

(2001) 02 BOM CK 0104

In the Bombay High Court

Case No : Writ Petition No. 1449 of 1999 with Writ Petition No. 1629 of 1999

Patel Engineering Works

APPELLANT

Vs

Shri Santosh Kumar Rawool and Others

RESPONDENT

Date of Decision : 09-02-2001

Acts Referred:

Citation : (2001) 2 ALLMR 561 : (2001) 3 BomCR 463 : (2001) 2 BOMLR 420 : (2001) 89 FLR 383 : (2001) 1 LLJ 1354 : (2001) 3 MhLj 439

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Mr. P.K. Rele, Mr. Piyush Shah and Mr. R.S. Upadhyay, for the Appellant; Mr. R.S. Upadhyay, for the Respondent

Judgement

R.J. Kochar, J.—The Petitioner-employer as well as Respondents employees are aggrieved by the Order of the Industrial Court passed by it in Complaint of Unfair Labour Practice filed by the individual employees invoking the Items 2, 5, 6 and 9 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

2. The Complainants had complained that though they were in employment for a period between 11 years and 17 years and that they were not regularised or made permanent and that they were paid lower than minimum wages. According to them they had completed more than 240 days continuous service and therefore, they were entitled to be made permanent and were entitled to wages and service conditions of permanent employees. According to them, the Petitioner employer was getting the work done through contractors and that they were deprived of the benefits of permanency. This is the nature of the complaint of the employees.

3. The Petitioner Company appeared and filed its written statement. Both the parties adduced their oral and documentary evidence before the Industrial Court. It was the case of the Petitioner Company that it had not engaged in any unfair labour practices as alleged. It was submitted that the concerned complainants

were not even temporary employees in the sense of the term used in the Model Standing Orders. Shri Rele, the learned Counsel for the Petitioner Company submitted that the Petitioner Company was a ship repairing industry. The work of the Petitioner Company was to repair ships as and when they come on shore. As and when ships were received by the Petitioner Company for repair purposes the petitioner Company engaged the casual labour for repairs in addition to its permanent employees and whenever work was available. It was given to the complainants. Shri Rele has pointed out from the record that in the preceding three years of the complaint no one had completed 240 days service. It was further pointed out by the learned Counsel that the Industrial Court has over stretched the matter by computing 240 days working by adding to the actual number of working days, the period of overtime work done by them to compute the total number of days. Shri Rele has also pointed out that the, business of the Company has reduced tremendously. In the year 1993 there were 340/350 workers, while this strength is reduced to 80 workers. It was also pointed out by the learned Counsel that turnover of work was reduced from Rs. 22 Crores to Rs. Nine Crores. It was further pointed out that many times the Company did not have sufficient work even for the permanent staff. It was therefore submitted that the Industrial Court did not consider the entire material on record including the nature of the industry and the nature of the work which was of uncertain nature. Shri Rele further pointed out that merely because some of the workmen might have completed 240 days in the remote past in one or two years as casual labourers they cannot be directed to be made permanent. He further submitted that there was absolutely no vacancy and no scope in the establishment to employ any additional hand.

4. On the other hand Shri Upadhyay the learned Counsel for the employees has argued that the Petitioner Company was getting the work done through the contractors and no work was given to the present employees. It was also submitted by him that ship repair work was not of a casual nature and that it was a permanent work available with the Petitioner Company. The concerned employees were working for years together and therefore all the complainants have been ordered by the Industrial Court to be regularised. He has pointed out that the Industrial Court has directed only 10 out of 14 to be regularised though even the remaining four employees are entitled to be regularised. According to Shri Upadhyay the Petitioner Company has engaged in unfair labour practices by continuing these employees as temporary for years together as contemplated by Item 6 of Schedule IV of the Act.

5. Prayer for permanency in employment is a perennial problem. In the present case it is the case of the complainants-employees that they were employed by the Petitioner Company for last many years and that they have completed more than 240 days in employment and they were therefore entitled to be made permanent and regularised in service. According to the Petitioner Company the work of ship repairing itself is uncertain and not regularly available. Shri Rele has pointed out that the Petitioner Company cannot be called a regular business

doing establishment. Its business depends on arrival of ships on the shores requiring repairs. If no ship comes for repairs the Company has no business. As and when ships come for repairs the Petitioner Company engages casual employees available to help the permanent workers and work was given to all the complainants on that basis. The Petitioner Company is not of a nature of industry having perennial flow of work. I agree with the submission of Shri Rele that the nature of the industry is rather peculiar; it is not even a seasonal industry depending on season as even seasonal industries are seasonably regular. If the ships come for repair, work is available and if no ships come for repairs, work will not be available. The nature of any such repair Industry is more uncertain than the work of building Industry or construction of roads, dams, canals etc. Work in all such industries is not of permanent nature. After the completion of a building or a dam or a canal or a road there will be no work for all those who were engaged therein. Similarly if there is no ship for repairs the additional or extra employees employed will have no work. In the light of this nature of the industry it is significant to note that even the complainants have admitted that they were given work as and when available. It is not their case that they were deprived of work and they were not employed and instead some others were employed to create artificial breaks in their service. All the employees have candidly accepted that the Petitioner Company had given work to them as and when available. It therefore cannot be said that the Petitioner Company had any hidden object or motive to deprive the complainants of the benefits of permanency. I am not able to accept the submission of Shri Upadhyay that the complainants or some of them could have been given work under the contractors engaged by the Petitioner Company. Shri Rele has rightly pointed out that certain specialised jobs are required to be done by the specialised contractors and the Petitioner Company hands over to them the complete job to be done by a particular contractor and it cannot insist or prevail upon such contractors to engage the casual employee, helpers as they have their own set of workers. The contract between the Petitioner Company and the contractor was on the basis of completion of the particular job. The contractor completes the work with the help of his own workers and such a contractor cannot be compelled to engage any other workmen. It is not the grievance of the permanent workmen that their work of regular nature and the work which they can do was diverted to the contractors. It is the complaint of the casual workers that they should be given the work of the contractors. Since the casual or the temporary workmen have no right in law to get the permanent employment they cannot complain and they cannot insist that the work which was given to the contractors should be given to them. It is wholly dependent on the petitioner Company and the nature of the work and the terms of the contract. It is not possible to accept the contention of Shri Upadhyay that the casual worker should have been given the work under the contractors and not doing so would amount to an unfair labour practice. Besides I do not think that there is any illegality to engage a contractor to do certain work. From the material on record it is clear that some of the workmen were employed from 1991 and upto 1994 some of

them have completed more than 240 days. The Industrial Court has no doubt added in the case of some workmen the period of over time to arrive at a figure of 240 days. As far as factual condition of the working days is concerned there is no dispute that they were given work as and when the work was available and the days and period of work is not disputed by the Petitioner Company. Its only contention is that it is an uncertain industry and therefore they cannot engage permanently all the workman for all the time. Shri Rele has pointed out that the complainants were employed not even as temporary but were employed as casuals and the category of the casual workmen have no right of permanent employment. Shri Rele has also pointed out that it is not a case of the complainants that they were not given work though the work was available and that such work was given to some others to deprive the present workmen of the benefits of the permanency.

6. Though the complainants have claimed in their complaint that they had joined the employment as shown in the annexure of the complaint from 1980-81 onwards as helper, wireman, fitter respectively, there is absolutely no evidence to show that they were continuously employed from the first date of their employment. It is possible that they might have joined as shown in the complaint on the first date and thereafter whether they were continued or whether there was a break or not there is no evidence. By merely showing the first date of employment without further substantiating the case of continuity of employment it cannot be said that they were in continuous employment from the first date of their joining. The present complaint was filed as late as on 16.5.1997. From the impugned order it is seen that the Petitioner Company has maintained clear record of their employment and from the said record the Industrial Court has computed the number of days put by each of the complainants from the years 1990 to 1994. For the period from 1995 to 1997 it is seen that for the years 1995 and 1996 the complainants have completed some number of days of work in a year but not more than 210 days in any case. In the year 1997 the attendance of all the workmen was very scanty as it appears that they had gone on strike. For considering the case of permanency it will not be proper to consider the remote past of working. It is possible that many of the complainants might have completed 240 days in a year, in the year 1990, 1991, 1992 and 1993. On the basis of this past record it cannot be considered in a complaint filed in the year 1997 that the complainants should be regularised in employment as permanent employees considering the nature of industry and considering the statement of the employees that they were getting work as and when available. It cannot be said that the petitioner Company was not giving them work with an object of depriving them of benefits of permanency. Had there been such object present in the mind of the management of the Petitioner Company the complainants would not have been given work as and when available continuously. At the cost of repetition I may say that it is not the case of the complainants that they were not given work though work was available and such work was given to others. Another significant aspect which cannot be forgotten is

that in the years 1990, 1991, 1992 many of the complainants were allowed to complete more than 240 days. Had there been an intention or object to deprive them of the benefits of the permanency in that case the Petitioner Company would never have continued the complainants for a period of 240 days or more. It appears that the intentions of the Petitioner Company did not smack of mala fides or unfair labour practice. As and when work was available the work was given to the employees. They were given even overtime work. That is how the company was functioning. It is further clear that the turn over of the Company in the year 1994 was Rs. 22.44 crores while in the year 1997 it was nine crores. Similarly the number of persons employed has also gone down. The Company had announced a voluntary retirement scheme also. It has reduced its permanent strength from 387 in the year 1995 to 132 as on 1.8.1998. The turn over and the strength of the employees has reduced substantially. If the permanent strength of the employees has substantially gone down it will not be just and proper to direct the Petitioner Company to regularise the casual workers merely because at some point of time they had completed 240 days or so. On the date of filing of the complaint the strength appears to be reduced to 143 from 387 in the year 1995. I am therefore not able to agree with the Industrial Court when it has computed the number of days of employment from 1990 to 1994 and directed the petitioner Company to regularise and make them permanent. From the facts which are clear that the employees were not employed as casuals for years together with the object of depriving them of benefits of permanency. From the sheer fact of completion of 240 days or more in the remote past of 1990 it cannot be held that the Petitioner Company should be directed to absorb all such employees as permanent particularly when its turn over of the business has substantially gone down and that is reflected even in the reduction of the permanent workmen employed as a consequence of reduction in the annual turn over. The workmen have not proved the fact that they were employed for years together with an object of depriving them of benefits of permanency. As I have already discussed that the nature of the industry was of uncertain work. The workmen have admitted that they were given work as and when available. It is not their case that they were deprived of work deliberately. The element of deliberate act on the part of the Petitioner Company to deprive them of the benefits of the permanency is totally absent. I fail to understand if they were in continuous employment for years together from 1980 onwards why they have waited upto 1997? The time changes, the nature of work changes, many factors governing the nature of the business also changes. We therefore cannot offer a hard and fast rule that as soon as a casual workman has completed 240 days he should be made permanent. It is not that the casual work is illegal or is prohibited under the law. In any industry as and when work is available casual work can be given and as soon as that work is over the casual workman has to go. He does not create any vested right in employment by the very nature of the casualness in the work.

7. In the aforesaid circumstances the Petitioner Company's petition succeeds

and rule is made absolute in terms of prayer clauses (a). In view of the reasoning recorded in this petition, the petition filed by the workmen is dismissed and rule is discharged in that petition. No order as to costs.