
(1994) 09 BOM CK 0060

In the Bombay High Court

Case No : Writ Petition No's. 1368, 1369 and 1370 of 1989

Zilla Parishad, Dhule and Others

APPELLANT

Vs

Rajendra Hiranman Khairnar

RESPONDENT

Date of Decision : 13-09-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1995) 70 FLR 64 : (1995) 2 LLJ 565

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

B.N. Srikrishna, J.—These three writ petitions under Articles 226 and 227 of the Constitution of India impugn order of the Industrial Court, Nasik, dated 14th October, 1988, made in Revision Application (ULP) No. 137 of 1988, Revision Application (ULP) No. 129 of 1988 and order dated 9th September, 1988 in Revision Application (ULP) No. 135 of 1988. Since the facts are almost identical and issues requiring consideration are also identical, it would be convenient to dispose of these three writ petitions by a common judgment.

2. For the purpose of appreciating the fact, I shall refer to the facts in Writ petition No. 1368 of 1989. The First petitioner is a Zilla Parishad constituted under the Maharashtra Zilla Parishad Act. The Second petitioner is the Chief Executive Officer thereof. The Respondent was given a letter of appointment dated 24th March, 1986. It stated as follows :

"Shri Rajendra Hiranman Khairnar, residing at Pramodnagar, Plot No. 50, Deopur, Dhule, is appointed as a cleaner in a purely Temporary capacity on Tanker No. MWN 1755, Sub-Division Nandurbar, Head Officer Taloja, on Daily wages, with a view to facilitate the administration.

He should present himself without fail at the place of appointment within five days on receipt of this order. The wages of the said employee should be debited to the provision made under the Head "289-Relief Fund".

The respondent thereafter worked continuously till his service was discontinued from 1st July, 1987 by an order dated 29th June, 1987, issued by the Executive Engineer, Minor Irrigation Department, Zilla Parishad, Dhule, in which it was stated as under :

"Some drivers and cleaners on water tankers on daily wages were appointed on purely temporary basis for the period for which water was to be supplied to villages under draught conditions during the period of the water shortage. All such drivers and cleaners are hereby relieved from service at the end of officer hours on 30th June, 1987. The above order has been issued since the water supplying tankers have been discontinued, because there has been sufficient rain during the month of June, 1987. From 1.7.1987 onwards the pay and allowances of any driver and cleaner should not be debited to the accounting Head "289-Water Scarcity" and a report of action taken should be sent to this Department."

The administration of the petitioners acted on it and the services of the three workmen, including the Respondent in this writ petition were, discontinued as a consequence thereof.

3. The Respondent challenged his removal from service by his Complaint (ULP) No. 112 of 1987 before the Labour Court, Dhule, under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act"). He alleged therein that he had completed more than 240 days of working during the three years and that he was continuously in service during the said three years and that his abrupt removal from service without complying with the provisions of section 25F of the Industrial Disputes Act was an unfair labour practice within the meaning of clause (g) of Item 1 of Schedule IV of the Act. The Labour Court tried the complaint, raised the following issues and answered them as under :

"I S S U E S

- (1) Does the complainant prove that the order terminating his service is illegal?
- (2) Does the complainant prove that the respondent used in unfair labour practice?
- (3) Is it proved that the application is not tenable?
- (4) Do respondents prove that service of the applicant is temporary?
- (5) Does he further prove that he was in continuous service of 3 years?
- (6) What order?

F I N D I N G S

- (1) No
- (2) No

(3) Yes

(4) Yes

(5) Yes

(6) As per order below."

The Labour Court came to the conclusion that the termination of service of the Respondent fell within the exclusory part of the amended definition of "retrenchment", in section 2(oo) of the Industrial Disputes Act, as clause (bb) was attracted. In this view of the matter, the Labour Court held that it was not necessary for the petitioners to comply with the provisions of section 25F and, since it was not in dispute that the service of the Respondent had been specifically utilised for the purpose of water supply work, which had been discontinued pursuant to an order passed by the Collector of Dhule, there were no mala fides on the part of the petitioner. On this reasoning, the complaint was dismissed.

4. The respondent challenged the said order of the Labour Court by his Revision Application (ULP) No. 137 of 1988. The Industrial Court examined the contention that the termination of service of the respondent amounted to retrenchment and held that clause (bb) of section 2(oo) of the definition did not at all apply to the case of the respondent. It further held that, however genuine the ground of termination of service of the respondent, the petitioners had to comply with the mandatory provisions of section 25F of the Industrial Disputes Act and, since statute had not been complied with. Following the law laid down by the Division bench of this Court in Executive Engineer, Electrical Division, Nagpur v. Shri Prakash Devidas Kolshait 1983 MLJ 615, the Industrial Court held that the termination of service of the respondent amounted to an unfair labour practice under Item 1(f) of Schedule IV of the Act. Consequently, the Industrial Court directed the petitioners to reinstate the respondent in service with continuity and full backwages. It is this order which is under challenge in writ petition No. 1368 of 1989. The orders in writ petition Nos. 1369 and 1370 of 1989 are also identical. In those cases also the Labour Court had dismissed similar complaints under the provisions of the Act and the orders of the Labour Court were set aside by the Industrial Court in Revision Applications filed by the concerned workman who were directed to be reinstated with full back wages and continuity of service.

5. Mr. Raghuwanshi, learned Advocate for the petitioners, contends that the Industrial Court erred in interfering with the order of the Trial Court. He emphasises that the evidence on record clearly shows that each respondent was doing the work of distribution of water, that he had been appointed only for that work and that he admitted that his services were terminated soon after that work was over, as there was no shortage of water in the villages. In the face of these admissions Mr. Raghuwanshi contended that the exclusory clause (bb) the definition "retrenchment" contained in Sec. 2(oo) of the Act would apply. Consequently, the action of the Petitioners in dispensing with the services of the

respondents did not amount to retrenchment requiring compliance with Sec. 25-F of the Act Hence, It is contended that the Industrial Court erred in interfering with and setting aside the view taken by the Labour Court while dismissing the complaints.

6. It is difficult to accept the contention of Mr. Raghuwanshi. Clause (bb) of Sec. 2(oo) of the Act, which is an exception to the definition of "retrenchment", reads as follows :

"Termination of the service of the workmen as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein."

In order to bring the case under this exception, it would be necessary to show that the termination of the service of the workman was, (a) as a result of the non-renewal of the contract of appointment upon its expiry, or, (b) because of such contract being terminated under a stipulation in that behalf contained in the clause of appointment. When I queried him as to which was the contract of employment, Mr. Raghuwanshi submitted that the administrative order of the Executive Engineer of Minor Irrigation Division, Zilla Parishad, Dhule, dated 24th March, 1986, issued to the employee was the contract of employment. It is obvious therefrom that this contract of employment does not stipulate that it is for a specific work nor does it stipulate that it is for a specific work, nor does it contain any stipulation with regard to termination. Mr. Raghuwanshi contended that this order contains a direction that the wages payable to the respondent would be debited to the Accounting head "289-Relief Fund", which is said to be a Budgetary Accounting Head specially created by the State Government for debiting expenditure on relief operations in the water scarcity areas. This provision by itself does not render the letter of appointment into a letter of appointment for a specific period. After all, the Budgetary Accounting Head is a matter between the Government and the Zilla Parishad. The employee, for aught we know, may not even understand the direction contained in the last sentence of the appointment letter. In my view, therefore, it is difficult to accept the contention that the employment contract in the letter of appointment dated 24th March, 1986, was of such a character as to attract the exceptional clause (bb) in the definition of retrenchment contained in section 2(oo) of the Industrial Disputes Act.

7. Mr. Raghuwanshi, learned Advocate for the petitioners, vehemently contends that the contract of employment was limited to working on water tankers supplying water to the drought villages and, as soon as water scarcity was relieved due to sufficient rain fall there was no necessity to continue the requisitioned operation of water tankers which were returned to their parent Departments and the services of the concerned employees having become redundant, were dispensed with. He contends that there was absolutely nothing mala fide in the action of the Zilla Parishad which is a public body and, for a

merely technical infraction of the rule in section 25F of the Industrial Disputes Act, petitioners should not be made liable to pay backwages. He relied on the judgment of the Supreme Court in Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, , in support of his contention. I am afraid that the judgment of the Supreme Court does not help the petitioners. In the case before the Supreme Court, certain employees had been employed under the Jawaharlal Nehru Rozgar Yojna, a scheme for giving employment to unemployed people. After having completed 240 days, those employees filed a petition in the Supreme Court, invoking Articles 41, 21 and 16 of the Constitution of India, for regularisation as employees of the Delhi Administration. The Supreme Court rejected their petition by holding that there was no provision for doing so and that merely because the State had, in pursuance of its welfare policy, given employment to some persons, it could not be contended that those employees were entitled to be regularised, as the method of recruitment into the service of Delhi Development Authority had to be strictly in accordance with the rules applicable thereto. It is clear that this judgment was not concerned with the provisions of the Industrial Disputes Act, nor does it say that a Public Authority can ignore the mandatory statutory provisions on the ground of public welfare and public interest. In case of the present petitioners it cannot be gainsaid that the workmen were superfluous to requirement. As a consequence of cessation of water scarcity, water supplying tankers may have been discontinued. Perhaps, this may give justification for termination of the services of the drivers and cleaners, but this does not mean that their services could be terminated without compliance with the mandatory provisions of section 25F of the Industrial Disputes Act. The petitioners may have done the right thing, but in the wrong manner. It is not possible to accede to the argument that the infraction of law on the part of the petitioners should be ignored in the larger public interests. Mr. Bapat, learned Advocate for the respondents, drew the attention of this Court to the judgment of the Supreme Court in Krishan Kumar Dubey v. U. P. State Food & Essential Commodities Corpn. & Anr. 1989 1 CLR 175 . Since the decision of the Supreme Court in The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, , it is well established law which has been consistently followed that the provisions of section 25F are mandatory in nature and any non-compliance therewith would render an order of termination of service illegal and non est. In these circumstances, I am of the view that the termination of services of the respondents was illegal and void and, therefore, the Industrial Court was fully justified in interfering with the orders of the Labour Court and directing reinstatement of the respondents in service with full backwages and continuity in service. it is not as if that the petitioner are without remedy. They are always free to comply with the provisions of the Industrial Disputes Act and retrench the respondents from service, if so advised.

8. In the result, I find that there is no justification for interfering with the impugned orders of the Industrial Court in writ petition Nos. 1368, 1369 and 1989, since the said orders are justified both on facts and in law.

9. Consequently, writ petition Nos. 1368, 1369 and 1370 and 1989 are hereby dismissed. Rules issued in these three writ petitions are discharged and all interim order are vacated. No order as to costs.

10. Certified copy expedited.