

(2008) 06 BOM CK 0067

In the Bombay High Court

Case No : Writ Petition No. 2564 of 1996

The State of Maharashtra and The General Manager,
Government Milk Scheme

APPELLANT

Vs

Narayan Babarao Lonikar and The Learned Judge

RESPONDENT

Date of Decision : 25-06-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B, 25F, 25N, 33C, 33C(2)

Citation : (2008) 5 ALLMR 135 : (2008) 5 BomCR 94 : (2008) 110 BOMLR
2318 : (2008) 119 FLR 344 : (2008) 3 LLJ 474 : (2008) 6 MhLj 605

Hon'ble Judges : P.R. Borkar, J

Bench : Single Bench

Advocate : D.V.Tele, A.G.P. in writ petition No. 2780 of 1996 and S.S. Autade, A.G.P, for the Appellant; P.G. Rodge, in writ petition No. 2780 of 1996 and D.R. Shelke, for the Respondent

Final Decision : Allowed

Judgement

P.R. Borkar, J.—These writ petitions are directed against identical orders passed by the Judge, Labour Court in various applications filed by respondent No. 1 in each petition under Sections 33C(2) of the Industrial Disputes Act, 1947, claiming difference of wages on the principle of "equal pay for equal work". All respondent No. 1 in these writ petitions are employees of Government Milk Dairy at Udgir. The order challenged in Writ Petition No. 2778 of 1996 was passed on 12.8.1992 and in remaining Writ Petitions the order challenged was passed on 13.1.1993.

2. In all these matters the case of all respondent No. 1 is that they have been working on daily wages applicable to unskilled labourers. They have worked with the petitioners continuously for several years. Due to continuous service within the meaning of Section 25B of the Industrial Disputes Act, 1947 (hereinafter referred to as, "the Act of 1947") they are entitled to regular scale and regular increments. Each has given details of period for which he worked in the

Government Dairy.

3. Learned Judge, Labour Court gave declaration that respondent No. 1 were entitled to difference of wages with pay scale of Rs. 200 - 280 with regular increments and dearness allowance payable thereon. He further directed in some of the petitions that from 1.1.1986, pay scale of Rs. 750 - 1200 with regular increments and dearness allowance be allowed. Only such order is not passed in Writ Petition No. 2780 of 1996 apparently because he left the service and joined Armed Forces.

4. Mrs. Autade and Mr. Tele, learned A.G.Ps. argued that in this case the daily wage workers were given regular pay scale and they are given benefit of permanency and regularisation by back door. The appointments were not on vacant post. No procedure was followed for appointment. Merely because an employee has worked for 240 days or more in a year is not sufficient to give benefit of regularisation or permanency. So orders passed by the Labour Court giving pay scale and directing the payment of difference of pay is per se illegal. It is also pointed out that interim stay was granted by this Court to the orders passed by the Labour Court.

5. Heard Mr. D.V. Tele, A.G.P. for the petitioners in writ petition No. 2780 of 1996, Mrs. S.S. Autade, A.G.P. for petitioners in rest of writ petitions, Mr. P.G. Rodge, advocate for respondent No. 1 in writ petition No. 2780 of 1996 and Mr. D.R. Shelke, advocate for respondent No. 1 in rest of writ petitions.

6. It is clear that in Writ Petition Nos. 2565 of 1996, 2780 of 1996 and 2781 of 1996 respondent No. 1 claimed to have worked as daily attendants; whereas in Writ Petition No. 2564 of 1996 respondent No. 1 claimed to have worked as a Pump Operator; in Writ Petition No. 2779 of 1996 respondent No. 1 claimed to have worked as a Fitter-Helper; and in Writ Petition No. 2778 of 1996 respondent No. 1 claimed to have worked as a Cleaner.

7. In Writ Petition Nos. 2565 of 1996, 2564 of 1996, 2779 of 1996 and 2781 of 1996 the only reason given by the learned Judge, Labour Court is that respondent No. 1 was absorbed in service with effect from 1.7.1989 and that indicated that he had joined service and he was entitled to pay scale. In other three matters the Judge, Labour Court has come to the conclusion that respondent No. 1 was in continuous service.

8. Learned A.G.P. relied upon the case of State of Haryana and Another Vs. Tilak Raj and Others, . In that case it is laid down that daily wage workers hold no post. A scale of pay being attached to a definite post, daily workers are not entitled to claim equal pay for equal work on parity with the regular employees. However, they are entitled to minimum wages as prescribed by the State Government. There is no dispute that all respondent No. 1 were getting daily wages. The ratio cited clearly covers the dispute raised in this petition and it is abundantly clear that merely because a daily wage worker has worked for 240 days or more and thus is in continuous service within the meaning of Section 25B

of the Act of 1947, he cannot claim any pay scale, as his appointment is not against a definite post. It is not case of any of respondent No. 1 in all the Writ Petitions that he was appointed in a vacant post.

9. The second case cited is Secretary, State of Karnataka and Others Vs. Umadevi and Others, . In that case it is laid down that so far as public employment is concerned, there cannot be regularisation or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees appointed or recruited or continued for long in public employment, de hors the constitutional scheme of public employment. Issuance of directions for regularisation and for stay of regular recruitment process for the posts concerned is not permissible. It is also laid down that casual labourer/temporary employee cannot be equated with the employees who are in regular employment. Such casual worker do not have right to regular or public employment unless they are selected after following due procedure. It is also observed that issuance of directions by the Court for absorption, regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees appointed or recruited de hors the constitutional scheme of public employment amounts to creating another mode of public employment which is not permissible. Thus the orders passed by the Labour Court are clearly against the law laid down by the Supreme Court and same cannot be sustained.

10. Another case cited is Manager, R.B.I., Bangalore Vs. S. Mani and Others, . In that case it is laid down after referring to Section 25F and 25N of the Industrial Disputes Act of 1947 that merely because employee has rendered 240 days continuous service by itself does not give rise to claim of permanence.

11. So considering the law on the subject, the Labour Court has exceeded its jurisdiction. It could not have awarded the regular pay scale and regular increments merely because respondent No. 1 in all these petitions have rendered continuous service within the meaning of Section 25B of the Act of 1947. In this case Record and proceeding is called and there is no evidence other oral evidence on record.

12. Shri Rodge, advocate has filed one Government Resolution dated 5.12.1997 which is taken on record and marked "X" for identification in Writ Petition No. 2780 of 1996. By the said order the Government has given regularisation to some employees and modified pay scale. It is necessary to note that the said Government Resolution is an independent policy decision of the Government. The judgment in these writ petitions will not affect the benefits got by concerned employees of the said Government Resolution dated 5.12.1997. The Government Resolution also contain names of the employees who are to get benefit of it. Shri Rodge, advocate cited a copy of order passed by this Court in Writ Petition No. 1820 of 1994 (Coram : Deshmukh, J.) on 3.4.1996. However, after the decision in the case of Umadevi referred to above, entire law has undergone a drastic change and in view of the Rulings referred to above, learned Single Judge's judgment is not applicable to this case.

13. In the circumstances, all the writ petitions are allowed. The orders passed by the Judge, Labour Court, Beed, dated 12.8.1992 in Writ Petition NO. 2778 of 1996 and 13.1.1993 are hereby quashed and set aside. The original applications u/s 33C of the Industrial Disputes Act, 1947 stand dismissed. Rule is made absolute accordingly in all the petitions. Parties are directed to bear their own costs.