

(2015) 07 BOM CK 0109

In the Bombay High Court

Case No : Writ Petition Nos. 1682, 1683 and 1684 of 2014

Raghunath Ambadas Hatgale and Others

APPELLANT

Vs

The Divisional Controller and Depot Manager

RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2A

Citation : (2016) 1 ALLMR 724 : (2015) 146 FLR 951 : (2015) 3 LLJ 712 :
(2015) 4 LLN 68

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : Arvind Deshmukh, for the Appellant; R.D. Reddy, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R.V. Ghuge, J—Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioners in these three petitions are identically situated. All three of them were appointed as "Cleaners" on daily-wages at the rate of Rs. 3/- per bus. All three of them claimed to have worked for a short duration of about two to three years. The Respondent is common in all these petitions. The issue that needs to be determined by this Court is common in all these petitions. I have, therefore, taken up these three petitions together for hearing and passing orders.

3. The Petitioner, in the first petition, claims to have worked from November, 1988 to 31.12.1990. He was orally terminated on 31.12.1990.

4. In the second petition, the Petitioner claims to have worked from January, 1991 and was orally terminated from 31.12.1992.

5. In the third petition, the Petitioner claims to be working from January, 1988 and was orally terminated on 31.12.1990.

6. All these three Petitioners issued demand notices under Section 2A of the Industrial Disputes Act, 1947 on 31.05.2010 claiming reinstatement with continuity and full back-wages. Since the conciliation failed, the appropriate Government passed the order of reference on 17.03.2011, by which the matters were referred to the Labour Court for adjudication. The Labour Court registered these three reference cases as Reference (IDA) Nos. 07/2011, 09/2011 and 08/2011, respectively.

7. The Petitioners submitted their statements of claims before the Labour Court. The Respondent/ MSRTC filed its written statement and finally by the judgment and award dated 28.03.2013, all these three reference cases were answered in Negative on the ground that the matters suffer from delay and a stale dispute has been raised after passage of almost 20 years in the first and third case and 18 years in the second case. While holding that the references are being rejected primarily on the ground that stale disputes having been raised, the Labour Court has also considered the oral and documentary evidence before it and concluded that none of the Petitioners have succeeded in establishing completion of 240 days in the continuous and uninterrupted service of the Respondent/ MSRTC.

8. Shri Deshmukh, learned Advocate for the Petitioners, submits that the Labour Court could not have rejected the references only on the ground that the dispute raised is a stale dispute. It should have gone into oral and documentary evidence available before it. It should have considered that the Respondent/ Corporation had not produced the record which was demanded by the Petitioners and therefore, an adverse inference should have been drawn in these circumstances.

9. He further submits that the Petitioners had filed their affidavits in lieu of examination in chief. Some documents that they had in their custody were produced. The Petitioners, however, had admitted that they have no appointment order or such documentary evidence so as to prove that they were in continuous employment of the Respondent.

10. He submits that the work performed by the Petitioners was of washing the buses and they used to be paid on the basis of the numbers of buses washed. They were never required to sign any muster roll or register for marking their attendance. They used to keep an account of number of buses washed and accordingly, they used to be paid their remuneration.

11. Shri Deshmukh, however, submits that these reference cases could be referred back to the Labour Court for a fresh consideration and also with a direction to the Respondent/ MSRTC to produce the documents which the Petitioners had sought production of so as to enable the Petitioners to establish their continuous employment with the Respondent/ MSRTC.

12. Mrs. Reddy, learned Advocate appearing for the Respondent/ MSRTC, has strenuously opposed these petitions. The contention is that all the three Petitioners have mentioned their age as 41 years in their statements of claims filed in 2011. As such, the first and the third Petitioner can be said to be 18 years

old and the second Petitioner can be said to be 21 years old when they reported for work.

13. She submits that none of these three Petitioners, who may have been engaged as cleaners, had ever worked continuously. There were many such cleaners. Depending upon the number of buses available for washing purpose, their services used to be utilized intermittently. Neither was any vacant post available, nor were the Petitioners appointed by following the recruitment procedure which is necessarily required to be followed in the Respondent/ MSRTC.

14. She submits that the Petitioners had admitted in their cross-examination that they were being paid on the basis of the number of buses that they washed. There was no attendance record maintained since none of the Petitioners were ever appointed by the Respondent/ MSRTC. The Petitioners themselves used to keep the tally of the number of buses washed and based on the same, they used to be paid the remuneration.

15. She further submits that none of the Petitioners were inducted in service of the Respondent/ MSRTC. None of them were taken on the muster roll as they were never appointed by the Respondent. They have been out of employment for the past about 25 years.

16. She further submits that the Petitioners have raised an industrial dispute on 31.05.2010, which is practically 20 years after their purported disengagement in the case of the first and third Petitioner. The second Petitioner has also raised an industrial dispute after about 18 years. She, therefore, submits that the issue is as to whether, it could be said that no industrial dispute exists.

17. She submits that the Apex Court in the cases of Steel Authority of India, Bhadravathi v/s Secretary, Government of India, Ministry of Labour, New Delhi reported in 2009(2) CLR 161 and G.M. ONGC, Shilchar Vs. ONGC Contractual Workers Union, (2008) 118 FLR 942 : (2008) 7 JT 309 : (2008) 2 LLJ 1071 : (2008) 8 SCALE 665 : (2008) 12 SCC 275 : (2009) 1 SCC(L&S) 661 : (2009) 2 SLJ 28 , has laid down the law that a stale dispute should not be entertained. She also relies upon the judgment of the Apex Court in the case of The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, AIR 2000 SC 839 : (2000) 84 FLR 673 : (2000) 1 JT 388 : (2000) 1 LLJ 561 : (2000) 1 SCALE 306 : (2000) 2 SCC 455 : (2000) SCC(L&S) 283 : (2000) 1 SCR 459 : (2000) 3 SLJ 22 : (2000) AIRSCW 397 : (2000) AIRSCW 1592 : (2000) 3 Supreme 729 : (2000) 1 Supreme 359 to support her contention that a dispute raised after 07 years ought not to be entertained since it loses the trappings of an industrial dispute. She, therefore, prays for the dismissal of these petitions.

18. Having considered the submissions of the learned Advocates for the litigating sides and the reports cited, I have gone through the impugned judgment and award with their assistance. The references are apparently rejected primarily on the ground that the disputes which were 20 years old have been raised by the Petitioners and there is no explanation whatsoever in their statements of claims

as to what were the circumstances that precluded them from approaching the Industrial Dispute Resolution Machinery under the Industrial Disputes Act, 1947. I would advert to this issue later in this judgment.

19. It is settled law that the Employee has to prove the factum of appointment/employment and continuity in service. The onus and burden initially lies on the Employee. In the instant cases, the Petitioners have conceded in their cross-examination, which is evident from the observations of the Labour Court in paragraph 14 of the impugned judgments, that they did not have any documentary evidence as regards their appointments since the Respondent/MSRTC had never issued any appointment order. They also did not have any record pertaining to their purported salaries and attendance since their names were not entered in the salary register or muster roll. They conceded that they used to wash the buses and only after washing the buses, they used to get their remuneration as per the number of buses washed. They have also conceded that they were paid their remuneration every fortnight.

20. It cannot be overlooked that the Employer would preserve the record of his employees for a particular duration. I have my own doubts looking at the facts of these cases as to whether, the Respondent/MSRTC could have preserved any document as regards the payments made to these Petitioners by counting the number of buses washed on each day. The first Petitioner has claimed to have been working in between November, 1988 to December, 1990. The second Petitioner makes a claim as regards January, 1991 to December, 1992 and the third Petitioner with regard to the period from January, 1988 to December, 1990.

21. Considering the evidence on record and the admissions given by the Petitioners in their cross-examinations, it appears that the Respondent/Corporation may have preserved such skeletal record for such period which it may have been required to preserve for tax purposes or for audit purposes.

22. The establishments like the Respondent Corporation have their own Rules for preserving the records which normally are over a period of 05 years to 10 years, unless proved otherwise. Under the Payment of Wages Act, the records are required to be preserved for a period of 03 years and insofar as the Income Tax Act is concerned, the preservation has to be for about 08 years.

23. The point for determination, therefore, is whether, any purpose would be achieved by remanding the matter to the Labour Court after considering the oral and documentary evidence brought on record. Shri Deshmukh has strenuously canvassed that failure on the part of the Respondent/MSRTC to produce the documents for the period 1988 to 1992 as were demanded by the Petitioners, should lead to an adverse inference being drawn against the Respondent/MSRTC. This argument can then be tested in the light of the period for which the Respondent/MSRTC could preserve its records.

24. It is apparent that the Petitioners were not appointed by the Respondent/MSRTC considering their own admissions. The record as regards their payments

made fortnightly could have been preserved by the Respondent/ MSRTC for sometime. After the period of 20 to 22 years, whether, such record could be said to be available with the Respondent, is the core issue. In my view, an adverse inference in such peculiar facts where the Petitioners have approached the Labour Court after 20 years, may not be possible. The delay caused by the Petitioners can be said to be responsible for the destruction of evidence or record by the Respondent after a period of about 5 to 10 years.

25. As such, insofar as the oral and documentary evidence is concerned, I do not find that the Labour Court has erred in concluding that the Petitioners could not establish the factum of their employment and their continuity in service for a period of 240 days in the calendar years preceding the date of reference which is their date of termination.

26. The issue of delay has been raised in these proceedings by the Respondent/ MSRTC before the Labour Court. The Respondent has specifically averred that all these reference cases are stale claims and there has been no explanation put forth by the Petitioners as regards the circumstances which precluded them from approaching the Labour Court or from raising an industrial dispute.

27. The learned Division Bench of this Court had an occasion to deal with a somewhat similar case in the matter of Bajaj Auto Limited v/s State of Maharashtra reported in 2007(2) Mh.L.J. 627, wherein the Petitioner Company had challenged the order of reference dated 21.03.2006 issued by the Deputy Commissioner of Labour, Aurangabad under Section 10 of the Industrial Disputes Act, 1947. It was claimed that the reference of the purported dispute itself is unsustainable since few workers had raised an industrial dispute after 18 years of their disengagement. A group of about 1500 workers was involved in these cases and their reference was carried to the Tribunal through their Union.

28. The learned Division Bench considered the following judgments cited by the litigating sides while deciding the said case:-

1. Dhrangadhra Chemical Works Ltd. Vs. The Dhrangadhra Municipality, AIR 1959 SC 1271 : (1960) 1 SCR 388 .

2. The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, AIR 2000 SC 839 : (2000) 84 FLR 673 : (2000) 1 JT 388 : (2000) 1 LLJ 561 : (2000) 1 SCALE 306 : (2000) 2 SCC 455 : (2000) SCC(L&S) 283 : (2000) 1 SCR 459 : (2000) 3 SLJ 22 : (2000) AIRSCW 397 : (2000) AIRSCW 1592 : (2000) 3 Supreme 729 : (2000) 1 Supreme 359 .

3. The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others, AIR 2000 SC 915 : (2000) 84 FLR 984 : (2000) 2 JT 70 : (2000) 1 LLJ 809 : (2000) 1 SCALE 515 : (2000) 3 SCC 93 : (2000) SCC(L&S) 321 : (2000) 1 SCR 787 : (2000) 3 SLJ 31 : (2000) AIRSCW 507 : (2000) 1 Supreme 454 .

5. Haryana State Coop. Land Development Bank Vs. Neelam, AIR 2005 SC 1843 : (2005) 2 ESC 192 : (2005) 105 FLR 114 : (2005) 2 JT 600 : (2005) 1 LLJ

1153 : (2005) 5 SCC 91 : (2005) 2 SCR 424 : (2005) 2 SLJ 218 : (2005) 2 UJ 798 .

6. Regional Manager, S.B.I. Vs. Rakesh Kumar Tewari, AIR 2006 SC 839 : (2006) 108 FLR 733 : (2006) 1 JT 252 : (2006) 1 LLJ 748 : (2006) 1 SCALE 59 : (2006) 1 SCC 530 : (2006) SCC(L&S) 143 : (2006) 1 UJ 617 : (2006) AIRSCW 235 : (2006) 1 Supreme 151 .

7. DGM Oil and Natural Gas Corp. Ltd. vs. Ilias Abdulrehman, 2005 LLR 235.

8. Manager (Now Regional Director) R.B.I. Vs. Gopinath Sharma and Another, AIR 2006 SC 2614 : (2006) 110 FLR 803 : (2006) 6 JT 394 : (2006) 3 LLJ 492 : (2006) 7 SCALE 151 : (2006) 6 SCC 221 : (2006) 3 SCR 597 Supp : (2007) 1 SLJ 192 : (2006) AIRSCW 3642 : (2006) 5 Supreme 613 .

9. State of Madras Vs. C.P. Sarathy and Another, AIR 1953 SC 53 : (1953) 1 LLJ 174 : (1953) 4 SCR 334 .

10. Niemla Textile Finishing Mills Ltd. vs. Second Punjab Tribunal, 1957(I) LLJ 460 (SC) .

11. Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others, AIR 1959 SC 1279 : (1959) 2 LLJ 405 : (1960) 1 SCR 348 .

12. Ram Avtar Sharma and Others Vs. State of Haryana and Another, AIR 1985 SC 915 : (1985) 51 FLR 71 : (1985) LabIC 1001 : (1985) 2 LLJ 187 : (1985) 1 SCALE 713 : (1985) 3 SCC 189 : (1985) 3 SCR 686 : (1985) 2 SLJ 108 : (1985) 17 UJ 939 .

13. T Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, AIR 1989 SC 1565 : (1989) 59 FLR 734 : (1989) JT 155 Supp : (1989) 2 LLJ 558 : (1989) 1 SCALE 1544 : (1989) 3 SCC 271 : (1989) 2 SCR 802 : (1989) 2 UJ 159 .

14. Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, AIR 1999 SC 1351 : (1999) 82 FLR 137 : (1999) 3 JT 38 : (1999) 1 LLJ 1260 : (1999) 2 SCALE 508 : (1999) 6 SCC 82 : (1999) SCC(L&S) 1054 : (1999) 2 SCR 505 : (1999) AIRSCW 1051 : (1999) 4 Supreme 51 .

15. Sapan Kumar Pandit Vs. U.P. State Electricity Borad and Others, AIR 2001 SC 2562 : (2001) 90 FLR 754 : (2001) 5 JT 592 : (2001) LabIC 2814 : (2001) 2 LLJ 788 : (2001) 4 SCALE 467 : (2001) 6 SCC 222 : (2001) SCC(L&S) 946 : (2001) 3 SCR 1081 : (2001) 3 SCT 806 : (2001) AIRSCW 2685 : (2001) 5 Supreme 235 .

29. The learned Division Bench considered the ratio laid down by the Apex Court in the cases of Nedungadi Bank Ltd. (supra), Assistant Executive Engineer, Karnataka (supra), Haryana State Cooperative Land Development Bank (supra), DGM -ONGC (supra) and other reports while deciding whether, the industrial

dispute could be said to have been existing.

30. The Division Bench recorded the contention of the Petitioner/ Management and more importantly in paragraph 13, that the Petitioner Company had the record of 1299 temporary employees at its disposal out of a total of 1348 temporary employees. Considering the fact that the Petitioner/ Management had preserved its records and out of 1500 employees working with the Company, 1300 workers had raised an industrial dispute within 07 to 08 years and it was only about 177 workers who had raised the dispute after 18 years, that the petition filed by Bajaj Auto Limited was dismissed.

31. The Division Bench, therefore, recorded in paragraph 18 of the judgment that a major chunk of the workers had raised an industrial dispute within 03 to 07 years of their disengagement. So also, this Court considered the aspect that the reference being tried by the Tribunal would enable these workers to make out a case on merits and as such, ends of justice would be met.

32. In the instant case, the reference with relation to these three Petitioners was made. Though on the one hand, the Labour Court concluded that the disputes are stale, yet on the other hand, the Labour Court considered the oral and documentary evidence adduced by the litigating sides and concluded that none of the Petitioners could establish their employment with the Respondent/MSRTC and none of them could prove completion of 240 days in a year preceding the date of their alleged termination.

33. Considering all the above factors, I do not find any merit in these petitions, which are, therefore, dismissed. Rule is discharged.