

(2019) 07 BOM CK 0088

In the Bombay High Court

Case No : Writ Petition No. 653 Of 2007, 3689, 4178 Of 2009 Civil Application
No. 9387 Of 2008

Kinetic Engineering Ltd

APPELLANT

Vs

Barku

RESPONDENT

Date of Decision : 06-07-2019

Acts Referred:

Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices
Act, 1971 — Section 44
Industrial Disputes Act, 1947 — Section 2(g), 17B, 25B

Citation : (2019) 07 BOM CK 0088

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : V.S. Bedre, S.V. Warad, P.L. Shahane

Final Decision : Disposed Off

Judgement

Sr.No.,Appointment Period,Department,Designation

1.,8.2.1986 to 7.7.1986,M/c Shop,Helper

2.,17.9.1989 to 16.4.1990,L- Plaint Shop,Helper

3.,15.11.1990 to 14.4.1991,L-Planning,Helper

4.,14.4.1991 to 14.6.1991,--"--,--"--

5.,26.3.1992 to 25.6.1992,Quality Control,--"--

6.,8.5.1995 to 7.8.1995,Plaint shop,--"--

7.,7.8.1995 to 7.12.1995,--"--,--"--

ventured into 100 CC gearless scooters known as 'Kinetic Honda' and thereafter
the motorÂcycles by the brand name as 'Velocity'. The learned,,,

Advocate for the Management submits that the said automobile manufacturing

activity of the petitioner factory at Ahmednagar was permanently,,,

closed down in 2006 and now it does not manufacture any of these products.,,,

9. The learned Advocate for the original complainants submits that the Management had settled their dispute with several workers when the factory,,,

was closed down and handsome packages were given. Unfortunately, these complainants who were litigating in Court, were ignored by the",,,

Management.,,,

10. I had an occasion to deal with three similar cases. In Writ Petition No. 669/1997, M/s. Kinetic Engineering Co. Ltd. Vs. Shri Ajay Irrappa",,,

Basapure and another, I had delivered a judgment on 13/10/2016 by noting the number of months for which such workers had worked and I had",,,

granted them compensation by relying upon the recent judgments of the Honourable Apex Court in four cases. It would be apposite to reproduce,,,

paragraph Nos. 4 to 8 from the said judgment as under :Â?,,,

â??4. There is no dispute that the respondent was engaged as a temporary for the period 14.10.1984 to 13.04.1985 to 21.04.1985 to 22.11.1985 by the,,,

Ahmednagar Unit of the petitioner. The Chinchwad Unit of the petitioner engaged him from 22.01.1986 till 31.07.1986 and 08.04.1987 till 07.10.1987.,,,

He has thus worked for a total period of 25 months in between October 1984 till October 1987.,,,

5. It is not in dispute that the respondent is not working with the petitioner since 08.10.1987 over a period of almost 29 years. It is also not in dispute,,,

that his last drawn wages at the rate of Rs.650/Â? per month.,,,

6. By an order dated 12.06.1997, this Court stayed the impugned award and granted liberty to the petitioner to consider offering work to the",,,

respondent.,,,

7. The Hon'ble Apex Court in the following four cases has settled the law that where a small tenure of employment has been put in by the employee,",,,

followed by a long spell of unemployment, grant of compensation instead of reinstatement and continuity and backwages would be appropriate :Â?",,,

1. Assistant Engineer, Rajasthan State Agriculture Marketing Board, SubÂ? Division, Kota Vs. Mohanlal [2013 LLR 1009],",,,

2. Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [{2013} 5 SCC 136],",,,

3. BSNL Vs. Man Singh [(2012) 1 SCC 558] and,,,

4. Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327)],,,

7. In the instant case the respondent has worked under four appointment orders as a temporary employee over a period of three years. The petitioner,,
is a private company and is not a 'State instrumentality'. Though the impugned award has been stayed by this Court, the respondent had not been",,,
granted Section 17B benefits under the Industrial Disputes Act, 1947. Considering this aspect that he would have been entitled to Section 17B benefits",,,
and that the petitioner is a private entity, I am enhancing the amount of compensation from Rs.30,000/Â per year to Rs.40,000/Â per year, as the view",,,
taken by the Hon'ble Supreme Court was in matters of 'State instrumentalities'.,,,

8. In the light of the above, this petition is partly allowed. The impugned award dated 28.06.1996 in Reference (IDA) No.87 of 1998 is modified and",,,
the respondent is granted compensation of an amount of Rs.1,20,000/Â as quantified compensation and he would not be entitled for any other benefits",,,
in relation to his employment and nonÂemployment. The said amount shall be paid to the respondent / employee within a period of 12 weeks from,,
today, failing which the said amount would carry interest at the rate of 6% per annum from the date of the award.â??",,,

11. In another judgment delivered on 08/12/2016 in Writ Petition No.2162/1997, M/s Kinetic Engineering Limited Vs. Pramod Gangadhar Mohite and",,,
another, I had passed an identical order and had granted a similar compensation by modifying the impugned judgment of the Industrial Court. In Writ",,,
Petition No. 4215/1997 (Shri Narayan Venkatesh Bura) and Writ Petition No. 4117/2004, decided on 05/01/2017, which were counter petitions, I had",,,
granted a little lesser compensation considering that Narayan Bura had worked for about 2 years only.,,,

12. Shri Shahane learned Advocate has placed before me four consenting orders passed by the Coordinate Bench of this Court in the matters of,,
Mahesh Bhakare, Yadav Kotkar (Deceased), Ajit Chandediya and Chandrakant Satpute in which the Management consented to pay Rs. 7 Lakhs as",,,
compensation to each of those workers.,,,

13. The learned Advocate for the petitioners submits that the above four cases in

which the Management voluntarily consented to pay the,,,
compensation, are distinguishable on facts and cannot be compared to these three cases in hand for the reason that all those four workers were",,,
actually contract labourers, who were deployed by contractors in the petitioner factory. They had approached the Court for seeking a declaration of",,,
regularization by dislodging the contractors. The Industrial Court had granted reinstatement with the petitioner company though it was a principal,,,
employer and these workers were, therefore, reinstated and were in employment. As the company was closed down, the Management had no option",,,

but to enhance the compensation.,,,

14. He further submits that in all these cases in hand, this Court had admitted the petition and had stayed the impugned judgments of the Industrial",,,

Court. As a consequence, none of these Respondents were in employment.",,,

15. I had called upon the learned Advocates for the workers to suggest as to whether they would agree to accepting compensation if paid by the,,,

Management. They stated that they are not agreeable for the amount of compensation granted by this Court in the three orders referred to in the,,,

foregoing paragraphs. They would agree to the quantum of compensation which the Coordinate Bench of this Court had considered and passed an,,,

order after the Management gave its consent.,,,

16. The learned Advocate for the petitioner company submits that the company is presently in financial doldrums and the factors in relation to the,,,

services of these employees are completely distinct and different than the facts of the case pertaining to the four contract labourers. He, therefore,",,,

submits that these two types of cases cannot be equated. The learned Advocates for the respondents workers, therefore, submitted that these",,,

petitions may be decided on their own merits.,,,

17. It is obvious that all these complainant workers were working intermittently for periods ranging from 2 months to 7 months, at times. It is also",,,

admitted that there was no continuity of service and they were not working when their tenure of employments, be it 2 months or 3 months or 5 months",,,

or 7 months, came to an end. On each occasion, they were disengaged and discontinued after the last day of working mentioned in the appointment",,,

order.,,,

18. In the light of the above, Section 25B of the Industrial Disputes Act, will have to be applied to assess as to whether these workers can be said to",,,

be in continuous employment with the Management. Section 25B reads as under :Â?,,,

"25B. Definition of continuous service Â? For the purposes of this Chapter, â?"",,,

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be",,,

interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockÂout or a cessation of work which is not",,,

due to any fault on the part of the workman;,,,

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in",,,

continuous service under an employer Â?Â?Â?,,,

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be",,,

made, has actually worked under the employer for not less than â?"",,,

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and",,,

(ii) two hundred and forty days, in any other case;"",,,

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be",,,

made, has actually worked under the employer for not less than â?"",,,

(i) ninetyÂ?five days, in the case of a workman employed below ground in a mine; and",,,

(ii) one hundred and twenty days, in any other case."",,,

Explanation.Â?Â? For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the",,,

days on which â?"",,,

(i) he has been laidÂoff under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946",,,

(20 of 1946), or under this Act or under any other law applicable to the industrial establishment;"",,,

(ii) he has been on leave with full wages, earned in the previous year;"",,,

(iii) he has been absent due to temporary disablement caused by accident arising

out of and in the course of his employment; and,,,

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve",,,

weeks. ",,,

19. It is, therefore, obvious that each of these workers had to complete 240 days in the uninterrupted service of the employer in the 12 calendar",,,

months preceding the date of reference, if permanency was to be granted. This position of law is crystalized. The 12 months from the date of",,,

reference will be calculated in the reverse order, preceding the date of the filing of the complaints.",,,

20. It is undisputed that in the 12 calendar months preceding the date of the filing of the complaints, none of the complainants had worked for 240 days",,,

in the continuous and uninterrupted service of the employer. The Industrial Court has apparently lost sight of the fact that they were working for 3",,,

months or 5 months or 7 months, intermittently. The impugned judgment is an outcome of misplaced sympathy without considering the law applicable",,,

when it comes to granting permanency.,,,

21. Standing Order 4C under Schedule I/A of the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act 1946",,,

pertains to a Badli or a temporary working continuously for 240 days in the uninterrupted service in an aggregate in the preceding 12 calendar months",,,

from the date of staking a claim. He is deemed to be a permanent employee. Clause 4C of the Model Standing Orders reads as under :Â?,,,

4C. A Badli or temporary workman who has put in 190 days' uninterrupted service in the aggregate in any establishment of a seasonal nature or 240",,,

days' uninterrupted service in the aggregate in any other establishment, during a period of preceding twelve calendar months, shall be made permanent",,,

in that establishment by an order in writing signed by the Manager, or any person authorised in that behalf by the Manager, irrespective of whether or",,,

not his name is on the muster roll of the establishment throughout the period of the said twelve calender months.,,,

Explanation. _ For the purpose of this clause any period of interrupted service, caused by cessation of work which is not due to any fault of the",,,

workmen concerned, shall not be counted for the purpose of computing 190 days or 240 days or, as the case may be, for making a badli or temporary",,,

workman permanent."",,,

In the light of Standing Order 4C, none of these original complainants were entitled for permanency."",,,

22. The learned Advocate for the employees relies upon Standing Order 2(g) to lay stress on involuntary unemployment. Section 2(g) reads as under,,,

:Â?,,,

"2(g) 'uninterrupted service' includes service interrupted on account of any of the following reasons, namely :Â?"",,,

(i) Sickness, as certified by a doctor of Employees' State Insurance Scheme where such scheme is applicable, or elsewhere by a Registered Medical",,,

Practitioner,"",,,

(ii) accident,"",,,

(iii) authorised leave.,,,

(iv) layÂ?off as defined in the industrial Disputes Act, 1948 (XIV of 1947),"",,,

(v) strike which is not illegal,"",,,

(vi) LockÂ?out,"",,,

(vii) cessation of work which is not due to any fault of the workman concerned,"",,,

(viii) involuntary unemployment."",,,

23. Based on the above provision, Shri Shahane learned Advocate canvasses that even if Vilas had worked for 5 months in 1986 and then worked for",,,

7 months, after 3 years and 2 months, in 1989, he should be deemed to be a permanent employee on account of involuntary employment. I find this",,,

submission to be fallacious for the reason that this would lead to disastrous consequences if accepted, because I would then have to presume that the",,,

5 months of employment of Vilas in 1986 coupled with the 7 months of the employment in September 1989 to April 1994 should be clubbed together,,,

and it would then be deemed that Vilas has been working for five continuous years when he had actually worked for 5 months in 1986 and 7 months in",,,

1989Â?90.,,,

24. If permanency is to be granted in this fashion, employers/industries would be foisted with such employees, who could be in hundreds. Standing",,,

Order 2(g) therefore, has to be interpreted in the present age industrial scenario. This was precisely done by the Honourable Apex Court in the matter",,,

of Bajaj Auto Limited Vs. Gopinath Bhojane (supra). I am, therefore, of the view that Barku and Vilas could not have been termed as being in",,,

continuous and uninterrupted service of the employer so as to be granted regularization after Barku had put in 60 months over a period of 16 years and",,,

Vilas had put in about 39 months in a period of 10 years of service.,,,

25. Insofar as Agarkar is concerned, he had approached the Labour Court against his discontinuation pursuant to the conclusion of his employment as",,,

per the appointment order. He was granted reinstatement in service by the Labour Court and which was confirmed by the Industrial Court. This Court,,,

admitted the petition filed against Agarkar. He was not reinstated in employment by the employer. The manufacturing activity of the petitioner,,,

company has been permanently stopped from 2006.,,,

26. Issue, therefore, is as to whether the judgments of the courts below could be sustained in the above factual legal position. Even if the total months",,,

put in by each of these workers is taken together, Barku has worked the maximum for 60 months, which is about 5 years and Vilas and Agarkar had",,,

worked for about 40 to 48 months which is about 3½ years and 4 years respectively. All are out of employment for the last more than 24 years.,,,

27. When it comes to payment of compensation, the status of the petitioner, which is a private industry, cannot be equated with a public sector",,,

undertaking or with state instrumentalities, who are always facing financial difficulties. No doubt, the petitioner has completely lost its manufacturing",,,

activity insofar as the scooter rates and motor cycles are concerned and now they do not produce a single unit of such automobiles. Nevertheless, the",,,

learned Advocate for the Management has fairly stated on instructions that the Management is presently doing job work in the engineering industry on,,,

a limited basis catering to the needs of some other factories. In this view of the matter, I find that it would be appropriate to grant lump sum",,,

compensation of Rs. 3,50,000/ to Barku Zumbar Borude and Rs. 3,00,000/ to Vilas Saja Shinde and Gangaram Pandurang Agarkar, @ Rs.",,,

75,000/ for one year of service.",,,

28. In view of the above, these petitions are partly allowed. The impugned judgments of the Industrial Court/Labour Court are quashed and set aside",,,

and the Management is directed to pay compensation of the amounts as mentioned in the foregoing paragraph to these 3 workers within a period of 12,,,

weeks from today, failing which the said amounts shall carry interest at the rate of Rs. 6% per annum from the date of the impugned judgments. Rule",,,

is made partly absolute in the above terms.,,,

29. The pending Civil Applications, if any, do not survive hence stand disposed off." ,,,