

(1995) 09 BOM CK 0050

In the Bombay High Court

Case No : Writ Petition No. 1133 of 1990 and 1134 of 1990

Maharashtra State Electricity Board

APPELLANT

Vs

Suresh Vaidyanath Pagar and Another

RESPONDENT

Date of Decision : 20-09-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1996) 1 LLJ 935

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

B. N. Srikrishna, J.—These two writ petitions arise under almost similar circumstances and raise an identical issue of law; hence, they can be conveniently disposed of by a common judgment.

2. The Petitioner in both writ petitions is the Maharashtra State Electricity Board and the Respondents in each writ petition was a workman employed in the service of the Petitioner Board.

3. The Respondent in each case was employed with the Petitioner Board as an Artisan "D" on 18th August, 1983 for a period of four months. On 14th August, 1984 he was appointed as an Artisan "D" on purely temporary basis and posted to work at T.R.W., Manmad. The letter of appointment dated 14th August, 1984, (Exh. 'A' to the writ petition) stipulates certain conditions of service. Particularly, Clauses 3, 4 and 6 of the letter of appointment need to be reproduced, as they are material:

"3. Your appointment is on purely temporary basis.

4. Your services will stand terminated on completion of 3 months period or earlier by giving 24 hours notice or payment of salary in lieu of notice.

6. Your appointment will be on purely temporary basis for a period not exceeding 3 (three) months and further continuance in the services of the Board shall be

subject to the following.

(I) Your candidature is recommended by Employment Exchange.

(II) You are selected for appointment by the Competent Selection Committee of the Board.

(III) Vacancy becomes available."

The appointment of Respondent in each petition was brought to an end on 14-11-1984 on the ground that the three stipulations contained in clause 6 hereinabove had not been fulfilled by him, viz. (a) that his candidature had not been recommended by Employment Exchange, (b) that he was not selected for appointment by the Competent Selection Committee of the Board and (c) that there was no available vacancy. The Respondents challenged their removal from service by their Complaint (ULP) No. 47 of 1985 and Complaint (ULP) No. 46 of 1985 before the Labour Court at Nasik. The Labour Court after trying the complaint held that the termination of services of the Respondent workmen was contrary to the provisions of section 25F of the Industrial Disputes Act and amounted to unfair labour practice within the meaning of Items 1(a), (b) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act"). The Labour Court directed reinstatement of the Respondent workmen in service common order in both complaints made on 9-5-1989.

4. The Petitioner Board carried the matter to the Industrial Court by its Revision Applications (ULP) Nos. 71 and 72 of 1989. Revision Application (ULP) No. 71 of 1989 pertains to the Respondent-workman in Writ Petition No. 1134 of 1990, while Revision Application (ULP) No. 72 of 1989 pertains to the Respondent-workman in Writ Petition No. 1133 of 1990. By a common order dated 13th December, 1989 the Industrial Court dismissed the Revision Applications and directed that the Petitioner Board should allow the Complainants workmen to join their duty within a period of one month from the date of order. Being aggrieved by the said order, the Petitioner Board is before this Court by the present writ petitions.

5. The ground which weighed heavily with the Labour Court for holding that there was unfair labour practice was that the termination of the concerned workman amounted to retrenchment within the meaning of section 2(oo) of the Industrial Disputes Act, 1971. Since it was not disputed that the provisions of section 25-F of the Industrial Disputes Act had not been complied with, the Labour Court had not difficulty in holding that the termination of service was illegal and amounted to unfair labour practice within the meaning of Item 1 of Schedule IV of the Act. During the trial of the complaints before the Labour Court, the Petitioner Board had urged that its action fell within the exception to the definition of "retrenchment" as contained in clause (bb) and that the termination of the services of the two Respondents workmen for non fulfillment of the stipulated conditions did not amount to retrenchment. This contention was

repelled by the Labour Court by placing reliance on the judgment of the Rajasthan High Court in *Principal, Mayo College, Ajmer v. Labour Court and Anr.* (1986 II C.L.R. 104) in which the view was taken that the newly added clause (bb) to Section 2(oo) of the Industrial Disputes Act had no retrospective effect. I am unable to see how this judgment could have been of use to the Labour Court. The termination of service of the Respondent workman, in both the cases, took place on 14-11-1984, after coming into force of clause (bb) of section 2(oo), added by the Amending Act 49 of 1984, with effect from 18th August, 1984. In my view, the Labour Court erred in relying on the judgment of Rajasthan High Court which had no application to the facts before it. When the matter was carried to the Industrial Court revision, once again the Petitioner Board urged the contention that the cases of the two Respondents workmen were covered by clause (bb) of section 2(oo) of the Industrial Disputes Act. By relying on judgment of this Court in *Dilip Hanumantrao Shirke & Ors. v. Zilla Parishad, Yavatmal & Ors.* (1989) 2 CLR 447, the Industrial Court over-ruled the contention. It is true that, at the material time when the Industrial Court decided the two Revision Applications, the judgment of Dilip Shirke held the field. The said judgment takes the view that, unless the post or the work for which the workman had been employed had itself come to an end, Clause (bb) would to be attracted, as, otherwise, it would give a free hand to dishonest Employers to scuttle the workman by artificial stipulations introduced in the employment contract. However, as a consequence of the later judgment of the Supreme Court in *M. Venugopal v. LIC of India A.P. & Anr.* 1994 I CLR 544, the view taken in Dilip Shirke's case must be held to be over-ruled. In the judgment rendered in *The Deputy Director of Health Services, Nasik Mandal, Nasik and Another v. Sau. Latabai Rajdhar Paturkar* (Writ Petition No. 2517 of 1989 dated 21st March, 1995,) to which I was a party, the view has been taken that after the judgment in Venugopal's case, the view taken in the judgment in Dilip Shirke must be held to be impliedly over-ruled, even though the judgment of Dilip Shirke was not even cited and brought to the notice of the Supreme Court while deciding Venugopal's case. I am of the view that in the instant case, following the law laid down by the Supreme Court in Venugopal, it must be held that the termination of services of the two Respondent workmen squarely fell within the exception Clause (bb) of section 2(oo) of the Industrial Disputes Act. It is not in dispute that none of the three stipulations incorporated in the letters of appointment of temporary service issued on 14th August, 1984, had been fulfilled by the Respondent workmen. The termination of their services was a consequence of the non-fulfilment of the said stipulations incorporated in their letters of appointment. Hence, their cases squarely fall within the exception contemplated by Clause (bb) of section 2(oo) of the Industrial Disputes Act defining "retrenchment". Thus, I am of the view that both the Courts below erred in holding that the termination of service of each of the Respondent workmen amounted to "retrenchment" and the further finding that there was breach of mandatory provisions of section 25F of the Industrial Disputes Act and the consequential finding of unfair labour practice under Item 1 of Schedule IV of the

Act. In my judgment, the judgments of both the Courts below are liable to be quashed and set aside.

6. At the time of admission of these two writ petitions, by an order dated 16th March, 1990, this Court had declined to interfere with the direction of reinstatement granted by the Labour Court and confirmed by the Industrial Court in Revision Applications. The Rules issued in both writ petitions were confined to back-wages. Further, the Petitioner was directed to deposit full amount of back-wages payable to the workmen concerned. By a further order dated 23-10-1991, this Court permitted the Petitioner Board to withdraw 50 per cent of the deposited amount and permitted the Respondent workmen to withdraw the remaining 50 per cent on furnishing Personal Undertakings to the trial Court. Though I am of the view that the judgments of the two Courts below are liable to be quashed and set aside, if the amounts of 50 per cent of the back-wages deposited in the Trial Court have already been withdrawn by the Respondent workmen by furnishing Personal Undertakings, it would be harsh and unjust to permit the Petitioner Board to recover the said amounts from the two Respondents workmen. I am taking this view because, at the material time when the two Courts below gave their orders, the view taken by this Court in Dilip Shirke's case held the field and it is only subsequently that the said view was impliedly over-ruled by the Supreme Court in Venugopal's case (Supra). In my view, the vicissitudes of litigation should not be allowed to engulf the Respondent workmen in their wake, leading to harsh and unjust results. A just and reasonable resolution would be that, if the workman have not withdrawn the amount, the amounts should be refunded to the petitioner Board and, if the workmen have already withdrawn the amount of 50 per cent permitted by this Court by its order dated 23-10-1991, then there should be no recovery of the amounts and the Personal Undertaking given by the Respondent workmen should be discharged.

7. In the result, Writ Petition No. 1133 of 1990 and Writ Petition No. 1134 of 1990 are hereby allowed. Rules granted therein are made absolute. The orders of the two Courts below in these two writ petitions are hereby quashed and set aside. If the Respondent workman the amount deposited in the Trial Court pursuant to the order of this Court dated 23-10-1991 by giving personal undertaking, then the amount lying in deposit in the Trial Court shall be refunded to the Petitioner Board. If, however, any amounts have been withdrawn by the Respondent workmen by giving personal undertakings, then, notwithstanding the Writ petitions being allowed, the Petitioner Board shall not recover the amounts already withdrawn by the Respondent workmen. Personal Undertakings, if given by the workmen, shall stand forthwith discharged.

8. Rules are accordingly made absolute in both writ petitions with no order as to costs.