

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.91 OF 2016

The Nagar Urban Co-operative Bank Ltd.,
Ahmednagar, Dist. Ahmednagar
Presently Nagar Urban Co-operative
Bank Ltd., (Multi State Scheduled Bank)
Ahmednagar, Through its Assistant
Chief Manager.

...Petitioner...

Versus

Shashwat S/o Lajras Dethe,
Age : 27 yrs. Occu: Self employed
R/o. Near Telephone Office
Newasa, Tq. Newasa,
Dist. Ahmednagar.

...Respondent...

.....

Shri Niteen V. Gaware, Advocate for petitioner.
Shri Parag V. Barde, Advocate for respondent.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE: 16.02.2016

ORAL JUDGMENT :

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

2] The petitioner is aggrieved by the judgment and order dated 7.2.2015 delivered by the Labour Court,

- 2 -

Ahmednagar, by which Complaint (ULP) No.45/2011 filed by the respondent has been partly allowed. He has been granted reinstatement with continuity, but without back wages.

3] The petitioner is also aggrieved by the judgment and order dated 7.10.2015 delivered by the Industrial Court, Ahmednagar, by which Revision (ULP) No.23/2015 filed by the petitioner and Revision (ULP) No.26/2015 filed by the respondent – employee have been dismissed.

4] It is not disputed that the respondent – employee has not challenged the judgment of the Industrial Court dated 7.10.2015 by which his revision petition has been dismissed.

5] Contention of Shri Gaware, learned Advocate for the petitioner – bank, is that the Labour Court has lost sight of the fact that the respondent was orally appointed as a temporary. He used to work as and when work of a Peon was available for him. Since he was a temporary, his disengagement from service was a natural effect.

6] The petitioner had also raised an objection that the complaint filed before the Labour Court, Ahmednagar,

- 3 -

was not maintainable because the petitioner was working at Nashik at the time of his oral termination. Same has been negated by the Labour Court.

7] Shri Gaware strenuously criticized the impugned judgment on the ground that the Labour Court could not have granted reinstatement with continuity of service to the respondent in the light of the fact that he was appointed as a temporary. The Labour Court lost sight of the fact that the petitioner – bank could not recruit any employee by itself. It was required to take permission from various authorities. Names of the applicants for any available post were to be called for from the Employment Exchange. Several examinations are prescribed and as such the respondent would not derive any right in seeking continuance in service.

8] He, therefore, submits that the impugned judgment of the Labour Court is perverse and erroneous. For the same reasons, the impugned judgment of the Industrial Court also deserves to be quashed and set aside for being perverse.

9] Shri Barde, learned Advocate appearing on behalf of the respondent – employee, has supported the impugned

- 4 -

judgments. He submits that there was no dispute as regards the duration of work of the respondent. He joined on 24.3.2010 as a Peon and worked continuously till 4.10.2011. He has been orally terminated with effect from 5.10.2011.

10] Shri Barde then points out the testimony of the Branch Manager Shri Ajit Hiran, who was the first witness of the petitioner, to support his contention that the duration of work was not disputed. The said witness also admitted that the decision to terminate the services of the respondent was taken at Ahmednagar. The head office of the petitioner is situated at Ahmednagar. It was under the directions of the head office from Ahmednagar that the services of the respondent were brought to an end. He, therefore, contends that the Labour Court at Ahmednagar rightly exercised its jurisdiction.

11] Shri Barde further submits that even if a person is a temporary or a casual, the employer does not derive a right to illegally terminate the services of any employee. The law of retrenchment needs to be followed after the employee has worked continuously for more than 240 days as is defined u/s 25-B of the Industrial

- 5 -

Disputes Act, 1947. He, therefore, submits that this petition deserves to be dismissed.

12] I have considered the submissions of the learned Advocates for the respective sides.

13] In matters of termination of temporaries, daily wagers or casuals, Section 25-B, 25-F and 25-G of the Industrial Disputes Act, 1947, are significant. Sections 25-B, 25-F and 25-G read as under:-

"25-B. Definition of continuous service -

For the purposes of this Chapter, -

(1) a workmen shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer -

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked

- 6 -

under the employer for not less than -

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation.- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which -

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment,

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been

- 7 -

on maternity leave, so however, that the total period of such maternity leave does not exceed twelve weeks.

25-F. Conditions precedent to retrenchment of workmen -

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

- a] the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- b] the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- c] notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

25-G. Procedure for retrenchment -

Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in

- 8 -

the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

14] In the instant case, the head office of the petitioner is situated at Ahmednagar. The respondent is a resident of District Ahmednagar. His engagement and his disengagement was on the basis of the decisions taken by the head office at Ahmednagar. In this backdrop, I do not find that the Labour Court has committed any error in concluding that it had jurisdiction to deal with the complaint filed by the respondent at Ahmednagar.

15] It is trite law that an employer cannot have the latitude of illegally terminating the services of an employee. In the instant case, completion of 240 days in continuous employment of the petitioner was established before the Labour Court. Since the respondent had fulfilled the requirement of Section 25-B, he was legitimately entitled to seek the protection of Sections 25-F and 25-G. It is not in dispute that the respondent was not paid retrenchment compensation with one month's

notice or wages in lieu of the notice period. This Court has time and again held that the three conditions below Section 25-F are axiomatic. Non-compliance of Section 25-F would render the termination of an employee as being an act of illegal retrenchment.

16] The learned Apex Court in the following three cases has concluded that non-compliance of Section 25-F would render the termination bad in law :-

[1] *Sudarshan Rajpoot v. U.P. State Road Transport Corporation* (2015) 2 SCC 317.

[2] *Ajaypal Singh v. Haryana Warehousing Corporation* (2015) 6 SCC 321, and

[3] *Mackinnon Mackenzie & Co.Ltd., V/s Mackinnon Employees Union* (2015) 4 SCC 544.

17] In the light of the above, I do not find that the Labour Court has erroneously granted reinstatement with continuity of service to the respondent. For the same reasons, the impugned judgment of the Industrial Court cannot be found fault with.

18] Needless to state, in the event an employer desires to dispense with the services of an employee, be he a temporary, a casual, a daily wager or a permanent employee, having fulfilled the requirement u./s 25-B of

- 10 -

the Industrial Disputes Act, 1947, the employer needs to follow the due procedure of law (while dispensing with the service of such an employee).

19] Hence, this petition, being devoid of merit, is, therefore, dismissed. Rule is discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)