

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL NO.17 OF 2012

**In
Writ Petition No.5649/2009**

Ku. Chaya d/o Kesharao Telang,
aged about 45 years, Occ.-Nil,
R/o.-Ballarpur Tq and Distt. Chandrapur.

...APPELLANT

VERSUS

1. The Forest Development of Maharashtra
Corporation Ltd Ballarpur through
Regional Manager, (South) Chandrapur Zone,
Chandrapur.

2. The Divisional Manager Depot Division, FDCM Ltd.
Ballarpur Tq and Distt. Chandrapur.

...RESPONDENTS

Shri S. S. Loney, Advocate for appellant.
Ms. Tajwar Khan Advocate for respondents.

**CORAM : A.S. CHANDURKAR &
PUSHPA V. GANEDIWALA, JJ.**

Arguments Heard on : 21-09-2021.

Judgment Pronounced on : 14-10-2021.

JUDGMENT : (Per PUSHPA V. GANEDIWALA, J.)

The order passed by the Single Bench on 02.12.2011 in Writ Petition No. 5649/2009 is the subject matter of challenge in this Letters Patent Appeal filed under Clause-15 of the Letters Patent. The learned Judge, while partly allowing the Writ Petition, held that the appellant will be at the most entitled to the amount of shortfall in

retrenchment compensation i.e. of Rs.3691/- and in addition to this the appellant would be entitled to compensation of Rs 15,000/-.

2. The facts in brief giving rise to the present proceedings may be stated as under:

The appellant herein is a complainant before the Labour Court, Chandrapur. The complaint was filed under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as, 'the MRTU and PULP Act') bearing Complaint (ULPA) No.78/2000, seeking declaration against the respondent no.1-Forest Development of Maharashtra Corporation Ltd, Ballarpur (for short, 'FDCM') that the respondents have engaged in unfair labour practice against the complainant under Item 1 Schedule IV of the MRTU and PULP Act by illegally terminating her services vide order dated 30-06-2000. The appellant/complainant further sought direction of her reinstatement with continuity in service and full back wages.

3. It is the case of the appellant/complainant that the appellant was appointed by the respondent no.2, on the post of Telephone Operator, on daily wages, as per order dated 16-12-1985. Since then she is working continuously without any break. The appellant is having educational qualification as required for the post of

Telephone Operator. The appellant claimed to have completed 240 days' continuous service with the respondents. According to her the respondent no.1 has failed to make category of the appellant as Telephone Operator, as there is no other person appointed as Telephone Operator since the year 1985. It is alleged that the appellant being the only candidate working as a Telephone Operator though on daily wages, the question of maintaining seniority list of the daily wages employees and therein showing the name of the appellant at serial no.68 is itself illegal and the said seniority list is not binding on the appellant. The appellant condemned the act of the respondents terminating her on the principle of last come first go on the basis of the aforesaid seniority list which according to her is wrongly prepared. It is her case that this principle is not applicable to her case as she is the only candidate working on the post of Telephone Operator, on which she was appointed. The appellant felt herself the victim of unfair labour practice committed by the respondents.

4. Initially, the complaint was filed in contemplation of her retrenchment. Subsequently, on her retrenchment, she added further pleadings in her complaint relating to the inadequacy of retrenchment compensation as calculated by the respondents under Section 25F of the Industrial Disputes Act, 1947 (for short, 'the I.D. Act'). She further states that considering the nature of her work i.e. of Telephone

Operator, since last 15 years, which is not at all closed, she ought to have been treated as permanent employee irrespective of any absence of sanction.

5. The respondents in their written statement resisted the adverse pleadings in the complaint. The respondents specifically stated that they have followed the mandatory provisions of Sections 25F and 25G and also Rule 81 of the I.D. Act. The respondents state that there was no post of Telephone Operator in existence and therefore the appellant is not entitled to claim any relief. In their specific pleadings the respondents state that the respondent is a Government enterprise and incorporated with a view to maintain and improve the quality and quantity of forest throughout the State of Maharashtra. The appellant was never appointed on a particular post. She was engaged on Maharashtra Vainiki Prakalpa Yojana and the said project was completed on 31-03-2000 due to paucity of funds and the workers employed for the said project on daily wages were continued till 30-06-2000. However, the respondents have paid retrenchment compensation in compliance with Sections 25F of the I.D. Act.

6. On the basis of pleadings of the parties, the learned Presiding Officer of the Labour Court framed necessary issues and recorded evidence as adduced by the parties. The appellant examined

herself at Exh.72, while respondent Corporation examined one of his official by name Ghansham Premlal Thakur at Exh. 112. Both the parties brought on record the relevant documents in support of their contentions. The learned Presiding Officer of the Labour Court, on appreciation of evidence, vide judgment dated 31-03-2006, recorded the finding that the appellant could prove that she has been illegally retrenched from services on 30-06-2000 and, therefore, she is entitled for the reinstatement with 25% back wages.

7. This order of the Labour Court was carried further by the respondents Corporation in Revision (ULP) No.12/2008, before the Industrial Court, Chandrapur, under Section 44 of the MRTU and PULP Act. The Industrial Court found the judgment and order of the Labour Court as legal, proper and correct and accordingly the Revisional Court dismissed the Revision Petition and thereby confirmed the judgment of the learned Labour Court.

8. The respondents Corporation challenged the order passed by the Industrial Court in Writ Petition No.5649/2009. The Single Bench of this Court vide order dated 02-12-2011, while partly allowing the Writ Petition, held that the appellant will be at the most entitled to the difference in the short payment between 17,064/- and Rs.13,373/- which is of Rs. 3691/- and in addition to this the appellant would be

entitled to compensation of Rs 15,000/-. This judgment of the learned Single Judge of this Court is assailed before this Court in Letters Patent Appeal by the appellant/original complainant.

9. We have heard Shri S. S. Loney, learned Advocate for the appellant and Ms. T.H. Khan, learned Advocate for the respondents.

10. The learned Advocate Shri Loney for the appellant submits that the respondents have failed to comply with the mandatory provisions of Section 25G read with Rule 81 of the Industrial Disputes (Bombay) Rules, 1957. The learned Counsel urged that the respondents ought to have prepared a seniority list of all the workmen in the particular category from which the retrenchment is contemplated and cause a copy thereof to be posted on a notice board in the premises of the respondents at least seven days before the actual date of retrenchment. The learned Counsel states that the respondents have failed to follow the procedure for retrenchment as contemplated under Section 25G of the I.D. Act. The learned Counsel submitted that the respondents have failed to comply with the mandatory provisions of Section 25F of the I.D. Act and therefore the retrenchment must be treated as *non est* as admittedly there was shortfall in payment of retrenchment compensation to the appellant. It is stated that both the learned Courts below have properly appreciated the material on record

and recorded the reasons accordingly. On the contrary, the learned Single Judge has committed an error in holding that the employer has established that there was no violation of Section 25F of the I.D. Act. The learned Counsel lastly submitted that the learned Single Judge has awarded inadequate compensation, ignoring the long tenure of service of the appellant with the respondent no.1. Therefore, learned Counsel urged to quash and set aside the judgment of the learned Single Judge in Writ Petition No.5649/2009.

11. In support of his submission, the learned Counsel for the appellant placed reliance on the following decisions.

(a) **Bharat Forge Co. Ltd vs Uttam Manohar Nakate,**
reported in **(2005) 2 SCC 489.**

(b) **Mackinnon Mackenzie and Company Ltd vs Mackinnon Employees Union,** reported in **(2015) 4 SCC 544.**

12. *Per contra*, Ms T.H. Khan, learned Counsel appearing on behalf of the respondents while supporting the judgment of the learned Single Judge of this Court submitted that now it is well settled that even non compliance of Section 25F of the I.D. Act would not entail automatic reinstatement in service. She submits that admittedly the appellant was joined on daily wages. There was no post of Telephone Operator with the respondents and she was appointed for the

Maharashtra Vainiki Prakalpa Yojana and because of closure of the said project, the daily wagers workmen employed for the said project were retrenched. The daily wager worker cannot claim continuity in service as of right. The learned Counsel for the respondents urged to dismiss the appeal.

13. We have considered the rival submissions. At the outset, admittedly, the appointment of the appellant as a Telephone Operator on 16.12.1985 was on daily wages. A perusal of her appointment letter would reveal that she was notified that she is appointed on daily wages on the post of Telephone Operator and her appointment is of temporary nature and she would be removed from the services without issuing any notice. A perusal of her termination order dated 30-06-2000, which is at page 79 of the paper book, would reveal that as the respondents were not able to engage her services due to paucity of funds and lack of work load, she is being retrenched with compensation of Rs.12,105/-. It is also stated that she is at serial no.68 in the seniority list and the compensation is issued to her considering her seniority and the date of her appointment. She is also given one month's pay in lieu of notice. It is also ensured that there is no one who is junior to the appellant in the employment of the respondents.

14. Long service put in by the appellant is not in dispute and therefore the fact that the appellant has completed 240 days' in the preceding year of retrenchment is not also in dispute. The learned Single Judge placed reliance on the judgments of the Hon'ble Apex Court in case of Incharge Officer and another vs Sankar Shetty, reported in (2010) 9 SCC 126 and Jagbir Singh vs Haryana State Agriculture Marketing Board and another reported in (2009) 15 SCC 327 and observed that there is a change in the trend of the decisions delivered by the Apex Court. It has been held that in case of daily wagers, if the work is not available then the consequences of reinstatement with back wages may not necessarily follow as a result of non-compliance of Section 25F and the employee may be entitled for payment of compensation. The learned Single Judge observed that after these two judgments of the Hon'ble Apex Court, there is not a single judgment pointed out taking contrary view of the matter either of the Apex Court or of this Court. The learned Judge also observed that the Labour Court has recorded the finding that the name of the complainant was included in the list of daily wagers and there is nothing on record to show that the juniors of the complainant are retained in service and therefore there was no question of framing any issue by the learned Labour Court as to whether a separate seniority list of the Telephone Operator was required to be maintained. The

Presiding Officer of the Labour Court has recorded the findings that the employer has established that there was no violation of Section 25G of the I.D. Act and that the retrenchment was on account of non availability of the post. It is further held that these findings have not been touched by the Revisional Court except to say that the stand of the employer that the complainant was employed as Telephone Operator on purely temporary basis cannot be accepted.

15. We do not find any error in the observations made by the learned Single Judge. These observations are in accordance with the material on record and the findings recorded by the Courts below. Reliance of the learned counsel Shri. Loney on a decision of Hon'ble Supreme Court in **Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate** (*supra*) is quite misplaced in as much as this judgment relates to the question of misconduct and the quantum of the punishment, as such, the same is wholly inapplicable to the factual situation of the present case where misconduct is not the issue for determination. In the second judgment relied on by the learned counsel Shri. Loney in the case of **Mackinnon Mackenzie and Company Ltd vs Mackinnon Employees Union**, (*supra*), the Hon'ble Apex Court held that the principle of 'last come first go' should be strictly adhered to by the employer at the time of issuing retrenchment notice served upon the concerned workmen as

provided under Section 25G of the I.D. Act read with Rule 81 of the Bombay Rules. In the instant case, as discussed earlier and considering the terms of the retrenchment order issued to the appellant, in our considered view, the present case is not the case of non-compliance of Section 25G of Act read with Rule 81 of the Bombay Rules.

16. In our considered view, the observations made by the learned Single Judge are just, proper and in accordance with the material on record and the changed trend of law, warranting any interference. It is evident from the record that the appellant has been given retrenchment compensation by the employer, however, evidently there is some shortfall in the computation of the compensation. The learned Judge has considered this aspect and enhanced the compensation in terms of law and an additional compensation of Rs.15,000/- is granted to her. In our view, considering her period of service, interest of justice would be met if she gets total compensation of Rs.50,000/- in addition to the compensation calculated in accordance with law. In the circumstances, we partly allow the appeal in the above terms. The balance amount of compensation of Rs.35,000/- shall be paid to the appellant within a period of six weeks failing which that amount would be payable with interest @ 6% per annum till payment.

17. Letters Patent Appeal stands disposed of in aforesaid terms. In the circumstances, there would be no order as to costs.

JUDGE

JUDGE

Deshmukh