
(2002) 09 MP CK 0037

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2682/89

M.P. Rajya Van Vikas Nigam Limited

APPELLANT

Vs

Shri Q.M. Qureshi English Coaching Class and Others

RESPONDENT

Date of Decision : 23-09-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F, 39

Citation : (2003) 96 FLR 90 : (2002) ILR (MP) 645 : (2002) 4 MPHT 389 :
(2003) 1 MPLJ 497

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : Shobhitaditya, for the Appellant; R.K. Gupta, for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Khare, J.

This is a petition under Articles 226/227 of the Constitution of India challenging the award dated 17-4-1985 of the Labour Court, Jabalpur, by which the termination of services of the respondent No. 1 has been declared to be illegal and he has been reinstated with full backwages.

It is not in dispute that respondent No. 1, Q.M. Qureshi was appointed as a Clerk in Madhya Pradesh State Forest Development Corporation Limited, Lamta Project Division, Balaghat on 22-11-1976 and his services were terminated on 23-2-1980. He was working as a Clerk during this period. No charge-sheet was issued against him nor any departmental enquiry was conducted. He was not paid any retrenchment compensation on termination of his services.

The case of the petitioner-Corporation is that the Labour Commissioner was not competent to refer the dispute to the Labour Court. The petitioner-Corporation is not an "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 (hereinafter to be referred to as "the Act"). The respondent No. 1 was

removed from service because his work and conduct were not satisfactory. He was guilty of various misconducts. He was removed because he was found unsuitable for the post held by him.

The case of the respondent No. 1 is that the Labour Commissioner has been delegated the power to refer the industrial dispute to the Labour Court. The petitioner-Corporation is an industry as it is engaged in carrying on the trade and business in forest produce. The respondent No. 1 cannot be said to have committed any misconduct as no departmental enquiry in that respect was held. The services of the respondent No. 1 were terminated and that amounted to retrenchment. As statutory requirement for retrenchment regarding payment of compensation was not followed, the award given by the Labour Court is correct.

In this petition it is argued that the petitioner-Corporation is not an "Industry" as it is a statutory Corporation. The respondent No. 1 was a temporary employee and he was found unsuitable for the post which he was holding and, therefore, his services were rightly terminated.

The first point for determination is whether the petitioner-Corporation is an "Industry". It is said that it is a Company registered under the Companies Act, 1956. It has been very vaguely stated that it does not carry on business and trade. The Labour Court has given finding that Madhya Pradesh Rajya Van Vikas Nigam Limited is engaged in the business of forest produce. That factual aspect is not denied by the petitioner-Corporation. In the opinion of this Court, the petitioner-Corporation is covered by the definition of "Industry" given in Section 2(j) of the Act. This point has been considered recently by the Supreme Court in Agricultural Produce Market Committee Vs. Shri Ashok Harikuni and Another Etc., in which all the earlier decisions have been considered. It has been held that the Agricultural Produce Market Committee comes within the definition of Industry. Similarly in All India Radio v. Santosh Kumar, AIR 1998 SC 941, it has been held that the function carried on by All India Radio and Doordarshan cannot be said to be confined to sovereign functions as they carry on commercial activity for profit by getting commercial advertisements. In the well-known case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, , it has been laid down that where there is (i) systematic activity, (ii) organised by co-operation between employer and employee, (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, prima facie, there is an "industry" in the enterprise. It has been clearly held that the economic adventures undertaken by the Government or statutory bodies are covered under the definition of Industry. In the present case the Labour Court has rightly held that the petitioner-Corporation comes within the definition of Industry given in Section 2(j) of the Act.

The second point which has been raised by the petitioner is that the Labour Commissioner had no power to make the reference. On the other hand it is pointed out that u/s 39 of the Act, the power has been delegated to the Labour Commissioner and he can make the reference of the dispute to the Labour Court.

Therefore, the reference cannot be said to be incompetent.

The third point is whether the termination of service of the respondent No. 1 comes within the definition of retrenchment given in Section 2(oo) of the Act. This definition is as under:--

" "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) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation on that behalf; or

(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 on that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health."

In the present case the contention of the petitioner-Corporation is that the termination of the services of the respondent No. 1 is not retrenchment because he was guilty of various misconducts and his work was not found to be satisfactory. But it is also an admitted fact that no punishment was inflicted on the respondent No. 1 by way of disciplinary action. The case of the respondent No. 1 is not covered by any exception to Section 2(oo) of the Act. He was not removed on the ground of misconduct. The order passed against him was of simple termination. It has been held in *Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another*, that a retrenchment as defined in Section 2(oo) covers every case of termination of service except those which have been embodied in the definition of discharge from employment or termination of service of a probationer would also amount to retrenchment. As such where while discharging a probationer requirements of Section 25F had not been complied with the same was void. Similarly in *Mohan Lal Vs. Management of Bharat Electronics Ltd.*, it has been observed "Niceties and semantics apart, termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment except in cases excepted in the section itself. The excepted or excluded cases are where termination is by way of punishment inflicted by way of disciplinary action, voluntary retirement of the workman, retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the the workman concerned contains a stipulation in that behalf, and termination of the service of a workman on the ground of continued ill-health.

It is well settled that where pre-requisite for valid retrenchment as laid down in

Section 25F has not been complied with, retrenchment bringing about termination of service is ab initio void.

In the present case condition precedent to retrenchment provided in Section 25F of the Act was not complied with inasmuch as the respondent No. 1 was not paid any retrenchment compensation as provided therein. Therefore, the award passed by the Labour Court is unassailable.

The writ petition is dismissed.