

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6257 OF 2012

Eknath S/o Umaji Sangle,
Age-35 years, Occu-Nil,
R/o Ustal Dumla (New Chandgaon)
Tq. Newasa, Dist.Ahmednagar

PETITIONER

VERSUS

Mula Sahakari Sakhar Karkhana Ltd.,
Sonai, Tq. Newasa, Dist.Ahmednagar
Through its Managing Director

RESPONDENT

Mr.K.D.Bade Patil, Advocate for the petitioner.
Mr.H.D.Deshmukh, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/08/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The contention of the petitioner is that he was a seasonal permanent employee with the respondent sugar factory and was working in every season from 1990 onwards. In the crushing season 2001-2002, he was not allotted work and hence he preferred Complaint (ULP) No.117/2001 before the Labour Court. The said complaint was dismissed by the Labour Court by judgment dated 11/03/2011 impugned in this petition. Revision (ULP) No.42/2011 filed by the

petitioner was dismissed by the judgment of the Industrial Court dated 16/02/2012.

3. Mr.Bade Patil, learned Advocate for the petitioner submits that a short issue has been raised by the petitioner for the consideration of this Court. The petitioner, being seasonal permanent, it was incumbent upon the respondent to offer him work in the crushing season 2001-02. Refusal to allot work, therefore, amounts to an oral termination. Compliance of Section 25-B, considering the seasonal activity of the respondent, would entitle the petitioner to the protection and benefit of Section 25-F. His termination, therefore, amounts to unlawful retrenchment.

4. The petitioner further submits that the Labour Court has erroneously concluded that the petitioner has not reported for the work considering the reply of the respondent. The Labour Court has also erroneously concluded that the respondent has automatically deleted the name of the petitioner from its role of Seasonal Permanent Employees. The impugned judgment has not considered the ambit of Section 25-B r/w 25-F and has dismissed the complaint.

5. The petitioner further submits that the Industrial Court should have noticed the perversity and the error committed by the Labour

Court. Instead of interfering with the judgment of the Labour Court, the Revisional Court dismissed the revision petition. He, therefore, prays for quashing and setting aside of both the judgments and a direction to the respondent to reinstate the petitioner in its role of Seasonal Permanent Employees with continuity and back wages.

6. Respondent has opposed the petition in the light of the written statement, which was filed before the Labour Court. It is fairly pointed out from paragraph Nos.5 and 6 that the petitioner was rendering continuous work as a “Seasonal Clerk” in the Chemical Department of the Factory. He has worked continuously in each and every crushing season from 1990.

7. It is then pointed out that going by the policy of the respondent, a public notice was published in “Daily Sarvamat” on 01/10/2001 directing all the Seasonal Permanent Employees to enroll themselves on or before 07/10/2001 for enabling allotment of work during the Crushing Season 2001-02. The petitioner did not respond.

8. The complaint (ULP) No.117/2001 was filed by the petitioner on 05/11/2001. The respondent has no animosity against the petitioner. It cannot be said that their relations are strained. It is only because of the petitioner having failed to respond to the public notice and having

failed in registering his name with the respondent factory as per the public notice, that the petitioner was presumed to be disinterested in working in the crushing season 2001-02.

9. Mr.Deshmukh further submits that considering the written statement filed by the respondent before the Industrial Court, the petitioner could have made an application for the succeeding crushing season so as to be able to report for duties and work in the said season. Despite the written statement indicating that the respondent had never prevented the petitioner from working, the bonafides of the petitioner would have been established, had he promptly reported for duties without prejudice to his rights and claims in the complaint.

10. Mr.Deshmukh draws my attention to the affidavit in reply filed by the respondent dated 28/07/2015. He indicates from paragraph No.4 of the affidavit that if the petitioner is interested in working today, he may accordingly make an application and register himself so as to be allotted work depending upon the availability of work and the number of seasonal permanent employees on its roll.

11. I have considered the submissions of the learned Advocates and with their assistance, I have gone through the record available. It is evident that the respondent had filed its written statement categorically

stating therein that the petitioner was not terminated, he had failed to respond to the advertisement and consequentially was not registered for the crushing season 2001-02. It is equally evident that the petitioner, in the light of the stand taken by the respondent/Management, could have registered himself for the succeeding crushing season 2002-03 onwards without prejudice to his case before the Labour Court. It is unexplained as to why has the petitioner not resorted to this option.

12. It was established before the Labour Court that a notice was published in "Daily Sarvamat" on 01/10/2001 calling upon the seasonal, permanent and seasonal employees to enroll themselves for the crushing season. There appears to be no evidence on record before the Labour Court either to indicate that the petitioner had in fact applied pursuant to the advertisement or that there was no such advertisement.

13. Considering the effect of the above referred evidence, the plausible conclusion could be that the petitioner lacked the keenness to join duties. The complaint was pending for almost 10 years and has been finally decided by the impugned judgment on 11/03/2011. The petitioner could have put in at least 9 crushing season in employment.

14. The Apex Court in the matter of Morinda Co.op.Sugar Mills

Ltd., Vs. Ram Kishan and others etc., AIR 1996 SC 332(1). has observed in paragraph Nos. 4 and 5 as under :-

“4. It would thus be clear that the respondents were not working throughout the season. They worked during crushing only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.

5. The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in clause (bb) of Section 2(o) of the Act. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated hereinbefore and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work.”

15. The Apex Court in the case of Anil Bapurao Kanase Vs. Krishna Sahakari Sakhar Karkhana Ltd., and another, AIR 1997 SC 2698 has observed in paragraph No.3 as under :-

“3. Learned counsel for the appellant contends that the judgment of the High Court of Bombay relied on in the impugned

order dated March 28, 1995 in Writ Petition No.488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 is applied to, his retrenchment is illegal. We find no force in this contention. In *Morinda Co-op. Sugar Mills Ltd., Vs. Ram Kishan*, (1995) 5 SCC 653 : (1995 AIR SCW 4131) in paragraph 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing ; in paragraph 4, it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after crushing season was over. Accordingly, in paragraph 5, it was held that it is not 'retrenchment' within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the Principles of the Act have not application. However, this Court has directed that the respondent-Management should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above."

16. In the light of the above, I am unable to agree with the

submissions of the petitioner that the judgment of the Labour Court deserves to be held as perverse and erroneous. For the similar reasons, the impugned judgment of the Industrial Court cannot be faulted.

17. The respondent has fairly stated in paragraph No.4 of its affidavit in reply that in the event of the petitioner registering himself with the respondent even today, he would be considered for allocation of work depending upon the contingencies set out in paragraph No.4 of the affidavit in reply and especially in the light of the fact that he was a Clerk in the Chemical Department of the respondent.

18. The petitioner is at liberty to apply to the respondent in the light of paragraph No.4 of its affidavit in reply.

19. In the result, this petition is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

