



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.518 of 2016

SWAWALAMBI SHIKSHAN PRASARAK MANDAL, THR ITS PRESIDENT,
WARDHA AND ANOTHER

VS

BABURAO SHAMRAO DHUMALE AND ANOTHER

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri V.P. Marpakwar, Advocate for the Petitioner/s
Shri D.S. Lambat, Advocate for the respondent No.1
Shri Shyam Bissa, AGP for the Respondent No.2/State

CORAM : ANIL S. KILOR, J.

DATED : 12.02.2024

1. Heard.
2. This petition takes exception to the Award passed by the Labour Court in Reference I.D.A. No.2 of 2011 dated 17.10.2015, allowing the reference and thereby, directing the petitioners to reinstate the respondent No.1 with backwages.

3. The brief facts of the present case are as under:

The respondent No.1 was appointed on 01.10.1993 as 'Peon' on consolidated monthly salary of Rs.800/- by the petitioner No.1 society. The post of 'Peon' is in the Class-IV category. The respondent No.1 was appointed in year to year basis for fixed term.

4. The respondent No.1, thereafter, filed complaint before the Industrial Court on 27.07.2001 for grant of permanency, the learned Industrial Court thereupon, issued notices and directed

the petitioners not to terminate the respondent-employee, vide order dated 30.07.2001. The said interim order was confirmed on 14.02.2003. However, in the meantime, the petitioners issued advertisement in the newspaper, calling applications for the post occupied by the respondent No.1.

5. The respondent No.1 therefore, moved an application for grant of stay to the advertisement which was allowed vide order dated 30.06.2003.

6. It is alleged that in breach of the above referred order, the respondent No.1 was terminated on 07.05.2001. Thereafter, the complaint before the learned Industrial Court, was disposed of on 06.12.2007.

7. The respondent No.1 on 03.09.2007 accordingly, gave a demand notice and on failure of Conciliation, the matter was referred to the learned Labour Court.

8. The learned Labour Court, after hearing both the parties, and on appreciation of the oral as well as documentary evidence available on record, passed the Award dated 17.10.2015, allowing the reference. Hence, this petition.

9. I have heard the learned counsel for the parties.

10. The learned counsel for the petitioners argued that, as the appointment of the respondent No.1 since beginning was for a fixed term, the discontinuation of the respondent No.1 at the end of such appointment, cannot be termed as retrenchment.

11. It is submitted that Section (2)(oo) of the Industrial Disputes Act, 1947 (for short “the I.D.Act”), makes it clear that the termination of the service on expiry of the contract period would not amount to retrenchment. In support of his contention he has placed reliance on the judgments of the Hon’ble Supreme Court of India in the case of *Karnataka Handloom Dev. Corpn. LTD v Shr Mahadeva Laxman Raval*¹, *Bhavnagar Municipal Corporation Vs. Salimbhai Umarbhai Mansuri*², *Nagpur District Central Co-operative bank Ltd. vs. Prashant Ashokrao Salunke and another*³, *Principal Vs. Anant Nivrutti Bhure*⁴ and *Vishwanath Shankar Sadafule Vs. Maharashtra State Electricity Distribution Co and others*⁵.

12. It is further argued that there is a delay in approaching the Conciliation Officer. It is submitted that, the respondent No.1 was terminated on 07.05.2001 and he first time approached to the Conciliation Officer in 2007 and the reference was made in 2015. He submits that on delay and laches the learned Labour Court ought to have dismissed the reference.

13. He thirdly and lastly submits that the complainant i.e. the respondent No.1 was working in the petitioner-college, therefore, the reference is not maintainable, as the dispute does not fall within the ambit of the I.D. Act.

14. On the other hand, the learned counsel for the respondent No.1 submits that admittedly, the respondent No.1 worked in the

1 (2006) 13 SCC 15
2 2013 (6) Mh.L.J. 919
3 2016(1) Mh.L.J. 706
4 2015 (146) FLR 409
5 2018 (2) MhLJ 479

petitioner-college from 1993 to 2001, which shows that the work was available with the petitioner-college which can further be substantiated by the fact that in the year 2001, the advertisement was issued by the petitioner-college.

15. It is submitted that despite the direction by the Industrial Court, not to terminate the services of the respondent No.1 and despite the fact that there was a stay granted to the advertisement, the respondent No.1 was terminated. He therefore, submits that considering the continuous service of the respondent No.1 from 1993 till 2001, the stand taken by the petitioners that, since the appointment was for the fixed term, it cannot be termed as retrenchment, is nothing but a denial of the rightful claim of the respondent No.1 for permanency and the benefits which otherwise the respondent No.1 is entitled for.

16. It is submitted that even if considering the provision namely Section 2 (oo) of the I.D. Act and considering the law laid down by the Hon'ble Supreme Court of India, in the cases of *Devinder Singh Vs. Municipal Council, Sanaur*⁶, *Divisional Controller, Maharashtra State Road Transport Corporation Vs. Kalawati Pandurang Fulzele*⁷, *Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Limited*⁸, the judgments of the Co-ordinate Bench of this Court in the cases of the *State of Maharashtra and anr. Vs. Kamalprasad Tilakchand Damhe and anr.*⁹ *Shankar Bhimrao Kadam and Ors. Vs. Tata Motors Limited*¹⁰ and the judgment of

6 (2011) 6 SCC 584

7 2022 SCC OnLine SC 112

8 (2014) 11 SCC 85

9 Writ Petition No.3117/2002 (dt. 28/09/2012)

10 Writ Petition No.5588/2017 (Dt.26.02.2022)

the Gujrat High Court, in the case of *Jamnagar Municipal Corporation Vs. Avdesh Kishorbhai Solanki*¹¹, it would amount to retrenchment.

17. It is submitted that there is no delay in approaching the Conciliation Officer for the reason that, the complaint filed before the learned Industrial Court by the respondent No.1 for permanency was disposed of on 06.12.2007 and thereafter, immediately, the demand notice was issued and the respondent No.1 approached to the Conciliation Officer, whereupon, the reference was made to the learned Labour Court. He therefore, submits that there is no delay.

18. He lastly points out that since the respondent No.1 is the Class IV employee and as the Co-ordinate Bench of this Court in the case of *Shri Chhatrapati Shivaji Shikshan Sanstha and anr. Vs. Anand s/o Suresh Shinde*¹², has held that the non-teaching staff working in schools or colleges or universities can approach the Labour/Industrial Courts. It is further held that, the Labour Court has jurisdiction to entertain the grievance of the respondent No.1. He therefore, submits that as no error has been committed by the learned Labour Court in allowing the reference, the petition may be dismissed.

19. In light of the rival contentions of the parties, I have perused the record and the impugned judgment and order.

20. From the record, it is evidence that, the respondent No.1 was in service with the petitioners from 01.10.1993 till

11 R/Special Civil Application No.10126/2018 and other connected matters(Dt.25/07/2022)

12 Writ Petition No.10366/2013 (Dt. 01/03/2017)

07.05.02001 i.e. continuously for about 8 years and in July 2001, the complaint was filed for permanency. Wherein, the learned Industrial Court directed the petitioners not to terminate the respondent No.1 only because the respondent No.1 filed the complaint for his regularization. Thereafter, on issuance of advertisement, the learned Industrial Court granted stay to it. However, the respondent No.1 was terminated and thereupon, the complaint was disposed of on 06.12.2007.

21. Considering the date of the demand notice i.e. 03.09.2007 and considering the date of disposal of the complaint by the Industrial Court, I do not find any substance in the submission of the learned counsel for the petitioners that there was a delay in approaching the Conciliation Officer, in the peculiar facts and circumstances of this case.

22. As far as the submission of the learned counsel for the petitioners that, the proceeding before, the Labour Court was not maintainable. This submission cannot be accepted and needs to be rejected, in view of the judgment of the Co-ordinate Bench of this Court, in the case of *Chhatrapati Shivaji Shikshan Sanstha and anr.* (supra).

23. Thus, I have no hesitation to hold that the reference before the Labour Court was maintainable at the behest of the respondent No.1.

24. The only, question now remains to be considered is that, whether the termination of the respondent No. 1 can be termed retrenchment or not ? The Hon'ble Supreme Court of India, in

the case of *Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Limited*¹³, has held as under:

"27. Very interestingly, the periods of service extends to close to 6 years save the artificial breaks made by the respondent with an oblique motive so as to retain the appellant as a temporary worker and deprive the appellant of his statutory right of permanent worker status. The aforesaid conduct of the respondent perpetuates "unfair labour practice" as defined under section 2(ra) of the id act, which is not permissible in view of Sections 25-T and 25-U of the ID Act read with entry at Serial No. 10 in the Vth Schedule to the ID Act regarding unfair labour practices. Section 2(ra) reads thus:

"2. (ra) 'unfair labour practice' means any of the practices specified in the Fifth Schedule."

Further, Entry 10 of the Vth Schedule reads as under:

"5. To discharge or dismiss workmen—

10. To employ workmen as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."

28. The respondent, in order to mitigate its conduct towards the appellant has claimed that the appellant was appointed solely on contract basis, and his service has been terminated in the manner permissible under Section 2(o)(bb) of the ID Act. However, we shall not accept this contention of the respondent for the following reasons:

28.1 Firstly, the respondent has not produced any material evidence on record before the Labour Court to prove that it meets all the required criteria under the Contract Labour (Regulation and Abolition) Act, 1970, to be eligible to employ employees on contractual basis which includes licence number, etc.

28.2 Secondly, the respondent could not produce any material evidence on record before the Labour Court to show that the appellant was employed for any particular project(s) on the completion of which his service has been terminated through non-renewal of his contract of employment.

29. Therefore, we deem it fit to construe that the appellant has rendered continuous service for six continuous years (save the artificially imposed break) as provided under Section 25-B of the ID Act and can therefore be subjected to retrenchment only through the procedure mentioned in the id act or the state act in pari materia.”

25. The Co-ordinate Bench of this Court in the case of *Shankar Bhimrao Kadam and Ors. Vs. Tata Motors Limited*¹⁴, has discussed the various authorities and held as under:

“51. Mr. Singhvi relies upon paragraph Nos. 4 to 11, 13 to 19 and 22 to 53. He submits that the view taken in Sunil Pralhad Khomane (supra), would perfectly apply to these cases and is virtually a tailor-made judgment for the present cases, in the light of the earlier judgments delivered in identical fact situations by the Hon'ble Supreme Court. It would be apposite to reproduce the said paragraphs, which read as under:

“... 15. It is clear from the definition quoted above that any termination otherwise than as a punishment inflicted by way of a disciplinary action comes within the main part of Section 2(oo), whereas Clauses (a) to (c), which follow, enacts exceptions to such termination. We are here concerned with clause (bb), which is relied upon by the Respondent Company for excluding the subject terminations from retrenchment. Clause (bb) applies to two situations: (i) where the termination is a result of non-renewal of the contract of employment between the employer and the concerned workman upon its expiry; and (ii) where such termination is the result of a contractual stipulation contained in the contract of employment. In our case, it is nobody's case that there was any contractual stipulation as a result of which the contract of employment was terminated. The company's case here is under (i) above, i.e. of a contract made for a specific period and its non-renewal upon expiry.

16. To be sure, the employment contracts in our case were all fixed period contracts; they did have an expiry date; and they were obviously not renewed after that date. They

did thereby fall within clause (bb) of Section 2(oo) (i.e. under (i) above) - so goes the argument of Mr. Naik and Mr. Cama. That is taking a rather too simplistic or literal view of the matter. The facts of our case demonstrate, as I have noted above, a deliberate rotational scheme employed by the Respondent company over more than thirteen years. A pool of temporaries is maintained and anywhere between four to eight thousand temporaries from out of this pool are employed in rotation, some of them on 8 to 14 times, each time for a duration not exceeding seven months. The classical idea behind retrenchment has been surplussage; an employee, who has become surplus due to any reason of economy, rationalisation in industry, new technology, improved plant, etc., and hence, no more required, is retrenched. A fixed period contract, on the other hand, implies either that for some particular work or project or due to a spurt in the demand and the resultant need for increased activity, there is a special need for a certain employee or number of employees and accordingly, need for a contract of employment for the particular work or project, or for the particular fixed period. In our case, however, what one finds is perennial work, work which is no different from what was performed by permanent workmen of the company, for which temporaries were engaged. The engagement was throughout a long period of over thirteen years. Though the actual number varied throughout, being anywhere between four to eight thousand, surely a minimum of four thousand temporary workmen were required to be engaged throughout. In the case of each of these workmen (with whom we are concerned here), we can see such rotational pattern even going by the Respondent's own documents. Based on this evidence, the only reasonable conclusion to be drawn was that their employments were neither for any particular work or project nor were brought to an end after a fixed period due to want of work upon expiry of the period of contract. The engagements were brought to an end purportedly at the expiry of the stipulated period of contract only to see that they get an artificial break (during which others from the waiting list were employed) only to be re-employed and this went on - again and again. The whole pattern clearly appears to have been designed with a view to avoid any legitimate claim of permanency of tenure on the part of the concerned workmen. That is a clear recipe of an

unfair labour practice, notorious in the industry, of employing 'badlis', casuals or temporaries and continuing them as such for years, with the object of depriving them of the status and privileges of permanent employees.

64. In *Sunil Prahlad Khomne (supra)*, this court has referred to *Bajaj Auto Limited v. R.P. Sawant*², *Bajaj Auto Limited v. Bhojane Gopinath D.* MANU/SC/1061/2003 : (2004) 9 SCC 488, *Bajaj Auto Limited v. Rajendra Kumar Jagannath Kathar* MANU/SC/0328/2013 : (2013) 5 SCC 691, *Ghanshyam Sukhdeo Gaikwad v. Bajaj Auto Limited* MANU/SC/0520/2016 : (2016) 13 SCC 295.

65. In *Chandrashekhar T. Titarmare (supra)*, the learned Division Bench of this court concluded that the learned Single Judge was right in holding that there is no evidence led by the management to establish that the workers were given breaks in service as work was not available. It was further held that the learned Single Judge was right in holding that artificial breaks were given to the employees only to deprive them of permanency. The management of Mahindra & Mahindra carried this judgment to the Hon'ble Supreme Court. During the pendency of the special leave petitions (12 Nos.), the management filed an application for withdrawal of all the special leave petitions, as the parties had mutually settled the matters. It was only on account of the agreement that the parties requested the Hon'ble Supreme Court that the judgment of the learned Appeal Bench of the Bombay High Court should not be treated as a binding precedent. Therefore, the Hon'ble Supreme Court observed that the orders of the High Court shall not operate as binding precedents. However, the law laid down by the Hon'ble Supreme Court in *R.P. Sawant (supra)*, *Rajendra Kumar Jagannath Kathar (supra)*, *Ghanshyam Sukhdeo Gaikwad (supra)*, and *Bhojane Gopinath (supra)* has now settled the legal position in such cases.

66. In view of the above, I find that the respondent-management has systematically prevented these temporaries from completing 240 days in continuous employment and had foisted involuntary unemployment on these temporaries before they could complete 240 days only to paint an imperfect picture that the work had come to an end and, therefore, these temporaries were disengaged by efflux of time, which is an exception to retrenchment u/s. 2(oo) (bb)."

26. From the above referred observations, it is evident that the fixed period contract implies either that for some particular work or project or due to a spurt in the demand and resultant need for increased activity, there is a special need for a certain employee or number of employees and accordingly, need for a contract of employment for a particular work or project, or for the particular fixed period.

27. Thus, if the facts of case at hand, are taken into consideration, it is an undisputed fact that there was a perennial work and the engagement was throughout from 1993 till 07.05.2001 i.e. for about eight years. Hence, the only reasonable conclusion can be drawn in this case that, the respondent No.1 was not employed for any particular work or project or his services were brought to an end after a fixed period due to want of work, upon expiry of the period of work. The appointments made year to year basis and the services brought to an end after expiry of the stipulated period, were only with an intention to avoid any legitimate claim of permanency of tenure on the part of the respondent No.1.

28. In the circumstances, as the respondent No.1 succeeded in establishing and proving by leading oral evidence that he completed 240 days in every year, to which there was no challenge raised in the cross-examination by the petitioners, I have no hesitation to hold that the post on which the respondent No.1 worked as 'Peon', was a permanent post and the work was of a perennial nature.

29. Moreover, there is no suggestion given by the petitioner to the respondent No.1 during his cross-examination on the point of gainful employment during the period of termination. In the circumstances, the findings recorded by the Labour Court in Reference I.D.A. No.2 of 2011 dated 17.10.2015, are just and proper and no illegality or infirmity has been committed by the learned Labour Court.

30. In light of the above referred observations and in peculiar facts and circumstances of the present case, the judgments cited by the petitioners, are of no help in the present case.

31. In the circumstances, I do not find any error committed by the learned Labour Court in allowing the reference.

32. Accordingly, the writ petition stands **dismissed**.

[ANIL S. KILOR, J.]