

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3001 OF 1994
WITH
CIVIL APPLICATION NO. 4560 OF 1997

The Indian Seamless Metal Tubes Ltd.,
(Formerly known as Balaji Tubes
Pvt. Ltd.,) Unit II, C-15, MIDC,
Industrial Area, Ahmednagar 414111
through its Senior Personal Manager. ..Petitioner

Versus

R.P.Shejul, C/o S.P.Kasture's House,
At and post Nagapur, Dist. Ahmednagar. ..Respondent

...
Advocate for Petitioner : Shri B.B.Yenge
Advocates for Respondent : Shri Pradeep Shahane
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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 09, 2015
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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties at length.
2. This petition was admitted by order dated 25.11.1994. Interim relief in terms of prayer clause (E) was granted to the petitioner / management by which the impugned judgment dated 25.4.1994, delivered by the Labour Court in Reference (IDA) No. 16 of 1985 has been stayed. By virtue of the said order, the respondent herein is out of employment.
3. The petitioner has challenged the judgment and award, dated 25.4.1994, by which the Labour Court has granted reinstatement with

continuity and full backwages with effect from 31.1.1984 to the respondent / employee.

4. The petitioner submits that the respondent was appointed as a probationer by order dated 11.9.1983. His probation was fixed for six months. Subject to his satisfactory performance, the employer has reserved its right to confirm the respondent or even extend the probation period. Upon conclusion of the probation period, an order of extension was issued on 1.1.1984, thereby, extending the probation of the respondent for a period of three months till 31.3.1983. As such, the petitioner put in eight months as a probationer with the petitioner.

5. By order dated 31.3.1984, the respondent was disengaged / terminated after the conclusion of the probation period on 31.3.1984. The petitioner has paid the legal dues as were calculated by the Accounts Department to the respondent.

6. The respondent preferred a demand notice and raised an Industrial Dispute under Section 2A of the Industrial Disputes Act, 1947 ("ID Act") seeking reinstatement with continuity and backwages with effect from 31.3.1984. As conciliation proceedings failed, the matter was referred to the Labour Court and which was registered as Reference (IDA) No. 16 of 1985.

7. The respondent filed its statement of claim before the Labour Court

taking a stand that as the respondent had put in eight months in service, his termination amounts to an illegal retrenchment owing to the violation of Section 25F of the ID Act. It was also alleged that as he joined a trade union during his probation period, the petitioner employer has terminated his service by way of victimization and in the colourable exercise of the employer's rights.

8. The petitioner responded to the statement of claim and contended that the Reference proceedings were untenable and have no merit since the respondent was a probationer and no right was created by law so as to continue the respondent per force. It was further contended that the probation period has come to an end and the petitioner did not desire to continue the respondent in employment.

9. The petitioner submits that the Labour Court, after considering the evidence on record, concluded that because the respondent had completed eight months as a probationer, he was deemed to have become permanent. Similarly, it concluded that as Section 25F was not complied with, the termination amounts to illegal retrenchment.

10. Grievance of the petitioner is that it had relied upon ten reported judgments of the Apex Court as well as of various High Court. The Labour Court in a single sentence concluded that all the judgments cited pertain to service matter and hence they are not applicable to the case.

11. Further grievance of the petitioner is that without assigning any reasons, the Labour Court concluded that the termination of the respondent is illegal and full back wages, with continuity of service, deserve to be awarded, while reinstating him in service.

12. The petitioner has relied upon the judgments of the Apex Court and various High Courts as under:-

- (1) M. Venugopal Vs. The Divisional Manager -
1994 (68) FLR 443,
- (2) Prafulla Dattatraya Pore Vs. J.K. Chemicals -
1989 (59) FLR 305,
- (3) U.P. State Brassware Corporation Vs. Udai Narain Pandey -
AIR 2008 SC 586,
- (4) Sangita Pathak Vs. High Court of Judicature for Rajasthan -
1996 II CLR 174,
- (5) Mahadev Sailor Vs. Bharat Petroleum Corporation -
1996 II CLR 361,
- (6) K.V.Krishnamani Vs. Lalit Kala Academy -
1996 II CLR 511,
- (7) Deputy Director of Health Services Vs. Latabai Rajdhar
Paturkar - 1996 I CLR 328 and
- (8) Ram Kishan Bairwa Vs. Bundi Chattorgarh -
1993 I CLR 516.

13. Shri Yenge, further submits that an application dated 22.4.1994 had been moved by the petitioner two days prior to the pronouncement of the award, on the basis of concrete information received that the respondent was working with an industry namely, Extract Engineering India Pvt. Ltd., MIDC, Ahmednagar for about 5-6 years. His muster-cum-wage register, for

the years 1984 to 1994, were pointed out by way of an evidence of his being in employment. A certificate which was in the custody of the petitioner, dated 22.4.1994, issued by Extract Engineering India Pvt. Ltd. indicating that the respondent was working from 1.7.1986 and was confirmed in employment on 1.7.1988, was also placed before the Labour Court. Request made was that the petitioner be permitted to lead further evidence on gainful employment in the peculiar circumstances of the case. By order dated 22.2.1994, the Labour Court rejected the said application and delivered the impugned judgment on 25.4.1994.

14. Shri Yenge, therefore, submits that the fact that the respondent has been working and was confirmed in employment cannot be over looked. The impugned award is a result of the Labour Court having disregarded the request of the petitioner and as a consequence the impugned award has resulted in a mis-carriage of justice. He, therefore, prays for quashing of the impugned judgment and award.

15. Shri Shahane, learned Advocate for the respondent employee has strenuously supported the impugned judgment. He submits that though the appointment order prescribed a probation period of six months and contained the extension clause, the respondent was deemed permanent in the light of the judgment of this Court in the matter of Raymond Uco Denim Private Limited Vs. Praful Warade and others [2010 (6) Mah. L.J. 178].

16. He further submits that the impugned termination order dated

31.3.1984 is without reasons. When the petitioner has not specifically stated that the probation period put in by the respondent was not satisfactory, the presumption would be that the respondent has satisfactorily completed the probation period. It was, therefore, incumbent upon the petitioner to grant confirmation / regularisation to the respondent. He submits that going by the probation order, the retirement age of the petitioner was fixed at 58 years under Clause 9 of the said order.

17. Shri Shahane further submits that the petitioner is an ever growing and flourishing private sector industry. It falls within the definition of a “large scale industry”. It engages about 300 permanent workmen today. There could be several trainees / probationers / contract labourers working in the said industry. In this backdrop, the respondent deserves to be reinstated with continuity and full backwages.

18. Shri Shahane submits on instructions that the respondent is willing to waive 75% of the backwages if the petitioner reinstates the respondent since he has about two years of service left prior to attaining the age of superannuation at 58 years.

19. Shri Shahane further submits that the impugned judgment is delivered on admitted facts. There is no dispute that the respondent was working for eight months as a probationer. The probation orders are admitted and so is the termination order. It is undisputed that Section 25F was not complied with by the petitioner. He contends that juniors were

kept in service. One Shri M.B.Sule, a co-worker is now a confirmed employee. He, therefore, prays that the petitioner deserves to be directed to reinstate the respondent with continuity in service and with such back wages as this Court may deem proper and appropriate.

20. I have considered the submissions of the learned Advocates as have been recorded above. With the assistance of the learned Advocates, I have gone through the reported judgments and the ratio laid down. The judgments relied upon by the petitioner lay down the law that a probationer cannot be deemed to have been regularized in service. Unless, there is an express order granting regularisation to an employee, a probationer cannot be presumed to have been regularized or confirmed in service.

21. It is trite law that the probation period has been introduced in law for testing the suitability of an employee. It is undisputed that a person is appointed on probation against a permanent vacant post since the employer desires to test the suitability of a probationer for being inducted as a permanent employee in the said industry / establishment. It cannot be disputed that the employer is the best Judge in such circumstances and the employer necessarily has to consider whether the probationer is suitable for the organization prior to issuing the order of confirmation. It also cannot be disputed that in the event the employer does not find a probationer suitable or upto the satisfaction of the employer, his probation period could be brought to an end prior to its completion or he may be relieved by efflux

of time.

22. In the instant case, the petitioner chose to relieve the respondent by order dated 31.3.1984 since the respondent was not required for the organization. At the same time, it cannot be overlooked that the employer has not specifically stated in the order of termination that the services of the respondent are not found to be satisfactory. Shri Shahane appears to be correct that had the petitioner concluded that the services of the respondent were not satisfactory, it could have said so in the termination order as observing that the probation period is not satisfactory, does not amount to a stigmatic termination. Having not specifically observed to this effect, the presumption could be that the petitioner had no grievance about the manner in which the respondent had discharged its duties as a probationer.

23. The respondent has relied upon the judgment of this Court in the matter of Raymond (supra), wherein 53 employees were appointed as probationers for a period of six months after completing their training under training contracts. All these 53 workmen completed their probation period satisfactorily and were confirmed in employment. In this backdrop, these 53 employees filed Complaint (ULP) No. 7 of 2007 on the ground that they had put in satisfactory service during probation and though they have been confirmed in employment, the date of confirmation needs to be made applicable from the date of having completed three months on probation in the light of the provisions of the Model Standing Orders.

24. I do not find any conclusion drawn by this Court in the Raymond's case (supra), that even if an employee has not put in satisfactory service as a probationer or who is not considered to be desirable by the employer, yet he would stand automatically confirmed in service after completion of three months as a probationer.

25. Notwithstanding the fact situation as above, I cannot ignore that the respondent has put in eight months as a probationer. Shri Shahane contends that he was working from 5.6.1982 onwards and subsequent thereto, the petitioner appointed the respondent as a probationer by order dated 11.9.1983 w.e.f. 1.8.1983. The respondent is out of employment from 1.4.1984 till this date. He was 36 years' old as on 4.9.1997 when he preferred a Civil Application No.4560 of 1997, claiming benefits of Section 17B under the ID Act. This Court, by its order dated 11.11.2003 directed that the Civil Application shall be considered along with the petition at the stage of final hearing. Consequentially, the respondent is without wages from 1997 under Section 17B for the last about 18 years.

26. The issue, therefore, is as to whether, the respondent could be reinstated in service after being out of employment for last 31 years. He is 56 years' old today and has about 2 years' service left prior to attaining the age of superannuation. It is evident that he was confirmed in the employment of another company, as recorded above.

27. In a somewhat similar situation, the Apex Court has concluded in the following four cases that when the employee has put in a meager tenure in service and is out of employment for periods ranging from 15 to 25 years, it would be impractical to reinstate such an employee:-

1. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal [2013 LLR 1009],
2. *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh* [(2013) 5 SCC 136],
3. *BSNL Vs. Man Singh* [(2012) 1 SCC 558] and
4. *Jagbir Singh Vs. Haryana State Agriculture Marketing Board* [(2009) 15 SCC 327].

The Apex Court, therefore, concluded that granting compensation in lieu of continuity and full backwages would be more reasonable.

28. In the instant case, considering the law as is applicable, the impugned judgment and award, does not appears to be based on sound principles of law. Nevertheless the respondent would be entitled for wages under Section 17B till the decision in this petition. He could have earned his wages for the last about 18 years. It also cannot be overlooked that the petitioner is a large scale industry and undisputedly financially strong having the financial strength to pay compensation to the respondent employee in lieu of reinstatement, continuity and full backwages.

29. Shri Shahane has submitted that a Welder like the petitioner, for example Shri M.D.Sule, is earning Rs.24,330/- per month today. Shri Yenge has countered the said submission, on instructions, that the respondent was

a Welder and Shri Sule is a Crane-Operator and hence cannot be compared with the respondent.

30. Considering the fact situation as above, with due circumspection, I find it appropriate to award compensation of Rs.3,00,000/- (Rs. Three lakhs only/-) to the respondent.

31. In the light of the above, this petition is partly allowed. The impugned judgment and award dated 25.4.1994 in Reference (IDA) No. 16 of 1985 stands modified with a direction to the petitioner that it shall pay an amount of Rs.3,00,000/- (Rs. Three lakhs only/-) as compensation to the respondent within a period of six weeks from today.

32. Rule is made partly absolute in the above terms.

33. Civil Application, in view of the disposal of the Writ Petition, does not survive and accordingly stands disposed off.

(RAVINDRA V. GHUGE, J.)

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