
(2010) 09 BOM CK 0017
In the Bombay High Court
Case No : Writ Petition No. 535 of 1997

The Administrator, Kalyan Municipal Corporation	APPELLANT
Vs	
Alka B. Bramhe and Another	RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 25F, 25G

Citation : (2011) 1 ALLMR 178 : (2010) 127 FLR 1061

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : A.S. Rao, for the Appellant; A.A. Garge, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The Writ Petition has been filed against the order dated 30th October, 1993 passed by the Labour Court, Thane, in Complaint (ULP) No. 74 of 1992, granting reinstatement with continuity of service and full back-wages to the respondent No. I. The order dated 29th November, 1996 passed by the Industrial Court, Thane, in Revision Application (ULP) No. 86 of 1993 filed by the petitioner, has also been challenged in the present Writ Petition.

2. The Respondent No. I was employed from 1st December, 1988 to 21st August, 1991 with the petitioner on a daily wage of Rs. 20/-. She did not attend her duties for 15 days and, therefore, the petitioner-Corporation terminated her services on 21st August, 1991. The respondent No. I filed a Complaint, being Complaint (ULP) No. 74 of 1992, under Item 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, (for short "the MRTU & PULP Act"), claiming reinstatement with continuity of service and full back-wages from 21st August, 1991. The petitioner-Corporation filed a written statement contesting the aforesaid complaint. The contentions raised by the petitioner-Corporation in the written statement were as follows:

(a). that the respondent No. I was employed on a daily wage;

(b). that the respondent No. I had abandoned her duty from 6th September, 1991;

(c). that the respondent No. I was appointed temporarily on a daily wage and had not joined duties after 6th September, 1991;

(d). that no Award was applicable to a temporary workman.

3. Both the parties filed pursis before the Labour Court contending that they did not wish to lead any evidence before the Court and stated that the Complaint (ULP) No. 74 of 1992 should be decided on the basis of the pleadings and the documents filed by them.

4. The Labour Court concluded that the respondent No. I had, in fact, worked from 1st December, 1988 to 21st August, 1991 with artificial breaks for some periods. However, it was found from the documents on record that she was in continuous service from 20th November, 1990 to 17th August, 1991 without a break. The Labour Court, therefore, concluded that she had been in continuous service for 240 days and that the provisions of Section 25F of the Industrial Disputes Act were required to be followed by the petitioner-Corporation for terminating her services. Admittedly the provisions of Section 25F of the Industrial Disputes Act have not been complied with and hence the Labour Court ruled that the respondent No. I was entitled to reinstatement with continuity of service and full back-wages. A finding is recorded by the Labour Court that there was no dispute that the job, which was performed by the respondent No. I, was in existence when the order was being passed.

5. The Industrial Court in Revision Application (ULP) No. 86 of 1993 has confirmed the aforesaid order of the Labour Court. The Industrial Court has also noticed that after the Award of the Labour Court, the petitioner had, in fact, reemployed and not reinstated the respondent No. I.

6. The contentions raised by Mr. Rao for setting aside the impugned orders are:

(i). that the workman was being paid at a daily rate;

(ii). that the appointment had been made contrary to the rules for employment;

(iii). that there were no sanctioned posts;

(iv). that there were no vacancies.

7. Mr. Rao submitted that since the respondent No. I was employed on a daily rated basis, she is not entitled to any relief in the complaint. He submitted that in view of the judgment of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , and the judgment of a learned Single Judge of this Court in the case of Ramesh Vitthal Patil and Ors. v. Kalvan Dombivali Municipal Corporation and Ors. in Writ Petition No. 443 of 2010 with other connected matters, delivered on 7th June, 2010, the respondent No. I is not entitled to reinstatement with continuity of service and full back-wages. He

further submitted that there is no need to comply with the provisions of Section 25F of the Industrial Disputes Act in the case of a daily rated workman since the provisions of Section 25F of the Industrial Disputes Act would be applicable only if the workman had completed 240 days in service. According to the learned Advocate, even assuming the petitioner had violated the provisions of Section 25F of the Industrial Disputes Act, the Labour Court could not have granted reinstatement of a daily rated workman since she was recruited without following the procedure and norms for recruitment.

8. Mr. Garge, the learned Advocate appearing for respondent No. 1, on the other hand submitted that the contentions of Mr. Rao cannot be accepted in view of the judgment of the Supreme Court in the case of Maharashtra State Road Transport Corporation and Another Vs. Casteribe Rajya P. Karmchari Sanghatana, . He submitted that there is a finding of fact recorded by both the Courts below that the workman had completed 240 days in service and that the petitioner had not tendered retrenchment compensation and/or notice wages, as required u/s 25F of the Industrial Disputes Act. He relied on the judgment of the Division Bench of this Court sitting at Nagpur in the case of Dattatrava Shankarrao Kharde and Ors. v. Executive Engineer, Chief Gate Erection Unit No. 2, Nagpur and Anr. reported in 1994 1 CLR 1022, in which it has been held that non compliance of Section 25F or Section 25G of the Industrial Disputes Act amounts to a breach of an agreement and, therefore, is an unfair labour practice under Item 9 Schedule IV of the MRTU & PULP Act.

9. The contentions raised by Mr. Rao, the learned Advocate for the petitioner, that because the workman is being paid wages at a daily rate, she is not entitled to the reinstatement, cannot be accepted. The parties had agreed to proceed on the basis of the pleadings and documentary evidence placed before the Court. No oral evidence was led by either of the parties. From the documents on record, which included orders issued to the respondent No. 1-workman by the petitioner, which were placed along with the list at Exhibit-10, the Labour Court found that the respondent No. 1-workman had completed 21 months of service. It was also apparent that the respondent No. 1-workman had been in continuous service for more than 240 days during the period from 20th November, 1990 to 17th August, 1991. The Court found that there were no artificial breaks given during this period. Admittedly, no retrenchment compensation was paid or offered to the respondent No. 1-workman, nor was any notice or wages in lieu of notice were furnished to the respondent No. 1-workman. In these circumstances, in my opinion, the Labour Court has rightly concluded that the petitioner-Corporation had violated the provisions of Section 25F of the Industrial Disputes Act while terminating the services of the respondent No. 1-workman.

10. Mr. Rao has submitted that a workman who is paid wages on a daily rate cannot be made permanent if there are no sanctioned posts and if the appointment is not made in accordance with the rules in that regard. This submission of Mr. Rao is based on the judgment of the Supreme Court in the

case of State of Karnataka v. Umadevi (supra) and of a learned Single Judge of this Court in the case of Ramesh Vitthal Patil and Ors. v. Kalvan Dombivali Municipal Corporation and Ors. (supra). However, the submission of Mr. Rao is fallacious. Firstly, the respondent No. I-workman has not sought permanency in the present matter. Secondly, the Reference is only made for reinstatement in service. Obviously such reinstatement would be in the position that she held prior to her services being terminated. The judgment in the case of State of Karnataka v. Umadevi (supra) was delivered by the Supreme Court where a Writ Petition was filed for regularization/permanency of workers who were being paid wages at a daily rate. Similarly, the Writ Petition No. 443 of 2010 in the case of Ramesh Vitthal Patil and Ors. v. Kalvan Dombivali Municipal Corporation and Ors. with other connected matters arose from an order in a complaint filed under Items 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act, where the workers had sought a declaration that the Kalyan Dombivli Municipal Corporation had committed unfair labour practices by not extending to them the benefits of permanent workmen although they had worked as temporary or daily rated workers for years together. These judgments, in my opinion, are not applicable at all to the facts in the present matter as the respondent No. I-workman has not sought permanency. It is well settled that in a complaint filed under Item 1 of Schedule IV of the MRTU & PULP Act all that the Labour Court is required to consider is whether the services of the workman have been terminated by an employer by indulging in unfair labour practices mentioned therein.

11. Furthermore, the contentions raised by Mr. Rao were not pleaded before the Labour Court by the petitioner, nor were these issues raised as grounds in the Revision Application (ULP) No. 86 of 1993 filed before the Industrial Court by the petitioner. In fact, these points have not been raised in the present Writ Petition also. Therefore, in my opinion, the contentions raised by Mr. Rao are without any foundation and have been urged only with a view to fall within the ambit of the judgment in the case of State of Karnataka v. Umadevi (supra).

12. In the case of Maharashtra State Road Transport Corporation and Anr. v. Casteribe_____Raiva Parivahan Karmachari Sanghatana (supra), the Supreme Court while considering the judgment the case of State of Karnataka v. Umadevi (supra) has held that the powers of the Labour Court and the Industrial Court are not denuded by the Judgment of the Supreme Court in the case of State of Karnataka v. Umadevi (supra). In fact, these observations have been made by the Supreme Court while dealing with a complaint filed under Item 6 of Schedule IV of the MRTU & PULP Act. Therefore, in my opinion, in a complaint filed under Item 1 of Schedule IV of the MRTU & PULP Act, the issue which the Labour Court is expected to consider is only whether the employer has indulged in the unfair labour practices contained therein and whether the consequential relief which the Labour Court can grant will include reinstatement with continuity of services and back-wages and/or compensation. The Judgment in the case of State of Karnataka v. Umadevi (supra) does not preclude the Labour Court from deciding complaints under Item 1 of Schedule IV of the MRTU & PULP Act even in the case

of a workmen who are paid wages at a daily rate.

13. In the case of Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana), , the Supreme Court was considering a case where the Labour Court has passed an Award directing that the workman should be reinstated in services in his previous post with continuity of service and 50% back-wages. The Labour Court had found that the workman had completed 267 days in service and that his services were terminated without notice or notice pay and without payment of retrenchment compensation and, therefore, his termination is in violation of Section 25F of the Industrial Disputes Act. This case also dealt with a workman who was being paid wages at a daily rate. The Supreme Court distinguished the judgment in the case of State of Karnataka v. Umadevi (supra) and observed that the employer had urged that the engagement of the workman was not against the post which was sanctioned and contrary to the statutory rules. The Court observed that in absence of any pleadings, evidence or findings on these aspects including whether there was any vacancy, the Award of the Tribunal granting reinstatement with continuity of service and back-wages was correct. The Court further observed that the decision in the case of State of Karnataka v. Umadevi (supra) relates to regularization in public employment and has no relevance to an Award for reinstatement of a discharged workman passed by the Labour Court u/s 11A of the Industrial Disputes Act without any direction for regularization of his service.

14. None of these contentions raised by the learned Advocate for the petitioner have been either pleaded by the petitioner or proved. In these circumstances, in my opinion, the order of the Labour Court which was confirmed by the Industrial Court must be upheld.

15. The facts in the present case and in Krishan Singh's case are almost identical except that the workman has sought to redress her grievance in the present case by filing a complaint under the MRTU & PULP Act rather than by obtaining a Reference under the Industrial Disputes Act. However, the same principles which have been enunciated in the aforesaid judgment in the Krishan Singh's case will apply to the facts in the present case. The direction of the Labour Court to grant reinstatement and continuity of service and back-wages to the respondent No. I from 16th September, 1991 cannot be faulted as admittedly no notice or wages in lieu of notice or retrenchment compensation u/s 25F of the Industrial Disputes Act were tendered to the respondent No. I-workman prior to terminating her services.

16. The contention of Mr. Rao that there are no vacancies as no work is available is also belied by the pleadings and the findings of the Labour Court that there was no dispute that the job performed by respondent No. I was available when the order was passed.

17. The respondent No. I-workman has been reinstated in service and there is nothing on record to indicate that she was reinstated subject to the result of the

present Petition, as suggested by Mr. Rao. Apart from this, the Court while issuing rule has observed that the only question which remained was related to the back-wages payable. The back-wages were calculated and it was found that Rs. 30,000/- was payable to the respondent No. I-workman as back-wages. Out of this amount, the Court directed the petitioner to deposit Rs. 10,000/- and permitted the respondent No. I-workman to withdraw Rs. 5,000/- without security and the balance with security. It appears that the amount of Rs. 5,000/- has been withdrawn by the respondent No. I-workman, however, the balance has been invested in a Nationalized Bank. That amount which has been invested in the Nationalized Bank shall be paid over to the respondent No. I-workman together with accrued interest.

18. The Writ Petition is dismissed.

19. Rule discharged.

20. No order as to costs.