account of non-renewal of a service contract between the workman and the employer or where contractual employment comes to an end on the basis of stipulation contained therein. The exception as contained in sub-clause (bb) will have to be strictly construed as it takes away certain rights of workman which such workman have been enjoying earlier to the amendment.

7. As stated above, the terminations which are included in sub-clause (bb) are those which are brought about either because of non-renewal of the contract or because of expiry of time stipulated in the contract of employment. It needs no further explanation but the probability of the employer exploiting the labour by giving fixed tenure appointments can never be overruled and, therefore, it would be improper and unwise simply to decide the nature of employment on the basis of letter of appointment issued by the employer. The nature of employment will have to be determined with reference to the nature of duties performed by the workman and type of job the workman was entrusted with. If the workman is engaged to do a particular job which may require him to do actual work for more than 240 days in twelve calendar months, such employment would be covered by the amended sub-clause because the employment comes to an end with the completion of the work. A stipulation in the contract that the employment would

be for a specific period or till completion of the work may also fall within the scope and ambit of this sub-clause. But if the employer resorts to contractual employment as a device to simply take it out of the principle clause (00) irrespective of the fact that the work continues or the nature of duties which the workman was performing are still in existence, such contractual engagements will have to be tested on the anvil of fairness, propriety and bona fides. May be that such fixed tenure employments are made to frustrate the claim of the workman to become regular or get himself confirmed as a permanent employee either under the Rules applicable to such employment or even under the Standing Orders. It is always open to the Court adjudicating the dispute to examine each and every case in its proper perspective and to protect the workman against the abuse of the amended provision. If this protection is not afforded, the benefit flowing from retrenchment, to which every termination succumbs, would be rendered nugatory. The amended sub-clause (bb) would apply only to such cases where the work ceases with the employment or the post itself ceases to exist or such other analogous cases where the contract of employment is found to be fair, proper and bonafide. To a certain extent, I am also supported in my view by the decision reported in the case of Shailendra Nath Shukla v. Vice Chancellor, Allahabad University and others 1987 Lab. I.C. 1607.

8. The learned Labour Court without considering the various factors narrated above, simply by relying upon the contents of the appointment letter came to the conclusion that the appointment of each of the petitioners was a fixed term appointment and their termination at the end of the term squarely fell within the ambit of sub-clause (bb) of Clause (00) of Section 2 of the Industrial Disputes Act and, therefore, they cannot be held to be retrenched. Such a conclusion which is arrived without proper application of mind can never be sustained. The order impugned hence deserves to be quashed.

9. In the result, the petition is allowed. The impugned order is quashed. The matter requires reconsideration but not without permitting the parties to lead evidence. Since sufficient time has lapsed and because evidence will have to be adduced by either of the parties, it would be appropriate to direct the learned Labour Court, Amravati to dispose of the complaints on merits as expeditiously as possible, preferably within a period of three months from the date of order along with the record received by the Court. In the above terms, the rule is accordingly made absolute. In the circumstances of the case, there will be no order as to costs.