

(2005) 09 MP CK 0020
In the Madhya Pradesh High Court
Case No : W. P. No. 2361 of 2005 (S)

Executive Engineer, M.P. Housing Board, Indore and others	APPELLANT
Vs	
Ramesh	RESPONDENT

Date of Decision : 06-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 2(oo), 25F

Citation : (2005) 4 MPLJ 529

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : V.P. Khare, for the Appellant;

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the validity of impugned award Annexure P/I by which respondent has been directed to be reinstated with 50% backwages. The M. P. Housing Board (hereinafter referred to as the Board") is a statutory body and its functions are to construct residential colonies, W.P. No. 2361 of 2005 (S) decided on 6-9-2005. (Indore) shopping complex, etc. etc. The petitioner No. 1 is the Executive Engineer, petitioner No. 2 is the Dy. Commissioner and petitioner No. 3 is the Commissioner of the Board. The Board in order to construct the colonies, shopping complexes etc. engages workman and wherever the construction work of the Board is to be carried out, the respondent was directed to work there and he was paid wages. The services of respondent were terminated vide order dated 28-2-2000. The respondent thereafter assailed the action of petitioners by invoking the jurisdiction under the Labour laws.

Before the Labour Court it was put forth by the workman that he was engaged as skilled labourers in the year 1994 and his services were terminated on

28-2-2000. Before terminating his services, the provisions of section 25F of I.D. Act, were not followed, therefore the order of termination of respondent, amounts to illegal retrenchment. The Labour Court after recording the evidence and discussing it at length arrived at a finding of fact that wherever the work of the Board is to be carried out, the respondent was asked to discharge his work on that place and he had served for more than 240 days in a calendar year and therefore his termination amounts to illegal retrenchment. Since the provisions of section 25F were not followed, therefore it was directed by the Labour Court to reinstate the respondent with 50% backwages.

Learned counsel for the petitioner by placing reliance Mahendra L. Jain and Others Vs. Indore Development Authority and Others, and also Himanshu Kumar Vidyarthi and Ors. v. State of Bihar and Ors., J.T. 1997 (4) 560 has submitted that the daily rated employees had no "right to post and therefore the termination of their service does not amount to retrenchment. It be seen that for years together the respondent served the petitioner in constructing their colonies, houses, bungalows and shopping complexes etc and therefore their rights are protected under the Industrial Disputes Act. Since the action of petitioners terminating the services of respondent without following the provisions of section 25F of the I.D. Act, it amounts to illegal retrenchment. The definition of retrenchment u/s 2(oo) is a comprehensive one intended to cover any action of the management to put an end to the employment of an employee for no reason whatsoever. In this context, I may profitably rely the decision of Supreme Court in D.K. Yadav v. J.M.A. Industries Ltd., (1993) 3 SCC 2594. The Constitution Bench of the Supreme Court in the case of Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, in para 82 has laid down the law that retrenchment u/s 2(oo) means termination of service of workman by employer for any reason whatsoever except those expressly excluded in the section. In the case of L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another, , the Apex Court held that the termination of service by unauthorised absence from duty amounts to retrenchment. The Apex Court, held that even a casual and seasonal workman who renders continuous service for one year or more cannot be retrenched on such ground without complying with the requisites of section 25-F of the I. D. Act. The Apex Court held that the Railway Establishment Manual should be read subject to the provisions of section 25-F of the Industrial Disputes Act. On the same line, there is another decision of Supreme Court H.D. Singh Vs. Reserve Bank of India and Others, . The view of this Court is that since the respondent had worked continuously for years together as a laborer to construct the houses etc. of the Board, therefore, the artificial breaks in his service would not debar him for asking the relief for his reinstatement under the Labour Laws. To me, to employ workman like respondent and to continue him for years and thereafter in order to debar their status by artificial breaks in service amounts to unfair Labour practice.

On the basis of aforesaid reasoning"s and the case laws the decision of

Himanshu Kumar Vidyarthi (supra) is not applicable. The Apex Court in this case held that every department of the Government cannot be treated to be an industry and in that context it was held that section 25-F of the I.D. Act is not applicable. But in the present case the Housing Board is an industry because it constructs the houses, colonies, shopping complex, bungalows etc. etc. Its work is of permanent nature. The decision of Mahendra L Jain (supra) is also not applicable because it was a matter of regularization where the irregular appointments were made.

Since the respondent had served for several years, in my view, the Labour Court did not err in passing the award by directing to reinstate the respondent with 50% backwages.

The petition is therefore dismissed summarily.