

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

LETTERS PATENT APPEAL NO.240/2012 IN
WRIT PETITION NO.334/2004(D)

Ajay Hiranman Patil,
 Age 42 years,
 R/o. Sonawadi, Ward No.16,
 Wardha.

..... **APPELLANT**

...V E R S U S...

1. The State of Maharashtra,
 through the Joint Director of Health Services
 (Malaria and Filariasis), Pune.
2. The Deputy Director of Health Services,
 Nagpur Region, Mata Kacheri, Nagpur.
3. The District Malaria Officer,
 Ramnagar, Chandrapur.

..... **RESPONDENTS**

 Shri P.N.Shende, Advocate for the appellant.

Mrs. Sangeeta Jachak, Assistant Government Pleader for the respondents.

CORAM : A.S.CHANDURKAR and G.A.SANAP, JJ.
DATED : 16th November, 2021

ORAL JUDGMENT (PER A.S.CHANDURKAR, J.)

The challenge raised in this Letters Patent Appeal is to the judgment of the learned Single Judge dated 28.11.2011 in Writ Petition No.334/2004. By the said judgment the learned Single Judge was pleased to allow the said writ petition preferred by the respondents herein in which the order passed by the Industrial

Court dated 15.04.2002 directing reinstatement of the appellant without back wages was challenged and which order came to be set aside.

2. It is the case of the appellant that being duly qualified he was appointed on the post of 'Laboratory Technician' on 05.10.1995. In the order of appointment it was stated that the appointment was of temporary nature for a period of 175 days or till a candidate selected by the Selection Board was available. Pursuant to the aforesaid order, the appellant discharged duties for a period of 175 days. Similar orders of appointment were issued to the appellant on 17.07.1996, 08.01.1997 and 29.09.1997. Period 175 days stipulated in the last order of temporary appointment came to an end on 31.03.1998. Since the appellant was aggrieved by this order of termination, he approached the Labour Court by filing a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971. The respondents opposed the complaint by pleading that the appointment was on temporary basis till a regularly selected candidate was made available for appointment and hence there was no right in favour of the appellant.

3. The Labour Court by its judgment dated 22.05.2001 held that by issuing such appointment orders on temporary basis for a period of 175 days, no unfair practice was committed by the respondents. Since the termination was in terms of the order of appointment, the appellant was not entitled for any relief. A finding was recorded that the provisions of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947') were attracted and therefore compliance of Section 25F of the Act of 1947 was not called for. The complaint was accordingly dismissed.

The Industrial Court while considering the revision application preferred by the appellant held that the appellant had completed 240 days of continuous service and was entitled to the protection of Section 25F of the Act of 1947. Since the said provision was not complied with, it was held that the retrenchment was illegal. The complaint was accordingly allowed after setting aside the order of the Labour Court. The relief of reinstatement with continuity in service but without any back wages was granted to the appellant.

4. The respondents being aggrieved by the aforesaid judgment challenged the same in Writ Petition No. 334/2004. The learned Single Judge after noticing that the similar issue was decided in Writ Petition No.2781/2010 [Sunita Vitthalrao Golher vs. The Joint Director of Health Services (Malaria and Filaria) and two ors.] on 25.11.2010 held that there was no retrenchment of service for the reason that in the order of appointment itself it was stated that the engagement was of temporary nature till a candidate was available for selection from the Regional Selection Board. The writ petition was accordingly allowed. Being aggrieved, the appellant has filed the present Letters Patent Appeal.

5. Shri P.N.Shende, learned counsel for the appellant submits that the Industrial Court rightly found that the appellant had completed continuous service of more than 240 days and there was non-compliance with the provisions of Section 25F of the Act of 1947. The said order did not call for any interference at the hands of the learned Single Judge. According to him, the appellant was in service from October 1995 to March 1998 which indicated that there was a post available as well as need of his services. Moreover appointment of three employees who came to be

appointed on temporary basis, after the appellant, were continued in service and the Industrial Court rightly found that this amounted to commission of an unfair labour practice. Placing reliance on the decisions in *Devinder Singh Vs. Municipal Council, Sanaur 2011(5) Mh. L J 503* and *Ramesh Kumar Vs. State of Haryana AIR 2010 SC 683*, it was submitted that the Industrial Court rightly granted the relief of reinstatement with continuity in service. He urged that the facts in Writ Petition No. 2781/2010 were distinct and the order passed by the Industrial Court in the present case was not liable to be set aside on that count.

6. Mrs. Sangeeta Jachak, learned Assistant Government Pleader for the respondents supported the impugned judgment. According to her in the order of appointment itself it was stipulated that the appointment was on temporary basis for a fixed period and till a candidate from the Selection Board was made available. It was rightly held by the Labour Court that there was no retrenchment and the order passed by the Industrial Court holding otherwise was rightly set aside by the learned Single Judge. The facts in Writ Petition No.2781/2010 were similar and the learned Single Judge was justified in relying upon that adjudication. Hence no interference with the impugned judgment was called for.

7. We have heard the learned counsel for the parties and we have perused the records of the case. After giving due consideration to the rival submissions, we find that there is no merit in the Letters Patent Appeal and the order passed by the learned Single Judge deserves to be confirmed.

8. The orders of appointment issued to the appellant on three occasions

clearly specify that the appellant was on temporary basis for a period of 175 days or till a candidate duly selected by the Selection Board was made available. The services of the appellant thus came to an end on the expiry of the period of 175 days on all these occasions. While upholding the view taken by the Labour Court that such discontinuation did not amount to retrenchment, the learned Single Judge in Writ Petition No.2781/2010 relied upon the decisions in *Punjab State Electricity Board Vs. Darbara Singh (2006) 1 SCC 121* and *Kishore Chandra Samal Vs. Orrissa State Cashew Development Corporation Ltd., Dhenkanal (2006) 1 SCC 253*. Having perused those decisions, it is clear that the same in clear terms hold that when the appointment is for a fixed period or till a duly selected candidate is made available, the same would not amount to retrenchment on completion of the period of temporary service. We find that no other view is possible than the one taken by the learned Single Judge.

9. As regards the contention that three other employees were retained in service on temporary basis, the records indicate that at Exhibits 44 and 45 these candidates were selected by the Secondary Selection Board and their names were forwarded to the respondent no.2. The orders of appointment though temporary in nature, indicate their selection by the Selection Board. Hence those appointments though on temporary basis cannot be equated with the appointment of the appellant. The Labour Court has rightly considered this aspect of the matter and the same has been rightly upheld by the learned Single Judge.

10. In the light of the aforesaid two decisions of the Hon'ble Supreme Court,

it is clear that the provisions of Section 25F of the Act of 1947 are not attracted to the case in hand. Hence the submission made on behalf of the appellant based on the decisions in *Devinder Singh* and *Ramesh Kumar* (supra) cannot be accepted in the facts of the present case. In those decisions on account of violation of the provisions of Section 25F of the Act of 1947, monetary compensation was granted. Since we have found that the provisions of Section 25F of the Act of 1947 are not attracted, there is no question of any monetary compensation being granted to the appellant.

11. Hence for the aforesaid reasons, the judgment of the learned Single Judge stands affirmed. The Letters Patent Appeal stands dismissed with no orders as to costs.

JUDGE

JUDGE

Andurkar..