
(2008) 02 BOM CK 0192

In the Bombay High Court

Case No : Letters Patent Appeal No. 109 of 1997 in Writ Petition No. 664 of 1991

Shri Shyamrao Wasnik

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Industrial Disputes Act, 1947 — Section 2, 25F
Maharashtra Public Services (Subordinate) Selection Board (Exemption from Consultation) Rules, 1976 — Rule 4

Citation : (2008) 3 ALLMR 274 : (2008) 6 BomCR 321 : (2008) 118 FLR 140 : (2008) 3 LLJ 1059 : (2008) 3 MhLj 660

Hon'ble Judges : R.C. Chavan, J;K.J. Rohee, J

Bench : Division Bench

Advocate : S.G. Jagtap, for the Appellant; A.M. Deshpande, AGP, for the Respondent

Final Decision : Allowed

Judgement

K.J. Rohee, J.—By this appeal the judgment of the learned Single Judge dated 7.11.1996 in W.P. No. 664/1001 allowing the writ petition by State and setting aside the Award dated 11.12.1990 passed by the Labour Court in Reference (IDA) No. 68/1997 directing the reinstatement of the appellant in service with continuity of service and payment of half the back wages, is challenged.

2. Prior to August, 1977, the appellant was working on daily wages with the Forest Department. By order dated 8.8.1977 by respondent No. 2, the appellant was appointed as Forest Guard in pay-scale of Rs. 80-110/- on temporary basis for a period of six months in clear vacancy. The order mentions that the appointment was purely temporary and was liable to be terminated without giving any notice. The services of the appellant were to be terminated within six months or on the day the candidate from the State Selection Board, Aurangabad was made available whichever was earlier. Accordingly the appellant joined the service. After the expiry of the said period, the appellant was reappointed from

time to time. According to the respondents, the services of the appellant were terminated with effect from 30.11.1980 whereas according to the appellant he handed over charge of his post on 25.12.1980.

3. After his termination, the appellant approached the authorities for reappointment. However, he was told that the case of the appellant would be considered after the decision in the case of Shri Wadekar who was also terminated along with the appellant. This state of affairs continued for a number of years. It seems that Shri Wadekar was reinstated under the order of the Labour/Industrial Court. However, by letter dated 21.4.1986 the appellant was informed that he cannot be reinstated because of physical unfitness. Hence on 22.12.1986 the appellant issued approach notice to the respondents contending therein that he has been removed from service without assigning any reason for termination and that it amounted to retrenchment without following statutory provisions. The appellant requested for his reinstatement in service with effect from 25.12.1980 with full back wages. It seems that the conciliation proceedings before the Assistant Commissioner of Labour, Amravati failed. As no settlement was arrived at between the parties, a reference in respect of the claim of the appellant pertaining to reinstatement into service together with continuity of service and payment of back wages being Reference (IDA) No. 68/1987 was made to the Labour Court, Amravati. Both the parties reiterated their stand before the Labour Court. It seems that the parties also adduced oral and documentary evidence before the Labour Court.

4. After considering the evidence before it, the Labour Court held that the appellant completed 240 days" continuous service in the year preceding his termination with effect from 25.12.1980. The Labour Court further held that it was necessary to follow the provisions of Section 25F of the I.D. Act. However, no notice was issued to the appellant and no retrenchment compensation was paid to him. Thus the respondent failed to comply with the mandatory provisions of Section 25F of the I.D. Act and that the termination of the appellant is void ab initio. It also held by the Labour Court that the appellant was entitled to exemption from appearing before the Selection Board under Rule 4 of the Maharashtra Public Services (Subordinate) Selection Board (Exemption from Consultation) Rules, 1976 (hereinafter referred to as the Rules of 1976. for short). Consequently the Labour Court directed reinstatement of the appellant into service with continuity of service. The Labour Court further directed payment of half back wages from 6.7.1987 when reference was received by the Court because of laches on the part of the appellant.

5. The State challenged the award passed by the Labour Court by preferring writ petition. The learned Single Judge held that the services of the appellant were terminated on 30.11.1979 and not on 25.12.1979 as contended by the appellant. The appellant, however, put in 240 days. service in a year prior to 30.11.1979. The learned Single Judge further held that there was no dispute that the appellant was a workman as per the definition of workman in the Industrial

Disputes Act and that non-payment of retrenchment compensation renders his termination illegal. The learned Single Judge observed that the Labour Court accepted the date of termination as 25.12.1979 without any basis. The learned Single Judge held that Rule 4 of the Rules 1976 would not apply to the appellant as he was not holding the post on 15.12.1979 as required under Rule 4(iv) of the Rules of 1976. The learned Single Judge held that under the then existing Rules, only the person who could be covered under Rule 4 was exempted from being selected by the Selection Board. Since the appellant was not covered by Rule 4, he could not get advantage thereof. The learned Single Judge went on observing that though the termination of the appellant was illegal and though on that count he would be entitled to the retrenchment compensation, he would not get either the reinstatement and if he was not entitled to the reinstatement in law, then he would also not get any back wages. The learned Single Judge, therefore, allowed the petition, set aside the award of the Labour Court and directed that the appellant was entitled to retrenchment compensation only as admissible to him under law. The said order is under challenge.

6. We have heard Shri S.G. Jagtap, Advocate for the appellant and Shri A.M. Deshpande, AGP for the respondents.

7. It was vehemently urged by the learned Counsel for the appellant that the Labour Court as well as the learned Single Judge held that the appellant was a workman within the meaning of Industrial Disputes Act. It is also not disputed that Forest Department of the State Government is an Industry within the meaning of the said Act. He further pointed out that both the Courts held that the termination of the appellant was illegal for want of statutory notice and payment of retrenchment compensation. However, thereafter the learned Single Judge committed an error by observing that though the termination of the appellant was illegal he is not entitled to reinstatement and back wages because Rule 4 of Rules of 1976 is not applicable to him. The import of the judgment of the learned Single Judge is that either the appellant should have been exempted from appearance before the Selection Board under the provisions of Rule 4 of Rules of 1976 or the appellant should have been recommended for appointment by the Section Board, and since the appellant was neither exempted and nor he went before the Selection Board, he is not entitled to reinstatement.

8. We are afraid that the learned Single Judge unnecessarily mixed up the two questions. The petitioner may seek relief based on more than one rights which he may perceive to be available. His disentitlement to one of the rights cannot result in denial of the other right. Once the learned Single Judge held that the appellant is a workman, that the department of the State Government where he was serving was an Industry and that he was in continuous service for not less than one year, he cannot be retrenched until the conditions precedent given in Section 25F are complied with. In the present case it is not disputed that none of the conditions precedent has been followed by the respondent. In Mohan Lal Vs. Management of Bharat Electronics Ltd., it has been held as under:

...termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment except in cases excepted in the section itself....

...by a catena of decisions it is well settled that where prerequisite for valid retrenchment as laid down in Section 25F has not been complied with, retrenchment bringing about termination of service is ab initio void. In *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, this Court held that failure to comply with the requirement of Section 25F which prescribes a condition precedent for a valid retrenchment renders the order of retrenchment invalid and inoperative. In other words, it does not bring about a cessation of service of the workman and the workman continues to be in service....

Thus in the present case the termination of the service of the appellant is ab initio void for want of non-compliance of Section 25F and there is no question of application of Rule 4 of the Rules of 1976 to the appellant.

9. The learned AGP tried to justify the impugned order by relying on *Surendra Prasad Tewari Vs. Uttar Pradesh Rajya Krishi Utpadan Mandi Parishad and Others*, where regularization in public employment was the main issue. It was held that adherence to Article 14 and 16 of the Constitution is a must in the process of public employment. It was lastly observed by the Court that in our constitutional scheme there is no room for back door entry in the matter of public employment.

10. One thing must be noted that in the case cited above the applicability of Industrial Disputes Act was not involved at all and hence the said ruling is not helpful to the respondents.

11. Another case relied upon by the learned AGP is *Punjab State Electricity Board and Another Vs. Sudesh Kumar Puri*, which relates to the Meter Reader engaged on contract basis. It is also not applicable to the present case because the said case was covered by Section 2(oo)(bb) of the Industrial Disputes Act whereas in the present case Section 2(oo)(bb) would not be attracted because the termination in the present case is prior to the amendment dated 18.8.1984 by which Sub-clause (bb) was inserted in Section 2(oo) of Industrial Disputes Act.

12. In the result, we find that the learned Single Judge rightly concluded that the workman was serving for over 240 days in a department which is an industry and that his services were terminated without complying with the conditions prescribed u/s 25F of the Industrial Disputes Act. Thus the termination of the services of the petitioner was bad and was liable to be set aside. The learned Single Judge, however, then fell in error in ignoring the implications of this bad termination and mixed up workman's right to continuation with reference to Rule 4 of the Rules of 1976 providing for exemption from selection by Selection Board. We, therefore, proceed to pass the following order:

The L.P.A. is allowed. The judgment of the learned Single Judge is set aside and award passed by the Labour Court is restored.