

(2017) 02 MP CK 0212

In the Madhya Pradesh High Court

Case No : 3748 of 1999, 3683 of 1999, 1580 of 2003, 1581 of 2003, 12922 of 2004, 12923 of 2004

Lavlesh Mishra and others

APPELLANT

Vs

The State of M.P. and another

RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

Industrial Disputes Act, 1947, Section 25F, Section 2(OO)(BB) - Conditions precedent to retrenchment of workmen - Definitions

Citation : (2017) 02 MP CK 0212

Hon'ble Judges : Sanjay Yadav

Bench : Single Bench

Advocate : Sanjeev Tuli, Uttam Maheshwari

Judgement

1. This order shall lead to final disposal of aforesaid writ petitions which arise out of the Awards-dated 26.3.1999 and 15.1.1999 passed by Central Government Industrial Tribunalcum- Labour Court, Jabalpur (hereinafter referred to as the "Tribunal").

2. The Tribunal was in seisin with the industrial dispute referred to for adjudication as to "whether the action of the Management of Employees State Insurance Corporation, Madhya Pradesh Region, Indore is legally justified in terminating the service of the five Class IV employees viz. S/Shri Chandra Kant, Dinkar Fakira, Malchate, Jagdish Chauhan, Mukund Lokhande and Ramesh Chandra Pawar from 2.5.1986, 8.5.1986 and 13.6.1986 ? If any, then the workers are entitled to what relief ? Whether the action of Management of Employees State Insurance Corporation RP Region Indore in terminating the services of Shri Kanhaiyalal Purohit, Peon in the office of the Corporation at Raigarh w.e.f. 19.5.1995 is justified ? If any, then the workers are entitled to what relief ?

3. The reference were at the instance of workmen who were engaged on contract

for three months and after a break of 2-3 days, the contract was renewed for another three months which later on being not renewed after eighth renewal, led the workmen raise the dispute before the Assistant Labour Commissioner for conciliation. As the conciliation failed, the appropriate Govt. referred the matter before the Tribunal for adjudication.

4. As per respective workmen, their services were regular from the time of appointment. Each employee has completed 240 days service in 12 calendar months prior to termination. Before termination, a departmental enquiry has not been held against any workman. No workman has been charged for misconduct or dereliction of duty. During the period of employment, the Management has contributed to be PFS and workman were given bonus to workman and also given annul increments in the salary. The name of the workmen were sponsored by management exchange and they had to face an interview and after being selected, they were given appointment. The Management has not assigned reasons for termination of service of the workmen. The artificial breaks were given by the Management for one day or two days between the period particularly on Saturday or Sundays with a view to deprive the workmen of the legitimate right of regularization. The case of the workmen is covered under Item No.10 of Chapter V (Unfair Labour Practice) as envisaged under I.D. Act. The workmen had been retrenched without payment of retrenchment compensation and without notice; hence, the order is liable to be quashed for non-compliance of Section 25F of the I.D. Act.

5. The Management, on their turn, contended that the appointment of respective workmen was on contract which was renewed from time to time. It was urged that the workmen were engaged by way of stop gap arrangement as the person working in these posts were given ad hoc promotion as Lower Division Clerk/ Record Sorter. It was contended that the stop gap arrangement were allowed to continue/extend till the result of open recruitment test for the post of LDC held on 29.9.1985 was received in April, 1986. It was urged that the workmen's engagement were not against any vacant post. It was further contended that with the declaration of results of open recruitment test for the post of Lower Division Clerk held on 29.9.1985, received in April, 1986, the successful candidates were given the appointment and those who were working on ad hoc basis as LDC were reverted to the post of Peon and due to this, the contract period of the workmen was not extended. And, were terminated by given one months" notice to each workmen.

6. Respective parties led their evidence and exhibited various documents.

7. The Tribunal, after taking into consideration the evidence on record and on a finding that the workmen were engaged initially for a period of three months but had continued for the period over two years and by treating the break of 2-3 days between two terms as an artificial break, held that the termination of workmen being without holding any departmental enquiry or giving any show cause notice and in violation of Section 25F of the Industrial Disputes Act, 1947

as illegal; accordingly, directed for their reinstatement without backwages.

8. Whereas, the workmen had approached this Court seeking relief for a direction to modification of Award to the extent that the workmen be given reinstatement with full backwages. The employer, on its turn, filed the writ petition questioning the very finding recorded by the Tribunal as to artificial break.

9. Indisputably, as borne out from record that the respective workmen rendered employment for the following period :

Name of workmen Services rendered at From To

Jagdish Chauhan Lashkar 19.7.1984 16.10.1984

18.10.1984 15.01.1985

17.01.1985 16.04.1985

18.04.1985 16.07.1985

18.07.1985 18.10.1985

17.10.1985 11.04.1986

14.04.1986 12.05.1986

Dinkar Malchatte Burhanpur 03.08.1984 20.11.1984

22.11.1984 19.02.1985

21.02.1985 20.05.1985

22.05.1985 19.08.1985

21.08.1985 18.11.1985

20.11.1985 12.02.1986

14.02.1986 08.05.1986

Ramesh Chandra Pawar Amlai 20.03.1984 16.06.1984

18.06.1984 15.12.1984

18.12.1984 14.03.1985

16.03.1985 13.06.1985

15.06.1985 12.09.1985

16.09.1985 12.12.1985

16.12.1985 14.03.1986

17.03.1986 13.06.1986

Mukund Lokhande Burhanpur 09.06.1984 05.09.1984

10.09.1984 07.12.1984

10.12.1984 06.03.1985

08.03.1985 05.06.1985

07.06.1985 04.09.1985

06.09.1985 04.12.1985

09.12.1985 28.02.1986

03.03.1986 08.05.1986

Chandrakant Raigarh 09.06.1984 05.09.1984

10.09.1984 07.12.1984

10.12.1984 06.03.1985

08.03.1985 05.06.1985

07.06.1985 04.09.1985

06.09.1985 04.12.1985

09.12.1985 28.02.1986

03.03.1986 08.05.1986

Kanhaiyalal Raigarh 21.02.1984 19.09.1996

10. Each workmen were engaged on a contract for a period of three months. The specimen of the memorandum of appointment is reproduced for a ready reference : MEMORANDUM Subject : Offer of appointment to name of the workmen to the post of Peon in the ESI Corporation The undersigned is directed to refer to interview with the workman and to say that he has been selected for and is offered post of Peon on an initial pay of Rs.196/- per month in the State Insurance Corporation. His appointment is subject to the further terms and conditions as follows : (i) The appointment will be on purely temporary and adhoc basis for a period not exceeding three months and only against short term vacancy of Peon and that such appointment does not confer on him any right for continuance on regular appointment.

(ii) He will be governed by such terms and conditions of services as laid down in the Employees State Insurance Corporation (Staff and conditions of Service) Regulation, 1959.

(iii) He will be posted as Peon at I.O. place of posting.

(iv) He will not be entitled to any T.A. for joining the post.

(v) He should intimate whether he accept the offer or not by date failing which the offer of appointment will automatically be treated as cancelled.

(vi) In case if he is willing for his appointment as Peon at place of posting, he should report thereon on or before date.

(vii) At the time of joining the post, he should submit his all the original/true copies of educational qualification to the Manager, Local Office, without which he will not be allowed to join his duties by the Manager Local Office.

11. Evidently, the appointment of respective workmen was on short term vacancy for three months. True it is that the term has been extended for further period of three months after giving break of 2-3 days between one contract period and the next; however, each time, it was made clear, as is evident from the memorandum that, the same will not confer any lien in favour of respective workmen. The workmen were, therefore, on a notice that their appointment is only for a period of three months and there was no assurance for its conformity. On the contrary, the engagement letter clearly stipulated the term that appointment does not confer any right for continuance on regular appointment.

12. Section 2(oo)(bb) reads as follows : "(oo) "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) ...

(b) ...

(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."

13. In *Marinda Co-op. Sugar Mills Ltd. v. Ram Kishan* (1995) 5 SCC 653, it is held : "4. It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.

5. The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in clause (bb) of Section 2(oo) of the Act. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal."

14. In *Anil Bapurao Kanase v. Krishna Sahakari Sakhar Karkhana Ltd.* (1997) 10 SCC 599, it is held : "3. . In *Marinda Co-op. Sugar Mills Limited v. Ram Kishan and others*, 1995(5) SCC 653 in paragraph 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing; in paragraph 4, it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after crushing season was over. Accordingly, in paragraph 5, it was

held that it is not "retrenchment" within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per Clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application."

15. In Punjab State Electricity Board vs Darbara Singh (2006) 1 SCC 121, in a similar fact situation, it has been observed that where the material on record establishes that the engagement of workmen is for a specific period and conditional, the non-continuation will not tantamount to retrenchment. It was held : "11. The materials on record clearly establish that the engagement of the workman was for specific period and conditional. It was clearly indicated that on appointment of a regular employee, his engagement was to come to an end."

16. In view whereof, the CGIT-cum-Labour Court, Jabalpur clearly fell in error in construing the break between two periods as artificial break. Rather, it glossed over other material evidence on record that the engagement was stop gap arrangement for a fixed period with a condition that it will not confer any right for continuance on regular appointment. As such, the decision relied upon by the petitioners-workmen in M.P. Urja Vikas Nigam Ltd. vs Santosh Kumar Dubey 2009 (1) MPLJ 552 is of no assistance to them in the given facts of the present case.

17. Consequently, the Awards passed by CGIT cannot be given the stamp of approval. The same are, accordingly, set aside.

18. In the result, WP-3748-1999 and WP-3683-1999 filed by employer are allowed to the extent above. Whereas, WP- 1580-2003, WP-1581-2003, WP-12922-2004 and WP-12923- 2004 preferred by the workmen are dismissed. There shall be no costs.

19. Let a copy of this order be retained in the connected petitions.