

(2015) 02 BOM CK 0274

In the Bombay High Court

Case No : Writ Petition Nos. 5171 of 2001 and 6024 of 2004

Kirloskar Oil Engines Ltd.

APPELLANT

Vs

Popat Sitaram Banker

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Citation : (2015) 02 BOM CK 0274

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : S.V. Natu, for the Appellant; Pradeep Shahane, Advocates for the Respondent

Final Decision : Disposed off

Judgement

R.V. Ghuge, J—Shri Natu and Shri Shahane, learned Advocates submitted that they have no objection, if this Court hears these matters.

2. The petitioner in the first petitioner is the respondent in the second petition, namely, M/s. Kirloskar Oil Engines Limited ("employer"). The respondent in the first petition is the petitioner in the second petition, namely, Popat Sitaram Bankar ("workman").

3. Writ Petition No. 5171 of 2001 was admitted by order dated 13.2.2001. By order dated 3.2.2004, passed on Civil Application No. 1671 of 2002, this Court directed the employer to pay Rs. 5,000/-, as granted by the Labour Court to the employee.

4. Writ Petition No. 6024 of 2004, filed by the employee/workman, was admitted by this Court on 7.7.2005.

5. The workman claimed to be appointed as a Trainee from 11.1.1990 for a period of six months. His training period came to an end on 10.7.1990. He submitted an application seeking employment on 12.7.1990 and was appointed as an Operator under probation for a period of three months from 14.7.1990.

6. The appointment order, dated 9.1.1990, indicated that the workman was selected as Stipendiary Trainee. Letter dated 10.7.1990, indicated that the training period of the workman was concluded after working hours. He was issued with a certificate and was paid his legal dues. He was then relieved.

7. The application, dated 12.7.1990, filed by the workman is on record. By letter date 13.7.1990, the workman was engaged as an Operator in the semi-skilled (B) category, with effect from 14.7.1990, for an initial period of probation of three months. The said probation period was liable to be extended. His services were liable to be terminated at any time, during the probation period. Accordingly, his probation period came to an end by efflux of time on 13.10.1990. He was then relieved.

8. The workman raised an Industrial Dispute, alleging wrongful termination, with effect from 14.10.1990. Dispute was raised on 17.8.1992. Failure in the conciliation proceedings resulted in the matter being referred to the Labour Court, Ahmednagar, which was registered as Reference (IDA) No. 246 of 1994.

9. After both the sides adduced oral and documentary evidence, the Labour Court delivered its judgment and award on 26.7.2001, thereby, allowing the reference. The Labour Court concluded that the order of discontinuation of the workman was illegal. The employer was directed to reinstate the workman as a probationer for a period of three months and to communicate to the workman every fortnight, in writing, about his performance till the end of the probation period. Finally, the employer was directed to consider his performance and if the performance appeared to be suitable, the employer may consider him for future employment in service. Back-wages were granted for a sum of Rs. 5,000/-.

10. The relevant directions in Clauses (3), (4) and (5) of the impugned order read as under:--

"(3) The first party is hereby directed to reinstate the second party within a month from the date of publication of an Award as a Probationer for the further period of 3 months.

(4) The first party at every fortnight to communicate to the second party in writing about his performance till the end of his probation period.

(5) The first party after completion of his probation period may consider his performance during the entire probation period and if found suitable may consider in its organization for the post for which he was taken on probation. If, his performance is not found satisfactory, it may consider the case of the second party, as otherwise."

11. Having considered the submissions of the litigating sides, it is not in dispute that this Court had granted interim relief to the employer on 13.12.2001, thereby, staying the execution and operation of the judgment dated 26.7.2001 passed by the Labour Court, Ahmednagar. It is also not in dispute that the workman is not in employment with the employer for the past about 25 years.

12. In so far as the direction of the Labour Court in the impugned award is concerned, it is quite clear that the employer was directed to reinstate the workman only for a period of three months. Back-wages for an amount of Rs. 5,000/- have already been deposited in this Court by Demand Draft No. 238778, dated 9.3.2004.

13. In the light of the direction of the Labour Court and the passage of 25 years, during which period there has been no employment of the workman with the employer, I am not inclined to sustain the said direction of reinstating the workman for a probationary period of three months.

14. Once the employer has already concluded and formed an opinion that the workman was not suitable for the organization, no purpose would be served in directing the employer to reinstate the workman today after 25 years for a period of three months on probation and thereafter consider his suitability for the organization. The workman is about 48 years old today and the age of retirement with the employer is about 60 years. I, therefore, do not find it to be fruitful to direct the employer to comply with Clauses (3), (4) and (5) of the impugned judgment and award.

15. Apparently, the workman has worked for a probationary period with the employer from 14.7.1990 till 13.10.1990. The Honourable Supreme Court in the cases of Bharat Sanchar Nigam Ltd. Vs. Man Singh, (2012) 132 FLR 500 : (2012) 1 SCC 558 : (2012) 1 SLJ 199 , Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, AIR 2009 SC 3004 : (2009) 122 FLR 665 : (2009) 9 JT 396 : (2009) 15 SCC 327 : (2010) 1 SCC(L&S) 545 : (2009) 10 SCR 908 : (2009) 5 SLR 606 : (2009) 8 UJ 3727 : (2009) AIRSCW 4824 : (2009) 5 Supreme 629 and Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh, (2013) 2 AD 553 : (2013) 136 FLR 908 : (2013) 2 JT 231 : (2013) 2 LLJ 141 : (2013) 1 LLN 318 : (2013) LLR 225 : (2013) 2 SCALE 126 : (2013) 5 SCC 136 : (2013) 2 SCC(L&S) 369 : (2013) 2 SCT 30 , has laid down the law that when the service put in by a daily-wager is of a short duration and the same is followed by unemployment for a long duration, relief of reinstatement ought not to be granted and instead, compensation in lieu of reinstatement would be the correct approach.

16. In the instant case, the Labour Court has directed reinstatement of the workman only for a period of three months. It is not in dispute that the workman was a probationer. It is well settled law that a probationer has no right to seek regularization or permanency with an employer. The very purpose of appointing an employee on probation is to test his suitability for the organization. In this backdrop, I am unable to accept the prayer made by the workman in his petition as regards reinstatement with effect from 14.10.1990, with continuity, full back-wages and all consequential benefits.

17. In the light of the above, I deem it proper to direct the employer to pay compensation of Rs. 25,000/- (Rs. Twenty Five Thousand only/-) in lieu the

directions issued by the Labour Court in Clause (3), (4) and (5) of the impugned judgment and award. I, therefore, modify the impugned judgment and award, dated 26.7.2001, delivered in Reference (IDA) No. 246 of 1994.

18. The employer shall deposit an amount of Rs. 25,000/- (Rs. Twenty Five Thousand only/-) in this Court, within a period of eight weeks from today. The workman - Shri Popat Sitaram Bankar shall be at liberty to withdraw the same. It is made clear that this amount is besides the amount of Rs. 5,000/- deposited by the employer in this Court, which has already been withdrawn by the workman from this Court, pursuant to the order passed by this Court, dated 3.2.2004 in Civil Application No. 1671 of 2002.

19. Both these petitions are disposed off. Rule, in both the petitions, is made partly absolute in the above terms.