



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

WRIT PETITION NO.6173/2023

1. The Executive Engineer, O & M Division,
MSEDCL, Vidhyut Bhawan, N.H. 6,
Nagpur Road, Bhandara
2. Deputy Executive Engineer, Sub Division,
MSEDCL, Tah-Pauni, Bhandara
3. Assistant Engineer (AE),
Kosara Distribution Centre,
MSEDCL, At-Po. Kondha-Kpsara,
Tahsi-Pauni, Bhandara.

.....PETITIONERS

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

Pranay. Pramod Bansod
Aged About 29 years, R/o Silli (Ambadi),
Tahsil and Dist. Bhandara.

...RESPONDENT

Mr. S. V. Purohit, Advocate for petitioners.
Mr. R. V. Bhandarkar, Advocate for respondent.

CORAM:- ANIL L. PANSARE, J.
DATED :- 24.03.2025

JUDGMENT

Heard. Issue Rule returnable forthwith. Learned counsel waives service on behalf of respondent. With consent of learned counsel for the parties, petition is taken up for final hearing.

2. Petitioner – Employer is aggrieved by judgment and order dated 25.07.2023 passed by Industrial Court, Bhandara in Revision

ULP No.41/2022, by which the judgment dated 08.04.2022, passed by Labour Court, Bhandara in Complaint ULP No.5/2019, has been quashed and set aside. Consequently, complaint filed by the respondent came to be allowed. Petitioners – original respondents were declared to have engaged in unfair labour practice in terminating service of the respondent. The order of termination of service date 31.01.2019 has been quashed and set aside. The petitioners were directed to reinstate the respondent with continuity in service.

3. Counsel for the petitioner submits that the Labour Court had no jurisdiction to entertain the dispute because there was no relationship of employer and employee inasmuch as the respondent herein was appointed as Electrical Assistant on contractual basis for a period of three years.

4. My attention is invited to appointment order dated 17.06.2015, which indicates that the respondent was appointed as Electrical Assistant on contractual basis for a period of three years upon various conditions, of which condition Nos. 3, 9 and 14 would be relevant. Condition No.3 provides that in case of misconduct, the appointment shall be cancelled. Condition No.9 provides that provisions of regular employment will be not applicable to the

respondent. Condition No. 14 provides that respondent will get lump sum payment as honorarium at Rs.7500/- for first year, at Rs.8500/- for second year and at Rs.9500/- for third year.

5. Mr. Purohit, learned counsel for the petitioner, submits that the respondent remained absent for the period from 20.02.2018 till 31.03.2018 and, therefore, vide notice dated 20.04.2018, his explanation was called as to why should his services be not terminated, in accordance with the terms and conditions of the appointment. In response, on 07.05.2018, the respondent submitted explanation stating therein that during the said period viz. from 20.02.2018 to 31.03.2018, he was admitted in hospital and, therefore, could not attend the office. In support, the respondent had annexed certificate dated 20.02.2018. The contents of the certificate are such that raised doubt in the mind of petitioners and rightly so because in the certificate issued on 20.02.2018, it is mentioned that respondent was in hospital with effect from 20.02.2018 till 31.03.2018. Thus, the doubt arose as to how in the certificate dated 20.02.2018, the doctor can certify that respondent was in hospital till 31.03.2018.

6. Thereafter, the petitioners issued yet another notice on 24.08.2018 stating therein that certificate so filed by respondent is

doubtful. The petitioners then issued show cause to respondent as to why did he not inform the petitioners through relatives or otherwise and why was prior written permission not taken and why has he not joined service till date.

7. It further appears that on 18.03.2019, yet another show cause notice was given to the respondent that he is absent with effect from 20.02.2018 and despite giving show cause notice, has not joined service and accordingly was called upon, as a last chance, to join service by obtaining medical certificate from the District Civil Surgeon, Bhandara.

8. Thereafter, on 31.01.2019, the petitioners, referring to earlier correspondence, opined that the certificate of Doctor and discharge card filed by respondent indicate that the respondent was discharged on 24.02.2018, indicating that the plea taken by the respondent that he was hospitalized, is false and further the respondent having not joined service despite repeated calls, his services were terminated.

9. During the course of argument, I came across a document issued by hospital under question which indicates that the respondent was hospitalized for a period from 20.02.2018 to 23.02.2018 and was advised bed rest till 31.03.2010. This position

has been not disputed by the respondent. If that be so, the plea taken by respondent in his reply dated 07.05.2018, that he was hospitalized during the period from 20.02.2018 till 31.03.2018 is known to him to be false.

10. The question is, whether in such a case, it was mandatory to conduct inquiry before terminating services of the respondent. In this context, the Labour Court's finding is relevant. It has relied upon judgment of the Supreme Court in the case of *State of Madhya Pradesh and Ors. Vs. Kumari Sandhya Tomar and Ors; [2013 (1) Bom LC (SC)]*, wherein the Supreme Court held that in the event a person is not appointed on regular post and if his service is not governed by any statutory rules, he shall be bound by the terms and conditions that have been incorporated in his appointment letter and, in such an eventuality, there can be no reason with respect to which terms and conditions incorporated in the appointment letter should not be enforced against such an employee.

11. The Labour Court has also relied upon judgment of the Supreme Court in the case of *Managing Director, Karnataka Handloom Development Corporation Ltd. Vs. Sri Mahadeva Laxman Raval [2007 (1) Bom. LC 361]*, wherein the Court held that the respondent therein was engaged only on contractual basis. Therefore,

cannot be said to be retrenched in view of the provisions under clause (bb) of Section 2 (oo) of the Industrial Disputes Act, 1947 (hereinafter referred to as the, “Act of 1947”). The said clause provides that where the termination of service of the workman is as a result of non renewal of contract, on its expiry or of such a contract being terminated under stipulation in that behalf contained therein, will not amount to retrenchment.

12. In the present case, the respondent’s services were terminated in terms of the conditions attached to appointment order. The Labour Court accordingly held that since services of the respondent were on contractual basis and since the service rules of regular employee will be not applicable, there was no need of holding inquiry before termination.

13. The Labour Court further observed that the respondent’s reasons to remain absent were false and despite such fact, the petitioners had given sufficient opportunity to him to join services by giving show cause notice but the respondent took a false plea and, therefore, termination was in accordance with the conditions of the appointment. Accordingly, complaint filed by respondent was dismissed.

14. The Industrial Court though has opined that respondent's appointment was on contractual basis, took a view that petitioners were under obligation to conduct inquiry before terminating his services. Industrial Court has further noted that the petitioner's plea of remaining absent was incorrect, however, has ignored the same on the ground that the petitioner was advised bed rest till 31.03.2018.

15. It is worth mentioning here that the respondent did not examine the doctor in support of his case that he was either admitted for the entire period or his condition was such that he could not have even informed the petitioners of his absence of such a long duration. Further, if the doctor has allegedly issued certificate to the respondent on 20.02.2018 that he would not be in a position to attend duties till 31.03.2018, there was no reason why should not respondent submit such a certificate to the petitioners through relatives or other modes of service. That apart, the respondent has taken a false plea that he was admitted in hospital for the entire period when he was hospitalized for only three days. Further, there appears no reason why should not respondent join duties despite repeated calls from the petitioners.

16. As such, learned counsel for the respondent submits that he was not allowed to join service. However, nothing prevented the

respondent from raising this grievance immediately from the date he was not allowed to join the service. Record shows that from 31.03.2018 till 19.01.2019 i.e. for the period of more than 10 months, the respondent did not join the service and if his plea that he was not allowed to join is correct, he should have approached the appropriate authority, within reasonable time.

17. It is also the argument of learned counsel for the respondent that the case under question will amount to “retrenchment” in terms of Section 2 (oo) of the Act of 1947. On this point, Mr. Purohit, learned counsel has relied upon judgment in the case of **Karnataka Handloom Development Corporation Ltd. Vs. Sri Mahadeva Laxman Raval [(2006) 13 SCC 15]**, to contend that termination of services in the present case will not amount to retrenchment in terms of Section 2 (oo) (bb) of the Act of 1947. The Supreme Court held as under:

“All the appointment letters dated 14-1-1991, 24-2-1992, 10-2-1993, 3-3-1993 and 30-11-1993 produced by the respondent as annexures consistently and categorically state that the respondent's appointment with the Corporation was purely contractual for a fixed period. A careful perusal of the terms and conditions of appointment would go to show that the respondent is not a worker but employed on contract basis on a time-bound specific short-term scheme assigned as weaving trainer. It is clear from the facts on record that the respondent claimant was aware that his appointment was purely contractual and for a specified period. It is not as if no period was indicated and the only

indication was the temporary nature of engagement. The terms and conditions of appointment in the case on hand indicate specific periods and the amount of honorarium to be paid. He was also aware that he was not eligible to any other benefits as a regular employee of the Corporation and could be liable for termination without any notice and without payment of compensation. The claimant was also aware that his appointment stood automatically terminated on the completion of the stipulated period. The case of the claimant, therefore does not become an industrial dispute. Thus the respondent is not a worker for the purposes of Section 25-F of the 1 Act but employed on contract basis only. Section 2(00) 01 the Act is not attracted as soon after the expiry of the specific period the respondent's service was discontinued and so it is not a retrenchment as defined under Section 2(o0) of the ID Act but falls under Section 2(oo)(bb). The respondent was also not governed by any service rules of the Corporation.”

18. Thus, the Supreme Court, having considered that the appointment was on contractual basis for a specific period, the respondent therein could not be said to be worker but is an employee on contractual basis. The respondent therein was aware of the terms and conditions of the appointment and was not eligible to any other benefits as a regular employee and could be liable for termination without any notice. He was further aware that his appointment stood automatically terminated on completion of stipulated period and, therefore, does not become the industrial dispute. The Supreme Court held that the respondent therein is not a worker for the purpose of Section 25(f) of the Act of 1947 but is an employee on contract basis only. Accordingly, the Court held that provisions of

Section 2(oo) of the Act of 1947 are not attracted but will be governed by Section 2 (oo) (bb) of the Act of 1947.

19. Similar is the case here with the only difference that the respondent's services were discontinued but strictly in terms of the conditions attached to the appointment order. In my view, even in such circumstance, the case of respondent will be governed by Section 2 (oo) (bb), more particularly latter part of clause (bb) which provides for termination of service by termination of contract under the stipulations in that behalf contained therein. In the present case, the contractual appointment, was governed by conditions stipulated for termination of services in terms of various conditions, of which condition Nos. 3 and 9 were relevant. The petitioners had, after giving sufficient opportunity, terminated the contract by removing the respondent from the service on the basis of conditions stipulated in appointment order.

20. The Industrial Court thus committed error in reversing the well reasoned judgment of the Labour Court despite noting the fact that the respondent's employment was on contractual basis terminable in terms of the provisions of appointment. The respondent herein cannot be said to be the "worker" for the purpose of Section 2 (f) of the Act of 1947 and was employed on contractual

basis only. Section 2 (oo) of the Act of 1947 will be not applicable. Rather, the case will be governed by section 2 (oo)(bb). The order passed by Industrial Court is, therefore unsustainable and liable to be quashed and set aside.

21. Resultantly, the writ petition is allowed. Impugned judgment and order dated 25.07.2023, passed by Industrial Court, Bhandara in Revision (ULP) No.41/2022 is quashed and set aside.

Rule is made absolute in the above terms. No order as to costs.

(Anil L. Pansare, J.)

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