

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REVIEW PETITION NO. 61 OF 2019
IN
WRIT PETITION NO. 9084 OF 2004**

Sharad Vishwas Bhamre

...Petitioner

vs.

The General Manager,
M/s.Mahindra Sons Ltd. & Anr.

...Respondents

Mr.Sagar A. Rane, Legal Aid, Counsel for Review Petitioner.
Mr.V.P. Vaidya with M.M. Agavekar for Respondent No.1.

CORAM : S.C. GUPTE, J.

DATE : 27 AUGUST 2019

P.C. :

Heard learned Counsel for the parties.

2 This review petition challenges an order passed on 22 June 2018 in Writ Petition No.9084/2004. The writ petition was in challenge of an award of Labour Court. The Petitioner's appointment was for a period of one year. It was his case that the appointment order provided for a period of training of one year. His service did not come to an end at the expiry of one year, i.e. on 1 April 1991. He claimed that he was on leave from 1 April 1991 till 4 April 1991 and his leave was subsequently extended upto 11 April 1991, when he received the letter of the Respondent communicating to him about the completion of his training period and cessation of his employment. His case before the trial court was that his retrenchment was in breach of the provisions of Section 25-F of the Industrial Disputes Act, since it was not with one month's notice or pay in

lieu of such notice or retrenchment compensation. The court rejected his contention on the ground that the termination of his service was the result of non-renewal of his contract of employment on its expiry and thus, not included in the definition of 'retrenchment' under Section 2(oo) of the Industrial Disputes Act, though the court accepted that during this period of one year, the Petitioner worked as a regular employee and not as a trainee under the Respondent establishment. The Petitioner's challenge to this order was rejected by this court in the writ petition on the ground that the conclusion of the Labour Court was clearly a possible view, which was supported by evidence. The training period had come to an end at the close of business on 1 April 1991. This court observed that it was not in dispute that on and after 1 April 1991, the Petitioner never resumed his duties; merely because he had produced a Medical Certificate, it could not be held, in the facts of the case, that his service was continued by the Respondent after the expiry of one year. This court was of the view that the conclusion of the Labour Court that the Petitioner's employment came to an end by virtue of the contract of employment was a possible view, there being no relevant material disregarded or irrelevant or non-germane material considered by the court whilst arriving at this conclusion and that, accordingly, no interference was warranted under Articles 226 and 227 of the Constitution of India.

4 The Review Petitioner cannot point out any apparent error of law or facts in the order under review. Relying on **Dilip Hanumantrao Shirke vs. Zilla Parishad, Yavatmal**¹, he submits that having regard to the law stated in that case, the order under review could not have been passed. The case of **Dilip Hanumantrao Shirke** was indeed considered by this

1 **1989 2 BomCR 661**

court in the order passed in the writ petition. Since the judgment was considered and analyzed and its ratio was discussed for application to the facts of the Review Petitioner's case, it cannot be made the basis of seeking a review. The error, if any, in analyzing the judgment cannot be described as an error apparent within the meaning of Order 47 of the CPC or principles analogous thereto.

5 Learned Counsel relies on the case of **S.M. Nilajkar vs. Telecom District Manager, Karnataka**². Learned Counsel submits that whilst considering the case as an exception to retrenchment in the light of sub-clause (bb) of Section 2(oo), the Supreme Court has laid down the conditions which ought to be satisfied. These conditions are : the workman should have been employed in a project or scheme of temporary duration; the employment should be on contract, and not on daily wage, which provided that the employment should come to an end on expiry of the scheme or project; the employment should have come to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract; and the workman ought to have been apprised or made aware of these terms by the employer at the commencement of the employment.

6 It is not that this law was disregarded by the court but that this court found nothing in the facts of the case, which could lay any factual foundation for deciding the case one way or the other. This court observed in the order under review that the Petitioner's case before the Labour Court, firstly, proceeded on the basis that despite his contract of employment stipulating the tenure of service of one year, his service

2 (2003) 4 SCC 27

actually continued beyond the period of one year. The factum of continuous service beyond the period of one year having not been found, there was nothing more for the court to decide. This court, in the premises, observed that the conclusion of the Labour Court could not be found fault with on the basis of the law cited by the Petitioner.

7 The review petition, accordingly, does not merit consideration and is dismissed.

(S.C. GUPTE, J.)