(2009) 01 MP CK 0020

Madhya Pradesh High Court

Case No: None

M.P. Urja Vikas Nigam Ltd. and Others		APPELLANT
	Vs	
Santosh Kumar Dubey and Others Deepak Singh Raghuwanshi and Others Vs M.P. Urja Vikas Nigam Ltd. and Others		RESPONDENT

Date of Decision: Jan. 21, 2009

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2, 25B, 25F

Citation: (2009) 121 FLR 509 : (2009) ILR (MP) 1928 : (2009) 3 LLJ 634 : (2009) 1 MPHT 535 : (2009) 1 MPLJ 552

Hon'ble Judges: Sanjay Yadav, J; Arun Mishra, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Arun Mishra, J.

In the instant writ petitions, the facts are common. Common question is involved for consideration hence the writ petitions are being decided by the common order.

Other facts are similar except the period and the post held by the employee. The employee preferred an application u/s 31(3) of MPIR Act. It was averred that he was initially appointed as Helper on 23-2-1991 in the integrated Rural Energy Programme. Rakesh Kumar Gautam was initially appointed as Helper on 5-2-90, Subodh Kumar Jain was initially appointed as Helper on 15-12-97, Laxminarayan was initially appointed as Junior Assistant on 27-9-91, Lekhram was initially appointed as Helper on 1-4-91, Deepak Singh was initially appointed as Junior Assistant on 1-2-96 and Rajendra Kostha was initially appointed as Mechanic on 11-11-92. All the

employees continuously worked up to 31-10-2000. The employee in W.P. No. 6479/08 (s) (M.P. Urja Vikas Nigam Ltd. v. Santosh Kumar Dubey) continuously worked with effect from 23-2-1991 to 31-10-2000 for a period of more than nine years, thereafter his services were terminated by the employer M.P. Urja Vikas Nigam Ltd. without complianceof provisions of Industrial Disputes Act, 1947 (for short "I.D. Act"). It was further submitted by the employee in his application that he was initially employed on 23-2-1991 on fixed pay, but was issued a contract agreement for a period of 12 months after six months of actual appointment. Yearly contract used to be renewed till 31-3-2000, thereafter no contract in writing was executed. Employee continued in the employment till the date of his removal that is 31-10-2000. He has completed more than 240 days services, he has rendered continuous services as required u/s 25-B of I.D. Act. He has acquired status of permanent employee under the Standard Standing Order, provisions of Sections 25-F of I.D. Act were not complied with, thus, the action of termination of his services was per se illegal and void.

In the reply filed by M.P. Urja Vikas Nigam Ltd., it was contended that Company was not an industry, continuous service of 240 days was not rendered in a preceding year, there was a contract, thus, provisions of Sections 2(oo), 25-F and 29-N of I.D. Act were not applicable. M.P. Urja Vikas Nigam Ltd. has its own rules, regulations and bye-laws for recruitment and taking disciplinary actions. The removal was due to non-renewal of the contract. The project has come to an end, thus, there was no violation of the provisions of I.D. Act.

The Labour Court has directed the reinstatement of the employee, however, without back wages, the order has been affirmed by the Industrial Court. The appeals preferred by the employer as well as employees have been dismissed. Employer has assailed order of reinstatement whereas employees have prayed for grant of back wages before the Industrial Court. Dissatisfied by the orders passed by the Labour Court and. Industrial Court, the instant writ petitions have been preferred by the employer as well as by the employees.

Shri S. Paul, learned Counsel appearing with Shri Akash Chaudhary for employer has submitted that it was a case of purely contractual employment, renewal was made year to year, project has come to an end, thus, it could not be said to be a case of retrenchment. Even otherwise, M.P. Urja Vikas Nigam Ltd. has own rules, regulations and bye-laws for recruitment and taking disciplinary actions, appointment was not as per rules and regulations, appointment was illegal and void, consequently, the provisions of retrenchment contained in Section 2(oo) of I.D. Act would not be applicable in the instant case. Learned Counsel has relied upon various decisions to be referred later.

Shri P.C. Chandak, learned Counsel appearing with Shri Rajesh Soni and Shri Uttam Maheshwari, for employees have supported the order with respect to reinstatement passed by the Labour Court and Industrial Court. He has submitted that it was not a

case of a project which came to an end, it has not been proved by adducing evidence by employer, continuous service for 9-10 years was rendered by the employees, thus, employees were entitled to protection of Section 25-F of I.D. Act, retrenchment could not have been made, services were required. They have also prayed for grant of back wages as each of the employee has stated that he was not gainfully employed after his removal from the services.

First question for consideration is whether the services of the employees were continuous service or not, in other words whether the services were contractual and it was on a project which came to an end.

It is not in dispute that for 9-10 years continuous service has been rendered and there was extension year to year and last extension was up to 31-3-2000, thereafter there was no extension of the services, each of the employee has rendered the services up to 31-10-2000 when they were removed unceremoniously without any written notice and payment of retrenchment compensation.

In S.M. Nilajkar and Ors. v. Telecom District Manager, Kamataka 2003 (2) MPLJ 529, the Apex Court has considered the concept of "retrenchment" and laid down that the Legislature is suggestive of the intent to assign the term "retrenchment" meaning wider than what it is understood to have in common parlance. There are certain exceptions carved out. The termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of "retrenchment" de hors the reason for termination. To be excepted from within the meaning of "retrenchment" the termination of service must fall within one of the four excepted categories. The Apex Court has laid down thus:

12. "Retrenchment" in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well settled that Parliament has employed the expression "the termination by the employer of the service of a workman for any reason whatsoever" while defining the term "retrenchment", which is suggestive of the Legislative intent to assign the term "retrenchment" a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term "retrenchment", and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of "retrenchment" de hors the reason for termination. To be excepted from within the meaning of "retrenchment" the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within categories (a), (b), (bb) and (c) would fall within the meaning of "retrenchment.

The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of Sub-clause (bb) subject to the following conditions being satisfied:

(i) that the workman was employed in a project or scheme of temporary duration;

(ii) the employment was on a contract, and hot as a daily wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project;

(iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract; and

(iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.

The engagement of a workman as a daily wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or upto the occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complain that by the act of the employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the abovesaid ingredients so as to attract the applicability of Sub-clause (bb) abovesaid. In the case at hand, the respondent employer has failed in alleging and proving the ingredients of Sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want of proof attracting applicability of Sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment.

It is apparent from the aforesaid dictum that to exclude the termination of a scheme or project employee from the definition of retrenchment, it is for the employer to prove the ingredients so as to attract the applicability of Sub-clause (bb). The employer has miserably failed in the instant case to prove that project has come to an end, no evidence has been adduced in that regard is not in dispute. The concurrent finding recorded by the Labour Court and Industrial Court is that requirement continues and scheme was not of temporary duration. As the test laid down to bring the case in excepted category of retrenchment has not been established, there is no escape from the conclusion that continuous service was rendered by the employees and they were entitled for the protection of Section 25-F of the I.D. Act. Their case did not fall in the excepted category of Section 2(oo) of I.D.

Act.

In National Thermal Power Corporation Vs. K.K. Shrivastava and Others, , services of the employees were taken on contract basis with effect from 18-1-91 to 15-2-94. This Court observed that when veil is lifted it becomes clear that the object of the appellant was to deprive the respondent of the benefit available under the Act of 1947 by keeping the employee on contractual basis, it was also observed that work was not for temporary duration. Termination without notice would amount to unfair labour practice.

In the instant case, it is apparent that for a long period of ten years the services were taken which goes to show that need was continuous. Employment was not for temporary duration, work was not of temporary duration, it has not been established that project has come to an end, thus, it amounted to unfair labour practice in the instant case, to retrench the services of employees, employees were entitled for protection of Section 25-F of I.D. Act. Thus, we find that without compliance of provisions of Section 25-F of the I.D. Act, retrenchment made was illegal and void.

Shri Paul, learned Counsel appearing for employer has relied upon decision of the Apex Court in M.P. Administration v. Tribhuban (2007) 9 SCC 748, in which the Apex Court has noted in case Section 25-F of I.D. Act has not been complied with, compensation is also awardable not automatic reinstatement. Change in view of the Apex Court in this regard has been highlighted. Relief which is to be granted to a daily-wager with respect to back wages has a different concept than it is to be applied in the case of a permanent employee. At one point of time reinstatement with full back wages used to be automatically granted, there is change in the said trend found in the decisions of the Apex Court. In the instant case, the decision does not espouse the cause of the employment as we are not inclined to grant the back wages in the instant cases and as the employee has worked for ten years and work has not come to an end, we do not consider it appropriate to award the compensation. It was not a case of loss of confidence also, thus, in our opinion, reinstatement which has been ordered by the Labour Court, affirmed by the Industrial Court is proper in the facts and circumstances of the instant case.

Counsel has also relied upon decision of Apex Court in Rajasthan Tourism Development Corporation Ltd. and Anr. v. Intejam Ali Zafri 2007 M.P.L.S.R. 76 (SC), in which the Apex Court has laid down that provision of Section 25-F of I.D. Act is not attracted if workman had not worked for 240 days in one calendar year, he had worked for about 227 days in four years period, thus, Section 25-F of I.D. Act was held not to be applicable. Hence, it was ordered that no reinstatement with back wages could be ordered. In the instant case, it is not in dispute that continuous service has been rendered without any break for more than nine years. It is also not in dispute that services have been rendered in each of the preceding year for more than 240 days, consequently, compliance of Section 25-F of I.D. Act was necessary.

Counsel has also referred to the decision of Apex Court in M.P. Electricity Board Vs. Hariram etc., , where the employee was taken in service for the purpose of digging pits for erecting electric poles on a project work which came to an end. On the basis of material on record, the Apex Court has held that employment was on job required basis and was not for continuous service required by the Board. Therefore, the employees could not claim either permanency or regularization since there was no such permanent post on which they could stake their claim. In the instant case, relief of regularization has not been granted by the Labour Court or Industrial Court, that has been declined. However, work was apparently continuous one, it was not a project work. Decision of Apex Court in Punjab State Electricity Board Vs. Darbara Singh, , has also been pressed into service in which the employment was for a specific period. It was conditional and clearly indicated that on appointment of regular employee, his engagement would come to an end, it was held that case was under excepted category of Section 2(oo) of I.D. Act. Section 25-F of I.D. Act would not be applicable, reinstatement directed was quashed. But the facts are otherwise in the instant case. There was continuous requirement of work, work was taken for ten years, case was not in the excepted category enumerated u/s 2(oo) of I.D. Act, thus, compliance of Section 25-F was necessary. Other decisions relied upon in Kishore Chandra Samal Vs. The Divisional Manager, Orissa State Cashew Development Corporation Ltd., Dhenkanal, , in which the employee was engaged for various spells for fixed period from July, 1982 to August, 1986. It was again a case falling within the exception on facts, consequently Section 25-F of I.D. Act was held not to be applicable. For the aforesaid reasons, decision has no application.
Reliance has also been placed on decision of Apex Court in Punjab State Electricity Board and Another Vs. Sudesh Kumar Puri, , in which services were taken of Meter Readers by State Electricity Board on contract basis for specific period, payment was made per meter reading at a fixed rate, services were dispensed with without following provisions of Section 25-F of I.D. Act. It was held that case was covered by Section 2(oo)(bb) of I.D. Act, the employees were not entitled for reinstatement or back wages. The facts are different in the instant case.

With respect to back wages employees have come up in petition, there is no averment made by them in the application filed u/s 31(3) of MPIR Act before the Labour Court that they were not gainfully employed else where, no prayer for framing of any issue was made before the Labour Court, no issue with respect to gainful employment else where was framed by the Labour Court, consequently, mere bald statement of the employees cannot be accepted that they were not gainfully employed else where, it was incumbent upon them to aver and thereafter to prove the fact, otherwise also, in the facts and circumstances of the case, the Labour Court and Industrial Court have exercised the discretion not to award the back wages due to aforesaid lacuna and, in the facts and circumstances of the case, back wages have been rightly declined by the Labour Court and Industrial Court.

Resultantly, we dismiss the petitions filed by the employees and employer. The orders passed by the Labour Court and Industrial Court are hereby affirmed. We leave the parties to bear their own costs as incurred of the petitions.