

(2008) 10 BOM CK 0018

In the Bombay High Court

Case No : C.A.J. Writ Petition No. 4749 of 1998

Raigad Zilla Parishad

APPELLANT

Vs

Gajanan H. Patil and others

RESPONDENT

Date of Decision : 24-10-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 25A

Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 250, 289

Citation : (2009) 120 FLR 423

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : C.G. Gavnekar, for the Appellant; Suresh S. Pakale, for the Respondent

Judgement

Nishita Mhatre, J.—This petition challenges the award of the Labour Court, Thane, dated 25.3.1997 in Reference (IDA) No. 15 of 1995. The reference has been allowed and the respondent-workman is directed to be reinstated with continuity of service w.e.f. 15.5.1986 alongwith full back wages.

The petitioner is the Zilla Parishad of Raigad District. The State Government i.e. respondent No. 3 passed orders permitting the Chief Executive Officer (in short, C.E.O.) of the Zilla Parishad to recruit employees in Class III and Class IV categories on a temporary basis, in the event the Divisional Selection Board or District Selection Board was not constituted. The C.E.O. appointed respondent No. 1 under these powers delegated by the order of the Government dated 21.7.1983. Clause 2 of this order of the Government lays down the eligibility criteria and procedure for making appointments to the Zilla Parishad. The requirement to obtain candidates from the Employment Exchange, the Social Welfare Officer and the Backward Class Organizations authorised by Government was stipulated. In the event no candidates were recommended by the aforesaid agencies, the C.E.O. of the Zilla Parishad was conferred with the power to advertise the number of vacancies in the newspapers and to appoint candidates

who were selected in response to the advertisement. However, such appointments could be made by the C.E.O. only on a temporary basis not exceeding one year.

2. The respondent No. 1 was appointed on 5.5.1984. He was continued in service till he was given a break and a fresh appointment order was issued to him on 17.5.1985. The respondent No. 1 had applied for recruitment for the post of Sanitary Inspector after completion of the course for the trade from Shirur Institute. On 8.4.1986 the Joint Director, Health Services, Pune intimated the Zilla Parishad that those persons who did not possess qualifications from recognised institutions should not be appointed in service. He further directed that the service of employees who did not have the proper qualifications should be terminated. Accordingly, on 12.10.1986 the services of the 1st respondent were terminated as he did not have the requisite qualifications. The qualifications of the Shirur Institute were derecognised and therefore, services of the 1st respondent were terminated.

3. Aggrieved by this decision of the Zilla Parishad, the 1st respondent raised an industrial dispute which was referred for an adjudication before the Labour Court, Thane.

4. The pleadings were filed by the parties. The 1st respondent contended in his statement of claim that his services had been terminated contrary to the provisions of the Industrial Disputes Act. He contended that while terminating his services the petitioner had not followed the mandatory provisions of law i.e. Section 25-F of the I.D. Act by offering him retrenchment compensation, and one month's wages in lieu of notice. It was further contended that the course required for appointment as a Sanitary Inspector could not be derecognised with retrospective effect thereby throwing the 1st respondent out of service after having rendered service for two years. The 1st respondent also contended that in any event, an enquiry ought to have been held prior to terminating his services as the termination of his service was by way of punishment for not having the requisite qualifications.

5. The petitioner filed its written statement contending that it was necessary to terminate the services of the 1st respondent it only because the course which the 1st respondent had undertaken through the Rural Development and Multipurpose Technical Training center at Shirur, Dist. Pune, was not recognised by the Government. It was pleaded that, the workman had completed only 11 months in service after which his services were terminated and he was reappointed till the order dated 12.6.1986 terminating his services was passed. It was further contended that the 1st respondent was not entitled to reinstatement as he had committed a serious act of misconduct by fabricating a letter allegedly written by the Chief Minister directing that he should be appointed. A police complaint was lodged and the 1st respondent was prosecuted. He was later acquitted by giving him the benefit of doubt. It was in these circumstances, the petitioner submits, that it was not possible to continue the 1st respondent in service

6. The oral evidence was led by the 1st respondent to prove that he was in continuous employment from the date when he was appointed as a Sanitary Inspector, after leaving service as a Malaria Surveillance Worker. The 1st respondent also stated on oath that two other Sanitary Inspectors were terminated from service alongwith him but they were re-employed after some months. The Labour Court, by its order, hold that the petitioner had terminated the services of the 1st respondent illegally, since it had not offered the respondent retrenchment compensation and wages in lieu of notice, prior to terminating his services. The Labour Court came to the conclusion that the termination of service was not u/s 2(oo)(bb) of the I.D. Act and in fact was in the nature of retrenchment, entitling the 1st respondent to the benefits u/s 25-F of the I.D. Act. The Labour Court has, therefore, granted reinstatement with full back wages and continuity of service.

7. Mr. Gavnekar for the petitioner submits that the petitioner's services were terminated only because he did not possess the requisite qualifications. He contends that in the case of public employment, a workman cannot be regularised or absorbed in service without having the requisite qualifications. He submits that even assuming the services of the respondent No. 1 were wrongly terminated he cannot be reinstated in service as he still does not possess the requisite qualifications. He points out that Gharat and Patil, who were similarly terminated from service, had acquired the necessary qualifications and were absorbed and regularised in service.

The learned counsel then relies on the judgment of the Supreme Court in the case of Secretary, State of Karnataka and others. v. Umadevi and others 2006 (109) FLR 826 (SC) : 2006 (42) AIC 935 (SC) in support of the submission that the 1st respondent could never have been employed in service in view of his defective qualifications. The petitioner cannot be directed to employ him and to pay him back wages, submits the learned counsel.

8. Mr Pakale for the 1st respondent submits that all appointments to the Zilla Parishad are made u/s 289 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. According to the learned Advocate, the Regional Selection Boards were constituted only in 1988 and, therefore, the C.E.O. was delegated the power to appoint suitable candidates if they had the requisite qualifications. He submits that the Government Resolution dated 26.7.1990 protects the 1st respondent and, therefore, he is entitled to reinstatement in service as a Sanitary Inspector with full back wages. According to the learned advocate, the petitioner did possess the requisite qualifications stipulated in the advertisement pursuant to which the workman had responded. The workman cannot be penalised if the course which was once recognised by the Government is derecognised subsequently, with retrospective effect. He submits that great prejudice is caused to the workman if after working for some time he is informed that he did not have the requisite qualifications, inasmuch as he did not have a certificate from an institution recognised by the Government. He has also

submitted that admittedly no show cause notice or charge-sheet was issued to the respondent No. 1 workman, nor was any enquiry held against him.

9. The petitioner employed the 1st respondent on the basis of the powers vested in the C.E.O. by the order of the Government dated 21.7.1983. There is no dispute that the workman was employed after the necessary procedure was followed under the Government Resolution. At the time of his recruitment the petitioner did possess the qualifications which were prescribed for being appointed as a Sanitary Inspector. The Government order was to operate till the Divisional Selection Board and District Selection Board were constituted u/s 250 of the Maharashtra Zilla Parishad and Panchayat Samitis Act. Undisputedly, for two years, while the respondent No. 1 was in service, the petitioner had not found any fault in the qualifications of the 1st respondent as a Sanitary Inspector. It was only because, a circular was issued by the Deputy Director, Health Services, Pune, that his services came to be terminated. This circular mentions amongst other things that those persons who had acquired the qualifications in Shirur Institute were not entitled to continue in service as they had been appointed by mistake. A direction was issued to terminate the services of such employees.

10. In my opinion, derecognition of a course which is prescribed for attaining the requisite qualifications for employment cannot be effected retrospectively. When an employee is appointed and he possesses the prescribed qualifications, his services cannot be terminated on the ground that the Government or the authority chooses to derecognise the institution from which the qualifications were acquired by the employee. The derecognition of the institute cannot be with retrospective effect. It must be prospective. Directing derecognition of an institute with retrospective effect would lead to disastrous consequences. Those who have acquired the prescribed qualifications from the institute and who are in service on the basis of those qualifications cannot be thrown out of service for no fault of their own. The petitioner had put in two years of service when he was informed that the qualifications that he had acquired were not recognised by the Government. There is no material on record to suggest that when the petitioner prosecuted the course offered by the Shirur Institute, he was informed that the recognition of the institute was in doubt.

11. The learned counsel for the petitioner has contended that the services of the 1st respondent were temporary in nature and therefore the services of the 1st respondent could be terminated at any point of time. In my view, this submission is unsustainable. Assuming the services of a temporary employee are to be terminated, he must be terminated in accordance with law. It is now well settled that even a temporary worker who has put in 240 days of service in the previous year, cannot be terminated from service without following the provisions of Section 25-F of the I.D. Act. It is also well settled that any termination of an employee amounts to retrenchment unless the termination is by way of punishment, or on account of continued ill health of the workman or by way of

voluntary retirement or on account of retirement on the workman attaining the age of superannuation or as a result of the non-renewal of the contract of employment between the employer and the workman concerned. The services of a temporary workman are not governed by the provisions of section 2(oo)(bb) of the I.D. Act as a matter of course. The petitioner had not appointed the 1st respondent only for a specified period for performing a particular job which should have been completed during that stipulated period. The work of a Sanitary Inspector is perennial in nature and, therefore, the question of services of the 1st respondent being terminated u/s 2(oo)(bb) does not arise. Undisputedly, the services of the workman were not terminated on account of voluntary retirement or attaining the age of superannuation or on the ground of continuous ill health. In such circumstances, obviously means that the respondent No. 1st services were terminated by way of retrenchment although he had worked more than 240 days in the previous year. Section 25-F of the I.D. Act stipulates that prior to such termination of service, the employer must offer retrenchment compensation and a notice of one month or wages in lieu thereof. Admittedly, this procedure has not been followed by the petitioner and, therefore, in my view, the Labour Court has rightly held that the services have been illegally terminated by the petitioner.

12. The contention of Mr. Gavnekar that, in view of the judgment in the case of Umadevi (supra), the 1st respondent is not entitled to reinstatement is without merit. The right which the respondent No. 1 had acquired to continue in service as a Sanitary Inspector could not be taken away retrospectively by directing that the institute from which the respondent No. 1 had acquired the qualifications was derecognized with retrospective effect. Apart from this, the ratio in Umadevi's case does not imply that a workman as defined u/s 2(s) of the I.D. Act can be thrown out of service without following the mandatory provisions of the I.D. Act. Therefore, in my view, the judgment in the case of Umadevi does not apply to the facts and circumstances of the present case.

Writ petition fails. Rule discharged. No order as to costs.