

(2015) 08 BOM CK 0127

In the Bombay High Court

Case No : Writ Petition Nos. 5717, 5718, 5719, 5720, 5722, 5723, 5724, 6175, 6176, 6177, 6178, 6179, 6180, 6181 and 6182 of 2005

State of Maharashtra

APPELLANT

Vs

Soma Lahanu Vayal and Others

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 25F, 25G

Citation : (2015) 6 BomCR 420 : (2015) 147 FLR 443

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

Bench : Single Bench

Advocate : Shinde V. A., AGP, for the Appellant; Shelke S. T., Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

R.V. Ghuge, J—These petitions were admitted by order dated 25.8.2005 and this Court granted interim relief to the petitioner in terms of prayer clause (C), which reads as under:-

"(C) Pending hearing and final disposal of the Writ Petition, the impugned judgment and order dated 12.4.2005 passed by the learned Judge, II Labour Court, Ahmednagar in Reference (IDA) No. 16 of 2001, may kindly be stayed."

This relief has been identically sought in all the above mentioned petitions. The said relief was, therefore, granted to the petitioners in all these petitions.

2. The petitioners are the same in all these petitions. The respondents are identically placed workmen. Since a common issue and common point of law is involved, I have taken up all these petitions together for hearing.

3. By a common order, dated 10.7.2009, delivered by this Court in Civil Application No. 452 of 2008 and connected Civil Applications, in which all these respondents were applicants, this Court has granted the benefit of Section 17B of

the Industrial Disputes Act, 1947 to each of these respondents / workmen. The learned AGP appearing on behalf of the petitioners, categorically states that 12 respondents, out of the 16 in these group of cases, have received Rs.2,31,840/- till March 2015. The remaining four have received Rs.1,34,400/- since they attained the age of superannuation.

4. The learned AGP points out from paragraph No. 4 of the order dated 10.7.2009, referred to above, that this Court had directed the petitioners to offer work on ad-hoc basis on any activity as per availability for a maximum period of 20 days in a month or pay daily wages for 20 days in a month in lieu of work. The learned AGP further submits that none of the respondents offered themselves for work and hence the petitioners have been paying them an amount of Rs.3,360/- per month in lieu of 20 days work in a month, as per the directions of this Court.

5. The petitioners submit that these respondents were offered work on daily wages as labourers as and when such work was available. To be precise, she indicates from page 66 of the petition paper book, which reflects the reference proceeding numbers, names of these respondents, and their period of service. For ready reference, the said chart, which was placed before the Labour Court is reproduced as under:-

6. The learned AGP has then drawn my attention to the issues cast by the Labour Court, identically in every case, which read as under:-

7. She has then drawn my attention to the statement made by the respondents in their cross-examination in paragraph No. 14 of the impugned award, which indicates that the respondent workmen had never worked for 240 days in a calender year of service.

8. She has then drawn my attention to paragraph Nos. 17 and 18 of the impugned judgment, wherein, the statement of the learned Advocate for the respondent / employee based on the evidence recorded before the Labour Court was noted that none of the respondents had worked for 240 days in a calender year and their case is not under Section 25F, but is under Section 25G before the Labour Court.

9. She then indicates from paragraph No. 20 of the impugned award, wherein the Labour Court has concluded that all the respondents / employees were working elsewhere on daily wages, were not idle and were earning more wages than the amounts they would have earned had they continued in the service of the petitioners. She, therefore, assertively submits that this was the reason why none of the respondents offered themselves for work despite the order of this Court dated 10.7.2009. She submits that on the one hand all the respondents / employees were working elsewhere and on the other hand were also drawing an amount of Rs.3,360/- per month under orders of this Court, which is against the prescription u/s 17B.

10. She then submits that the respondents had worked for meager days, which are less than 240 days as per their own admission, till 1986 and they are out of employment for the past more than 29 years. She, therefore, criticizes the impugned judgment, wherein despite no evidence being available, the Labour Court has concluded that juniors were retained in service and the respondents were terminated.

11. She further submits that the petitioners had filed their Written Statement and had taken a specific stand that none of the respondents had reported for work from the dates mentioned in the chart reproduced above and there was no termination in the eyes of law. It was stated that they were at liberty to offer themselves for work. She, therefore, submits that the impugned awards deserve to be quashed and set aside.

12. Shri Shelke, learned Advocate appearing on behalf of all the respondents has strenuously defended the impugned awards. He submits that all the respondents are tribals and living in tribal areas which are disconnected from the society. Whatever lands they had, have been acquired under projects. They are project affected persons. Whenever work was offered, they used to work with the petitioners. They are in need of employment. Despite their termination in 1986, they have raised industrial disputes in 2001, though belatedly and have pursued the litigation till today.

13. He submits that the respondents could not remain idle as they could not have starved. They had to work somewhere to keep themselves and their families alive. Since they were in need of wages, they had moved Civil Applications, seeking benefits of Section 17B and hence this Court, by order dated 10.7.2009, had granted those benefits to the respondents. He denies that the respondents did not offer themselves for work, even after the order of this Court dated 10.7.2009.

14. He submits that the Labour Court has rightly considered the effect of non-compliance of Section 25G of the ID Act and Rule 81 of the Industrial Disputes (Bombay) Rules, 1957. He further submits that the Labour Court was convinced that juniors were retained in service and hence, the order of reinstatement.

15. I have considered the exhaustive submissions of the learned AGP and Shri Shelke and have gone through the record.

16. It is trite law that when an employee makes an allegation of junior employees being retained in service while terminating senior employees, a mere bald contention in the statement of claim, is not enough. In my view, when a litigant alleges violation of Section 25G and Rule 81, he cannot suppress or hide the names of such employees, whom he brands as juniors to him, having been retained in employment. There must be a specific and precise pleading in the statement of claim. Only when it is pleaded, it could be proved.

17. I do not find from any statement of claim filed by the respondents in their

respective reference cases that they have specifically mentioned the names of such junior employees, so as to enable the petitioners employers to peep into its records and take a stand in response to the said allegation.

18. In my view, the case of the respondents is further weakened. They had led evidence by way of an affidavit in 2004 before the Labour Court. In the said examination-in-chief, there has not been a whisper of any name of an employee who could be said to be junior to the respondents. Naturally, in the cross-examination, conducted by the petitioner, the said issue was left untouched as there was no specific averment in the oral evidence. The said issue of non-compliance of Section 25G was, therefore, not established before the Labour Court.

19. In the cross-examination of the management's witness, the petitioners stood by a seniority list, produced by them, which contains the names of persons, who were in employment. The said seniority list was prepared for the first time by the petitioners in December 1986. Obviously, the names of the respondents were not in the said list. The respondent employees did identify any person from the seniority list and did not confront the witness of the petitioners with such names, in relation to their claim that juniors were retained. No suggestion was put forth to the witness of the petitioners, so as to elucidate factual information about juniors being retained in employment.

20. In its conclusions on the issue of Section 25G and Rule 81, even the Labour Court has failed to rely upon any such piece of evidence, on the basis of which the conclusion that Section 25G was violated as juniors were retained in service, could be arrived at. In fact, the Labour Court has misdirected itself by only referring to several judgments cited and the ratio laid down therein. The Labour Court has merely considered the ratio laid down and has applied the said ratio to these cases without any evidence that Section 25G was violated. In my view, unless there was sufficient oral and documentary evidence before the Labour Court, it could not have drawn its conclusion of violation of Section 25G merely based upon the ratio laid down in the judgments cited.

21. In the light of the above, I am of the considered view that the impugned awards are perverse and erroneous. All the impugned awards are, therefore, quashed and set aside.

22. Notwithstanding the above, it is an undisputed position that these respondents were drawing Rs.3,360/- per month, under orders of this Court dated 10.7.2009. The learned AGP has placed on record a chart indicating the amounts paid to these respondents. The same is taken on record and marked as Exhibit "X" for identification. Shri Shelke, learned Advocate submits that he would not be in a position to confirm the veracity of the said statement Exhibit "X".

23. I have considered the solemn statement made by the learned AGP on behalf of the petitioners after taking instructions from the representative Shri

Radhakrishna Eknath Ghule, Sub-Divisional Officer, Ghatghow Pumped Electric Project, Sub Division No. 3, Bhandardara, Tq. Akole, District Ahmednagar, who is present in the Court and who has supplied Exhibit "X".

24. Shri Shelke, learned Advocate has submitted that some compensation be granted to the respondents in the light of the recent view of the Apex Court.

25. The Apex Court recently has dealt with similar situations and has concluded that compensation in lieu of reinstatement could be granted wherein, the employee has been working for very short tenures and have been out of employment for 15-20 years. The said four judgments are as under:-

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 .

26. This Court had considered the said ratio of the Apex Court in the case of State of Maharashtra Vs. Santosh Gorakh Patil and Others(2015) 145 FLR 826 : (2015) 2 LLN 81 : (2015) 3 MhLj 922 , and has concluded in paragraph Nos. 9 to 13 as under:-

"9. I, however, do not desire to go into this aspect since the respondent has been out of employment for the past 28 years. He has earned last drawn wages from 2000 onwards. In the light of the law laid down by the Honourable Supreme Court in the case of 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 and in the case of 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 , I am convinced that the impugned judgment and award deserves to be partly set aside.

10. Paragraph No. 20 of the judgment in the case of Mohanlal (supra) reads as

under:-

" We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in 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 that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

11. Paragraph No. 29 of the judgment in the case of Gitam Singh (supra) reads as under:-

" In light of the above legal position and having regard to the facts of the present case, namely, the workman was engaged as daily wager on 01.03.1991 and he worked hardly for eight months from 01.03.1991 to 31.10.1991, in our view, the Labour Court failed to exercise its judicial discretion appropriately. The judicial discretion exercised by the Labour Court suffers from serious infirmity. The Single Judge as well as the Division Bench of the High Court also erred in not considering the above aspect at all. The award dated 28.06.2001 directing reinstatement of the Respondent with continuity of service and 25% back wages in the facts and circumstances of the case cannot be sustained and has to be set aside and is set aside. In our view, compensation of Rs. 50,000/- by the Appellant to the Respondent shall meet the ends of justice. We order accordingly. Such payment shall be made to the Respondent within six weeks from today failing which the same will carry interest @ 9 per cent per annum."

12. It would be apposite to refer to the observations of the Honourable Supreme Court in paragraph Nos. 4 and 5 in the case of Bharat Sanchar Nigam Ltd. Vs. Man Singh, (2012) 132 FLR 500 : (2012) 1 SCC 558 : (2012) 1 SLJ 199 as under:-

"4. The award of reinstatement passed by the Labour Court was challenged by the Department by filing writ petitions before the High Court. The High Court after hearing the Learned Counsel for the parties and going through the records of this case, dismissed the writ petitions filed by the Department. The Appellant is thus before this Court.

5. This Court in a catena of decisions has clearly laid down that although an order of retrenchment passed in violation of Section 25F of the Industrial Disputes Act may be set aside but an award of reinstatement should not be passed. This Court has distinguished between a daily wager who does not hold a

post and a permanent employee."

13. The Honourable Supreme Court in the case of 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 , has held in paragraph No. 14, as under:-

" It would be, thus, seen that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee....."

27. Since, I have quashed and set aside the impugned awards, the issue of quantification of compensation would, in fact, lose its significance. Nevertheless, it cannot be overlooked that 12 out of the 16 respondents have received Rs.2,31,840/- till March 2015 and four of them, who have superannuated have received Rs.1,34,400/- till their superannuation age vide order dated 10.7.2009 passed by this Court.

28. In the light of the above, I am inclined to grant nominal compensation to the respondents only to the extent of Rs.5,000/- per respondent. Besides the same, their monthly wages at the rate of Rs.3,360/- shall be payable to them till the passing of this judgment today. It is stated by the petitioners that they are paid till March 2015. Hence, the compensation of Rs.5,000/- as well as the monthly wages shall be paid to the 12 respondents till this date. In so far as the 4 respondents are concerned, they shall be paid only Rs.5,000/- as directed above. These payments shall be made within a period of 12 weeks from today.

29. These petitions are, therefore, partly allowed, by quashing and setting aside the impugned judgments and awards. All reference cases, instituted by the respondents stand rejected. Rule is made partly absolute in the above terms.