
(2008) 12 MP CK 0009
In the Madhya Pradesh High Court

The Commissioner, Municipal Corporation	APPELLANT
Vs	
Laxmi Narayan Jaiswal and Others	RESPONDENT

Date of Decision : 08-12-2008

Acts Referred:

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

Citation : (2009) ILR (MP) 994 : (2009) 2 MPHT 235

Hon'ble Judges : Sushma Shrivastava, J;Arun Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arun Mishra, J.—The writ petitions have been preferred by the employer The Commissioner, Municipal Corporation, Katni (hereinafter referred to as "Corporation" for brevity). In W.P. No. 15288/05 (S) the respondent-employee approached under the provisions of the MPR Act, 1960 before the Labour Court and other cases of concerned workmen were referred for adjudication under ID Act to the Labour Court. In W.P. No. 15288/05 (S) reinstatement has been ordered by the Labour Court with 25% back wages. In W.P. No. 7987/07 (S) and W.P. No. 15092/07 (S) also reinstatement has been ordered with 25% back wages whereas in W.P. No. 15091/07 (S) and W.P. No. 15093/07 (S) the reinstatement is ordered without back wages.

2. The short facts indicate that the respondent-workmen/employees have rendered services for a period of 2 1/2 years. Their services were dispensed with. Initially the action was assailed by way of filing writ petitions before this Court. The writ petitions were dismissed. Thereafter LPAs were preferred. In LPA No. 309/99 and other connected appeals a common order was passed on 30-10-2002 by Division Bench of this Court in which the order of Single Bench was set aside and in LPA it was directed that case of each of the appellant in the appeal be examined in accordance with circular and executive instructions and Commissioner was directed to pass an independent and individual order qua each employee without being influenced by the earlier order of termination

passed. Thereafter the matter was taken to the Labour Court under the provisions of MPIR Act/ID Act. The Labour Court has found that the services were rendered by each of the employee/workman for more than 240 days in each of the preceding year, thus, the services could not have been dispensed with without following the provisions of Section 25-F of the ID Act. Retrenchment has been held to be illegal and void.

3. In W.P. No. 15288/05 (S) the approach was made by the employee/workman under MPIR Act. The order was passed by the Labour Court directing the reinstatement without back wages. The order was not subjected to appeal by the employer-Corporation. The employee/workman preferred appeal with respect to the back wages. Appeal has been partly allowed and 25% of the back wages have been ordered to be paid by the Industrial Court in the appeal. In other writ petitions the award passed by the Labour Court on 29-7-1999 has been assailed. In two of the cases as mentioned above the back wages have not been granted.

4. Shri K.N. Pethia, learned Counsel for the petitioner-Corporation, has submitted that considering the order passed it was not open to the Labour Court to hold that retrenchment was illegal and void for non-compliance of the provisions of Section 25-F of the ID Act as reinstatement was not ordered by this Court in LPA on 30-10-2002. He has further submitted that grant of back wages in the case where 25% back wages have been ordered, is not proper. The approach was made to the Industrial Court and the Labour Court under MPIR Act/ID Act, with delay in view of financial crunch faced by the Corporation the back wages ought not to have been granted also considering the short period for which the services were rendered by the employees/workmen. The retrenchment being legal the employees/workmen are not entitled for claiming the protection u/s 25-F of the ID Act, they were not entitled for retrenchment compensation.

5. Shri Sanjay Verma, learned Counsel appearing for the respondent-employee/workmen, has supported the order and the award passed by the Industrial Court/Labour Court. He has submitted that illegal appointment is not an exception u/s 2(oo) of the ID Act. He has placed reliance on decision of the Division Bench of this Court in *Iftikar Ahmad Gauri v. Municipal Council Ambah* 1992 (1) MPJR 104 and also decision of this Court in *Chief Municipal Officer, Municipal Council Govindgar, Rewa v. Presiding Officer, Labour Court, Rewa* 1994 MPLJ 704, in which it has been laid down that validity of the appointment is not germane. The invalidity of appointment is not covered by exception. The employment includes casual labour on daily wages; casual worker, though not appointed as per Rules, having completed 240 days, cannot be retrenched without complying with Section 25-F.

6. We have heard the learned Counsel for the parties and gone through the order passed by this Court in LPA, the operative part of which is quoted below:

12. Though we have issued the aforesaid directions no right shall accrue in favour of the petitioners to lodge their claim that they should be taken back in

the services and allowed to work. We say so because they are basically daily wages workers. We only clarify that the Commissioner shall pass appropriate order keeping in view the circular, letter-circular and executive instructions and any such document which govern the field. He shall keep in mind that he has to play a fair role and shall function independently without being influenced. There is no need to state that the Commissioner shall pass an independent and individual order qua each employee without being influenced by the earlier order of termination passed. We hope and trust that the Commissioner shall act with utmost objectivity and rationality and ostracize the concept of prejudice from his mind. The Commissioner shall also bear in mind that in a welfare state back-door entry is not appreciated as it corrodes the base of public interest. This order is restricted to the appellants before us.

It is apparent that the fresh order was required to be passed by the Commissioner after examining the circular and the question of validity of the order passed by the Commissioner was open to be challenged before the Labour Court/Industrial Court under ID Act/MPIR Act as the case may be. There was no final adjudication with respect to the validity of the termination in the LPA, consequently, it was open to the Labour Court to adjudicate upon the aforesaid question of violation of the provisions of Section 25-F of the ID Act. The decision of the LPA does not come in the way so as to hold the retrenchment to the void.

7. Coming to the question of correctness with respect to the non-compliance of Section 25-F of the ID Act, it is not in dispute that the employee/workman has rendered continuous service for more than 240 days, he has rendered services for more than two years, consequently it was necessary to comply with the provisions of Section 25-F of the ID Act; even if the appointment was not valid, it could not rescue the Corporation. It was not permissible to the Corporation to make retrenchment without compliance of Section 25-F of the ID Act. In *Iftikar Ahmad Gauri v. Municipal Council Ambah*'s case this Court has laid down thus:

Even, in cases of invalid appointments, it has to be examined in the light of Section 25-F of the Act; it cannot be contended that since the appointment of the petitioner was not valid, in violation of rules, it does not amount to retrenchment. The definition of "retrenchment" as given in the Act is wide enough and comprehensive to include all typed so terminations of service unless the termination falls within any of the excepted categories mentioned therein. An invalid appointment is not one of the exceptions. Therefore, termination not falling under any of the exclusory clause of Section 2(oo) would amount to clear retrenchment, and for such termination pre-requisites of Section 25-F are necessary. A Division Bench of Rajasthan High Court in case of *Prabhudayal* (1991 Lab.IC 944), has taken the same view. An unreported decision rendered in *Municipal Council, Khaniyadhana v. Deo Prakash M.P. No. 538/1991*, decided on 18-4-1991, by this Court is also in the same line.

A Division Bench of this Court in *Chief Municipal Officer, Municipal Council, Govindgar, Rewa v. Presiding Officer, Labour Court, Rewa*'s case, has also

considered the aforesaid question thus:

5. Secondly, it was contended that the five workmen were not holding a regular post, but were daily-rated workmen and their appointment was conditionally made subject to the sanction of posts being accorded by the Competent Authority, which, however, was not done taking into consideration the financial capacity of the Municipal Council. No right, therefore, accrued to the five workmen as for want of sanction of posts, their appointment, which was made in anticipation of the sanction, was cancelled and their services were terminated. In such a situation, it will not amount to "retrenchment". In our opinion, the contention is not available to the Municipal Council as retrenchment defined u/s 2(oo) means the termination by the employer of the services of a workman, for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action or is not covered within the excepted or excluded categories (a) to (c), mentioned in Section 2(oo). Recently, this Court, in the case of Iftikar Ahmed's case 1992 (I) MPJR 104, has taken the view that while considering a complaint of statutory violation of Section 25-F, the question whether the initial appointment is valid or not or the appointment is not in accordance with rules and, therefore, the termination is bonafide is not germane. The definition of "retrenchment" as given in Section 2(oo) of the ID Act is wide enough and comprehensive to include all types of terminations of service unless the termination falls within any of the excepted categories mentioned therein. An invalid appointment is not one of the exceptions, therefore, would amount to "retrenchment".

6. The Supreme Court in case of Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, , while considering a case of eight employees whose appointments were made by the Chairman who had no power to appoint them under the Rules, considered the scope of the definition of "retrenchment" defined in Section 2(oo) of the ID Act and held that the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section would amount to "retrenchment".

In view of the aforesaid, it could not be canvassed by the Corporation that there was no necessity for it to comply with the provisions of Section 25-F of the ID Act on the ground that appointment were illegal or invalid.

8. Coming to the question of back wages which is being agitated. In two of the matters- W.P. No. 15091/07 (S) and W.P. No. 15093/07 (S) the back wages have not been granted by the Labour Court; that direction is found to be proper. For various reasons are not inclined to grant 25% back wages which have been granted to the workmen in W.P. No. 15288/05 (S), W.P. No. 15092/07 (S) and W.P. No. 7987/07 (S), initially the petitioner approached before this Court and the matter travelled in the LPA, adjudication was sought before Labour Court after the fresh order passed considering the period spent in this Court, the employees approached the Labour Court, later on in second round, there was

delay and also considering the period for which the services were rendered, it would not be proper to direct the payment of back wages as financial crunch is being admittedly faced by the Corporation, we set aside the part of the award passed by the Industrial Court.

9. We set aside order of grant of 25% back wages in W.P. No. 15288/05 (S), W.P. No. 7987/07 (S) and W.P. No. 15092/07 (S), the writ petitions are partly allowed. W.P. No. 15091/07 (S) and W.P. No. 15093/07 (S) are dismissed. Parties to bear their own costs as incurred of these petitions.