

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.48 of 2008

Sambhaji Khandu Patil

.. Appellant

Versus

The District Society Welfare Officer,
Kolhapur and anr

.. Respondents

...

Mr. M.S. Topkar for the appellant.

Mr. K.S. Thorat, AGP for the State.

CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.

DATED : 15th NOVEMBER, 2019

P.C:-

1 The appellant was undisputedly engaged as a watchman by the District Social Welfare Officer at Government Hostel at Gargoti, District Kolhapur. The appointment was for 29 days commencing from 28th June 1990 and ending on 27th July 1990. With a break of one day, appointment for another 29 days was granted from 29th July 1990 to 26th August 1990 and after one day's break he was re-appointed 11 times in succession and as a result he continued to work from 28th June 1990 till 21st August 1991 with 13 breaks of one day each after 29 days.

2 Service being terminated on 22nd August 1991 because it was not followed by another order as in the past, the petitioner filed a complaint before the Labour Court at Kolhapur and successfully established having worked for 240 calendar days in the year preceding the date of termination and non-compliance with Section 25F of the Industrial Disputes Act, 1947.

3 Reinstatement was ordered without back wages. The respondents challenged the award dated 23rd October 2001 by filing a revision before the revisional authority which was allowed on 16th December 2006 on the reasoning that the employment being for 29 days would be covered by clause (bb) to Section 2(oo).

4 The petitioner challenged the revisional decision by a Writ Petition which has been dismissed by the learned Single Judge vide impugned order dated 22nd January 2008. The view taken by the learned Single Judge is that the appointment being contractual for 29 days, it was not a case of retrenchment. The learned Single Judge also referred to the celebrated decision reported as 2006(4) SCC 1, State of Karnataka Vs. Umadevi's that back door employment can not be accepted by Courts.

5 Noting that the award in favour of the petitioner was one of reinstatement without back wages, the issue in the Appeal

would be whether the law declared in Uma Devi's (supra) case would be applicable and whether clause (bb) to Section 2(oo) of the Industrial Disputes Act, 1947 would apply.

6 As regards the law declared in Uma Devi's case being applicable or not, suffice it to state that it has no application to a case of a workman who pleads termination of service contrary to the provisions of the Industrial Disputes Act, 1947. Section 25F of the Industrial Disputes Act requires retrenchment compensation to be paid to a workman who has continuously worked for not less than one year under the employer at the time of retrenchment. This not being paid, it would be a case of retrenchment and the ratio of law in Uma Devi's case would not apply.

7 On the issue of applicability of clause (bb) of Section 2(oo) suffice it to state that where the employment as per contract is for a period fixed then alone, clause(bb) of Section 2(oo) would come into play. In the instant case, there is no evidence of contractual employment for the reason no contract was pleaded. It is a case where the workman was made to continuously work with artificial breaks of one day each after 29 days service rendered from 28th June 1990 till 21st August 1991.

8 Thus, we set aside the impugned decision dated 22nd January 2008 and allow Writ Petition No. 809 of 2007 filed by

the appellant and quash the judgment dated 16th December 2006 passed by the Revisional Authority.

9 We do not restore the award which directs reinstatement of the appellant for the reason the appellant had worked for 1 year 2 months when his services were discontinued but in violation of Section 25F of the Industrial Disputes Act, 1947.

10 In lieu of reinstatement, we award appellant compensation by answering the reference declaring and awarding the appellant a sum of ₹ 1,00,000/- which shall be paid to the petitioner by the respondents within two months from today and if not paid within two months shall bear interest @ 8 % p.a reckoned two months hereinafter till payment is made.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE