
(2018) 06 BOM CK 0105
In the Bombay High Court
Case No : WRIT PETITION NO.9084 OF 2004

SHARAD VISHWAS BHAMRE

APPELLANT

Vs

THE GENERAL MANAGER-M/S.MAHINDRA SONS LTD. AND
ANR.

RESPONDENT

Date of Decision : 22-06-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(o), 2(oo), 25F
Constitution of India, 1950 — Article 226, 227

Citation : (2018) 06 BOM CK 0105

Hon'ble Judges : S.C. GUPTA, J

Bench : Single Bench

Advocate : N.V. Bandiwadkar, Vinayak Kumbhar, V.P. Vaidya

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the parties.

2. This petition challenges an award passed by the Labour Court at Nashik rejecting the reference made to it at the instance of the Petitioner herein.

The Petitioner was appointed as a trainee with the Respondent with effect from 2 April 1990. The appointment order issued to him on 2 April 1990

appointed him as a trainee in the Respondent's factory at MIDC, Satpur, Nashik with effect from the date of the letter. The period of training was said

to be one year. After completion of this period, by a communication dated 1 April 1991, which according to the Petitioner was received by him on 11

April 1991, the Respondent informed the Petitioner that his training period was completed from the close of business on 1 April 1991. The Petitioner

was, accordingly, requested to collect his dues against proper acquittance. It was the case of the Petitioner before the Labour Court in the reference

that his service did not come to an end on 1 April 1991 but that from 1 April 1991 he was on ESI Medical leave till 3 April 1991 and that this leave was subsequently extended upto 11 April 1991, when he received the letter of the Respondent communicating to him completion of his training period and cessation of his employment. The Petitioner's case before the Labour Court was that his retrenchment was in breach of the provisions of Section 25A of the Industrial Disputes Act, since it was not with one month's notice or pay in lieu of such notice and retrenchment compensation. The Court rejected this contention of the Petitioner on the ground that the termination of his service was a result of nonrenewal of his contract of employment on its expiry and thus not included in the definition of 'retrenchment' under Section 2(o) of the Industrial Disputes Act, though the Court accepted that during this period of one year the Petitioner worked as a regular employee and not as a trainee under the Respondent establishment.

3. The conclusion of the Court that the employment of the Petitioner came to an end with the expiry of the period of one year and that the Petitioner did not continue in service thereafter, is clearly a possible view, which is supported by evidence. Merely because the Petitioner has produced ESI Medical Certificate, it cannot be held as proved that his service was continued by the Respondent after the expiry of one year. It is not in dispute that on and after 1 April 1991 the Petitioner never resumed duty. Under the employment letter issued to him, his services were stipulated to be for one year, that is to say, upto 1 April 1991. On these facts, the conclusion that the Petitioner's employment came to an end by virtue of the contract between the parties is clearly a possible view. There is no relevant material disregarded and no irrelevant or non-germane material considered by the Court for arriving at this conclusion. The conclusion, being a possible view based on evidence and not vitiated by any reason, does not warrant any interference at the hands of this Court in its jurisdiction under Articles 226 and 227 of the Constitution of India.

4. Learned Counsel for the Petitioner relies on a judgment of the Nagpur Bench of this Court in the case of Dilip Hanumantrao Shirke vs. Zilla Parishad, Yavatmal¹. In this case, our Court held that since the exception contained in clause (bb) of Section 2(o) is introduced by way of an amendment and it takes away rights of workmen which they had before the amendment, it must be construed strictly. Our Court also held that

considering the probability of the employer engaging labour by making ostensible fixed appointments, it would be improper and unwise to simply decide

the nature of employment on the basis of the letter of appointment; the nature of employment would have to be determined with reference to the

nature of duties performed by the workman, the type of job he was entrusted with, cessation of work with the employment, existence of the post

thereafter and other analogous considerations. The emphasis of our Court in the judgment of Dilip Hanumantrao Shirke is on whether the contractual

employment was a genuine contract for a specified period or was it a device simply to get away from the provisions of Section 2(oo) of the Act. This

is what the Court has to consider. There is nothing in the facts of this case which lays any factual foundation for deciding the case on this point one

way or the other. The Petitioner's case before the Labour Court simply proceeded on the basis that despite his contract of employment stipulating the

period of employment to be of one year, his services in fact continued beyond this period of one year. There is no other allegation which requires the

Court to consider fairness or otherwise of the contract of employment from the point of view of exploitation of labour or otherwise. The factum of

continuous service beyond the expiry of one year having not been found by the Court in favour of the Petitioner, there is nothing more for the Court to

decide. In the premises, the conclusion of the Labour Court cannot be found fault with on the basis of the law declared by this Court in the case of

Dilip Hanumantrao Shirke.

5. Accordingly, there is no merit in the petition. The petition is dismissed. No order as to costs.