

(2000) 04 BOM CK 0086

In the Bombay High Court

Case No : Writ Petition No. 1670 of 1994

Shri Laxman Ramchandra Mai

APPELLANT

Vs

Executive Engineer, Irrigation Department

RESPONDENT

Date of Decision : 11-04-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5), 25

Citation : (2000) 3 BomCR 642

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Anil V. Anturkar, for the Appellant; S.R. Nargolkar, A.G.P., for the Respondent

Judgement

R.J. Kochar, J.—The petitioner was appointed as a Pump Operator from 6-5-1980. His services came to be terminated w.e.f. 13-5-1985. The petitioner raised an industrial dispute under sections 10(1) & 12(5) of the Industrial Disputes Act, 1947 and the same was referred by the State Government for adjudication to the Labour Court, Sangli.

2. Both the parties filed their respective pleadings and documents. On the basis of this the Labour Court framed the following issues and answered the same from the material on record :

ISSUES

1.

Whether the Second Party proves that his termination since June 85 is illegal & improper ?

Yes

2.

Whether the First Party proves that the termination is legal & proper ?

No.

3.

Whether the Second Party is entitled to reinstatement with continuity of services and full back wages as claimed ?

Choukidar till the date of his retirement

4. What Award? Claim is partly allowed

None of the parties had adduced any oral evidence. The Labour Court has rejected the claim of the petitioner for reinstatement and continuity of service with full back wages. The Labour Court also held that the petitioner was entitled to continue on the post of Choukidar till the date of his retirement. It was the case of the petitioner that his termination was illegal for violation of section 25-F of the Industrial Disputes Act, 1947. It appears from the record that the petitioner's services were terminated along with all those who were in employment in the scheme for the reason that the said lift irrigation scheme of the department was sold and transferred by the State of Maharashtra to Shetkari Sahakari Sakhar Karkhana, Sangli and therefore, the services of all those employees under the scheme were terminated. According to the respondent, before the transfer of the scheme a notice was published in the newspaper requesting all the employees to come and accept the retrenchment compensation and their legal dues on the basis of the date of their appointment. It further appears that pursuant to the said notice the petitioner was offered retrenchment compensation and his other legal dues but he did not accept the same and he challenged the legality and validity of his termination order mainly on the basis of violation of section 25-F of the Act. The Labour Court has found that the respondent has violated the mandatory provisions of section 25-F of the Act and therefore the termination was held to be illegal and improper. The Labour Court however, refused to grant reinstatement and full backwages as the scheme under which the petitioner was employed was sold and transferred to Shetkari Sahakari Sakhar Karkhana, Sangli and therefore, he could not be reinstated as the scheme was no more in existence under the State Government. In view of the aforesaid reasoning given by the learned Labour Court the relief of reinstatement was denied. The learned Labour Court has also considered another aspect of the matter while rejecting the prayer for reinstatement that the petitioner was alternatively absorbed as a Choukidar in some other department of the State Government. It is an admitted position that he still in employment as a Choukidar. The Labour Court has directed the respondents to continue him as Choukidar till the date of his retirement.

3. The petitioner appears to have challenged the order of the Labour Court rejecting his claim of reinstatement. It appears that by challenging the said order his intention is to full backwages, if he succeeds in his prayer for getting reinstatement. According to me, the whole petition is misconceived. I find that the Labour Court has confused the issues. The Labour Court has committed a

grave error of law in holding that the termination of the petitioner was illegal and improper, after holding that the petitioner was offered the retrenchment compensation but he did not accept the same. As far as the respondents are concerned before terminating the services of the petitioner they had complied with the provision of section 25-F of the Act by tendering the amount of retrenchment compensation to the petitioner but he did not accept the same. Having refused to accept the amount of compensation tendered to him as required u/s 25-F of the Act, the petitioner cannot contest that his retrenchment was in violation of section 25-F of the Act. As is very obvious from the record that the respondents have complied with the mandatory provisions of section 25-F of the Act and therefore the order of termination is not illegal or improper. For this reason itself the petitioner is not entitled to get the relief of reinstatement with full backwages and continuity of service. The Labour Court has refused to grant the prayer of reinstatement on different ground of the scheme having been sold and transferred to the third party and hence non availability of the work under the respondent which the petitioner had prayed for. Though the Labour Court could not have passed an order directing the respondents to continue the petitioner on the post of Choukidar till the date of his retirement in the reference before it since the petitioner is happily continued by the Department as a Choukidar. I do not wish to disturb the said directions in the interest of justice. It is needless to mention that such continuation of the petitioner as Choukidar till the date of his retirement would be subject to the service rules.

4. Shri Anturkar, the learned Advocate for the petitioner, sought a relief of continuity of service and the benefits of continuity of service under the Government Resolution dated 11th March 1964. I am not able to grant any such relief in the present proceedings which have arisen from the Industrial Disputes Act, 1947. The relief of continuity of service of a Government servant would squarely fall under the jurisdiction of the Maharashtra Administrative Tribunal as a service matter and petitioner is at liberty to approach before the forum for appropriate relief in accordance with law. The present petition, however, has no merits and the same is dismissed with no order as to costs.

5. Certified copy of the order is expedited.

6. Parties to act on an ordinary copy of this order duly authenticated by the Sheristedar of this Court.

7. Petition dismissed.