
(2017) 07 BOM CK 0183
In the Bombay High Court
Case No : 231 OF 2008

Maharashtra State Warehousing

APPELLANT

Vs

Shri Ganesh Sampatrao Dhole

RESPONDENT

Date of Decision : 01-07-2017

Acts Referred:

Industrial Disputes Act, 1947, Section 25F, Section 17B, Section 25H -
Conditions precedent to retrenchment of workmen - Payment of full wages to
workman pending proceedin

Citation : (2017) 07 BOM CK 0183

Hon'ble Judges : B.P. Dharmadhikari, Rohit B. Deo

Bench : DIVISON BENCH

Advocate : N.R. Saboo, S.A. Kalbande

Judgement

1.] Award delivered on 7.7.2006 by Labour Court, Wardha granting relief of reinstatement with continuity to respondent and maintained by the learned Single Judge of this Court on 3.12.2007 while dismissing Writ Petition No. 640/07 has been questioned by appellant employer.

2.] On 17.7.2009 in L.P.A. reinstatement was stayed. The application under Section 17-B of the Industrial Disputes Act, 1947 moved by respondent workman was dismissed by this Court. Mr. N.R. Saboo, learned Counsel for appellant, points out that period of employment is extremely short. Oral termination has taken place on 1.4.1988 and for a period of about ten years thereafter, no steps were taken. Demand notice itself was issued on 28.9.1998 and reference proceedings were registered in 2000. He contents that thus there was unreasonable delay in invoking the jurisdiction of Conciliation Officer and in approaching Labour Court. As such, grant of reinstatement is totally unwarranted. 3] Without prejudice, he points out that the employer

examined two of its responsible officers who on the basis of records pointed out that workman had worked only for 191 days during the above period. Thus, he did not complete 240 days in all from date of his joining till his termination. As such, finding that he had worked for 240 days continuously in every year is perverse. He also adds that in absence of challenge to said record maintained by employer and in absence of any notice to produce document, this oral evidence ought to have been accepted.

4] Lastly, he relies upon judgment of Hon'ble Apex Court in the case of Jagbir Singh .vs. Haryana State Agriculture Marketing Board & another reported in 2009(9) SCALE 611 to urge that considering the very short period of employment, relief of reinstatement could not have been granted and the workman could have been given reasonable compensation.

5] Mr. S.A. Kalbande, learned Counsel for respondent, strongly opposed the appeal. He points out that after termination of present respondent another employee by name Ganpat Gavai was immediately appointed and that person was in employment even in 2005. He, therefore, states that there is no scope for awarding compensation in the present matter and reinstatement as allowed needs to be maintained. He also relies upon the evidence adduced by workman and inconsistency in evidence of appellant herein to submit that finding of completion of 240 days is not perverse. According to him, in the present situation burden was upon the appellant Corporation to produce record and to prove the daily wage paid to respondent on his completion of only 191 days of service as alleged.

6] Mr. N.R. Saboo, learned Counsel for appellant, in reply points out that finding on Section 25-H of the Industrial Disputes Act as recorded by the Labour Court is unwarranted as it did not possess the jurisdiction.

7] The respondent workman has specifically pleaded that he was employed as Godown Chowkidar from 12.1.1984 and continued till his oral termination on 1.4.1988. He has also pleaded that his monthly salary was Rs.400/- per month and his duty hours were 9 p.m. to 8 a.m. This was denied by appellant by filing Written Statement. They claimed that during entire period of about three years, workman had put in only 186 days of service and that he was being paid daily wages.

8] The workman has entered witness-box and deposed in tune with his statement of claim. He has been cross-examined but there is no challenge to his assertion of receipt of monthly wages, completion of 240 days of continuous service in every year or then

employment of another person immediately after his termination and in his place. Impliedly, all his assertions on oath have remained uncontroverted.

9] The appellant examined one of its officers Shri Vasant Palkar. He has stated that workman worked from September, 1986 to March, 1988, i.e. for a period of 19 months and put in 191 days of service. Suggestion given to him that workman worked from 12.1.1984 to 1.4.1988 was denied by the witness. He accepted that he prepared muster-roll but muster-roll was not filed by him. He also accepted that in place of workman one Gavai was appointed and he was working even on the date when his deposition was being recorded. This deposition, therefore, shows that Gavai appointed after terminating workman in 1988 was being continued and was working even on 12.9.2005.

10] The deposition of this witness, therefore, shows that he does not support statement in Written Statement that workman had worked only for 186 days. He has given period of 19 months only and he points out service of 191 days during said period. This 19 months" period is not specifically pleaded in Written Statement.

11] In the light of this evidence, it is apparent that burden was upon employer to bring on record the material demonstrating that he has worked only for period of 19 months or then for a period of 186 days during said 19 months.

12] At this stage of dictation, Mr. N.R. Saboo, learned Counsel for appellant, has with the leave of Court invited attention to certified copy of deposition of workman available with him. He submits that deposition was recorded in handwriting and its first three pages are only annexed as deposition with Writ Petition filed before this Court. He submits that latter part of cross-examination, therefore, is not provided either to learned Single Judge or this Court as an annexure. We have looked into the latter part also, though Mr. Kalbande, learned Counsel for respondent, is objecting to this process. In latter part, the workman has accepted that he was paid Rs.16.90 paise daily. He further stated that he was not accepting that during period September, 1986 to March, 1988 he worked for 186 days only. He has further stated that he was called by employer whenever work is available. He has also accepted that when regular employee goes on leave, he was called for work. He has stated that he worked on daily-rated-basis and he was paid Rs.16.90 for such work. This part of cross-examination does not specifically point out the period during which he was called for work whenever work was available. Whether he was allowed to work even after termination in leave vacancy or not, is not very clear. Moreover, the learned Single Judge of this

Court has not looked into this part and Writ Petition has been decided without referring to it. However, considering the position of appellant as a Public Corporation, we have looked into that part. We also direct appellant Corporation to place photo copy of certified copy along with its true typed copy on record of this L.P.A.

13] The reference by Labour Court to provisions of Section 25-H of the Industrial Disputes Act is only to highlight the legal obligation cast upon the employer when work again becomes available. The Labour Court has found that though work was available, it was not provided to workman.

14] In the backdrop of the fact that after termination of workman, one Gavai was appointed and he continued to work till 2005 or even thereafter clearly shows that the oral termination of respondent was unwarranted. If the work was available, he should have been continued. If work became available after his termination, he should have been given due preference and it could not have been given to new employee.

15] We, therefore, find nothing wrong with consideration of controversy either by Labour Court or by learned Single Judge of this Court.

16] The learned Labour Court was aware of the fact that it was looking into a dispute which was referred after a gap of almost 12 years. It has, therefore, refused to grant any back wages to respondent. This denial of back wages has attained finality and respondent did not assail it. The appellant did not reinstate the workman after award by Labour Court or then after rejection of Writ Petition by the learned Single Judge of this Court. Thereafter, reinstatement was stayed by this Court in L.P.A. on 17.6.2009. That interim order is operating even today.

17] The contention about grant of compensation to respondent in lieu of reinstatement needs rejection, as after termination of his services, Shri Gavai came to be appointed and continued for long time. In judgment reported in the case of Jagbir Singh (cited supra), employee Jagbir was daily wager who worked from 1.9.1995 till 18.7.1996 and his termination was found violative of Section 25-F of Industrial Disputes Act. He was not substituted by any fresh employee. The length of service put in by him was less and hence in these facts the Hon'ble Apex Court has found it proper to allow compensation in lieu of reinstatement. In present facts, when immediately after termination another person substituted respondent, work was very much available and hence, grant of compensation cannot be accepted as a just relief. New recruit was continuing even on the date when approach notice was issued. Injustice to

respondent workman was therefore continuous one. The industrial dispute had not died due to lapse of time.

18] As we are not inclined, the contentions of appellant need to be dismissed. If the L.P.A. is dismissed, respondent workman becomes entitled to back wages for the period from award of Labour Court, i.e. from 7.7.2006 till his reinstatement, i.e. almost for a period of 11 years. In facts noted supra, when interim stay granted by this Court has operated till today, we direct appellant Corporation to pay him back wages of 1/3rd of the total back wages for said period. Thus, wages payable to respondent for period from 7.7.2006 till his reinstatement shall be calculated and 1/3rd portion thereof shall be paid to him within four months from today. He shall also be reinstated in the meanwhile.

19] Accordingly, we partly allow the the L.P.A. only to the extent of quantum of back wages and maintain rest of the award of Labour Court as it is. No costs.