

(2010) 07 BOM CK 0018

In the Bombay High Court

Case No : Writ Petition No. 6456 of 1997

Mahanagar Telephone Nigam Ltd.

APPELLANT

Vs

Deepak Sadashiv Shrikande and Others

RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25B, 25F

Citation : (2010) 6 BomCR 152 : (2011) 1 LLJ 152 : (2010) 6 SLR 462

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : S.R. Rajguru, for the Appellant; S.N. Pillai, for the Respondent

Judgement

Nishita Mhatre, J.—The petition challenges the award passed by the CGIT No. II, Mumbai in Reference No. CGIT-2/2/1996. By this award, the Tribunal has allowed the Reference by directing the Petitioner to reinstate the Respondent as a casual labourer and to pay him all wages from the date of termination of his services till reinstatement.

2. The facts in the present case cannot be disputed. Respondent No. 1 was employed as a casual labourer with the Petitioner from October, 1985. He continued working with the Petitioner till August, 1986. His services were terminated on September 1, 1986 without complying with the procedure contemplated u/s 25-F of the Industrial Disputes Act. Respondent No. 1, therefore, approached the machinery available to him under the Industrial Disputes Act for redressal of his grievance. A reference was made on January 2, 1995 for adjudication of his dispute for reinstatement with continuity of service and backwages.

3. Respondent No. 1 in his statement of claim contended that he had wrongly been terminated from service by the Petitioner without following the provisions of Section 25-B and 25-F. Respondent No. 1 therefore sought reinstatement with continuity of service and full backwages. The Petitioner did not appear before his

Tribunal. Despite this, the Tribunal considered the question as to whether the Petitioner was an industry as defined u/s 2(j) of the Industrial Disputes Act. After considering various judgments of the Supreme Court right from the law laid down in the case of *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, to the decision of the Supreme Court in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, the Tribunal also considered the effect of the judgment of the Supreme Court in the case of *Sub-Divisional Inspector of Post, Vaikam, and others Vs. Theyyam Joseph, etc.,*, where the Supreme Court had taken the view that Post and Telegraph Department was not an industry. The Tribunal then considered a later judgment of the Supreme Court where a three-Judge bench of the Supreme Court has observed that the law in *Sub-Divisional Inspector, Posts v. Theyyam Joseph (supra)* case, is not correct in view of the decision in the case of *Bangalore Water Supply and Sewerage Board v. A. Rajappa and Ors. (supra)*. The Tribunal therefore has held that the Petitioner is an industry.

4. On the issue as to whether on merits, Respondent No. 1 was entitled to any relief the Tribunal held that the certificate issued by the Petitioner indicated that Respondent No. 1 was working from October, 1985 till August, 1986 i.e. for about 320 days. In view of this, the Tribunal observed that Respondent No. 1 was in continuous service as contemplated u/s 25-B and therefore, was entitled to a notice or wages in lieu of notice besides payment of retrenchment compensation u/s 25-F prior to termination of his service. Admittedly, the Tribunal observed that the termination of service was not on account of any misconduct and therefore amounted to retrenchment. The Tribunal has granted relief of reinstatement as a casual labourer. It has further directed that all wages from the date of his termination of service should be paid to the workman. The Respondent has accordingly been reinstated in service on April 18, 2002.

5. The present writ petition has been 5 admitted and the award has been stayed only as regards back wages. Obviously therefore the Petitioner has reinstated the workman only after the order was passed on September 21, 1998 admitting the petition.

6. Mr. Rajguru appearing for the Petitioner, submits that it is not an industry and therefore, the Tribunal has erred in adjudicating on the reference. He submits that the five-Judge bench of the Supreme Court has referred the decision in the case of *Bangalore Water Supply and Sewerage Board v. A. Rajappa and Ors. (supra)* to a larger bench of the Supreme Court for reconsideration of the kind of establishments which fall within the sweep of the definition of "industry" as stipulated u/s 2(j) of the Industrial Disputes Act. In these circumstances, he contends that this writ petition should not be heard till the reference is decided by the Apex Court.

7. The submission of Mr. Rajguru is unsustainable. Today, the judgment in the case of *Bangalore Water Supply and Sewerage Board v. A. Rajappa and Ors. (supra)* etc., governs the field as to whether an establishment is an industry as

defined u/s 2(j). Although this decision has been referred to a larger bench for reconsideration the judgment in the case of Bangalore Water Supply and Sewerage Board v. A. Rajappa and Ors. (supra), has not been stayed. Therefore, since it holds the field, both the Tribunal and this Court are bound by the judgment in Bangalore Water Supply and Sewerage Board v. A. Rajappa and Ors. (supra). The Tribunal has on the basis of the evidence on record held that the Petitioner is an industry. Significantly, no written statement was filed by the Petitioner. Nor does the Petitioner appear to have cross-examined the Respondent. In my view, the reasons set out by the Tribunal for declaring that Mahanagar Telephone Nigam Limited is an industry are cogent and must be accepted. Moreover, the contention of Mr. Rajguru that the department is not an industry cannot be accepted in view of the judgment in the case of Sub-Divisional Inspector, Posts v. Theyyam Joseph (supra).

8. Mr. Rajguru then submits that the workman has obtained a reference after an inordinate delay and therefore, the Tribunal has erred in directing the Petitioner to pay the workman full back wages. He submits that although there was a cessation of employment on September 1, 1986, the workman raised the demand much later and obtained a reference in 1996. He therefore submits that the Petitioner should not be saddled with payment of back wages from September 1, 1986. In my view, this submission of Mr. Rajguru is well founded. The Tribunal ought not to have granted full back wages when the workman had not approached the machinery under the Industrial Disputes Act diligently and within a reasonable time. There was a delay of 10 years in obtaining the reference. The workman had raised the demand only on January 2, 1994 when he approached the Assistant Labour Commissioner. Therefore, in my opinion, he is not entitled to wages from the date of his termination from service till he raised the demand on January 2, 1994.

9. In any event, in the present case, the Respondent has filed an affidavit on April 21, 2010 in which he has offered to forego back wages awarded by the Tribunal if he is regularized in service with continuity of service.

10. In my opinion, I need not consider this offer made by the workman since the Reference was not in respect of regularization of the service of the workman. The reference only related to reinstatement. Therefore, it would not be appropriate for me to direct MTNL to regularize him only because of the offer. If the Respondent workman is entitled to be regularized, the Petitioner will do so in accordance with law.

11. The contention of Mr. Rajguru on the basis of the judgment in the case of Director, Food and Supplies, Punjab and Another Vs. Gurmit Singh, that full back wages ought not to have been granted and the matter should be remanded for a fresh consideration is unsustainable. In the aforesaid case, the Supreme Court was considering whether a long delay in obtaining a reference should be taken into account by the adjudicating authority while passing the award. The Supreme Court has observed thus at p. 813 of LLJ:

4..... The Tribunal or the Labour Court cannot invalidate the reference on the ground of delay. If the employer makes a grievance that the workman has made a stale claim then an employer can challenge the reference by way of a writ petition and contend that since the claim is belated there was no industrial dispute. The Tribunal or the Labour Court cannot strike down the reference on this ground. As observed in *Sapan Kumar Pandit Vs. U.P. State Electricity Board and Others*, there are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval, it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanized by the workmen or the Union on account of other justified reasons it does not cause the dispute to wane into total eclipse. The long delay for making the adjudication could be considered by the Adjudicating Authority while moulding the reliefs. That is a different matter altogether.

12. Therefore in my view, the matter need not be remanded and the relief can be moulded in this Court itself.

13. Mr. Rajguru then relied on the judgment in the case *Manager (Now Regional Director) R.B.I. Vs. Gopinath Sharma and Another*, to contend that the laches and delay would make a dispute stale and therefore such a reference is not valid. The submission of Mr. Rajguru cannot be accepted. In *Reserve Bank of India v. Gopinath Sharma and Anr. (supra)*, the delay in obtaining the reference was 13 years. The Court held that such a delay in obtaining a reference was inordinate. Another bench of the Supreme Court in a later judgment in the case of *Director, Food & Supplies, Punjab and Anr. v. Gurmit Singh (supra)*, has observed that in case there is a delay in approaching the Court the reference cannot be invalidated on the ground of delay but the Tribunal or the Labour Court can mould the relief. In fact, the Supreme Court has observed that if the employer has a grievance that the workman had raised a stale claim, it is open for the employer to challenge the reference by filing a writ petition. No such steps have been adopted in the present case, therefore, in my opinion, the submission of Mr. Rajguru that the reference ought to have been dismissed since it was delayed is untenable.

14. The question now is whether the Respondent could be entitled to full back wages. In my opinion, there is no justification for granting full back wages from 1986 to 1994 when he had not even raised a demand. Therefore, the Petitioner need not pay back wages for that period.

15. Accordingly, the petition is disposed of with the modification that back wages from 1986 to 1994 need not be paid by the Petitioner to the Respondent. However, the petition shall pay the rest of the back wages awarded by the Tribunal to Respondent No. 1

16. Mr. Rajguru seeks a stay of this order. Stay refused.