
(2008) 02 DEL CK 0138
In the Delhi High Court
Case No : LPA No's. 1990 of 2006

Naresh Chand

APPELLANT

Vs

The Presiding Officer, CGIT

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Citation : (2008) 3 LLJ 331

Hon'ble Judges : Dr. M.K. Sharma, C.J;Reva Khetrapal, J

Bench : Division Bench

Advocate : Rani Chhabra, for the Appellant; Barkha Babbar and Raman Oberoi, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—These appeals raise similar and identical issues. The appeals were heard together and they are also being disposed of by this common judgment and order.

2. The appellants herein challenged the legality of the judgment and order passed by the learned Single Judge dismissing the writ petitions by judgment and order dated 21st July, 2006 and also against the award dated 21st November, 1996 passed by the Industrial Tribunal, New Delhi holding the reference against the workmen in respect of their termination of service. The appellants herein were engaged for different posts by the respondent on 23.04.1990/23.07.1990. In the offer of appointment the engagement of the appellants was for a fixed period, i.e., up to 29th January, 1991 and the terms and conditions for the post for which they were engaged were also given in the offer of appointment. The appellants accepted the aforesaid offer pursuant to which the appointment letters were also issued to them on specific terms and conditions to which reference shall be made during the course of discussion. Services of the appellants were also not dispensed with within the date fixed in their order of engagement and they continued to work. However, their services were subsequently dispensed with w.e.f. 21.3.1992.

3. Being aggrieved by the aforesaid dispensation of service, the appellants raised industrial dispute. The appropriate government made a reference pursuant thereto to the Industrial Tribunal to adjudicate upon and decide as to whether or not the termination of the services of the appellants was legal and justified, and if not, to what relief the workmen would be entitled ? The Tribunal allowed the parties to adduce their evidence and on appreciation thereof and other records held that the appellants were employed specifically for the purpose of USSR specialists who had come for performance of the task entrusted to them and with the completion of the said task the services of those employees were no longer required and, Therefore, it was a clear cut case of "closure" as the workmen were engaged only for a fixed period for the specific purpose for attending those specialists, and consequently the action of the management in disengaging the appellants was fully justified. The appellants being aggrieved by the aforesaid award, filed writ petitions in this Court which were registered as WP(C) Nos. 1785/1997 and 1787/1997. The aforesaid petitions were heard by the learned Single Judge and by orders dated 21st July, 2006 they were dismissed.

4. Being aggrieved by the said orders dated 21st July, 2006 rendered by the learned Single Judge, present appeals were filed which were heard together as the facts are identical and the counsel appearing for the appellants is also common. We now proceed to dispose of both these appeals giving our reasons therefore.

5. In order to appreciate the contentions of the parties, it will be necessary to look into the nature of the appointment that was given to the appellants. A copy of the offer of appointment is placed on record which is dated 21st April, 1990. The first two clauses of the offer of appointment reads as follows:

1. Consequent to the test carried out by this establishment as well as completion of scrutiny of relevant documents, your candidature for appointment as Masalchi purely on a temporary capacity up to 29 January, 1991 is approved.

2. The terms and conditions of the post of Masalchi are given at Appendix "A" to this letter (on reverse). If these term and conditions are acceptable, please contact this workshop on 23rd April, 90 at 0800 hours.

6. In the terms and conditions of service annexed therewith, it was specifically mentioned against the column "Nature of Appointment" as: "Temporary on nerrik rates". As against the column "Conditions of Service" it was mentioned that (a) the post is purely temporary up to 29th January, 1991 on nerrik rates of pay. There is no likelihood of this appointment being extended or converted to any other types of appointment and (b) Services are liable to be terminated without any notice. It was also mentioned in the said terms and conditions that the workmen would be liable to serve in 510 Army base Workshop. In the letter of appointment it was specifically mentioned that if these term and conditions are acceptable, please contact this workshop on 23rd April, 1990. Under their specific letter dated 21st April, 1990 the appellants also accepted the terms and

conditions mentioned in the letter dated 21st April, 1990. The learned Single Judge in the impugned judgment has also extracted the contents of the offer of appointment, the terms and conditions of service and also the contents of the appointment letter. The services of the appellants were not dispensed with on 29.01.1991 and, Therefore, their services were taken even after expiry of 29.01.1991 which was the period for which they were appointed and their services were dispensed with only on 21.3.1992, meaning thereby that they continued to serve for approximately another one year period.

7. In view of the aforesaid position, the contention which has been raised by the appellants is that although initially they might have been appointed on contractual basis for a fixed period of time, yet by allowing them to continue in service even after the expiry of the said period of contract they would be deemed to be temporary employees and, Therefore, their termination of service is illegal and unjustified in view of the provisions of Section 25F of the Industrial Disputes Act, 1947. The said contention was raised by the appellants in the reference which was initiated and referred to the industrial adjudicator for which evidence was also led by the appellants. Industrial adjudicator, however, was not impressed and persuaded by the contention raised by the appellant, for he held that the evidence on record had proved and established that USSR specialists had come to Meerut Cantt, and some staff for them was required, and that it was made clear by the Government of India as well as by the appointing authority that the employees were being recruited only for services to be rendered to this unit of USSR specialists. It was also held that the nature of the job of the said persons was also like Masalchi, Cook, Gardner, Waiter etc. and that they were engaged for a specific period and were not even entitled to leave. The learned industrial adjudicator after referring to the aforesaid findings held as follows:

After having gone through the points urged before me by the representatives for the parties, I am of the opinion that there is no denying fact as proved from the annexures filed by the management, which is part of the defense services of the Government of India, that USSR Specialists had come to Meerut Cantt. and some staff for them was required. It was made clear by the Government of India as well as by the appointment Authority that the employees were being recruited only for services to be rendered to this Unit of USSR specialists. The nature of the job of these people was also like Masalchi, Cook, Gardner, Waiter etc. They were engaged for specific period and were not entitled to even leave. As their appointment was only daily basis which is recorded as nerrick rates of pay in the Appendix attached in the terms and conditions in respect of these candidates. It was recorded that there was no likelihood of the appointment being extended or converted to any other type of appointment. The terms and conditions were recorded in letter dated 21.04.1990 and as a part of the defense services the workmen were told that their services would no longer be extended beyond the period of their appointment. He also admitted the receipt of letter dated 23.04.1990 and accepted the offer of appointment on the terms stated therein. In view of this situation I am of the opinion that since the workman was

employed along with his other colleagues whose reference have also been received specifically for the purpose of assisting the USSR Specialists for the task entrusted to them and with the completion of the said task, the services of these employees were no longer required. It was a clear cut case of closure as the workman were employed only for a fixed period on daily basis for specific purpose for holding those specialists. The action of the management in this case in my opinion was fully justified. However, parties are left to bear their own costs.

8. The learned Single Judge before whom the writ petitions were filed considered the plea of the appellants that the respondent has contravened the provisions of Section 25F of the Act which amounts to retrenchment and, Therefore, the appellants are entitled to protection as granted u/s 25F of the Act. The Learned Single Judge in that context considered the provisions of Section 2(oo)(bb) of the Act and also considered the ratio of the decisions of the Supreme Court in *Morinda Co-op. Sugar Mills Ltd. Vs. Ram Krishan and others etc.*, , and *Mahendra L. Jain v. Indore Development Authority* (2005) SCC L&S 154 and also the decision in *A. Umarani Vs. Registrar, Cooperative Societies and Others*, and upon reference and consideration of the same held that the appellants were engaged only for the period when a team of specialists from USSR was staying in the Mess and, Therefore, their termination of service was covered u/s 2(oo)(bb) of the Act. The appellants had no right to get regularised. In the light of the aforesaid findings recorded by the Industrial Adjudicator and also by the learned Single Judge, the plea that is raised before us by the counsel appearing for the appellants is that the appellants never sought for and requested for regularisation of services and that they only sought for protection as provided for u/s 25F of the Act, which provides that their services cannot be retrenched without following the due process of law as laid down in the provisions of the Act. The relevant clauses of Section 2(oo)(bb) and also Section 25F of the Act reads as follows:

Section 2(oo): "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-....

(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 in that behalf contained therein.

25F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation

which shall be equivalent to fifteen days" average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

9. Counsel appearing for the respondents heavily relied on the ratio of the decision of the Supreme Court in *A. Uma Rani* (supra). Specific reference was made to the following passage from the aforesaid decision:

...Once the employees are employed for the purpose of a scheme, they do not have vested interest after project is over....(para 41 and 42).

10. Counsel appearing for the appellant, however, submitted that the aforesaid decision shall have no application to the facts of the present case as the provisions of Section 2(oo)(bb) and Section 25F of the Act were not at all involved in the said decision. It was also submitted that the said decision was rendered in the context as to whether or not the appellant could claim for regularisation when their initial appointment was contractual.

11. It is true that in the case of *A. Uma Rani* (supra) it was held by the Supreme Court that the persons who are engaged on contractual basis would not have right to get themselves regularised as their initial appointment was not in accordance with the provisions of the statutory rules of recruitment. However, while dealing with the said issue the Supreme Court also happened to consider the nature of appointment of contract employees. No notice is required to be served in cases where employees are appointed only for a fixed period and their services stand automatically expired on expiry of the date of contract of service. Same was also clearly stipulated in the terms and conditions of the letter of offer of appointment which the appellants accepted without any reservation that their appointment is contractual and their services could be terminated without serving any notice on them. There can be no dispute with regard to the fact that the initial engagement of the appellants being contractual in nature, the appellants have no vested right created in their favor to continue in service and also to be regularised in service. They were, however, allowed to be continued and the respondent received their services, but it cannot be said that in view of the said fact a vested right has accrued to them.

12. The Supreme Court in *M.D., Karnataka Handloom Dev. Corpn. Ltd. Vs. Sri Mahadeva Laxman Raval*, has stated thus:

...Even assuming that the respondent had worked 240 days continuously he, in our opinion, cannot claim that his services should be continued because the number of 240 days does not apply to the respondent inasmuch as his services were purely contractual. The termination of his contract, in our view, does not amount to retrenchment and, Therefore, it does not attract compliance of Section 25F of the I.D. Act at all.

13. In A. Uma Rani's case (supra) also it was held by the Supreme Court that once the employees are employed for the purpose of a project, they do not have any vested interest after the period of the project is over. The finding of fact herein which is recorded by the Industrial Adjudicator is that the appellants were engaged for a particular project and that the said project has come to an end. There is also a stipulation in the offer of appointment which was accepted by the appellants that no notice is required to be served on the appellants before disengaging them from their service. Clause (bb) of Sub-section (oo) of Section 2 of the Act excludes the said termination of service of a workman which is a result of the non renewal of the contract of employment between the employer and the workman on its expiry or on such contract being terminated under stipulation in that behalf contained therein. It, however, includes within its parameters such termination of service which accrues and arises out of a contract which is terminated under a stipulation that such services can be dispensed without service of notice. If that be so, the same cannot strictly be said to be a case of "retrenchment", thus the provisions of Section 25F would not be applicable.

14. We would like to fortify the aforesaid conclusion with the decision of the Supreme Court in the case of Municipal Council, Samrala v. Raj Kumar reported as (2006) 3 SCC 81. The aforesaid decision was rendered by the Supreme Court in the context of the facts that the workman was appointed on contract basis on a resolution being passed Therefore by the Municipal Executive Council to meet the exigencies of the situation prevailing and were appointed on the terms and conditions approved by the Municipal Council. In the said background facts, it was held by the Supreme Court that where such terms and conditions expressly include a term that the contract was a short lived one and shall be liable to be terminated as and when the Municipal Council thought it fit or appropriate or necessary to do so, the case would fall under the second part of Section 2(oo) (bb) of the said Act and the provisions of Section 25F shall be inapplicable. The said decision also takes note of the fact that the employee in the said case was an employee of the Municipal Council which is governed by the provisions of a statute and that the matter relating to the appointment of the employees as also the terms and conditions of their services indisputably are governed by the relevant Act or the rules framed there under and thus there is no doubt that the matter relating to the employment should be governed by the statutory provisions. The Supreme Court in the facts of the said case held that there was neither any doubt nor any dispute that the terms and conditions contained in the offer of appointment on both these spells for which the respondent was in service with the appellant was same and that so far as the employment of a person in a Municipal Council , which is a "State" under Article 12 of the Constitution, is concerned, the same must be done in terms of the provisions of the statute or the Rules framed there under. The Supreme Court took notice of the fact that the employee was not appointed on a permanent or a temporary basis. It was not the case of the respondent that while making an offer of appointment, the Municipal Council had complied with the requirements laid down in the statute or

statutory rules or even otherwise the same was in conformity with Articles 14 and 16 of the Constitution. The case would, Therefore, fall in the second part of Section 2(oo)(bb) of the Act.

15. Almost a similar view was taken by the Supreme Court in another case *Indian Drugs and Pharmaceuticals Ltd. Vs. Devki Devi and Others*, . In the said case also the Supreme Court held that the material which was placed before the Labour Court would indicate that the contract was a job contract and no temporary employment was terminated.

16. We may also refer to the decision of the Supreme Court in *Harmohinder Singh Vs. Kharga Canteen, Ambala Cantt.*, wherein the Supreme Court has held that so far Section 25F is concerned the same deals with conditions precedent to retrenchment of a workman. It was also held that the same would not apply in those cases which are expressly excluded as laid down u/s 2(oo)(bb). It was also held that the contracts of service for a fixed term are excluded and in those cases the principle of natural justice are not applicable where termination takes place on the expiry of the contract.

17. Merely because the appellants in the instant case continued to work for about a year after the expiry of the initial period of contract would not, in any manner improve the status of the appellants for the conditions of their appointment never came to be changed or altered in their favor. In that view of the matter, we find no error in the judgment passed by the industrial adjudicator and also by the learned Single Judge. The appeals have no merit and are dismissed.