
(2004) 03 BOM CK 0114

In the Bombay High Court

Case No : Writ Petition No. 2654 of 1991

Prabhakar Ramchandra Deshpande

APPELLANT

Vs

Maharashtra State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 11-03-2004

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2004) 4 MhLj 544

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : B.M. Khan, for the Appellant; V.G. Wankhede, for the Respondent

Final Decision : Allowed

Judgement

S.T. Kharche, J.—By invoking the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, the impugned order dated 20-4-1990 passed by the Industrial Court dismissing the complaint filed by the petitioner for regularisation of his services and for grant of time scale of pay has been challenged.

2. Brief facts are as under :

The petitioner was working as a clerk in the respondents/corporation on daily wages with effect from 17-10-1970 and was posted in the office of the Executive Engineer, State Transport, Nagpur. He was taken on time scale of pay with effect from 5-10-1972. It was contended by the petitioner that artificial breaks in service were given and he had completed the work of more than 180 days including the holidays and weekly off and in spite of that he was not brought on time scale. Therefore, he had filed a complaint bearing No. ULP 138 of 1986 before the Industrial Court u/s 28 read with Item No. 9 in Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short M.R.T.U. and P.U.L.P. Act). The contention of the

management was that the petitioner was not entitled for regularization of his services as his initial appointment was purely temporary and that the complaint was barred by limitation. The management also contended that the petitioner was appointed purely on temporary basis and thereafter he was appointed as a typist after he was selected by the Selection Committee and in such circumstances he was not entitled to regularisation of his services from the date of his appointment as a clerk, i.e. 17-10-1970.

3. The Industrial Court considered the contentions canvassed by the parties before it and observed that the petitioner was initially appointed on 17-10-1970 on daily wages and was posted in the office of the Executive Engineer, State Transport, Nagpur, and his appointment was purely temporary and thereafter he was appointed by the Selection Committee and hence negated his contention that he was entitled for regularisation of service from 17-10-1970 and consequently dismissed the complaint. This order is under challenge in this petition.

4. Mr. Khan, learned counsel, for the petitioner contended that the Industrial Court has ignored the fact that in counting the service for 180 days, weekly off and other holidays are also inclusive. It is an admitted position that the petitioner was in the employment as a typist on daily wages from 17-10-1970. The chart of the working period was given by the respondents which would indicate that artificial breaks ranging from 3 to 6 days have been given. He contended that as per the settlement dated 25-4-1956 an employee working for 180 days including weekly offs and other holidays continuously will be brought on the time scale of pay and will get all the benefits available to time scale workers and in such circumstances the petitioner had completed 180 days continuous service on 17-4-1971. Consequently, the petitioner ought to have been regularized from the date of his appointment, i.e. 17-10-1970. He contended that in such circumstances, the impugned order passed by the Industrial Court cannot be sustained in law. In support of these submissions, Mr. Khan relied on the decision of Supreme Court in the case of Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, and also on the Full Bench decision of this Court in Maharashtra State Road Transport Corporation v. Premlal Khatri Gajbhiye 2003 (3) M. L.J. 1025

5. Mr. Wankhede, learned counsel, for the respondent contended that the petitioner was appointed purely on temporary basis as a clerk on daily wages on 17-10-1970 and he did not complete the continuous service for the period of 180 days on the date when he was regularly selected by the Selection Committee and was appointed in the post as a typist from 5-10-1972 as per the chart appended to the written statement and, therefore, the petitioner is not entitled to claim regularisation of his service in the time scale from the date of his initial appointment, i.e. 17-10-1970. In support of these submissions, he relied on the Division Bench decision of this Court in Virendralal B, Vaishya v. Union of India 2003 (2) M.L.J. 64: 2003 (1) CLR 382.

6. I have given thoughtful consideration to the contentions canvassed by the learned counsel for the parties. It is not in dispute that the petitioner was appointed temporary on 17-10-1970 and thereafter he was regularly selected by the Divisional Selection Committee and was appointed as a typist and was brought in the time scale on 5-10-1972. It is also not disputed that he was appointed purely on temporary basis as a clerk on daily wages he had put in the service with respondent No. 2 as per the chart appearing on page 26 of the petition. The said chart is as under :

----- Sr. Divisional									
Establishment Period of Service Break of No. of No. Order No. & Date From To									
days	days	----- 1.							
548	21-10-1970	17-10-1970	16-01-1971	-	100	2.	20	20-01-1971	21-01-1971
31-03-1971	4	68	3.	156	19-04-1971	05-04-1972	04-07-1971	5	111
22-07-1971	10-07-1971	09-09-1971	6	59	5.	313	08-10-1971	13-09-1971	
30-11-1971	4	78	6.	278	16-12-1971	04-12-1971	29-02-1972	3	87
03-04-1972	04-03-1972	30-04-1972	3	56	8.	112	12-05-1972	04-05-1972	
30-06-1972	3	56	9.	224	01-08-1972	04-07-1972	11-07-1972	4	7

7. The aforesaid chart will indicate that the break in service was ranging from 3 days to 6 days during the period from 21-10-1970 to 1-8-1972.

8. The only grievance of the petitioner is that he is not given the time scale and as such regularisation of his service right from 17-10-1971 on which date there was completion of 180 days service, and therefore, he is entitled in accordance with Clause 49 of 1956 settlement for the time scale from 17-4-1971.

9. In Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, , cited supra, the Apex Court held that, "once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years experience, ignoring artificial break in service for short period/ periods created by the respondent, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of the three years period. Therefore, the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said post." Such is not the present case and; therefore, this authority is not of any assistance to the petitioner.

10. The learned counsel for the respondents/corporation relied on the decision of Division Bench of this Court in Virendralal B. Vaishya Vs. Union of India (UOI) and Others, , cited supra. This Court is of the considered opinion that the said decision has no bearing on the facts and circumstances of the present case

because the controversy involved in that case was whether the petitioner was entitled for regularisation in service in the school he was working in on the contract basis which arose because of the petitioner's qualifications. Such is not the present case,

11. The Full Bench of this Court in Maharashtra State Road Transport Corporation Vs. Premlal Gajbhiye, , cited supra, was dealing with the point as to whether Clause 19 of 1985 settlement replaces Clause 49 of 1956 settlement, and considering this point observed in para 28 as under :

"We, therefore hold that Clause 49 of 1956 settlement is neither replaced nor revoked by Clause 19 of 1985 settlement. We also hold that the resolution No. 8856 is unenforceable and not binding upon the respondents. The Clause No. 49 of 1956 settlement operates in totally different field from Clause 19 of 1985 settlement inasmuch as that the former relates to the scale of pay whereas the latter pertains to absorption of the daily rated worker in permanent employment. The appeal and the petition therefore, lack merits and deserve to be dismissed with cross objections."

12. The petitioner was admittedly appointed on daily wages as a clerk on 17-10-1970 and worked with the respondents as mentioned above in the chart. It would clearly reveal that he has put in service for about one year and eight months only. The petitioner's contention is that he can get the benefit of the settlement No. 49 of 1956 dated 25-4-1956 is well founded because as per settlement No. 49 of 1956 the daily wagger system is abolished by the Corporation and the specific settlement was arrived at in the following terms --

"Any employee working for 180 days including weekly offs and other holidays continuously will be brought on the time scale of pay and will get all the benefits available to time scale workers.

Any absence on account of authorised leave will not be treated as break for the above purpose and will not also count for service."

13. The chart would clearly show that if weekly offs and other holidays are taken into consideration then the petitioner has completed 180 days of service as on 17-4-1971 and, therefore, he ought to have been regularised in service. The artificial breaks which are ranging from 3 to 6 days would clearly indicate that those breaks were given only to take out the employee from being regularised in view of the settlement dated 25-4-1956. The ratio laid down by the Full Bench of this Court in the case of Maharashtra State Road Transport Corporation Vs. Premlal Gajbhiye, , cited supra, would clearly be applicable to the facts and circumstances of the present case and this is a case wherein by virtue of settlement No. 49, which does not stand replaced by Clause 19 of 1985, would yield to the benefit of the employee. It is well settled that as long as the default in performance of obligation continues, the wrong is deemed to have continued and therefore, it is to be taken as a continuing wrong. If the duty continues from day to day, the non-performance of that duty from day to day is a continuing

wrong. The unfair labour practice has been followed in this case by the Corporation in continuing the denial of the benefits under Clause 49 of 1956 Settlement to the petitioner and until such benefit is given, it will continue to recur and, therefore, the complaint filed by the petitioner was not barred by limitation. Since Settlement No. 49 of 1956 is still in force the non-application thereof would amount to unfair labour practice and, as such, this Court is of the considered opinion that the impugned order passed by the Industrial Court dismissing the complaint is liable to be set aside. In the result, the petition is allowed and it is declared that the petitioner is entitled for regularisation of service and also for the time scale with effect from 17-4-1971. Rule is made absolute in aforesaid terms. No costs.