

(2015) 01 KAR CK 0100

In the Karnataka High Court

Case No : Writ Petition Nos. 86335 to 86338 of 2012 (L-TER)

Sidram

APPELLANT

Vs

Alstom Projects India Limited

RESPONDENT

Date of Decision : 07-01-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo)(bb), 25F, 33A

Citation : (2015) 146 FLR 567 : (2015) 3 KarLJ 521

Hon'ble Judges : L. Narayana Swamy, J.

Bench : Single Bench

Advocate : P. Vilas Kumar, for the Appellant; Ashok S. Kingai, Advocates for the Respondent

Final Decision : Allowed

Judgement

L. Narayana Swamy, J.—The petitioners in these petitions are challenging the order dated 10th July 2012 passed by Labour Court in Reference No. 72 of 2011 and further made a prayer to reinstate them into service with all consequential benefits.

2. The petitioners, after completion of apprentice-ship, were got appointed in the year 2004 as Moulders. Initial appointment was for a period of six months in the nature of contract and thereafter successfully fresh appointment orders were issued after completion of contractual period. Like this, they have completed about six years of service and thereafter a reference in No. 72 of 2011 was sought on the file of the Labour Court at Gulbarga for regularisation of their services and pending adjudication, the services of the petitioners have been terminated as per order Annexure-F dated 27th August 2011. The said order of termination is under challenge in these petitions on the following grounds.

3. Firstly, that the termination order is contrary to Section 33A of the Industrial Disputes Act, 1947 (hereinafter referred to "the Act" as short). It is submitted that when adjudication is pending before the competent Court, the services

should not have been terminated. Hence, the action of the respondent is contrary to the provisions of law. Secondly, the continuance of the services of the petitioners beyond the contractual period for about six years with break attract Section 25F of the Act. Thirdly, the case of the petitioners fall under item 10 of the Fifth Schedule of the Act which contemplates to employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen. The continuance of the petitioners beyond the contractual period for about six years is to be presumed, as they are permanent for the purpose of item 10 of the Fifth Schedule of the Act. The Learned counsel further submits that the respondent has improperly invoked Section 2(oo)(bb) of the Act. In support of the said submission, the learned counsel relied upon the unreported judgment of the Hon"ble Supreme Court in the case of Sudarshan Rajpoot v. U.P. State Road Transport Corporation in Civil Appeal Nos. 10353-10354 of 2014 disposed of on 18th November 2014. He also relied upon the judgment in the case of Maharashtra State Road Transport Corporation and Another Vs. Casteribe Rajya P. Karmchari Sanghatana, wherein it has been held that the impugned action of the respondent-Corporation in terminating the services falls under item No. 10 of the Fifth Schedule of the Act and the respondent is prohibited from invoking the workmen as badli, casual or temporary workers to work on permanent basis.

4. The learned counsel for the respondent supports the order of the Labour Court. He submits that the respondent has rightly invoked Section 2(oo)(bb) of the Act since the petitioners were purely on contractual and temporary basis. Mere issuance of successive contractual orders shall not be interpreted as continuance in service for considerable length. Hence, the termination order issued by the respondent is in accordance with the exception provided under Section 2(oo)(bb) of the Act and the case of the petitioners does not fall under Section 25F of the Act. In respect of falling of the case of the petitioners under item No. 10 of the Fifth Schedule of the Act, the learned counsel submits that the petitioners shall not be treated as badli or casual employees and hence the said item No. 10 of the Fifth Schedule of the Act also cannot be made applicable. In support of his submissions, the learned counsel referred to the judgment of this Court in the case of CM. Suresh and Another v. The Managing Director, Bescom, Bangalore reported in 2014(1) KCCR SN 1 (DB), which judgment has been confirmed by the Hon"ble Supreme Court in SLP (Civil) No. 3152-53 of 2014 between the same parties.

5. Heard the learned counsel for the parties. I am of the considered opinion that the judgment relied upon by the respondent in the case of CM. SURESH AND ANOTHER (supra) is not applicable to the case on hand for the following reasons. In the said case the services of the petitioners were initially appointed for six months and was extended for another three months and under those circumstances, this Court held that they are nothing but badli workers and are not entitled for benefit under item No. 10 of Fifth Schedule of the Act.

6. Secondly, the case of the petitioners also do not fall under exceptional clause of Section 2(oo)(bb) of the Act since their services have been continued for considerable length of time of about six years. The submission that the successive appointment orders were issued for about one year, the said break is to be termed as artificial break is only for the reasons best known to the respondent and the said break cannot be considered for the purpose of treating the petitioners under Section 2(oo)(bb) of the Act and also to deprive their right as per item No. 10 of the Fifth Schedule of the Act.

7. Since the services of the petitioners were continued for about six years by issuing successive appointment orders, the same cannot be termed that their services are temporary and a fresh appointment. The petitioners have approached the Labour Court in Reference No. 72 of 2011 for regularisation and upon issuance of notice, the respondent has entered appearance and instead of waiting till adjudication, have invoked Section 2(oo)(bb) of the Act and terminated the services of the petitioners, which is nothing but a vengeance attitude of the respondent towards the petitioners. It is made clear that when parties are before the Court, they should receive the verdict of Court and should not indulge in any other mode in order to deprive the legitimate decision of the Court. In the instant case, the respondent appeared before the Court and issues were also framed. Thereafter, the services of the petitioners have been terminated, which is nothing but a classic case of illegality. Hence, I pass the following:

ORDER

"1. The termination orders dated 27th August 2011 vide Annexure-F, F1, F2 and F3 passed by the respondent are held as bad and illegal and accordingly are set aside.

2. The respondent is directed to reinstate and regularise the services of the petitioners with all consequential benefits."

At this juncture, the learned counsel for the respondent submits that the petitioners are not entitled for regularisation since they are only contractual employees. The said submission is rejected, since the petitioners have been continued in service for six continuous years with an artificial break and under these circumstances, the petitioners are entitled for regularisation of their services.

In terms of the above, the petitions are allowed.