
(1984) 11 BOM CK 0051
In the Bombay High Court
Case No : Writ Petition No. 2860 of 1980

Zilla Parishad

APPELLANT

Vs

Khushal Lanjewar

RESPONDENT

Date of Decision : 13-11-1984

Acts Referred:

Constitution of India, 1950 — Article 246, 254
Industrial Disputes Act, 1947 — Section 25F, 25J

Citation : (1985) 1 BomCR 372

Hon'ble Judges : V.A. Mohta, J; M.M. Qazi, J

Bench : Division Bench

Advocate : P.T. Trivedi, for the Appellant; S.D. Thakur, for the Respondent

Final Decision : Dismissed

Judgement

V.A. Mohta, J.—A point of some importance is raised in this petition. It is whether the Maharashtra Zilla Parishads (Contract Service) Rules, 1965 ("the Z.P. Rules" for short) override section 25-F of the Industrial Disputes Act, 1947 ("the ID Act" for short)?

2. As the award is challenged also on other grounds, it will be appropriate to notice first the salient facts. Respondent Khushal Lanjewar was employed in the work-charged establishment of the petitioner Zilla Parishad, Bhandara, as a muster-clerk from 4th February, 1965 to 13th July, 1966; 15th January, 1968 to 13th June, 1968; 12th November, 1971 to 31st July, 1972; 31st December, 1972 to 31st June, 1973 and lastly from 15th March, 1974 to 5th July, 1976. By notice dated 5th July, 1976, his services were terminated on the ground that work was over. Admittedly, neither retrenchment compensation as provided u/s 25-F of the ID Act was paid nor the other procedure contemplated therein was followed. According to the respondent this termination is mala fide and so also illegal. At his instance this dispute was referred for adjudication by the Government to the Labour Court, Nagpur, before which, the respondent examined himself and produced certain documents. The petitioner chose not to adduce any evidence.

The Labour Court came to the following conclusions :---

1. The respondent was in continuous service for more than one year.
2. Juniors to the respondent were retained.
3. Termination violated section 25-F of the ID Act.
4. The defence that the scarcity works ended as contended necessitating termination was not proved.
5. The seniority list of the muster clerks required to be maintained under the departmental circular was not maintained.
6. Departmental instructions in respect of absorption of such temporary servants were not followed and certain persons were retained contrary to those instructions.

Consequently the Labour Court gave an award declaring the termination illegal, setting it aside and directing reinstatement with full back wages.

3. Before proceeding with the merits of the matter we would like to dispose of an application for amendment filed by the petitioner containing several factual statements, a copy of which was given to the respondent's Counsel during the course of hearing of this matter. This long delay of four years and taking the respondent by surprise at the eleventh hour coupled with the circumstance that its grant is bound to result in a remand and another round of litigation the burden of which may be unbearable to the respondent, are our reasons for its rejection.

4. As far as findings of fact are concerned we see no justification to interfere. The petitioner has chosen not to adduce any evidence despite the fact that the matters were very much within its special knowledge. Version of the respondent has been believed and there is no perversity about it.

5. Now, the point of law raised for the first time before us orally but with our permission which we granted despite protest from Shri Thakur the learned Counsel for the respondent. That the activities of the petitioner fall within the definition of the term "industry" as defined in section 2(j) of the ID Act, that the respondent falls within the definition of the term "workman" as defined in section 2(s), that termination amounts to "retrenchment" as defined in section 2(oo) and that this termination is in contravention of section 25(f) are all undisputed positions before us. In this back ground simple and complete answer to the point is contained in the provisions of section 25-J which gives to the entire Chapter VA of the Act, effect overriding all laws inconsistent to provisions of that Chapter. Here are those provisions for immediate reference :---

"25-J. (1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law (including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (XX

of 1946));

Provided that where under the provisions of any other Act or Rules, orders or notifications issued thereunder or under any standing orders or under any award, contrary to service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matter under this Act.

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to effect the provisions of any other law for the time being in force in any State in so far as the law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter."

But ingenuity knows no bounds and precedents on industrial law are galore. It is submitted that (i) the ZP Rules are special positive provisions governing a class of "industry" framed later to and inconsistent with the provisions of section 25-F and (ii) the ID Act which is a law with reference to Entry 22 of Concurrent list of the Constitution cannot have application to the petitioner which is an "industry" covered by Entry 24 of the State list.

6. First point first. This must lead us to the scheme of the ZP Rules and the scope of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 ("the ZP Act" for short). Section 248 of this ZP Act provides for recruitment and conditions of service of persons serving the Zilla Parishad. Section 253 contains the power to appoint persons in contract, in accordance with the rules prescribed by the State Government. Section 274 is rule making power. The ZP Rule 2 (a) defines "work charged establishment". Rule 3 permits appointments of employees on contract. The Maharashtra Public Works Manual published by the Government of Maharashtra. (Buildings and Communication Department) in Chapter 2, Clause 83 deals with the topic of work-charged establishment. Note 2 below this clause refers to the manner in which the appointment to any such post has to be made. Neither the ZP Act nor the ZP Rules nor the Manual contain any provision about any terminal benefits. All that they provide for is the power of termination after completion of work. If that be the position it is difficult to see as to how the ZP Rules can be said to be positive "law" governing the topic of terminal benefits in general and retrenchment in particular and how any question of inconsistency between those Rules and Chapter VA at all arises.

7. There is yet another angle to the issue. Section 9-A of the ID Act bars change in service conditions without a notice. Proviso refers to exceptions. Proviso (b) contains the list of certain Government servants who are specially excluded from the operation of this provision. They all are governed by service rules. This indicates legislative intention to exclude the persons governed by service rules

only for the limited purpose of section 9-A and not in respect of other matters. In other words such service rules do not take away protective umbrella of Chapter VA from them. Service rules and the ID Act contain altogether different nature of rights. The former are framed and imposed by the employer. Within their frame work there is no right to better terms for the employees. The later is based on the theory of collective bargaining and resolution of disputes and claims either by conciliation or by adjudication. The ID Act is a beneficial legislation intended to guard less fortunates. The statutory benefits granted thereunder have a great social purpose and those benefits cannot be held to have been taken away by so called "necessary implication" merely because there is a rule regarding employment in work charged establishment. Whether and how these benefits can be taken away is a point that does not arise in the present matter. In this connection useful reference may be made to the Full Bench decision of Kerala High Court in the case of Umayammal Vs. State of Kerala, in which it is held that the Rule 9(a) of Kerala State and Subordinate Service Rules in regard to temporary appointees do not exclude from its operation Chapter VA of the ID Act.

8. Point number two now. ID Act is a law with reference to Entry 22 in the concurrent list reading as under :---

"Trade Union, Industrial and Labour Disputes".

How liberally and in a reconciliation mood these entries are to be construed by seeing only the pith and substance is well settled. The ID Act plainly deals with industrial disputes. The entry has no relation to a particular industry and governs disputes with relation to all without any exception. The submission wrongly assumes the existence of such distinction. No doubt the State Legislature has also ample power under Entry 24 of the State list to have a "law" in respect of industries not covered by Entries 7 and 52 of the Union List but that is a different subject. This does not mean Central law relating to industrial disputes generally dealing under Entry 22 of the Union list will have no application to industries covered by Entry 24 of the State list. It is possible that the two laws clash. How that clash can take place and how it is to be resolved is provided for in Articles 246 and 254 of the Constitution. We are informed that the ZP Act has not received the assent of the President and, therefore, even that larger question of State law prevailing over the Central law with respect to one of the matters in Concurrent list does not arise in the present case. Thus the submission that Central law cannot govern the industries referred to in State list has no substance whatsoever.

9. All that remains to be considered is another Full Bench decision by Kerala High Court in the case of Director of Postal Services (South) Kerala v. K.R.B. Kaimal 1984 Lab & Ind 628 on which heavy reliance was placed by Shri Trivedi, the learned Counsel for the petitioner. That case concerned the temporary employees of the Post and Telegraph Department of the Government of India governed by the Central Civil Services (Temporary Service) Rules made under Article 309 of the Constitution. Those rules were held to be a law with reference to Entry No.

70 in the Union list reading as under :

"Union public services; all India services; Union Public Service Commission."

It was further held that the rules contain a positive provision inconsistent with the provisions of section 5-A of the ID Act. It is observed :---

"It is now no longer in dispute that the Government servants, unlike their counterparts in industrial establishments are not mere contractual employees, but have acquired a status protected by statutes and guaranteed by the constitutional safeguards under Article 310 of the Constitution. The service of the temporary Government servants in the P. & T. Department can be terminated by a mere one month's notice in writing from either side and the Government servant is entitled to claim pay and allowance for this notice period. This is independent of the Industrial Disputes Act and stands in a different and distinct category altogether. It has legislative competence and constitutional support. This Court cannot thus ignore the rules; nor efface them from the statute book simply because there is the Industrial Disputes Act. Chapter VA of the Industrial Disputes Act can be pressed into service only in these cases where these special rules relating to temporary Government servants cannot apply. It can thus be safely ruled that the special rules under Article 309 in respect of the temporary employees in the P and T Department exclude the provisions in Chapter V-A of the Industrial Disputes Act."

Now, this Full Bench considered the ratio in the earlier Full Bench decision in the case of Umayammal cited (supra) did not disagree with the ratio laid down therein but held that the relevant Central Rules framed under Article 309 stood on altogether different footing. The following cautious note was put in :-

"We shall guard ourselves by stating that we have considered only the impact of the special rules, the Central Civil Services (Temporary Services) Rules, 1965 on the Industrial Disputes Act and nothing further."

In this back ground we are unable to see how the later Full Bench decision supports the petitioner. The rules therein firstly were held to be the law with reference to entry in the Union list and secondly were considered to be a positive provision regarding terminal benefits which were held to have overriding effect vis-a-vis Chapter V-A of the ID Act. The rules with which we are concerned are not a law with reference to the entry in the Union list. The employees have not acquired the status of Government servant protected by the constitutional guarantee and demonstrated earlier do not contain any provision relating to terminal benefits.

10. This takes us to the submission about the relief to be granted to the petitioner. It is contended that the work charged establishment is closed from time to time depending upon the necessity and, therefore, reinstatement would be unjust. We see no merit in the submission in view of the finding of fact recorded by the Labour Court. During the course of nearly 4 years since when

the matter is pending many times a request was made on behalf of the respondent for reinstatement and to comply with the order of the Labour Court but the petitioner chose not to reinstate the petitioner though admittedly at least intermittently there was work. In the case of Mohan Lal Vs. Management of Bharat Electronics Ltd., It has been held that any termination disregarding provisions of section 25-F of the Industrial Disputes Act is non est and thus the termination becomes void ab initio. Thus normal effect of the order becoming non est, namely, reinstatement in the service must be allowed to follow.

11. In the result, the petition is dismissed and the rule is discharged. No order as to costs.