

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4450 OF 2005
(Old No. 3112 OF 1995 (Bombay))

1. The Maharashtra State Road Transport
Corporation, Vahatuk Bhavan, Bombay
Central, Bombay - 400008

2. The Divisional Controller,
Maharashtra State Road Transport
Corporation, Latur,

3. The Depot Manager,
Maharashtra State Road Transport,
Corporation, Udgir, Dist.Latur

PETITIONERS

VERSUS

1. Vishwanath Nagorao Kedare,
Age-26 years, R/o Udgir, Tal.Udgir,

2. Kashinath Gundappa Birajdar,
Age-33 years, R/o Nagaon,
Taluka Udgir

3. Manohar S/o Balaji Chamatwar,
Age-32 years, R/o Majalgaon,
Tal.Udgir.

RESPONDENTS

Mrs.R.D.Reddy, Advocate for the petitioners.

Mr.P.G.Rodge, Advocate for respondent Nos. 2 and 3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 06/08/2015

ORAL JUDGMENT :

1. This petition was Admitted by order dated 13/07/1995 and interim relief in terms of prayer clause 11(c) was granted to the

petitioner/Corporation.

2. Prayer clause 11(c) reads as under :-

“that pending the hearing and final disposal of the petition, this Hon’ble Court be pleased to stay execution, operation and/or implementation of the judgment and order dated 21/04/1995 passed by the Member, Industrial Court, Solapur, in Revision (ULP) Applications 16/92, 17/92 and 18/92 and also judgment and order dated 1-2-1992 passed by the Judge, Labour Court, Latur, in Complaints (ULP) No.45/86, 46/86 and 47/86.”

3. The petitioner/Corporation has contended in this petition that the 3 respondents were allowed to do the work of cleaning / washing the buses @ 50 paise per bus in the Udgir Depot on different dates in the year 1986. Since such work was not available, they were disallowed from entering the Depot. Factum of employment was denied by the petitioner. Employer/employee relationship was denied. The respondents were never engaged by the Corporation directly. Their complaints filed before the Labour Court challenging the alleged termination dated 07/03/1986, 08/03/1986 and 07/03/1986 respectively were untenable in Law.

4. It is further contended that there was no supervision/control

or direction by the Corporation over these 3 respondents. They were not workman u/s 2(s) of the I.D.Act.

5. The Labour Court has erroneously granted the relief of reinstatement with continuity of service and full back wages to the respondents. When the respondents could not prove completion of 240 days in the continuous employment of the petitioners, no conclusion of violation of Section 25-F could have been arrived at by the Labour Court. The impugned order of the Labour Court dated 01/02/1992 was, therefore, unsustainable.

6. It is further submitted that the Revision (ULP) Nos. 16/1992, 17/1992 and 18/1992 filed by the petitioners were dismissed by the impugned judgment dated 21/04/1995 delivered by the Industrial Court. The Industrial Court failed to notice the error committed by the Labour Court and has erroneously dismissed the revision petitions.

7. Mr.Rodge, learned Advocate appearing on behalf of the respondents submits that 3 complaints were decided by the Labour Court bearing Nos.45/1986, 46/1986 and 47/1986. 3 Revision petitions, as noted above, were decided by the Industrial Court. The

petitioners have preferred a single writ petition, which is not maintainable. He, therefore, prays for dismissal of this petition on this count alone.

8. In so far as the merits of the petition are concerned, he submits that the 3 respondents have worked for long durations with the petitioners. Respondent No.1 has worked for 13 months, respondent No.2 has worked for about 42 months and respondent No.3 has worked for about 38 months. He, however, concedes that all of them are out of employment for the past more than 29 years on account of the interim relief granted by this Court to the petitioner.

9. He submits that the respondents had led oral evidence since all of them were identically placed. They had asserted that they were working continuously. He, however, has no answer when it came to whether any documentary evidence was made available before the Labour Court to indicate or establish the factum of employment.

10. Mr.Rodge, however, submits that in the case of similarly situated cleaners, who were before the Industrial Court claiming regularization / permanency, the matter has reached the Apex Court. The issue of whether a direction to the MSRTC could be given by the

Industrial Court and could be confirmed by the High Court to grant status of permanency and consequential benefits, was decided. The Special Leave Petition was dismissed by the Apex Court.

11. He refers to the two questions taken up by the Apex Court for decision in MSRTC and another Vs. Casteribe Rajya P.Karmchari Sanghatana, 2009 (8) SCC 556, which read as under :-

“(one) : Whether a direction to the Maharashtra State Road Transport Corporation (for short, “Corporation”) by the Industrial Court, and confirmed by the High Court of giving status, wages and all other benefits of permanency, applicable to the post of Cleaners to the complainants is justified ?

(two) : Whether the two complaints filed by Casteribe Rajya Parivahan Karmchari Sanghatana (for short, “Union”), an unrecognised union under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, “MRTU and PULP Act”), alleging unfair labour practice on the part of the employer under item No.6 of Schedule IV are maintainable ?”

12. He, therefore, submits that on similar lines, the rights of the respondents need to be sustained and this petition deserves to be dismissed.

13. At the outset, since only 1 petition was filed for challenging 3

judgments of the Labour Court in 3 independent complaints and 3 revision petitions, I hereby direct the petitioners to deposit the deficit court fees as are payable for instituting two petitions besides the present petition. The deficit court fees shall be deposited within a period of 6 (six) weeks from today.

14. Having considered the rival submissions and having gone through the record with the help of the learned Advocates, I find that there was no evidence before the Labour Court to prove the factum of employment, except a certificate issued by the Depot Manager at Udgir indicating that the respondents were satisfactorily washing the buses from August 1982 to June 1988. Duty cards were produced to indicate that the duty was allotted to the respondents for 45 days in between January to March 1986. The experience certificate issued by the Depot Manager does not tally with the statements made by the respondents, as is recorded in the impugned judgment of the Labour Court. As noted above, the Labour Court has considered the number of months of employment as per the statement of the respondents.

15. Notwithstanding the above, it cannot be lost sight of that this Court had stayed the impugned judgments of the Labour Court as

well as of the Industrial Court. Consequentially, these 3 respondents are not in employment / unemployed for the past about 29 years. Two respondents i.e. respondent Nos. 2 and 3 have worked for about 42 months each and respondent No.1 has worked for about 13 months.

16. Considering the fact that they have put in meager tenures in employment and have been out of employment for the past 29 years, I deem it proper to follow the ratio laid down by the Apex Court in the following 4 judgments :-

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,*
4. *Jagbir Singh Vs. Haryana State Agriculture Marketing Board, (2009) 15 SCC 327.*

17. This Court has relied upon by the view taken by the Apex Court in the abovesaid cases in the matter of State of Maharashtra Vs. Santosh Gorakh Patil and another, 2015(3) Mh.L.J.922. The relevant observations in paragraph Nos.9 to 13 are as under :-

“9. I, however, do not desire to go into this aspect since the respondent has been out of employment for the past 28 years.

He has earned last drawn wages from 2000 onwards. In the light of the law laid down by the Honourable Supreme Court in the case of Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal [2013 LLR 1009] and in the case of Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136], I am convinced that the impugned judgment and award deserves to be partly set aside.

10. Paragraph No.20 of the judgment in the case of Mohanlal (supra) reads as under:-

" We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Assistant Engineer, Rajasthan Development Corporation and Anr. v. Gitam Singh : (2013) 5 SCC 136 that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

11. Paragraph No.29 of the judgment in the case of Gitam Singh (supra) reads as under:-

" In light of the above legal position and having regard to the facts of the present case, namely, the workman was engaged as daily wager on 01.03.1991 and he worked hardly for eight months from 01.03.1991 to 31.10.1991, in our view, the Labour Court failed to exercise its judicial discretion appropriately. The judicial discretion exercised by the Labour Court suffers from serious infirmity. The Single Judge as well as the Division Bench of the High Court also erred in not considering the above aspect at all. The award dated 28.06.2001 directing reinstatement of the Respondent with continuity of service and 25% back wages in the facts and circumstances of the case cannot be sustained and has to be set aside and is set aside. In our view, compensation of Rs. 50,000/- by the Appellant to the Respondent shall meet the ends of justice. We order accordingly.

Such payment shall be made to the Respondent within six weeks from today failing which the same will carry interest @ 9 per cent per annum."

12. It would be apposite to refer to the observations of the Honourable Supreme Court in paragraph Nos.4 and 5 in the case of BSNL Vs. Man Singh [(2012) 1 SCC 558] as under:-

"4. The award of reinstatement passed by the Labour Court was challenged by the Department by filing writ petitions before the High Court. The High Court after hearing the Learned Counsel for the parties and going through the records of this case, dismissed the writ petitions filed by the Department. The Appellant is thus before this Court.

5. This Court in a catena of decisions has clearly laid down that although an order of retrenchment passed in violation of Section 25F of the Industrial Disputes Act may be set aside but an award of reinstatement should not be passed. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

13. The Honourable Supreme Court in the case of Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327], has held in paragraph No.14, as under:-

" It would be, thus, seen that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

18. In the light of the above, this petition is partly allowed. The impugned judgments and orders delivered by the Labour Court dated 01/02/1992 and Industrial Court dated 21/04/1995 are modified and replaced by a direction to the petitioners to pay compensation to

these respondents. As such, the petitioners shall pay an amount of Rs.30,000/- (Rs.Thirty thousand only) to respondent No.1 namely V.N.Kedare and shall pay compensation of Rs.1,00,000/- (Rs.One lac each) to respondent Nos. 2 K.G.Birajdar and respondent No.3 M.B.Chamatwar, within a period of 12 (twelve) weeks from today.

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

(RAVINDRA V. GHUGE, J.)