

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1040 OF 2015

AMOL SANJAY SARWADE
VERSUS
LIFE INSURANCE CORPORATION OF INDIA AND ANOTHER

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Advocate for Petitioner : Shri Shelke Manoj U.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 05, 2015
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PER COURT :-

1. I have heard the learned Advocate for the petitioner for quite some time.
2. The contentions of the petitioner are summarized as follows:-
 - (a) An appointment order, dated 16.4.2007, was issued thereby appointing the petitioner for 85 days as purely temporary engagement in view of pending recruitment of candidates on regular basis.
 - (b) Clause of termination, by efflux of time, was set out in the order.
 - (c) The petitioner was at liberty to accept the appointment order if the terms and conditions set out in the appointment order were

acceptable to him.

- (d) A similar temporary engagement order was issued on 7.9.2007.
- (e) The petitioner was engaged from 16.4.2007 till 31.12.2007.
- (f) On 31.12.2007 the petitioner was dis-engaged.
- (g) Temporary engagement was in the sub-staff category.
- (h) Nature of duties were preparation of docket and docket filing.
- (i) An Industrial Dispute was raised by the petitioner under Section 2A of the Industrial Disputes Act, 1947 ("ID Act") on 1.2.2008.
- (j) The respondent - Life Insurance Corporation submitted its reply, dated 7.4.2008, and opposed the demand.
- (k) The appropriate Government, which was the Assistant Labour Commissioner (Central) and Conciliation Officer declined to refer the Dispute to the Central Government Industrial Tribunal ("CGIT").
- (l) The petitioner approached the learned Division Bench of this Court in Writ Petition No.152 of 2010.

(m) By its judgment dated 10.8.2010, the petition was allowed and the appropriate Government was directed to refer the Dispute to the CGIT under Section 10(1) of the ID Act.

(n) Reference CGIT No.6 of 2010/11 was registered before the CGIT-Cum-Labour Court at Nagpur.

(o) Statement of claim was filed by the petitioner.

(p) The respondent opposed the Reference by filing its Written Statement.

(q) The parties led oral evidence.

(r) By its award, dated 19.2.2014, the CGIT-Cum-Labour Court rejected the Reference.

(s) The petitioner has completed 260 days in the continuous and uninterrupted service of the respondents in between 16.4.2007 till 31.12.2007.

(t) Sections 25F, 25G and 25H of the ID Act were not followed by the respondents while terminating the services of the petitioner.

(u) The petitioner was selected by following the due procedure and his name was recommended by the Employment Exchange.

(v) Juniors have been retained in service.

(w) The petitioner is entitled to reinstatement on account of violation of Section 25F, while terminating his services.

(x) The judgments of the Apex Court in the case of Oil and Natural Gas Corporation Ltd. Vs. Engg. Mazdoor Sangh [(2007) 1 SCC 250] and Rajasthan Lalit Kala Academy Vs. Radhey Shyam [(2008) 13 SCC 248] are applicable to the petitioner's case.

(y) The judgment of the Madhya Pradesh High Court in the case of Sunita Gupta Vs. Nagar Palika Parishad, Sabalgarha, District Morena [2010 (2) MP L J 644] and the judgment of this Court in the case of Keru Kisan Rokade Vs. Geofeery Manners and Co. Ltd. Nasik [2011 (1) MLJ 115] are applicable to the case of the petitioner.

3. Having heard the learned Advocate for the petitioner at length and having gone through the petition paper book with his assistance, it needs mention that the petitioner's engagement was purely as a temporary daily wage worker. The respondent - Corporation appears to have initiated the

process of recruiting candidates on regular basis. The petitioner's engagement was a stop-gap arrangement in order to ensure that the office work does not suffer till the recruited candidates on regular basis report for duties.

4. It is also needs mention that the petitioner's wages at the rate of Rs.4,105/- per month were to be calculated on 1/26th principle along with the allowances. It, therefore, indicates, that the petitioner was being paid wages for 26 working days in a month. There were approximately 38 weekly holidays during the tenure of the petitioner from 16.4.2007 till 31.12.2007. The petitioner claims to have worked for 260 days inclusive of the unpaid weekly holidays.

5. The petitioner was intimated through the appointment order that his engagement is only till the regularly recruited candidates report for duties. His engagement would come to an end after the expiry of the period mentioned in the appointment order or at any time prior thereto, without assigning reasons. It was made clear to the petitioner that he would not be entitled for any preference in recruitment or absorption or regularization in the service of the respondent / Corporation. It is not in dispute that the petitioner has accepted the said engagement on conditions as set out in the appointment order.

6. The learned CGIT, while considering the case of the petitioner has

come to a conclusion that the petitioner was not a regularly selected candidate, but was appointed on daily basis as a stop-gap arrangement. The case of the respondent that the petitioner was engaged only for specific durations and which was clearly mentioned in the appointment order, indicates that it was a contractual engagement for specific periods and was, therefore, squarely covered by Sections 2(oo)(bb) of the ID Act.

7. Section 2(oo)(bb) reads as under:-

" (oo) 'Retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include -

(bb) termination of the service of the workman 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; or"

8. As such, it is apparent that the contractual engagement of the petitioner on daily wages was not renewed and was brought to an end by efflux of time. Section 2(oo)(bb) is an exception carved out to the definition of "Retrenchment" under the ID Act.

9. Even assuming that the case of the petitioner would not fall within the ambit of Section 2(oo)(bb), it cannot be disputed that in a span of 9

months, unpaid weekly holidays cannot be computed while calculating 240 days put in by a daily wager.

10. In the ONGC case (supra), the Industrial Tribunal decided the case of hundreds of workmen before it by concluding that 153 workmen who had admittedly completed 240 days and had acquired the status of regular employees, be granted permanency. Those who had worked for lesser periods, no regularization was granted. In the instant case, when it clearly appears that the petitioner had included even unpaid weekly holidays while computing 240 days in employment, the respondent / employer had rightly disputed the said contention on the ground that the petitioner had not put in 240 days in continuous service. I, therefore, find that the ratio laid down in the ONGC case would not be applicable to the case of the petitioner.

11. In the case of Rajasthan Lalit Kala Academy (supra), the concerned employee was engaged as a Jr. Clerk on 7.6.1980. It was proved before the Industrial Tribunal, Jaipur that he had completed 240 days in the continuous employment. It was in that backdrop that the Apex Court had considered the challenge posed before it. However, the Special Leave Petition filed by the employer was allowed and compensation was directed to be paid to the employee for a sum of Rs.3,00,000/-.

12. In the instant case, since I find that the petitioner was specifically engaged as a daily wager and that too as a stop-gap arrangement, it cannot

be held that the Doctrine of Legitimate Expectation would apply to this case. Having not put in 240 days of actual working, I do not find that this could be said to be a fit case for granting compensation.

13. In the cases of Sunita Gupta (supra) and Keru Kisan Rokade (supra), the facts are as regards engagement of a daily wager who had worked for more than 2 years and was also transferred from one place to another. Keru Kisan Rokade was an employee engaged in private sector undertaking and had worked from 4.8.1984 to 4.9.1989. It was in that backdrop that this Court had directed reinstatement to Keru Kisan Rokade by negating the applicability of Section 2(oo)(bb) and for violation of Section 25F of the ID Act.

14. An identical situation, as like the case of the petitioner, arose in the matter of LIC of India Vs. Ravindra Venkat Ladhe and others - Writ Petition No.1655 of 2004. Similar clauses as found in the appointment order of the petitioner were before this Court. Considering the challenge to the termination on the ground of non compliance of Section 25F, G and H of the ID Act, this Court had set aside the order of reinstatement. In the case of M.P. Administration Vs. Tribhuban [2007 LLR 785], the Apex Court concluded that mere non-compliance of Section 25-F of the ID Act 1947, will not result into reinstatement with back wages. The Apex Court has taken a similar view in the case of BSNL Vs. Man Singh [2012 LLR 1].

15. The petitioner has not adduced any evidence to the extent of proving that identically situated employees, junior to him, have either been retained in employment or have been regularised. In the absence of any evidence, identifying such candidates and proving the ingredients of Section 25G of the ID Act, the CGIT rejected the contention of the petitioner in the impugned award.

16. The issue as regards, whether an employee as like the petitioner, can be granted reinstatement, by upholding a right to employment, is no longer res-integra. Merely completion of 240 days shall not create a right in a daily wage as like the petitioner for seeking reinstatement and thereby crystallising a right to continue in employment.

17. In the light of the above, I do not find any error or perversity in the impugned award. The petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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