
(2013) 12 BOM CK 0041
In the Bombay High Court
Case No : Writ Petition No. 5474 of 2012

The State of Maharashtra	Vs	APPELLANT
Sanjay Ramchandra Yadav		RESPONDENT

Date of Decision : 24-12-2013

Acts Referred:

Citation : (2014) 141 FLR 103 : (2014) 1 LLJ 444

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : M.A. Deshpande, A.G.P, for the Appellant; S.T. Shelke, for the Respondent

Final Decision : Partly Allowed

Judgement

Ravindra V. Ghuge, J.—Rule. Rule made returnable forthwith and heard finally with consent of the parties. By this petition, the petitioner/Executive Engineer, Ahmednagar Irrigation Division Ahmednagar seeks to challenge the judgment and award dated 30/08/2011 passed by the Labour Court, Ahmednagar in Ref. I.D.A. No. 6/2005 thereby holding that the termination dated 01/09/1987 meted out to the respondent employee, is invalid. The said termination was, therefore, quashed and set aside and the petitioner was directed to reinstate the respondent in service with continuity but without back wages.

2. The case of the petitioner can be summarized as under:-

- (a) The respondent was appointed on the maintenance of water supply activity to the agricultural fields.
- (b) The canal and pipeline installed by the petitioner was to be maintained and repair work on such canal and pipelines was to be catered to.
- (c) It is claimed that the respondent was not eligible or entitled to seek reinstatement in service.
- (d) In view of complaint U.L.P. No. 71/1997 having been filed by the respondent

in the Industrial Court, Ahmednagar, the reference case was barred by principles of res-judicata.

(e) The statement in the reference case was filed in 2005 seeking relief of reinstatement in relation to the termination order dated 01/09/1987.

(f) It is averred that he worked only from 01/01/1986 till 31/08/1987 with intermittent breaks and had never put in 240 days in the continuous and uninterrupted service of the petitioner.

(g) The Kalelkar Award was not applicable to him, since he had not worked for 5 consecutive years and had not put in 240 days in each calendar year.

(h) The Labour Court has mis directed itself and the impugned award is an outcome of misplaced sympathy.

(i) The onus and burden of proving completion of 240 days in continuous employment lay upon the respondent worker who did not discharge the said burden.

(j) Due to non availability of work, he was removed from employment.

(k) Evidence recorded in the Labour Court has not been properly appreciated thereby leading to passing of the impugned award.

(l) For all the above reasons, the award of reinstatement, impugned in this petition, amounts to mis-carriage of justice and demonstrates non application of mind.

3. Reliance has been placed upon the judgment of the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, to buttress the contention that an irregular appointment/illegal appointment gives no legal right to the employee and the respondent has not put in 10 years of continuous employment so as to be regularized in light of Umadevi's case (supra).

4. The Law and Judiciary Department received the proposal from the Head Office of the petitioner with regard to challenging the impugned award. After the proposal was accepted, the impugned award has been challenged. As such, the delay caused in challenging the award is neither intentional or deliberate nor laches can be attributed to the conduct of the petitioner.

5. The respondent worker vehemently opposed the petition primarily on the following grounds:-

(a) The award is delivered on 30/08/2011 and the petition is filed on 27/06/2012.

(b) The respondent was working from 01/01/1986 as a daily rated unskilled employee and was in continuous service till 31/08/1987.

(c) He was orally terminated on 01/09/1987 despite the work of maintenance and repair being available on the canal and pipelines of the petitioner.

(d) Unblemished, blotless and continuous service of 240 days have been put in by the respondent.

(e) Only breaks in service are those falling on public holidays for which no wages were paid to the respondent since he was a daily wager.

(f) Junior employees have been retained in service and new recruitments have also been made.

(g) The respondent made representations on 05/03/1990, 16/07/1996, 01/08/1996, 25/08/1996 and 03/02/1997 to the petitioner, which were not considered.

(h) Section 25F, 25G and 25H of the Industrial Disputes Act, 1947 (In short, hereinafter referred to as I.D. Act.) have been violated by the petitioner in orally terminating the respondent.

(i) Onus and burden of proving completion of 240 days has been discharged by the respondent, which has been appreciated by the Labour Court and therefore the reference was allowed.

(j) The burden of disproving completion of 240 days which shifted on the petitioner was not discharged.

(k) Complaint U.L.P. No. 71/1997 was filed by the respondent since the petitioner had orally refused work to the respondent w.e.f. 01/09/1987.

(l) He had, therefore, sought permanency and regularization from the Industrial Court.

(m) The same can to be withdrawn and was for a totally different cause.

(n) Therefore, the case of the respondent is not hit by the principles of res-judicata.

(o) Reference I.D.A. No. 6/2005 was registered in 2005 since the petitioner allegedly kept the respondent hanging with the assurance of reinstatement.

(p) The judgment of the Apex Court in Umadevi's case (supra) is not applicable to the instant case.

(q) Work is constantly available with the petitioner.

(r) There are no rules for recruiting the Class IV workers or for performing maintenance and repair works on canals and its pipelines.

(s) Therefore the respondent can be reinstated in employment.

(t) Impugned award is still not implemented.

(u) The petition therefore deserves to be dismissed.

6. I have gone through the petition paper book, the grounds for challenge and

the impugned judgment. It appears from the conclusions drawn by the Labour Court that the respondent had proved completion of 240 days in continuous employment with the petitioner from 01/01/1986 to 31/08/1987. It is also noted that the petitioner failed to produce the attendance register for the said period despite directions. Therefore, an adverse inference was drawn against the petitioner. The oral termination of the respondent was without compliance of section 25F of the I.D. Act. The respondent was covered u/s. 25B as he proved his continuous employment. It is, in these circumstances and on the basis of such evidence that the reference came to be allowed by the impugned award.

7. I find that the issue of public employment was not dealt with by the Labour Court. So also, the fact remains that the respondent had worked for a period of about 20 months in the employment of the petitioner. Post termination, a period of about 26 years have lapsed as on date. Recruitment de-hors the rules would not sustain a temporary employment.

8. The petitioner is a State instrumentality and there can not be a private recruitment under the orders of any Officer or Authority claiming to have the Authority to recruit Class IV employees. This issue was required to be looked into specifically since the Labour Court, while delivering the impugned award, could not have been oblivious of this fact. However, it appears that the said issue was not considered by the Labour Court. So also, granting reinstatement in 2011, after a passage of 24 years was another issue necessarily required to be considered by the Labour Court. An employee, who had put in about 20 months of service, has been reinstated with continuity after 24 years.

9. In the light of the recent judgment of the Apex Court in the case of Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohan Lal, , the law as regards compensation being quantified in lieu of reinstatement and consequential benefits is now thus settled. I find it appropriate to follow the same view in the facts of this case. Before the Apex Court, an employee had worked for about 15 months and the award challenged was dated 03/02/1999. As such, reinstatement was ordered after a passage of about 13 years. In the instant case, the respondent had worked for about 20 months and the award of reinstatement was delivered after 24 years.

10. As of today, the award is about 26 years old. The petitioner worked for about 20 months and is out of employment for 26 years, In this backdrop, relying upon the Assistant Engineer, Kota's case (supra), I find it fit and appropriate to award compensation of Rs. 1,25,000/- in lieu of reinstatement and continuity to the respondent.

11. Therefore, the petition is partly allowed. Impugned judgment and award dated 30/08/2011 delivered by the Labour Court, Ahmednagar in Reference I.D.A. No. 6/2005 is modified by granting compensation of an amount of Rs. 1,25,000/- to the respondent in lieu of reinstatement and continuity. The petitioner shall pay the said compensation to the respondent within a period of

16 (sixteen) weeks from today. Rule is accordingly made absolute in the above terms. No order as to costs.