
(2005) 12 MP CK 0065

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1265 of 1993

M.P. State Tourism Development Corporation

APPELLANT

Vs

Kishan Bhoi and another

RESPONDENT

Date of Decision : 06-12-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Shops and Establishments Act, 1958 — Section 58(2)

Citation : (2006) 2 MPLJ 131

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : A.P. Singh, for the Appellant; R.N. Shukla and R.B. Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

This petition has been filed under Articles 226 and 227 of the Constitution of India assailing the impugned order Annexure-P/1 dated 28-12-1992 passed by respondent No. 2 directing the petitioner to reinstate respondent No. 1 with full backwages.

An appeal u/s 58(2) of the M. P. Shops and Establishment Act, 1958 (for brevity "the Act") was filed by respondent No. 1 before respondent No. 2 on the ground that he was serving as employee under the Establishment of the petitioner. He was appointed on 26-12-1981 in the pay of Rs. 245/- . Thereafter on 18-6-1984 he was appointed on the post of Electrician-cum-Plumber. On this post he served upto 31-7-1987. Vide notice dated 1-8-1987 the petitioner terminated the service of respondent No. 1 by giving one month's salary.

The case of respondent No. 1 is that before terminating his services, no charge-sheet was served to him nor he was subjected any departmental enquiry. The retrenchment compensation has also not been paid to him and, therefore, the

action of petitioner terminating his services is contrary to the provisions of Industrial Disputes Act, 1947 (in short "the Act of 1947"). It was prayed by respondent No. 1 that he be reinstated with full backwages.

The petitioner filed written statement and the main contention of opposition is that the provisions of Act are not applicable on the petitioner and, therefore, the appeal which has been filed u/s 58(2) of the Act is not maintainable and the same be dismissed. In the written statement it has been further pleaded that the work of respondent No. 1 was not found satisfactory and for this reason his services have been terminated and in lieu of one month's notice, wages of that period has been paid to him.

The appellate authority constituted under the Act framed necessary issues and after recording the evidence came to hold that provisions of Act are applicable on the petitioner. The appellate authority further came to hold that without holding any departmental enquiry the services of petitioner is terminated which is contrary to the principles of natural justice as well as proviso to section 58(1) of the Act. The authority allowed the appeal and directed the petitioner to reinstate respondent No. 1 with full backwages. Hence this petition.

It has been submitted by Shri A. P. Singh, Learned Counsel for the petitioner that respondent No. 2 erred in law in holding that the provisions of the Act are applicable on the petitioner and respondent No. 1. It has also been submitted by Learned Counsel for the petitioner by placing reliance on the decision of the Supreme Court in the case of Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, , that since there is no finding of the authority (respondent No. 2) that respondent No. 1 was not gainfully employed, therefore, he was not entitled for the backwages.

On the other hand, Shri R. N. Shukla, learned Senior Advocate for respondent No. 1 supported the impugned order Annexure-P/1 passed by the authority and has contended that in a slipshod manner the services of respondent No. 1 were terminated in contravention to section 25-F of the Act of 1947 and, therefore, the termination of respondent No. 1 amounts to illegal retrenchment. By inviting my attention to section 2(8) of the Act, it has been argued that since the petitioner runs Restaurant where the food is served, therefore, the petitioner would come under the ambit and sweep of definition "establishment" as envisaged under sub-section (8) of section 2 of the Act. Merely because the petitioner is a Corporation and is a Government Company registered u/s 617 of the Companies Act, it cannot be said that the provisions of the Act are not applicable on the Government Company. By inviting my attention to the order passed by the appellate authority under the Act, it has been contended that since there is positive evidence of respondent No. 1 that he remained unemployed after termination, therefore, the authority did not err in passing the impugned order. In support of his contention, learned Senior Counsel for respondent No. 1 has placed reliance on Syed Azam Hussaini v. The Andhra Bank Ltd., 1995(1) CLR 435. Learned Senior Counsel has also placed reliance on the decision of the

Bombay High Court in the case of Pramod Prabhakar Kulkarni v. Balasaheb Desai Sahakari Sakhar Karkhana Ltd. and another, 2005(111) CLR 482 and also on the decision of the Supreme Court in the case of Uptron India Limited Vs. Shammi Bhan and Another, .

After having heard Learned Counsel for the parties, I am of the view that this petition deserves to be dismissed.

The contention of Learned Counsel for the petitioner that provisions of the Act are not applicable on the petitioner Corporation because it is a Government Company, sans substance. On going through the provisions of the Act and particularly section 2(8) and (24) where the "establishment" and "shop" are defined, it cannot be said that the provisions of Act are not applicable to the petitioner. It is no more in dispute that the petitioner is also serving and selling the meals and food article to the customers and, therefore, the petitioner would come under the definition of "establishment" as well as under the definition of "shop" defined under the Act. There is no bar in the Act that its provisions would not be applicable on the Government establishment or the Government Companies. Thus, the order passed by the appellate authority under the Act cannot be said to be without jurisdiction on the ground that the provisions of the Act are not applicable.

So far as the contention of Learned Counsel for the petitioner that since the services of respondent No. 1 were not found satisfactory, therefore, his services were rightly terminated by giving one month's salary in lieu of one month's notice is concerned, the view of this Court is that the hire and fire policy which was being taken place a century ago cannot be allowed to be applicable in the present social system particularly when the provisions of the Act as well as the Act of 1947 are applicable. In the case of Syed Azam Hussaini (supra) the Supreme Court while dealing with the provisions of Andhra Pradesh Shops and Commercial Establishments Act, which is akin to the Act, and while dealing with the scope of section 41 of that Act, it was held that the provisions of section 25-F of the Act of 1947 are applicable. The Apex Court placed reliance on its earlier decision Krishna District Co-operative Marketing Society Limited, Vijayawada Vs. N.V. Purnachandra Rao and Others, . The Apex Court further held that since the employee had worked continuously for more than 240 days in a calendar year, therefore, his termination amounts to illegal retrenchment if the provisions of section 25-F of the Act of 1947 were not complied. In the case of Syed Azam Hussaini (supra) the services were terminated on account of unsatisfactory work and the employee was directed to be reinstated. In the present case also the stand of petitioner is that on account of unsatisfactory work of respondent No. 1, his services were terminated. Thus, by placing reliance on the decision of Syed Azam Hussaini (supra), safely it can be said that the termination of the services of petitioner is not only contrary to the principle of natural justice but also in contravention to section 25-F of the Act of 1947.

I have already held hereinabove that the petitioner would come under the ambit

and sweep of term "establishment" and "shop" as defined u/s 2(8) and 2(24) of the Act. According to the proviso to section 58(1) of the Act the employer shall not dispense with the service of an employee who has been employed for a period of three months or more except for a reasonable cause and without giving such employee at least one month's notice or wages in lieu of such notice. But, no notice would be required if the services are terminated on the charge of misconduct. Admittedly, respondent No. 1 had served for more than three months. In the present case the services have been terminated on account of unsatisfactory work. Admittedly, no enquiry was conducted against respondent No. 1. The Supreme Court has already held in the case of Syed Azam Hussaini (supra) while dealing with the provisions of Andhra Pradesh Shops and Commercial Establishment Act which is akin to the Act that the termination of services on account of unsatisfactory work, cannot be a ground to terminate the service. Moreover, in the present case, no material was placed in order to demonstrate that the performance of respondent No. 1 was not satisfactory. In absence of any material to show that the service record of respondent No. 1 was not satisfactory, merely by saying in the order that the services were found not satisfactory, would not suffice. Thus, the decision of the appellate authority constituted under the Act holding the action of petitioner terminating services of respondent No. 1 is illegal, cannot be said to be arbitrary or in contravention to the provisions of the Act.

There is no merit in the contention of Learned Counsel for the petitioner that the backwages have been wrongly awarded. There is specific averment of respondent No. 1 that after terminating his services, he was not gainfully employed and he is unemployed. No evidence in rebuttal has been adduced on behalf of the petitioner. Thus, the order passed by the authority directing the petitioner to reinstate respondent No. 1 with full backwages does not call for any interference.

Ab judicatio, this petition is found to be bereft of any substance and the same is hereby dismissed with no order as to costs.