IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.394 OF 2014
AND
WRIT PETITION NO.910 OF 2015

WRIT PETITION NO.394 OF 2014

Workmen
of U.P. State Bridge Corporation Ltd.
Represented by
Goa Trade & Commercial Workers Union
Through its Secretary,
Shri Subhash Naik,
major of age,
Having office at
Gurudatta Bldg., 2nd floor,
Panaji, Goa. ... Petitioners

V e r s u s

M/s. U. P. State Vridghe Corporation,
A Company incorporated under the
Companies Act,
Having its office at 16,
madan Mohan Malaviya Marg,
Lucknow, U.P. ... Respondents

Mr. Vijay Palekar, Advocate for the Petitioners
Mr. A. V. Nigalye, Advocate for the Respondents.

AND
WRIT PETITION NO.910 OF 2015

M/s. U. P. State Bridge Corporation Ltd.
A Company incorporated under the
Companies Act, 1956
having its registered office at 16,
Madan Mohan, Malaviya Marg,
Lucknow, Uttar Pradesh
Represented through its Dy. Project Manager,
Shri Sandeep Gupta,
son of Shri R. Gupta,
50 years of age, having his office at Mirzapur,
Uttar Pradesh. … Petitioners

V e r s u s

Goa Trade & Commercial Workers' Union
a Trade Union registered under the Trade Unions
Act, 1926, having its office at
Velhos Building,
Near Municipal Garden,
Panaji-Goa.
Represented through its Secretary
Shri Subhash Naik Jorge. … Respondents

Mr. Arun Nigalye, Advocate for the Petitioners.
Mr. Vijay Palekar, Advocate for the Respondents.

Coram :- **C. V. BHADANG, J.**
Reserved for Judgment on :- 25th February 2019.
Judgment pronounced on :- 29th August, 2019.

JUDGMENT

1. Both these petitions are between the same parties and involve a challenge to the award dated 19.03.2018 passed by the Industrial Tribunal at Panaji in reference (IT) no.16/1993. As such, they are bring disposed off by this common Judgment.

2. The brief facts necessary for the disposal of the petitions may be stated thus :

That UP State Bridge Corporation Limited (the Corporation, for short) had taken a contract for construction of the second Mandovi Bridge. For the said purpose, the Corporation, had employed workmen in category 'C' on various posts. The present dispute pertains to 54 such workmen, who were engaged in various capacities. According to the Goa Trade and Commercial Workers Union (Union, for short), representing the said workmen, the services of these 54 workmen were abruptly terminated w.e.f. 28.08.1992, without giving them any intimation in writing. For the said purpose, a notice dated 27.08.1992 was displayed stating that these 54 workmen were retrenched w.e.f. 28.08.1992 as per Section 25 FFF (2) of the Industrial Disputes Act (Act, for short). According to the Union, although the new Mandovi Bridge was thrown open for traffic on 23.07.1992, the work at site was not completed. It was contended that the corporation did not comply with Section 25 FFF and 25G of the Act, before terminating the services of these workmen, inasmuch as, neither one month's notice, nor retrenchment compensation, was paid and the workmen were not individually informed about the termination.

3. Feeling aggrieved, the union raised an Industrial dispute before the Tribunal, which was registered as reference (IT) no.16/1993. The Union sought reinstatement of the workmen with full back wages and other benefits and also regularisation of their services from category C to category B.

4. The corporation resisted the reference, claiming that under S.O. B-1-2 of the applicable standing orders, governing the employment in the corporation, the services of the workmen engaged by the unit in charge of the corporation, for execution of work, declared to be a project "Goes with the work as soon as the project is completed" and the engagement of these category of workmen shall come to an end automatically. It was contended that the workmen who were "muster roll employees" were engaged for a limited period of the project and on completion of the project the corporation was within its rights to terminate their services after complying with the provisions of section 25FFF of the Act. It was contended that the only benefit to which the workmen were entitled is retrenchment compensation or notice pay which has been paid by the Project Manager. It was contended that the construction work of the bridge commenced sometime in February 1987 and the bridge was thrown open for public from 23.07.1992 and thereafter the services of these workmen were terminated w.e.f. 28.08.1992 after due compliance with the provisions of Section 25F read with Section 25 FFF (2) of the Act, wherever applicable. It was also contended that the provisions of Section 33(2)(b) of the Act are not attracted in this case.

5. On the basis of the rival pleadings, the Tribunal raised in all eight issue. The parties led evidence in which the Union examined in all six workmen out of the total 54 workmen and the Corporation examined Shri A. K. Shrivastava and Shri Jitendra Kumar Pant.

6. Out of the eight issues, issue no.2 about the failure of the Corporation to seek permission under Section 33(2)(b) of the Act and issue no.4 about the claim of regularisation of the services of the workmen from category 'C' to category 'B' were not pressed by the Union. The Tribunal answered issue no.1 partly in the affirmative and issue no.3 in the affirmative thereby holding that there was non-compliance with the provisions of Section 25F of the Act by the Corporation and found that the action of the Corporation in termination of the workmen was not legal or justified. The Tribunal answered issue nos.5 and 6 in the negative and against the Corporation thereby holding that the Corporation had failed to establish that the services of the workmen were terminated in accordance with the provisions of the certified standing orders and Section 25 FFF(2) of the Act. The Tribunal held that the Corporation had failed to establish that the workmen had refused to accept the notice pay and the dues offered to them, in accordance with the provisions of the Act. In the face of the findings as above, the Tribunal by the impugned award, has allowed the reference and while holding the action of the Corporation as illegal and unjustified, has restricted the relief to grant of a monetary compensation of ₹20,000/- to each of the workmen, alongwith interest at the rate of 9% per annum.

7. Feeling aggrieved by the refusal to grant reinstatement with full back wages, the Union has filed Writ Petition No.394/2014 while the Corporation has filed Writ Petition No.910/2015 questioning the grant of compensation after holding the action of the Corporation as illegal and unjustified.

8. I have heard Mr. Palekar, the learned Counsel for the Union and Mr. Nigalye, the learned Counsel appearing for the Corporation. With the assistance of the learned Counsel for the parties, I have perused record and gone through the impugned award.

9. At the outset, it would be necessary to notice the submissions on behalf of the Corporation, because only in the event the finding about the action of the Corporation being found to be illegal and unjustified is upheld, that the question of grant of reinstatement with full back wages can arise.

10. Mr. Nigalye, the learned Counsel for the Corporation has placed reliance on the certified standing order no.B-1-2 in order to submit that the workmen, were employed by the unit in charge, only for the purpose of specific project of construction of the Mandovi Bridge and on completion of the said project, their services would automatically come to an end. It is submitted that the termination of services of the workmen was on account of closure of the project and not by way of retrenchment and, as such, the condition precedent for retrenchment of the workmen, namely payment of the retrenchment compensation and notice of one month and/or wages in lieu thereof, does not arise in this case. It is submitted that the termination was as a result of the non-renewal of the contract of employment on its expiry and/or such contract being terminated under a stipulation in that behalf. It is submitted that therefore the Tribunal was in error in answering issue no.5 in the negative. It is submitted that the Tribunal ought to have held that the services of the workmen were terminated in terms of Section 25 FFF(2) of the Act and in accordance with the provisions of the certified standing orders. It is submitted that the workmen refused to accept the notice pay and the dues offered. It is submitted that the finding recorded by the Tribunal that the termination is in breach of Section 25 F of the Act, is not legal and proper and is not borne out of the record. It is submitted that the Tribunal erred in granting compensation of ₹20,000/- to each of the workmen. It is submitted that only six out of the 54 workmen were examined by the Union and, therefore, there was no acceptable evidence to show whether the concerned workmen were gainfully employed or not during the period of their unemployment. It is submitted that the construction of the bridge was completed and the bridge was thrown open to public on 23.07.1992 and it is thereafter that the services of the concerned workmen were terminated in accordance with the certified standing orders and after due compliance with Section 25 FFF(2) of the Act. While opposing the petition filed by the Union, it is contended that the workmen are not entitled to reinstatement much less with back wages as the Union had failed to establish that the workmen were not gainfully employed during the period of their unemployment.

11. Mr. Nigalye, the learned Counsel has placed reliance on the decision of the Supreme Court in the case of (i) **Lal Mohammad & Ors. vs. Indian Railway Construction Co. Ltd. & ors. (2007) 2 SCC 513,** (ii) **Hindustan Steel Works Construction Ltd., vs. Hindustan Steel Works Construction Ltd. Employees' Union AIR 1995 SC 1163,** (iii) **Management of Regional Chief Engineer P.H.E.D.**

Ranchi vs. Their Workmen rep. By District Secretary 2018 III CLR 679 and the decision of this Court in the case of (iv) **Jagdish s/o. Karuji Bombarde, Bhandara vs. Chief Officer, Municipal Council, Tumsar & anr. 2019 (1) CLR 343.**

12. On the contrary, Mr. Palekar, the learned Counsel for the Union, has supported the impugned award to the extent it holds, the action of the Corporation to be not legal and justified and in breach of Section 25F of the Act. It is submitted that having held so, the Tribunal was in error in refusing to grant reinstatement with full back wages. It is submitted that it is normal rule that once the termination is found to be illegal and unjustified, reinstatement with full back wages would follow. Mr. Palekar, has also taken exception to the Tribunal granting compensation in lieu of reinstatement and has also questioned the quantum of compensation awarded which, according to the learned Counsel, is meagre and not in consonance with the last drawn wages of the workmen and the subsequent revision of minimum wages. Without prejudice to the claim of reinstatement with full back wages, it is his alternate submission that the compensation needs to be enhanced substantially on the basis of the minimum wages of the category of workmen as prescribed under the minimum wages Act. It is submitted that although the concerned workmen were drawing wages ranging from ₹18/- to ₹29/- per day at the time of their termination, there is substantial revision of wages thereafter, effected periodically and in the year 2018, the wages for the unskilled, semi-skilled and the skilled category are respectively ₹307/-, ₹368/- and ₹423/- per day. It is submitted that the compensation has to be commensurate and has to be determined on the basis of the minimum wages as statutorily prescribed. It is submitted that there is sufficient evidence to show that the workmen were not gainfully employed during the course of their unemployment and the Corporation has failed to rebut the said evidence.

13. While opposing the petition filed by the Corporation, it is contended that the termination cannot be supported on the basis of the standing orders which, according to the learned Counsel, are inapplicable. It is also contended that factually the work of the bridge was not completed as claimed and therefore even otherwise the project was not over.

14. Mr. Palekar, the learned Counsel has placed reliance on the decision of the Supreme Court in the case of (i) **Bhavnagar Municipal Corporation & Ors. vs. Jadeja**

Govubha Chhanubha & anr. (2014) 16 SCC 130, (ii) **Bhuvnesh Kumar Dwivedi vs. Hindalco Industries Ltd., (2014) 11 SCC 85** and the decision of this Court in the case of (iii) **Mapusa Municipal Council vs. Krupa Hallikar & Ors. 2013 (5) Mh.L.J. 729.**

15. I have carefully considered the rival circumstances and the submissions made. According to the Union, the termination is illegal for want of compliance with Section 25 F of the Act, while the Corporation claims that the termination is effected in accordance with the certified standing order no.B-1-2 read with Section 25 FFF(2) of the Act. According to the Union, there were no individual notices served, nor there was payment of notice pay nor retrenchment compensation. In this case, there is a serious dispute, as to when the construction of the bridge was completed so that the project, as such was over. In this regard, the Tribunal has noticed the evidence of Mr. A. K. Shrivastava and the Project Manager Mr. Jitendra Kumar Pant. It has come in their evidence that they were posted in Goa on the project of construction of the Mandovi Bridge. Insofar as Mr. A. K. Shrivastavs is concerned, he was working in Goa on the said project from August 1987 to August 1994. Mr. Jitendra has also claimed that he worked in Goa as a Project Manager from 1987 to 1994. Although it has come on record that the bridge was thrown open for public on 23.07.1992, the Union claims that the construction work as such was not complete. It has also come in the evidence of Mr. Shrivastava that even after the termination of the service of 54 workmen involved in this petition, few other workers were working at the Mandovi Bridge on account of some finishing work. Considering the over all evidence, in my view, the Tribunal is justified in holding that on the basis of the evidence of Mr. Shrivastava and Mr. Pant, one cannot come to the conclusion that the project was completed by 28.08.1992. This is one of the reasons, why the Tribunal has refused to accept the case of the Corporation that the termination was on account of the completion of the project. Although it is contended on behalf of the Corporation that the termination was in accordance with standing order no.B-1-2 read with Section 25 FFF of the Act, the Corporation has not given details of the project and the employees engaged. Even the appointment letter of the workmen were not produced nor the standing orders on which reliance was placed were produced before the Tribunal. The Tribunal has considered this aspect in para 22 of the impugned award. The Tribunal has also considered that the certified standing orders of the Corporation in Uttar Pradesh (UP) and other States are not valid and applicable for workmen working in Goa as no such standing orders have been certified in Goa.

16. Section 25 FFF(2) of the Act provides that where any undertaking set up for construction of buildings roads, canals, dams or other construction work is closed down on account of the completion of the work within two years, from the date on which the undertaking had been set-up, no workman employed therein shall be entitled to any compensation under clause (b) of Section 25-F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every continuous service or any part thereof in excess of six months. As noticed earlier, the Corporation neither produced the copy of the standing order nor it is shown that the same is applicable to the employment of the workmen in Goa. Secondly, there is also no acceptable evidence that the work of the construction of the bridge was over and the project stood concluded on 27.08.1992. There is also no acceptable evidence that the compensation was tendered and was refused by the workmen as has been rightly held by the Tribunal. There is also no evidence about the service of the individual notice on the workmen.

17. The decision in the case of **Lal Mohammad** (supra), has been considered by the Tribunal. The said case turned on its own facts. The question whether a particular scheme/project has come to an end and the date on which it has come to an end would evidently depend upon the facts and circumstances of each case.

18. I have carefully gone through the impugned award of the Tribunal and I find that the findings recorded by the Tribunal are based on proper appreciation of the oral and documentary evidence on record and the finding does not suffer from any infirmity so as to require interference. Thus, there is no case for interference, insofar as the finding recorded by the Tribunal that the termination was illegal and unjustified is concerned.

19. This takes me to the relief which can be granted to the 54 workmen. The Union is claiming reinstatement with back wages on the ground that it is the normal rule once the termination is found to be illegal. It is the alternate submission that the compensation granted in lieu of reinstatement is meagre and needs to be granted on the basis of the minimum wages as are prevailing on date.

20. The Tribunal has considered the aspect of grant of relief in the face of the termination being held illegally in para 34 onwards. There has been shift in the legal position as to whether the relief of reinstatement is automatic on the termination being found to be illegal and unjustified. The Supreme Court, in the case of **Kendriya Vidyalaya Sangathan & anr. vs. S. C. Sharma (2005) 2 SCC 363,** has held that it is not an inviolable rule to grant reinstatement with full back wages once the termination is found to be illegal or unjustified. The Supreme Court has held that the employee must show that he was not gainfully employed and thereafter the employer is required to rebut such claim. In the case of **General Manager, Haryana Roadways vs. Rudhan Singh (2005) II CLR 1055,** it has been held that the order of back wages cannot be passed in a mechanical manner as there are several factors which have to be taken into consideration. The settled legal position appears to be that workmen should atleast aver in their pleadings and the evidence that they were not gainfully employed and thereafter it is for the employer to rebut the same. The Tribunal has found that there are no pleadings in the statement of claim by the Union, that the workmen were not gainfully employed since the date of their termination. Although it cannot be expected that the Union would examine all the workmen where there are large number of workmen which are covered by the reference, the fact remains that out of 54 workmen, only six were examined, coupled with the fact that it has not been averred in the statement of claim that the workmen were not gainfully employed. The Supreme Court in the case of **Bhavnagar Municipal Corporation** (supra) has held that illegality in the termination order on account of non-payment of retrenchment compensation does not necessarily result in reinstatement and in an appropriate case, compensation should be awarded in lieu of such reinstatement.

21. The Tribunal has also noticed that the termination in this case was of the year 1992. The reference was raised in the year 1993, which came to be decided in the year 2013. The Tribunal has also noted that there is nothing on record to indicate that at present, the Corporation has any work of construction of bridges or similar construction work on its hand or is in the position to accommodate the workmen. The Supreme Court in the case of **Hindustan Steel Works Construction** (supra), has held that if the Tribunal has refused reinstatement for proper reasons, no interference is called.

22. The Tribunal, in my considered view, is right in refusing relief of reinstatement with backwages in this case. This takes me to the quantum of the compensation granted in lieu of reinstatement. It has come on record, that at the time of their termination, the workmen were drawing wages ranging from ₹18/- to ₹29/- per day. Considering this, the Tribunal has awarded compensation of ₹20,000/- to each of the workmen. The contention of the Union is that the compensation should be commensurate with the subsequent revision of minimum wages. It is contended that in the year 2018, the minimum wages for the unskilled, semi-skilled and the skilled category of workmen are respectively ₹307/-, ₹368/- and ₹423/- per day. It is not possible to accept the said contention. The reference before the Tribunal was pending from the year 1993 to 2013 i.e. for a period of 20 years. Neither party can be entirely held responsible for the delay in disposal of the reference. The subsequent revision of minimum wages can hardly afford a ground for determination of such compensation once the Tribunal has found that reinstatement with backwages cannot be granted. A reasonable guesswork is necessary if not inevitable in the matter of determination of compensation. Considering the last drawn wages drawn by the workmen, I do not find that the grant of compensation of

₹20,000/- along with interest at the rate of 9% per annum can be said to be illegal or unjust.

23. The reliance placed on the decision of the Supreme Court in the case of **Bhuvnesh Kumar Dwivedi** (supra) and that of this Court in the case of **Mapusa Municipal Council** (supra), is misplaced, as both these cases turned on their own facts. In the case **Bhuvnesh Kumar Dwivedi** (supra), the termination of service, of the concerned workman, was on account of the non-renewal of the contract of service. In the case of **Mapusa Municipal Council** (supra), the concerned workman was dismissed during the pendency of the industrial dispute without seeking approval of the Industrial tribunal. It is in these circumstances, that the finding of the Industrial tribunal that the order of termination was not operative and the workman continued to be in service, was upheld by this Court.

24. Thus, no case for interference is made out. Both the petitions are accordingly dismissed. Rule is discharged with no order as to costs.

C. V. BHADANG, J.

arp/*