

(2021) 11 BOM CK 0134

In the Bombay High Court

Case No : Letters Patent Appeal No.72, 86 Of 2011 In Writ Petition No.3160,
3337 Of 2001

M/s Mahindra & Mahindra Ltd

APPELLANT

Vs

Madhav Ramkrishna Lomte And Others

RESPONDENT

Date of Decision : 30-11-2021

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo)(bb), 25F, 25H
Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices
Act, 1971 — Section 28

Citation : (2021) 11 BOM CK 0134

Hon'ble Judges : A. S. Chandurkar, J;G. A. Sanap, J

Bench : Division Bench

Advocate : R. E. Mohrir, A. P. Raghute

Final Decision : Dismissed

Judgement

A. S. Chandurkar, J

1. In these Letters Patent Appeals the common judgment of learned Single Judge in Writ Petition Nos.3160 and 3337/2001 decided on 23/09/2010 is under challenge. Both the appeals can be conveniently decided by this common judgment.

2. For sake of convenience the facts of Letters Patent Appeal No.86/2011 are being referred to. It is the case of the respondent No.1-complainant that he was appointed on temporary basis as a Wireman being semi-skilled worker on the basic salary of Rs.200/-. Various appointment orders on temporary basis for a period of three months at a given point of time were issued to the complainant, the first appointment being from 17/12/1992 and the last engagement ending on 08/08/1994. According to the complainant the appellant-employer was an Engineering Industry in which about 500 employees were working continuously. The employer was covered by the provisions of the Model Standing Orders framed under the Maharashtra Industrial Relations Act, 1946. The work on the

post of 'workman' on which the complainant was engaged was always available with the employer. After terminating the services of the complainant the employer continued employing other employees on the same post and then proceeded to retain some of them who were junior to the complainant. It is the case of the complainant that when his services came to be terminated he had completed 240 days of continuous service in the preceding year and he was therefore entitled to be paid retrenchment compensation under Section 25F of the Industrial Disputes Act, 1947 (for short, the Act of 1947). Since there was non-compliance with the aforesaid mandatory provisions, the complainant filed a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, the Act of 1971) alleging commission of an unfair labour practice under Item-9 of Schedule-IV to that Act. It was also his case that the seniority list as required to be maintained was not maintained. A waiting list as required to be maintained under Clause 4D of the Model Standing Orders was also not maintained. The employer ought to have complied with the provisions of Section 25H of the Act of 1947 thereby giving preference to the complainant while recruiting any other person on the same post. The complainant accordingly sought necessary relief in the said complaint.

3. The employer filed its written statement opposing the complaint. It was stated that the engagement of the complainant was of a purely temporary nature with his engagement coming to an end automatically in terms of the order of appointment. The engagement was for temporary period with a view to consider the suitability of the employee engaged. It was denied that the complainant had completed 240 days of continuous service. All other allegations relating to non-compliance of Clause 4D of the Model Standing Orders as well as failure to maintain the seniority list were denied. It was also denied that provisions of Section 25H of the Act of 1947 were attracted. According to the employer on 30/04/1994 the services of the complainant were sought to be engaged but the complainant refused to accept the offer on the ground that he was not being offered permanent appointment. It was thus submitted that the complaint was liable to be rejected.

4. The parties led evidence before the Industrial Court which after considering the same recorded a finding that the complainant had worked for a continuous period of 240 days in the preceding year. The relief of regularisation and permanency could not be granted by the Industrial Court as the order of termination was required to be challenged before the Labour Court which was not so done. It was then found that in view of provisions of Section 25H of the Act of 1947, there was a right of re-employment in favour of the complainant. The evidence in that regard led by the complainant was sufficient to grant that relief and therefore the employer was under an obligation to comply with the provisions of Section 25H while considering recruitment of fresh candidates. Accordingly by the common judgment dated 03/05/2001, the complaints as filed were allowed and the complainants were held entitled to the benefit of Section

25H of the Act of 1947 and the employer was directed to re-employ the complainants on the former post.

5. The employer being aggrieved by the aforesaid judgment challenged the same by preferring two writ petitions in this Court. The learned Single Judge after hearing the learned counsel for the parties found that the employer was seeking to rely upon the provisions of Section 2(oo) (bb) of the Act of 1947. It was observed that even if the said provisions may not be squarely applicable, there was an obligation to maintain a waiting list as contemplated by Clause 4D of the Model Standing Orders. Said obligation to maintain waiting list had nothing to do with the provisions of Section 2(oo)(bb) or Section 25F of the Act of 1947. In the aforesaid backdrop the learned Single Judge found that the directions by the Industrial Court to the employer to re-employ the complainant flowed from Clause 4D and 4E of the Model Standing Orders and therefore the order of the Industrial Court could not be faulted. The employer ought to discharge his obligation in accordance with the said Standing Orders. On that premise the learned Single Judge found that there was no case made out warranting interference in exercise of writ jurisdiction. Accordingly by the judgment dated 23/09/2010 both the writ petitions came to be dismissed. Being aggrieved the employer has preferred these Letters Patent Appeals.

6. Shri R. E. Mohrir, learned counsel for the employer submitted that the learned Single Judge erred in holding that the complainants were entitled for relief under Section 25H of the Act of 1947. According to him the orders of appointment issued to both the complainants were for a fixed period and their engagement came to an end at the expiry of the period mentioned therein. When the orders of appointment were for a fixed period and that period was specifically mentioned therein, there would be no question of such employees being retrenched for their engagement would automatically come to an end on the expiry of such period. The provisions of Section 2(oo) of the Act of 1947 would therefore not apply. He sought to emphasise upon the fact that by Act No.49 of 1984 the provisions of Section 2(oo) were amended and Clause (bb) was added in the explanation. This was for the specific purpose of excluding from the definition of "retrenchment" the termination of service of a workman as a result of non-renewal of contract of employment on its expiry and on termination of such contract in accordance with the provisions thereof. It was his submission that the learned Single Judge was not justified in concluding that it was the obligation of the employer to re-employ the complainants even when their services were not retrenched. Despite offers for re-employment being made to the complainants in terms of the interim orders passed, the complainants had not responded since they were interested only in seeking regularisation of their services. He therefore submitted that the judgment of the learned Single Judge was liable to be set aside. In support of his submissions the learned counsel placed reliance on the following decisions :

1. Shaikh Sabir Lad Mohammad vs. Commissioner, Ahmednagar Municipal

Corporation 2016 (1) Mh.L.J. 804

2. Bhavnagar Municipal Corporation vs. Salimbhai Umarbhai Mansuri (2013) 14 SCC 456

3. Haryana State Agricultural Marketing Board vs. Subhash Chand and anr. (2006) 2 SCC 794

4. Regional Manager, SBI vs. Mahatma Mishra (2006) 13 SCC 727

5. Karnataka Handloom Development Corporation Ltd. vs. Sri Mahadeva Laxman Raval (2006) 13 SCC 15

6. Bhogpur Co-operative Sugar Mills Ltd. vs. Harmesh Kumar (2006) 13 SCC 28

7. Escorts, Ltd. Vs Presiding Officer and another. 1997 LLR 699 (SC)

8. Mahindra and Mahindra Ltd. Nagpur vs. Sunil Namdeorao Zade and anr. 2021 (3) Mh.L.J. 589

9. Nagpur District Central Co-operative Bank Ltd. Thr. Its Manager vs. Prashant Ashokrao Salunke and anr. 2016 II CLR 3

10. State of Gujrat and anr. vs. Lokendrasinh Pratapsinh Chauhan and anr. 2018 LAB.I.C. 161

7. Shri A. P. Raghute, learned counsel for the complainants opposed the aforesaid submissions and submitted that no interference was called for when the judgment of the learned Single Judge for the reason that the only direction given was to re-employ the complainants in terms of Clauses 4D and 4E of the Model Standing Orders. Though the orders of appointment issued to the complainants were for specific period, the fact that employees were engaged on various occasions by virtue of which they had rendered more than 240 days continuous service itself shows that the work in question was available and the appellant had need of the same. The said posts could not be said to be temporary as contended by the employer. He invited attention to the pleadings in the complaint as well as those in the written statement. Referring to the evidence on record it was submitted that after the term of engagement of the complainants was completed, other employees were engaged on the same posts which clearly indicated that the appellant intended to deprive the complainants the benefit of permanency. The Industrial Court had rightly found that with completion of continuous service of more than 240 days the complainants were entitled for appropriate relief. However, instead of granting the relief of reinstatement with continuity of service and grant of full back-wages, the direction to re-employ the complainants on their posts came to be issued. Though the appellant had taken a stand that the suitability of the concerned complainant was required to be examined and for that purpose he was engaged for a fixed period, there is no evidence led by the employer to indicate the suitability or otherwise of the complainants for being retained in service. He denied the contention of the learned counsel for the appellant that the

complainants were not interested in discharging their duties. On the contrary despite attempts being made to re-join their duties, the appellant refused to permit the complainants to do so. The learned counsel placed reliance on the following decisions :

1. Central Bank of India vs. S. Satyam and ors. AIR 1996 SC 2526
2. S. M. Nilajkar and ors. vs. Telecom District Manager, Karnataka (2003) 4 SCC 27
3. The Haryana State Agricultural Marketing Board vs. Subhash Chand and ors. AIR 2006 SC 1263
4. Regional Manager, SBI vs. Mahatma Mishra (2006) 13 SCC 727
5. Rajkumar vs. Director of Education and ors. AIR 2016 SC 1855
6. Bhavnagar Municipal Corporation vs. Salimbhai Umarbhai Mansuri AIR 2013 SC 2762
7. Bhuvnesh Kumar Dwivedi vs. M/s Hindalco Industries Ltd. (2014) 11 SCC 85
8. Judgment of Bombay High Court in Writ Petition No.4502 of 2006 with connected matters dated 01/02/2021(Sunil Pralhad Khomane and ors. vs. M/s Bajaj Auto Ltd. Akurdi, Pune with connected matters)
9. Haryana State Electronics Development Corporation Ltd. vs. Mamni AIR 2006 SC 2427
10. Hemant Babruvahan Parchake vs. Social Welfare Officer, Sadr, Nagar and ors. 2021(4) Bom CR 679
11. Santosh Gupta vs. State Bank of Patiala AIR 1980 SC 1219
12. State Bank of India vs. Shri N. Sundara Money AIR 1976 SC 1111
13. Mohan Lal vs. Management of Bharat Electronics Ltd. AIR 1981 SC 1253

He thus submitted that there was no merit in the Letters Patent Appeals which were liable to be dismissed.

8. We have heard the learned Counsel for the parties at length and we have given due consideration to their respective submissions. Perusal of the order passed by the Industrial Court reveals that it has recorded a finding that the complainants had completed continuous service of more than 240 days in the preceding calendar year. It then found that the work which they did for temporary period was available with the appellant and therefore there was an obligation to comply with the provisions of Section 25H of the Act of 1947. On that premise the Industrial Court directed the appellant to re-employ the complainants on their former posts. Before the learned Single Judge the appellant had relied upon the provisions of Section 2(oo)(bb) of the Act of 1947 to contend that as the orders of appointment were for a fixed period, their

services came to an end thereafter which did not amount to retrenchment. The learned Single Judge observed that considering the nature of engagement, even if the provisions of Section 2(o)(bb) were held to be not squarely applicable to the case in hand, the appellant was bound by the provisions of the Model Standing Orders which required the appellant to maintain a waiting list of all temporary operatives under Clause 4D and a further restraint from giving work to any other person when such work was again available in view of Clause 4E. On this basis by observing that the right to re-employment flowed from Clauses 4D and 4E of the Model Standing Orders, the learned Single Judge refused to interfere with the orders passed by the Industrial Court.

9. In the complaints as filed it was specifically pleaded by the complainants that the appellant's establishment was covered by the provisions of Model Standing Orders framed under the Maharashtra Industrial Relations Act, 1946. The witness examined by the appellant in his deposition admitted in paragraph 5 that the service conditions were framed under the Maharashtra Industrial Relations Act, 1946 and the corresponding Model Standing Orders were applicable to its employees. It was also admitted that the appellant did not maintain waiting list of temporary employees. Clause 4D of the said Model Standing Orders requires the establishment to maintain a waiting list of all temporary workmen whose services have been terminated on account of completion of the work for which they were appointed or on account of expiry of the period for which they were employed. Further vacancies in the establishment were required to be filled by giving preference to the persons including in the waiting list maintained under sub-Clause (i).

10. It has not been demonstrated as to how the provisions of Clause 4D of the Model Standing Orders which confer a right on a temporary operative to have his name included in the waiting list and then confer a right of preference in the matter of re-employment are not applicable to the facts of the present case. It was emphasised on behalf of the appellant that since the orders of appointment issued to the complainants were for a fixed period, at the end of that period the employees ceased to be in employment which did not amount to retrenchment. There can be no dispute with the proposition that if the situation is governed by the exception carved out by Section 2(o)(bb) of the Act of 1947, there would be no case of retrenchment so as to apply the provisions of Section 25H of the Act of 1947. The learned Single Judge has infact observed so in paragraph 12 of the impugned judgment and has then found that the obligation to maintain a waiting list of temporary employees under Clause 4D of the Model Standing Orders was independent of the provisions of Section 2(o)(bb) and Section 25H of the Act of 1947. We do not find any reason to take a different view in this regard considering the fact that the provisions of the Model Standing Orders were admittedly applicable to the appellant and it was obliged to maintain a waiting list of temporary employees. Thus even if the complainants were not found entitled for relief under Section 25H of the Act of 1947 on the ground that there was no retrenchment of their services in view of provisions of Section 2(o)(bb)

of the Act of 1947, the right of re-employment has been recognised as flowing from Clauses 4D and 4E of the Model Standing Orders. In these facts therefore we do not find any reason to take a different view of the matter. Coming to the decisions relied upon by the learned Counsel for the parties, we find that the same do not pertain to the applicability of the Model Standing Orders and especially Clauses 4D and 4E thereof. The ratio of the decision in Nagpur District Central Co-operative Bank Ltd. Thr. Its Manager (*supra*) is distinguishable for the reason that applicability of the Model Standing Orders and the effect of Clauses 4D and 4E thereof was not the subject matter of consideration therein. Thus even if it is held that there were no retrenchment of the complainants in view of provisions of Section 2(oo)(bb) of the Act of 1947 for the reason that the appointment itself was for a fixed period, it is clear that by virtue of the right flowing from Clauses 4D and 4E of the Model Standing Orders, the right of re-employment has been recognised.

For the aforesaid reasons we find that the learned Single Judge has rightly refused to interfere with the direction of re-employment granted by the Industrial Court by clarifying that such right was in view of Clauses 4D and 4E of the Model Standing Orders. The Letters Patent Appeals therefore fail and they are accordingly dismissed leaving the parties to bear their own costs. Pending civil applications are also disposed of.