

(1995) 04 BOM CK 0034
In the Bombay High Court
Case No : Writ Petition No. 3137 of 1989

Philipos Babu

APPELLANT

Vs

M/s. Bajaj Tempo Ltd. and Another

RESPONDENT

Date of Decision : 06-04-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1996) 3 LLJ 666

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

1. This Writ Petition under Articles 226 and 227 of the Constitution of India impugns an Award of the Second Labour Court, Pune, dated July 28, 1988, made in Reference (IDA) No. 109 of 1988 (Old Reference No. (IDA) No. 71 of 1988) under the provisions of the Industrial Disputes Act, 1947.

2. The facts of this Writ Petition are fairly simple. The First Respondent is a Company which manufactures two/three wheelers (scooter/tempo) at its factory at Akurdi, Bombay - Pune Road. The Petitioner is an ex-workman of the First Respondent. The Petitioner was working for about 2-1/2 years between 1977 to 1979 as a Helper under a Contractor of the First Respondent. Between April 18, 1979 to December 29, 1979 the Petitioner was working as a temporary workman in the employment of the First Respondent. On October 16, 1981, the Petitioner was given a letter of appointment which appointed him as a Helper in Foundry-16-01 Department on consolidated salary of Rs. 12.50 per day with effect from October 16, 1981. It was stipulated therein that the appointment was purely temporary and likely to last for a maximum period of about seven months according to the exigencies of work, but may be terminated at any time during that period without notice or pay in lieu of notice. It was also stipulated therein that, if no such order was issued, the temporary appointment would automatically come to an end on May 15, 1982. On November 4, 1981, the Petitioner was given another letter of appointment appointing him as a Helper in

Foundry-16-01 Department in the factory on consolidated salary of Rs. 12.50 per day with effect from October 16, 1981. This letter stipulated as under :

"You will be on probation for a period of six months, but this probationary period may be extended at the discretion of the company."

By this letter, the First Respondent reserved the right to terminate services of the petitioner at any time without notice or pay in lieu of notice, without assigning any reason therefore or at any time during the probationary period or upon completion of the probationary period, if the service was found unsatisfactory. On June 6, 1982, the Petitioner's services were terminated by a letter which informed him that his services were not required by the First Respondent and, therefore, terminated and that the petitioner was being removed from service. The Petitioner raised an Industrial Dispute for reinstatement in service with continuity of service and backwages. The dispute came to be processed by the Deputy Commissioner of Labour, Pune, under the Act and resulted in Reference (IDA) No. 71 of 1983 being made to the second Labour Court, Pune, (The reference appears to have been renumbered later as Reference (IDA) No. 109 of 1988). The Labour Court by the impugned Award held that the appointment of the Petitioner by the letter dated November 4, 1981 was not contrary to law and that the termination of service was also not contrary to law and, in this view of the matter, rejected all reliefs to the Petitioner. Being aggrieved thereby, the Petitioner is before this Court.

3. Ms. Karnik, learned Advocate for the petitioner, relying on the provisions of the Model Standing Order 4-A contended that the Probationary service had to be confirmed by an order in writing within seven days from the completion of three months of uninterrupted probationary service. Since the First Respondent had failed to do so, the Petitioner must be deemed to have become permanent in the post at the expiry of six months of probation. Consequently, the termination of service by the letter dated June 6, 1982, on the assumption that the Petitioner was a probationer, was wholly erroneous and illegal. It is not in dispute that the First Respondent does not have Certified Standing Orders and that the service conditions of the First Respondent's workmen are governed by the Model Standing Orders.

4. Mr. Talsania, learned Counsel for the First Respondent, placed reliance on Model Standing Order 32 and contended that the said Standing Order provides that nothing contained in the Standing Orders shall operate in derogation of any law for the time being in force or to the prejudice of any right under a contract of service, custom or usage or an agreement, settlement or award applicable to the establishment. He contends that notwithstanding the provisions of the Model Standing Order 4-A, the contract of employment as contained in the letter of appointment dated November 4, 1981 provides that the Petitioner's probationary service would be for a period of six months and would come to an end upon expiry of the said period unless confirmed by an order in writing, it must be held that the terms of contract of employment over-ride the obligation under Model

Standing Order 4-A to confirm a probationer in service upon completion of three months uninterrupted service. It is not possible to accept this contention. A perusal of Section 2-A of the Industrial Employment (Standing Orders) Act shows that the scheme of the Act is that where the said Act applies to an Industrial establishment, the Model Standing Orders for every matter set out in the Schedule to the Act applicable to such establishment would automatically apply to such establishment from such date from which the State Government makes them applicable. There is an exception provided in the proviso which is not relevant to the Petitioner's case. Sub-Section (2) of Section 2-A Specifically provides that if there are any Model Standing Orders framed in respect of additional matters included in the Schedule after the coming into force of the Industrial Employment (Standing Orders) Act, 1974, particularly, additional matters relating to probationers or Badlis or temporary or casual workmen, then such Model Standing Orders shall automatically override the existing Standing Orders, unless the Certifying Officer is of the view that they are less advantageous to the workmen as compared to the provisions of the existing Standing orders. Item 10-C of the Schedule to the Act, added by Rule 15 of the Bombay Industrial Employment (Standing Orders) Rules, specifically provides :

"Employment or re-employment for probationers or badlies or temporary or casual workmen, and their conditions of service."

The net result of these provisions is that, Model Standing Order 4-A would override any provision to the contrary contained in the employment contract or the Certified Standing Orders existing on the day on which Model Standing Order 4-A was brought into effect. Model Standing Order 4-A was brought into effect from February 21, 1978. Apart from this, it would appear that Standing Order 32 has already been the subject matter of interpretation by this Court and the view has been taken by our High Court in *The Indian Tobacco Company Limited v. The Industrial Court and Ors.* 1990 C. L. R. 88 that Model Standing Order 32 was only intended for protecting better rights in favour of the workmen and that the Standing Orders must prevail over the terms of contract of service in case of inconsistency between the two. This judgment also takes the view that the legal result of Standing Orders 2-B and 4-A is automatic confirmation of a probationer after the expiry of three months of continuous probationary service, subject only to the proviso that the Employer has the right to terminate the service of the employee for unsatisfactory probationary service at the expiry of probationary period. I am, therefore, unable to accept the contention urged by Mr. Talsania, for the First Respondent.

5. In the result, the finding of the Labour Court in the impugned Award that the Petitioner was a probationary employee, is, therefore, erroneous and liable to be set aside. The probationer must be deemed to have become permanent upon expiry of three months probationary service with effect from June 6, 1982. His abrupt removal by the order dated June 6, 1982, on the wrong footing that he was on probation, is therefore, illegal. The Labour Court has missed this vital

point and, consequently, the Award is unsustainable and needs interference.

6. Though the Petitioner is entitled to relief of reinstatement with continuity of service, without any manner of doubt, the question then arises as to the backwages, if any, to be granted to the Petitioner. A perusal of the impugned Award does not show that attention was focussed on this aspect of the matter. The evidence on record does not indicate clearly whether the Petitioner had or had not obtained any alternate employment after his removal from service by the First Respondent. In this Situation, the interests of justice require that the matter be remanded to the Labour Court for trial only on this limited issue.

7. In the result, the Writ Petition is allowed, the impugned order of the Labour Court dated July 28, 1988 is quashed and set aside and the First Respondent is directed to reinstate the Petitioner in service with Continuity, not later than April 30, 1995.

8. Reference (IDA) No. 109 of 1988 is remanded to the Second Labour Court, Pune, for further hearing and disposal in accordance with law. The Labour Court shall specifically decide the issue of backwages, if any, to be awarded to the Petitioner for the period of his unemployment from June 6, 1982 till April 29, 1995. For this purpose, the Labour Court may give an opportunity to both parties to lead such evidence as they desire in their support. It is expected that the Labour Court shall dispose of the reference as early as possible.

9. Rule made absolute accordingly with no order as to costs.