
(2017) 11 BOM CK 0154
In the Bombay High Court
Case No : 315 of 2010

Executive Engineer & Anr

APPELLANT

Vs

Dinesh & Anr

RESPONDENT

Date of Decision : 23-11-2017

Acts Referred:

[Industrial Disputes Act, 1947](#), [Section 25F](#) - Conditions precedent to retrenchment of workmen
[Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971](#)

Citation : (2017) 11 BOM CK 0154

Hon'ble Judges : B.P. Dharmadhikari, Swapna S. Joshi

Bench : DIVISON BENCH

Advocate : H.R. Dhumale

Final Decision : Allowed

Judgement

1. The learned Single Judge of this Court vide judgment dated 1.9.2009 delivered in Writ Petition No. 686/09 upheld the relief of reinstatement with continuity granted by Labour Court as also by Industrial Court but brought down full back wages to 25%. This Court in L.P.A. on 17.9.2010 admitted L.P.A., granted adinterim relief of reinstatement after taking on record statement that amount of back wages as awarded by learned Single Judge has already been deposited. This interim stay has been confirmed on 25.11.2010. It appears that on that day Shri D.C. Naukarkar, learned Counsel appearing for respondents/workmen, sought time to apply for withdrawal of amount. However, that application has not been filed till date.

2. Though learned A.G.P. has invited our attention to two Complaints (ULP) filed vide Complaint (ULP) No. 16/98 and Complaint (ULP) No. 15/98, first adjudication therein by third Labour Court on 27.12.2001, the common order dated 10.2.2003 passed by Industrial Court remanding the matter back to Labour Court to answer the issue whether provisions of Industrial Disputes Act,

1947 were attracted and the later common judgment delivered by very same Labour Court again granting reinstatement with continuity and full back wages, we do not wish to go into all these niceties. By said judgment dated 18.8.2003 Labour Court declared termination of complainant before him with effect from 1.1.1998 as an unfair labour practice falling under Item 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act No. 1 of 1972). Consequently, it granted relief of continuity with full back wages. The employer then approached Industrial Court in Revision Petitions (ULPN) No. 259/03 & 260/03. Vide order dated 26.7.2004 the Industrial Court dismissed those Revisions preferred under Section 44 of Act No. 1 of 1972. This concurrent adjudication was then questioned in Writ Petition No. 686/09 and learned Single Judge has found no substance in it vide judgment dated 1.9.2009. However, because of readiness and willingness shown by learned Counsel for workmen, quantum of back wages was brought down to 25% from the date of dismissal till reinstatement. The learned Single Judge has modified the adjudication by Labour Court only to that extent.

3. Mr. H.R. Dhumale, the learned Assistant Government Pleader for the appellants, submits that the respondent no.2 Manoranjan had completed 56 years when L.P.A. was filed in 2009 and as such, by this date must have reached the age of superannuation and gone out. In so far as the other respondent Dinesh is concerned, he claims ignorance about actual joining either by Dinesh or Manoranjan. He submits that after 2009 he has not received any instructions from the Department in this connection. However, as there was stay given by this Court, both of them have admittedly not joined the employment.

4. He submits that burden to prove completion of 240 days of continuous service was upon the respondents and they have failed to discharge it. He invites our attention to consideration by the Industrial Court in paragraph no. 7. According to him, the Industrial Court has erroneously treated "continuous service" to be admitted fact. He has invited our attention also to memo of Complaints (ULP) filed by respective complainants and written statement filed thereto to show that fact was very much in dispute. He, therefore, contends that Industrial Court has proceeded on a wrong premise and ignored specific ground raised vide ground no. 14 in Revision (ULP) under Section 44 before it. Thus, there is failure to exercise jurisdiction.

5. According to learned A.G.P., learned Single Judge of this Court has fallen into same error. When there is no evidence of completion of 240 days of continuous service, the contention that provisions of Section 25F of the Industrial Disputes Act have not been complied with is erroneous and inconsequential. He, therefore, prays for allowing of L.P.A. and for dismissal of Complaints (ULP).

6. Nobody appears for respondent nos. 1 & 2.

7. It is to be noted that in their respective complaints, respondents point out that

they have worked continuously either from February, 1991 or then February, 1993. At the end of paragraph no.1 of Complaints (ULP), they have also specifically submitted that they were in continuous service from their joining till date of their illegal termination. They have pointed out that they were neither appointed by Tahsildar nor their appointment was under recommendation of Tahsildar, who acts as Competent Authority under Employment Guarantee Scheme. This material has been looked into by Labour Court as also by Industrial Court. Though evidence of witnesses of employer has not been made available for our perusal, its discussion in paragraph no. 11 of the judgment of Industrial Court dated 26.7.2004 shows that the appellant employer did not produce form no. 7 for showing that names of complainants were recommended by Tahsildar under Employment Guarantee Scheme. In paragraph no. 12 the learned Member of Industrial Court has also noted that employer produced copies of muster for showing wages paid to respective complainant for period from 6.10.1997 upto 26.12.1997. This material along with evidence has been looked into.

8. Perusal of written statement filed by employer does not show a specific denial of initial date of entry into service, i.e. as February, 1991 or then as February, 1993. Order of termination is dated 29.11.1997 and services have been brought to an end on 1.1.1998. Thus, workmen who joined services in February, 1991 or February, 1993 have continued upto 29.11.1997.

9. The employer has produced only documents of EGS work done by complainants for period from 16.10.1997 to 26.12.1997. Thus, nature of work done by them from February, 1991 or February, 1993 till 1.1.1998 has not been brought on record. If employer has got records only for a period of about two months to show EGS work, it is obvious that it must possess other records also but then same have not been produced to prove the true and correct position. The appellant would do so only if production of records is against its interest and, therefore, in favour of respondents. If for long period from February, 1991 or February, 1993 till 1.1.1998 employer can demonstrate EGS work only of two months, an adverse inference rightly needs to be drawn. After 26.12.1997 till their termination on 1.1.1998 the respective complainant/workmen must have done some other work, i.e. nonEGS work. It also follows that before 16.10.1997 they have again done nonEGS work.

10. The discussion by Industrial Court shows how EGS work can be proved by getting necessary records from office of Tahsildar as also from site where EGS work is actually done. Forms generated in the process are also taken note of. Absence of such records of respondents for period mentioned supra, therefore, clearly reveals falsehood in their contention that respondents were all the while working as EGS employees. The Industrial Court has in this backdrop applied its mind and accepted the findings of fact reached by Labour Court. The learned Single Judge in exercise of writ jurisdiction has upheld these concurrent findings of fact.

11. We have perused the relevant judgments of Labour Court, Industrial Court as

also judgment delivered by the learned Single Judge. The learned Single Judge has with proper reasoning endorsed the concurrent findings. We do not see any jurisdictional error or perversity.

12. The learned Single Judge has brought down back wages to 25%. Instead of awarding 100% back wages from the date of termination, i.e. from 1.1.1998 till reinstatement, the learned Single Judge has accepted offer of workmen and given to them 25% of the back wages with continuity. Thus, for period from 1.1.1998 till 1.9.2009 the respondents are entitled only to 25% of the salary with continuity.

13. As thereafter on 17.9.2010 in L.P.A. there is an interim direction, the respondents could not join and, therefore, are out of employment even today. Respondent no.2 Manoranjan cannot now join back. The fate of other respondent, namely, Dinesh is also not on record. If at this stage they are to be reinstated, Dinesh may get back wages for the period from 1.1.1998 approximately for a period of 20 years. If grant of wages at 25% is upheld, he will get roughly salary of about five years.

14. In this situation, we find that when respondents were working on daily wages and not holding any post, the grant of wages at 25% to respondent no.2 Manoranjan, who must have superannuated already after 1.9.2009 till date of superannuation would be unjust. We make it 50%. Thus, respondent no.2 Manoranjan will get back wages at 25% from 1.1.1998 till 31.8.2009 and thereafter at 50% from 1.9.2009 till his superannuation.

15. Dinesh, who may be now not more than 48 years old will get back wages at 25% only from 1.1.1998 till his reinstatement. If he is not already working and is interested in reinstatement, he shall report back to his employer within next one month. If he does not report back, he will not earn the back wages or continuity.

16. Both the respondents shall, however, be given the benefit of continuity. Thus, the judgment and order delivered by third Labour Court in their respective Complaints (ULP) on 18.8.2003 is modified to that extent.

17. The Letters Patent Appeal is thus partly allowed and disposed of. No costs.