

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10305 OF 2018

NITESH RAMBHUL BED
VERSUS
THE STATE BANK OF INDIA THROUGH MANAGER
KANNAD BRANCH

...
Advocate for Petitioner : Mr. V.P. Latange
Advocate for Respondent: Mr. Ruturaj Patil

.....
[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 29th MARCH, 2022

ORDER :

1. At the instance of the petitioner Reference IDA No. 57/2015 was initiated. By filing statement of claim the petitioner contended that he was appointed with the respondent/bank as a sweeper on 19.04.2008. The bank availed his serviced and on 01.07.2015, petitioner's service was orally terminated by the bank. The petitioner therefore, claimed setting aside his oral termination, reinstatement in service with continuity and full back wages.

2. The bank resisted claim of the petitioner contending that the petitioner was engaged on purely temporary and casual basis and

he was called as and when there was need. He was being paid honorarium. In the year 2015, contractor was appointed for cleaning bank premises.

3. The Labour Court partly allowed the reference and declared that oral termination of the petitioner was illegal, however, instead of reinstatement, awarded compensation of Rs. 5,250 to the petitioner. This petition challenges the award passed by the Labour Court to the extent it denies reinstatement with continuity of service and full back wages.

4. Heard the learned advocate for the petitioner and learned advocate for respondent/bank.

5. The learned advocate for the petitioner urged that the Labour Court has recorded all the findings in favour of the petitioner and has held that the termination of the petitioner was illegal. In that view of the matter, the Labour Court ought to have granted reinstatement with full back wages. According to him, the Labour Court has committed serious error in denying the reinstatement and full back wages to the petitioner. He therefore, submits that the

impugned award to the extent it denies the relief of reinstatement and back wages claimed by the petitioner is liable to be quashed and set aside and reinstatement with full back wages needs to be granted to the petitioner. In support of his submissions he placed reliance on Surendra Kumar Varma ETC. Vs. The Central Government Industrial Tribunal Cum-Labour Court (1981 AIR 422), The Management of Regional Chief Engineer P.H.E.D. Ranchi vs. Their Workmen Rep. By District Secretary (2018 LLR 1167) and Executive Enginner, PWD, Pune and anr. Vs. S.P. Rokade (2012 (4) AIR Bom R 722).

6. The learned advocate for respondent/bank on the other hand supports the impugned award. He states that the services of the petitioner was engaged purely on temporary and casual basis. No proper procedure was followed while engaging the services of the petitioner. The petitioner was being paid only honorarium and not any salary or wages. Hence, no right is accrued to the petitioner to claim permanent employment and reinstatement in services with full back wages. He submits that since contractor is appointed for cleaning in July, 2015, the Labour Court was justified in denying the reinstatement

with full back wages to the petitioner. He therefore, submits that there is no substance in the petition, the petition is liable to be dismissed.

7. It is a matter of record that the Labour Court as held that the termination of the petitioner by the bank is illegal. However, in the facts of the case and considering the fact that the petitioner has admitted that the bank has allotted cleaning duty to the contractor, it is held that the work which was being performed by the petitioner is being performed by the bank through the contractor, hence the Labour Court awarded compensation. This Court is of the view that the Labour Court in the facts of the case was justified in arriving at a conclusion that the petitioner is not entitled for reinstatement in service, but was entitled for retrenchment compensation.

8. In *Management of Regional Chief Enginner P.H.E.D. Ranchi* (supra), the Labour Court awarded reinstatement with full back wages. The order of the Labour Court was upheld by the writ Court and the writ appellate Court. In these facts, the Hon'ble Supreme Court refused to interfere in the award of reinstatement.

9. In *Surendra Kumar Verma ETC* (supra), the Hon'ble Apex Court, come to a conclusion that normally reinstatement with full back wages should be granted, where the termination is held to be illegal. However, it is also observed that *"but there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums: the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the Court to make appropriate consequential orders. The Court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The Court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that,*

more often than not. comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.”

10. In the case in hand, since the services of the petitioner were temporary and casual and no formal procedure was followed while engaging his services and in view of the fact that the contractor is appointed for cleaning purposes, the Labour Court was justified in passing the impugned award.

11. In *Executive Engineer, PWD, Pune and Anr.* (supra), the co-ordinate bench of this Court upheld the order of Industrial Court granting reinstatement and continuity of service with consequential benefits to the Safai Kamgar of circuit house, Pune, however, held that the complainants were not entitled for any back wages granted by the Industrial Court. Such are not the facts of the present case.

12. In *Assistant Engineer Rajasthan Development Corporation and another vs. Gitam Singh* (2013 (5) Mh.L.J. Page 1), the Hon'ble Supreme Court held that *“With regard to the wrongful termination of a daily wager, who had worked for a short period, the*

award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors, including mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute before grant of relief in an industrial dispute.”

13. In *Jagbir Singh v. Haryana State Agriculture Marketing Board and Another* (2009) 15 SCC 327, the Hon’ble Supreme Court held thus:-

“14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wages has not been found to be proper by this Court and instead compensation has been

awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.”

14. In *Uttar Pradesh State Electricity Board v. Laxmi Kant Gupta* (2009) 16 SCC 562, it is held that “*now there is no such principle that for an illegal termination of service the normal rule is reinstatement with back wages, and instead the Labour Court can award compensation.*”

15. In the light of principles laid down by the aforesaid citations, the Labour Court in the facts of the present case was justified in awarding compensation to the petitioner instead of reinstatement in service. The Labour Court has passed a reasoned award. There is no illegality or perversity in the impugned award passed by the Labour Court. The writ petition being devoid of merits, is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE