
(1992) 06 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 8 of 1991

Rajesh Kumar and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 21-06-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1994) 2 LLJ 320 : (1994) 1 MPJR 37 : (1993) 38 MPLJ 133 : (1993) MPLJ 133

Hon'ble Judges : S.K. Dubey, J; R.C. Lahoti, J

Bench : Division Bench

Advocate : R.D. Jain and J. Maheshwari, for the Appellant; R.A. Roman and H.N. Gupta, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

This order shall also govern disposal of M.M. No. 82 of 1991 (Satyendra Singh and 31 others v. State of Madhya Pradesh through Registrar, Co-operative Societies, M.P., Bhopal and Ors.), as both the petitions were heard analogously.

All the petitioners by this petition have prayed for issuance of a writ in the nature of mandamus or any other suitable writ, direction or order for quashment of the notice and orders of termination of their services passed on December 1/5, 1990 (Annexures P/1-A to P/1-Q) by the Manager, Land Development Co-operative Bank Ltd., Vidisha, the respondent No. 5, while the petitioners in M.M. No. 82 of 1991 have challenged the resolution dated November 14, 1990 (Annexure P/1) of the Board and the notice and order of termination dated November 19, 1990 (Annexure P/3), passed and issued by the respondent No. 5.

The petitioners contend in their petition that they were appointed on their respective posts and then were regularised, but because of political reasons one month's notice of termination of their services was given in violation of the rule

of "last come first go" and without complying with the pre-conditions of Section 25F of the Industrial Disputes Act, 1947 (for short, the "Act") : therefore, the orders are void.

In the return, the respondent/Bank and other respondents have contended that the employees were surplus, as there were no sanctioned posts vacant; the appointments of the petitioners were made illegally in violation of rules prescribed; some of the petitioners were not having the minimum qualifications as required by Rule 5 of the Madhya Pradesh Ke Zilla Sankari Bhumi Vikas Bank Karmachariyon Ke Seva (Niyojan, Nibandhan Tatha Karya Sthiti) Niyam (for short, the "Rules"); therefore, the Board of the Bank took a decision and passed the resolution to terminate the services of the petitioners, It was denied by the Bank that the rule of "last come first go" was violated, and for that a list, specifying the date of joining of each employee, was annexed with the return.

Shri R.D. Jain and Shri Jitendra Maheshwari, counsel for petitioners and Shri R.A. Roman, Government Advocate for respondents with Shri H.C. Gupta, General Manager of the Bank were heard.

It is not in dispute that each of the petitioners even after regularisation of their services (in both petitions) has completed more than 240 days" continuous service preceding to the order of termination. It was admitted that after giving one month"s notice of termination, petitioners" services were continued because of the ad interim writ issued by this Court and all of them are working and performing their respective duties. It is also not the case of the respondent Bank that the order of termination simpliciter preceded by any charge of misconduct. It was, however, denied by the respondents that the petitioners (in both petitions), though fall within the definition of "workman" as defined in Section 2(s) of the Act, were permanent; they were on probation; therefore, their termination during the probationary period was in accordance with Rule 62 of the Rules without assigning reasons and on giving one month"s notice thereof; hence, the petitioners are not entitled to any relief.

After hearing counsel, we are of opinion, that this Court need not deal with the rival contentions raised during the course of hearing, as the orders of termination can be struck down for non-compliance of the pre-requisites of Section 25-F of the Act. Though the petitioners contended that their employment was not on probation and, therefore, in view of Rule 63 of the Rules, the Bank was bound to follow the provisions of Sections 25F and 25G of the Act, without going into that controversy, even if it is assumed for argument"s sake that the petitioners were probationers, in that case too, compliance of Section 25-F was mandatory, as has been ruled by the Apex Court in case at Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another,

The other contention of the Bank is that the petitioners" appointment was invalid; therefore, in pursuance of the decision of the Board of the Bank, the services were duly terminated, as on an invalid appointment an employee does

not get any right to the post: hence, compliance of Section 25-F was not required.

In our opinion, this contention too has no merit. A Constitution Bench of five Judges of the Supreme Court in case of Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, while considering the precise question whether the expression "retrenchment" in Section 2(oo) has to be interpreted in its narrow, natural and contextual meaning or in its wider literal meaning, has negated the contention of the employer and laid down that the definition of "retrenchment" in Section 2(oo) means termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and those expressly excluded by the definition. This is the wider literal interpretation as distinguished from the narrow, natural and contextual interpretation of the word to mean termination by the employer of the service of a workman as surplus labour for any reason whatsoever.

In case of Santosh Gupta Vs. State Bank of Patiala, the Supreme Court observed that the discharge of the workman on the ground that she did not pass the test which would have enabled her to be confirmed, was "retrenchment" within the meaning of Section 2(oo) and, therefore, the requirement of Section 25F had to be complied with.

Recently, this Court in case of Iftikar Ahmed v. Municipal Council, Ambah, 1992 (1) MPJR 104, while considering the definition of Section 2(oo) as it stands after Amendment, has taken the view that the definition of "retrenchment" as given in Section 2(oo) of the Act is wide enough and comprehensive to include all types of terminations of service, unless the termination falls within any of the excepted categories mentioned therein. An invalid appointment is not one of the exceptions. Therefore, termination not falling under any of the exclusionary clause of Section 2(oo) would amount to clear retrenchment, and for such termination compliance of the prerequisites of Section 25F is necessary.

Therefore, in view of the above discussion, the contention that the appointment of the petitioners was not in accordance with the Rules, is not available to the respondent/Bank ; as a consequence of that the orders of termination of petitioners' services and the notice are void and have to be quashed and are hereby quashed. The petitioners shall continue in their employment and will be entitled to all ancillary benefits.

Now, left with the submission of Shri Roman that, in case this Court holds the termination of petitioners as void because of non-compliance of Section 25F, the respondent/Bank be allowed to pass appropriate fresh orders, as the employees are surplus and there are no vacant posts for the petitioners. On this submission, we need not say anything, as said earlier that we have not expressed any opinion on the various contentions raised by the counsel for the parties, and simply struck down the order of termination for non-compliance of the pre-

requisites of Section 25F. Therefore, it is up to the Bank to consider and take appropriate action, if available, in accordance with law.

In result, the petitions are allowed with costs. The order of termination (Annexures P/1-A to P/1-Q) and the notice (Annexure P/3) are quashed. The petitioners who are already in service, shall continue on their respective posts. Counsel's fee Rs. 500/- if pre- certified.