
(2015) 07 BOM CK 0158
In the Bombay High Court
Case No : Writ Petition No. 279 of 2014

State of Maharashtra and Others	Vs	APPELLANT
Bhaskar Asruba Satpute		RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 17(B), 25(B), 25(F)

Citation : (2015) 6 MhLj 788

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : Y.M. Kshirsagar, AGP, for the Appellant; P.L. Shahane, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

R.V. Ghuge, J—Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners are aggrieved by the impugned judgment and award dated 17/04/2013 delivered by the Labour Court, Aurangabad in Ref. (IDA) No. 1/2003.

3. It is not in dispute that the respondent workman was engaged as a "Sweeper" under oral orders of the first party employer/the petitioner herein. It was alleged that the respondent was orally terminated on 20/04/2001 by the petitioners. He raised an industrial dispute which was referred to the Labour Court and registered as Ref. (IDA) No. 1/2003. By the impugned award, the reference was partly allowed and the employee was granted reinstatement as a "Daily Wager" with continuity of service from 20/04/2001 by setting aside the oral termination. He was deprived of the back wages.

4. Grievance of the petitioners is that though it was specifically contended in the written statement at Exh.C-3 that the workman is not a regular employee of the establishment, has worked intermittently and has not completed 240 days in the continuous and uninterrupted employment of the petitioners, the Labour Court

has concluded that the oral termination is in defiance of Section 25(F) of the Industrial Disputes Act, 1947 (For short, I.D. Act) as the workman had completed 240 days in the continuous service of the petitioners as required by Section 25(B) of the I.D. Act.

5. The learned AGP strenuously submits that the engagement of the respondent/workman is apparently a back door entry, no application for employment was filed, no applications were called for by the petitioners and there was no selection and appointment procedure that was followed.

6. It is further submitted that the burden of proving completion of 240 days lay upon the workman. The receipts of payments made by the petitioners through vouchers were held as proof of employment with the petitioners. Merely because the Labour Court presumed completion of 240 days that the impugned award has been delivered on the ground that Section 25(F) has been violated. She, therefore, relies upon the judgments of the Apex Court that back door entries of such nature cannot be legalized. Though the workman contends of having worked for 9 months, the period of unemployment as on date is about 14 years.

7. Mr. Shahane, learned Advocate appearing on behalf of the respondent/workman, has strenuously supported the judgment and award. He submits that firstly the respondent is entitled for the last drawn wages under section 17(B) of the I.D. Act from the date of the award, which is 17/04/2013. He further submits that the workman had produced all the voucher receipts to indicate the payments received by the respondent as a daily wage @ Rs. 50/- per day as a "Sweeper". Extract of muster roll was also produced before the Labour Court.

8. He submits that on the basis of the documents produced by the petitioner at Exh. C-4/1, the workman had established continuous and uninterrupted service for more than 240 days with the petitioners. Admittedly, the oral termination is without compliance of Section 25(F) of the I.D. Act. The oral termination is illegal, unsustainable and void.

9. He further states that the petitioners' submission of back door entry cannot be entertained since it is the petitioner's department which permitted the respondent to work on daily wages as a "Sweeper". The petitioners allowed the respondent to work and now claims that he had entered through the back door which was opened by the petitioners themselves. He, therefore, submits that the petition be dismissed with costs.

10. This Court has come across several writ petitions filed by various limbs of the State Government wherein "sweepers"/"safai kamgar" and clerks have been appointed on daily wages orally. They have been terminated orally after allowing them to work in periods ranging from 1 year to 10 years. They are orally terminated on the ground that they were daily wagers and had worked intermittently. Several of such persons have succeeded before the Labour Court in reference matters in which the case of the Government is not presented properly before the Labour Court.. Such awards have been challenged before this

Court by the Government on the ground that all such appointments are back door entries, which back door, in the submissions of Mr. Shahane, are opened by the Government itself.

11. The issue that needs to be addressed is as regards who permitted such employees under oral orders to work for months or years together. Time has come for the State Government to look into each of such cases and investigate as to which Officer was responsible for such oral appointments, which are being termed by the State Government as illegal appointments or back door entries.

12. In several such cases, this Court as well as the Apex Court has granted compensation to such employees which amounts are paid from the State Exchequer. It needs no debate that it is the tax payers' amount from which such compensations are required to be paid as if there is no accountability for those Officers who have resorted to making such oral appointments. I find the instant case as one amongst hundreds of such cases.

13. It is apparent from the record produced before the Labour Court and which has been considered by it in paragraph No. 6 of its conclusion, which indicates that the respondent/workman worked in between 15/06/2000 and 31/12/2000. The record indicates that he further worked from 01/02/2001 till 19/04/2001. Though the Labour Court has concluded that the respondent worked for more than 240 days in continuous service, it is evident from the analysis of the documents before the Labour Court from paragraph No. 6 that the respondent had not worked from 01/01/2001 till 31/01/2001.

14. The Apex Court in the case of Haryana Urban Development Authority Vs. Om Pal, AIR 2008 SC 475 : (2007) 113 FLR 831 : (2007) 5 JT 560 : (2007) 2 LLJ 1030 : (2007) 5 SCALE 507 : (2007) 5 SCC 742 : (2007) 2 SCC(L&S) 255 : (2007) 4 SCR 1091 has held that mere completion of 240 days would not mean that a right is created in a workman to be reinstated and continued in employment. The present issue involves public employment and a public policy with regard to recruitments. So also, this Court cannot be blind to the fact that the respondent had worked for about 9 months with the petitioners, though on account of the oral appointment by some Officer and has an award of reinstatement with continuity in his favour.

15. I am not convinced by the conclusions of the Labour Court that a person, who worked in the manner as is recorded by the Labour Court for a period of about 9 months with some breaks, deserves an order of reinstatement with continuity of service. Employment of such nature for a period of 9 months, which is followed by unemployment of 14 years, needs to be dealt with differently.

16. In the light of the above, I am of the view that the impugned judgment and award deserves interference. Nevertheless, the respondent needs to be compensated since he has been engaged in litigation over a decade and has succeeded before the Labour court. The Apex Court in the following judgments has, therefore, quantified compensation in lieu of reinstatement:-

"1. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohan Lal, (2013) 139 FLR 125 : (2013) 11 JT 343 : (2013) LabIC 4081 : (2013) 4 LLJ 105 : (2013) LLR 1009 : (2013) 10 SCALE 431 : (2013) 14 SCC 543 : (2013) 4 SCT 460 : (2013) AIRSCW 4877 ,

2. Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh, (2013) 2 AD 553 : (2013) 136 FLR 908 : (2013) 2 JT 231 : (2013) 2 LLJ 141 : (2013) 1 LLN 318 : (2013) LLR 225 : (2013) 2 SCALE 126 : (2013) 5 SCC 136 : (2013) 2 SCC(L&S) 369 : (2013) 2 SCT 30 ,

3. Bharat Sanchar Nigam Ltd. Vs. Man Singh, (2012) 132 FLR 500 : (2012) 1 SCC 558 : (2012) 1 SLJ 199 and

4. Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, AIR 2009 SC 3004 : (2009) 122 FLR 665 : (2009) 9 JT 396 : (2009) 15 SCC 327 : (2010) 1 SCC(L&S) 545 : (2009) 10 SCR 908 : (2009) 5 SLR 606 : (2009) 8 UJ 3727 : (2009) AIRSCW 4824 : (2009) 5 Supreme 629 ."

17. As observed above, I find that this is an appropriate case to be referred to the Principal Secretary of the Women and Child Development Department to cause an investigation as regards the Officer who was responsible for issuing oral appointment order to the respondent, who has therefore dragged the State in this litigation for the redressal of his grievance.

18. As I am quantifying an amount of Rs. 75,000/- (Rs. Seventy Five Thousand only) by way of compensation in lieu of reinstatement and continuity of service after having put in 9 months with the petitioner/Department, the Principal Secretary is expected to fix the responsibility on the Officer, who was responsible for the oral appointment of the respondent. The Principal Secretary shall also consider the recovery of this compensation amount from the salaries of those Officers who have orally engaged the respondent by entering his name on the muster roll and making voucher payments. A report of action taken shall then be filed with the Registrar (Judicial) of this Court by 31/01/2016.

19. With the above directions, this petition is partly allowed. The impugned award dated 17/04/2013 is modified and replaced by the direction to the petitioners to pay an amount of Rs. 75,000/- (Rs. Seventy Five Thousand only) as a quantified compensation to the respondent within a period of 4 (four) months from today.

20. The Principal Secretary shall act in accordance with the observations recorded above for recovering the said amount from the erring Officers. Learned AGP shall transmit the copy of this order to the Principal Secretary, Women and Child Development Department for further steps/action.

21. Rule is made partly absolute in the above terms.