Madhya Pradesh Bank Karmachari Sangh Vs Syndicate Bank and Another

Court: Madhya Pradesh High Court

Date of Decision: July 3, 1995

Acts Referred: Industrial Disputes Act, 1947 â€" Section 2, 25F

Citation: (1997) 3 LLJ 536

Hon'ble Judges: T.S. Doabia, J

Bench: Single Bench

Advocate: S.R. Muley, for the Appellant; N.P. Mittal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

T.S. Doabia, J.
This order shall dispose of two writ petitions, namely Madhya Pradesh Karmachari Sangh v. Syndicate Bank, M.P. No.

132/1988: and Gajra Raja Medical College v. Bhishm Kumar Lalwani, M. P, No. 1375/1988, as the questions of law in both the cases are

similar. In both the cases the employees want to take benefit of non compliance of the provisions of Section 25F of the Industrial Disputes Act.

1947. (hereinafter referred to as the "Act"), while the employer wants to get out of this provision by placing reliance on the provision of Section

2(oo) (bb) of the Act.

2. Before noticing these contentions the facts in each of the writ petitions be noticed.

The facts in writ petition No. 135/88, namely, Madhya Pradesh Bank Karmachari Sangh v. Syndicate Bank, are as under:--

The M. P. Bank Karmachari Sangh has preferred this petition on behalf of one of its members, namely, Shri Narendra Gupta, hereinafter referred

to as the "workman". According to the petitioner-Union, the aforementioned workman had completed more than 40 days of service in a calendar

year with the respondent Bank, hereinafter referred to as the "employer". It is stated that his services were terminated without complying with the

provisions of Section 25F of the Act.

3. The requisite averment with regard to completion of 240 days in one calendar year had been made in Para 2 of the petition. For facility of

reference this para is reproduced below :--

That, since Shri Narendra Gupta has worked for more than 240 days in the year 1985, 1986 and 1987. According to the law laid down by their

Lordships of the Supreme Court in the case of Digwadih Colliery v. Workmen (1964 II LLJ 143) service for 240 days in a period of 12 calendar

months is equal not only to service for a year but is to be deemed continuous service even if interrupted"", u/s 25B of the Industrial Disputes Act,

1947.

4. The employer has filed the return. The averment made in the, petition that the workman had completed more than 240 days of service has not

been denied, but the plea taken is that this is not a case where the deeming provision of continuous service can be made applicable. The stand

taken by the employer-bank in para 1 of the return be noticed, which reads as under:--

.....In this connection it is submitted that Shri Narendra Gupta has worked under respondent No. 2 as casual labourer only on daily wage basis in

1984, 1985, 1986 and 1987. It is to be noted that no appointment order nor any relieving order had been given to Shri Narendra Gupta at any

time much less during the said years. It is true that Shri Narendra Gupta has worked under respondent No. 2 for 20 days in 1984, 267 days in

1985. 301 days in 1986 and 306 days in 1987 and even 25 days in January 1988. However, on all the said days Shri Narendra Gupta has

worked only as casual labourer on daily wage basis and had never been appointed or considered even as temporary attender by the respondent.

Thus, there is no denial of the fact that the petitioner had worked for more than 240 days in one calendar year.

5. The facts in writ petition No. 1375/88, namely, Gajra Raja Medical College v. Bliishm Kumar Lalwani, may now be noticed. These are as

under :--Gajra Raja Medical College (''hereinafter referred to as the ''employer''), through its Dean impugns the order, Annexure P-1. This order

was passed by Labour Court No. I, Gwalior. Vide this the respondent No. 1 (hereinafter referred to as the ""workman"") stands reinstated. A

direction has further been given to pay him full back wages.

It is the case of the employer that workman was originally appointed on ""daily wages. He was to get wages as per the Collector''s approved rate.

The period of appointment is said to be 89 days. The copy of the appointment order has been placed on record as Annexure P-2. It is the case of

the employer that workman''s services were terminated w.e.f. August 31. 1985, and an order to this effect is said to have been passed on August

29, 1985. It may, however, be seen that even after passing of the order of termination on August 29, 1985, the workman was continued in service

and he was actually rendering services with the employer, namely. Gajra Raja Medical College. He continued to work from time to time and

ultimately it is said that an order was passed, copy whereof is Annexure P-9. Vide this order, the appointment was made for a period 60 days. It is

stated that after this no extension was made. As a matter of fact, it was, this, non-extension of service, which led the workman to prefer an

application before the Labour Court. This application, as noticed above, was allowed on May 6, 1988.

6. At the time when the writ petition was admitted a direction was given that payment of back wages shall remain stayed. The workman is in

service.

7. It will be seen that a firm finding of fact has been recorded that the workman had completed more than 240 days of service. It was after

recording this finding the Labour Court concluded that as retrenchment compensation has not been paid in accordance with Section 25F, the

workman was entitled to be reinstated with back wages.

Coming to the legal question :

So far as position in law is concerned, it is well- settled that a workman who completed more than 240 days of service in a calendar year is entitled

to reinstatement, if his services are brought to an end without complying with Section 25F of the Act.

8. As to how this period was completed is totally irrelevant. As a matter of fact, where by arithmetical account the workman was able to prove

that he had completed this period the relief was granted. It would be apt to notice the decision given by the Supreme Court in Santosh Gupta Vs.

State Bank of Patiala, wherein the earlier view expressed in State Bank of India v. N. Sundar Money. (1976 I LL.I 478) and Hindustan Steel Ltd.

Vs. The Presiding Officer, Labour Court, Orissa and Others, was approved. The relevant observations are as under:--

11. In State Bank of India v. N. Sundara Money, (Supra),a Bench of three Judges of this Court consisting of Chandrachud, S. (as he then was),

Krishna Iyer, S., and Gupta. J.. considered the question whether Section 25F of the Industrial Disputes Act was attracted to a case where the

order of appointment carried an automatic cessation of service, the period of employment working itself out by efflux of time and not by an act of

employer. Krishna Iyer, J., who spoke for the Court observed:

Termination .....for any reason whatsoever" are the key words. Whatever the reason, every termination spells retrenchment. So the question is -

has the employee"s service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either

by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive

definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever

produced..... Thus, the Section - speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about

the termination is essential to attract Section 25F and automatic extinguishment of service by effluxion of time cannot be sufficient... Words of

multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened we hold that the transitive and intransitive

senses are covered in the current context. More over, an employer terminates employment not merely by passing an order as the service runs. He

can do so by writing a composite order, one giving employment and the other, ending or limiting it. A separate subsequent determination is not the

sole magnetic pull of the provision. A pre-emptive provision to terminate is struck by the same vice as the post-appointment termination. Dexterity

of diction cannot defeat the articulated conscience of the provision.

12. In Hindustan Steel Ltd. v. The Presiding; Officer, Labour Court, Orissa, (Supra), the question again arose whether termination of service by

efflux of time was termination of service within the definition of retrenchment in Section 2(oo) of the Industrial Disputes Act. Both the earlier

decisions of the Court in Hariprasad Shivshankar Shukla v. A. D, Divikar, AIR 1957 SC 121, State Bank of India v. S.S. Sundara Money, were

considered. There was also a request that N. Sundara Money''s case conflicted with the decision in Hariprasad Shivshankar Shukla v. A.D.

Divikar and therefore required reconsideration. Bench of three Judges of this Court consisting of Chandrachud, J. (as he then was), Goswami, J.

and Gupta, J. held that there was nothing in Hariprasad Shivshankar Shukla v. A. D. Divikar, (Supra) which was inconsistent with the decision in

N. Sundara Money''s case. They held that the decision in Hariprasad Shivshankar''s case was that the words ""for any reason whatsoever"" used in

the definition of retrenchment'' would not include a bona fide closure of the whole business because it would be against the entire scheme of the

Act. The learned Judges then observed that, on the facts before them to give full effect to the words ""for any reason whatsoever"" would be

consistent with the scope and purpose of Section 25 of the Industrial Disputes Act and not contrary to the scheme of the Act. In Delhi Cloth and

General Mills Ltd. Vs. Shambhu Nath Mukherji and Others, Goswami, Shinghal and Jaswant Singh, JJ., held that striking off the name of a

workman from the rolls by the management was termination of the service which was retrenchment within the meaning of Section 2(oo) of the

Industrial Disputes Act.

9. The above view stands reiterated in later decision - in Management of Karnataka State Road Transport Corporation, Bangalore Vs. M.

Boraiah and Another, : Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court,

Chandigarh and Others, . Thus, once an employee completes more than 240 days of services and there is failure to comply With the provisions of

Section 25F of the Act, then he is entitled to reinstatement and this relief can be granted even in a writ petition.

10. In both the cases, it is apparent that the workman had completed more than 240 days of service. As the provisions of Section 25F of the Act

were not complied with, they would be entitled to reinstatement, i.e., in Writ Petition No. 135/1988, the workman would be entitled to

reinstatement, and in Writ Petition No. 1375/1988, the order passed by the Labour Court ordering reinstatement would be a valid order.

11. As noticed above, faced with the above situation, the learned counsel for the employers in both the cases have argued that this is a case which

falls within the ambit of Section 2(oo)(bb). It is contended that on account of aforementioned provision, which was brought on the statute book by

Act No. 49 of 1984, the act of termination would not fall within the definition of the term ''retrenchment''. It is argued that the contract under which

workmen were appointed came to an end by efflux of time and, therefore, the case would fall u/s 2(oo)(bb).

12. Before examining this argument, the aforementioned provisions be also noticed. These read as under:--

2(oo) - ""Retrenchment"" means the termination by the employer of the service of work- man for any reason whatsoever, otherwise than as a

punishment inflicted by way of disciplinary action, but does not include-

(a) xx xx xx

(b) xx xx xx

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the

workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or")

13. It may be seen that Section 2(oo)(bb) is to be construed strictly in favour of workman as far as possible, which is a benevolent provision and

has to be implemented in law and spirit. Clause (bb) which has been inserted in the statute in the year 1984 is in the nature of an exception. Such

was the view expressed in the case of Balvirsingh v. Kurushetra Central Cooperative Bank 1990 61 Fac LR 438 (P&H).In the light of the above,

some other decisions dealing with this aspect of the matter be noticed. In Haryana State Federation of Consumer Cooperative Wholesale Stores

Ltd. v. Presiding Officer, Hissar, 1994(3) Serv Cases Today 420, the facts were that on February 9, 1984, the employer appointed the workman

as a Salesman for a period of 89 days on ad hoc basis. This appointment was extended from time to time. Finally, in pursuance to the request

made by the workman vide his letter dated July 19, 1986, his appointment ""was extended for the period w. e. f.August 4, 1986 to February 3,

1987, for six months on the fixed salary of Rs. 500/- per month."" Thereafter, his services stood terminated. The workman raised an industrial

dispute. The appropriate Government made a reference to the Labour Court. It accepted the workman''s claim vide award dated April 26, 1990.

This order passed by the Labour Court was challenged in the High Court of Punjab and Haryana, J. L. Gupta, J., upheld the order passed by the

Labour Court holding that Section 2(oo) cannot he enlarged so as to ""stifle"" the basic provision. Para 5 is relevant and be noticed. It reads as

under :--

5. Retrenchment has been defined to mean ""the termination by the employer of the service of a workman for any reason whatsoever, otherwise

than as a punishment inflicted by way of disciplinary action....."" An exception was, however, introduced by Act No. 49 of 1984. It was inter alia

provided that ""termination of the service"" of the workman as a result of the non-renewal of the contract of employment between the employer and

the workman concerned on its expiry....."" would not amount to retrenchment. Thus, the normal rule is that when an employer terminates the service

of an employee, for any reason whatsoever, it retrenches him. However, when a person is employed for doing a particular work or for a specified

duration of time (say-to work against a leave vacancy), the termination may come about automatically on the completion of the work or the expiry

of the period. The law appears to have excluded such termination from the ambit of ''retrenchment''. Furthermore, it can also happen that a person

may be employed on a specific condition that he has to achieve a particular target in a specified time and in case of failure to do so, his

appointment shall stand automatically terminated. Even in such a case, the termination may not amount to retrenchment. However, the scope of

exception to the general rule in Section 2(oo) cannot be enlarged so as to stifle the basic provision and the real objective of law.

14. In State of Punjab v. Parvesh Kumar 1994 3 SCR 397, the contention of the employer was that the workman was daily wage earner and even

though he had worked for six years, he is not entitled to the benefit of Section 25 of the Act. J.L. Gupta, J. while negativing the contention of the

employer observed as under :--

Still further, it cannot be accepted that merely because the appointment was made on ''daily wages'', it would not amount to retrenchment. It is not

a case where an appointment had been made for a fixed period for a specific job. The appointment had admittedly continued for almost six years.

It has not been established on the record that the post had been abolished or that there was no work. The exception in Section 2(oo)(bb) cannot,

thus, be invoked,

15. In State Insurance and Provident Fund Department, Rajasthan v. Rameshwar Prasad 1995(I)SCT 609, the workman was appointed for three

months. He was, however, allowed to continue after expiry of the above term. It was held that if in such a situation the workman completes 240

days, he is entitled to retrenchment compensation and the provision of Section 2(00)(bb) would not be attracted. C. S. Singhvi, J., made the

following observation :--

No doubt order dated October 24, 1985, fixed term of employment as 3 months and automatic termination on the expiry of period of 3 months.

However, after expiry of 3 months the workman continued in service. The employer had not discontinued his service with effect from January 24,

1986. No order extending the term of appointment or fixing further term of appointment was issued by the employer. It can thus be said that no

limitation was fixed regarding period of employment of the workman, That being the position, it is not possible to uphold the plea of the petitioner

that termination of service of the petitioner will not be covered by Section 2(oo) of the Act. The Labour Court has very carefully examined this

aspect of the matter and record of service of the petitioner amounts to retrenchment.

16. Again merely because an employee is on probation is also no ground to deny the benefit of Section 25F. Thus, in the case of Gram Panchayat,

Damnagar \, Sharadkumar D. Acharya 1994(3) SCT 788, it was said :--

The first contention is concluded by the Supreme Court in case of Karnataka S.R.T. Corpn. v. M. Boraiah, (Supra) wherein it has been held that

Section 2(oo) covers every case of termination or service except those which have been embodied in the definition and, therefore, discharge from

employment or termination of service of a probationer, would also amount to retrenchment and compliance with the requirements of Section 25F in

the case of such termination is essential and necessary consequence of non-compliance with Section 25F would render the termination void,

therefore, the first contention must fail.

17. A similar view has been expressed in the case of Municipal Committee. Gobindgarh v. Presiding Officer, Labour Court, Patiala 1994 (2) SCT

14 (Pun & Har). It was observed in para 8 thus :--

8. It is true that ""termination of the services of the workman as a result of the non-renewal of the contract of employment...on its expiry or of such

contract being terminated under a stipulation in that behalf contained therein"" does not amount to retrenchment as contemplated u/s 2(oo) of the

Act. If a person is engaged for a specified period, or for the execution of a specific work and a clear stipulation is made in the contract of

employment that the services shall be terminated at the expiry of the work, the workman shall not be entitled to claim that he has been retrenched

or that the action is violative of the provisions of the Act. In such a situation, even the provisions of Section 25F shall not be attracted.

Consequently, the Labour Court shall be entitled to reject the claim of the workman. It is equally true that where on account of , reasons of

economy etc. the management bona fide decides to abolish certain posts and retrenches its employees, the Court shall not force the employer to

create posts and reinstate the workman. However, those are all questions of fact which have to be proved by reading cogent evidence.

The view expressed by the Punjab and Haryana High Court, Gujarat High Court and Rajasthan High Court have been taken note of in the

preceding paras. It would be apt to take notice of the view expressed by his Court in Ram Krishan Sharma v. Samrat Ashok Technical Institute.

Vidisha, 1995 MPLJ 53. The view of this Court is in consonance with the view expressed above. It was held that the employer cannot steal away

the protective umbrella provided to an argument by resorting to Section 2(oo)(bb) of the Act. Shri Snacheendra Dwivedi, J., while dealing with this

aspect of the matter as under :--

26, Even with intermittent breaks, once an employee completes 240 days of employment and if his last letter of appointment or renewal contains

the automatic clause, stipulating the termination of his service, the right accrued to the employee cannot be taken away by employing the exception

clause of (bb). It would still be retrenchment. To retrench is to cut down. You cannot retrench without trenching or cutting. Any other view would

result in shrinkage rather in swallowing the principal clause of Section 2(oo) itself which the Parliament would never have contemplated in view of

the scheme of the Act. This cannot be the function of an exception. An employer cannot steal away the employee''s umbrella provided by Sections

2(oo), 25B read with 25F of the Act, by serving an employee the last letter of his appointment or the renewal with the stipulation of termination of

service under the contract, so as to bring the termination within the excepted category and to snatch it out of the purview of retrenchment.

18. From the decisions noted above, it becomes apparent:--

(i) that the provisions of Section 2(oo)(bb) are to be construed benevolently in favour of the workman;

(ii) that if the workman is allowed to continue in service by making periodic appointments from time to time, then it can be said that the case would

not fall u/s 2(oo)(bb);

(iii) that the provisions of Section 2(oo)(bb) are not to be interpreted in the manner which may stifle the main provision;

(iv) that if the workman continues in service, the non renewal of the contract can be deemed as mala fide and it may amount to be a fraud on

statute;

(v) that there would be strong resumption of non-applicability of Section 2(oo)(bb) where the work is of continuous nature and there is nothing on

record that the work for which a workman has been appointed had come to an end.

19. Coming to the facts again, in writ petition No. 135/88 there is nothing on record to indicate that any specific order was passed in this case

limiting or providing the outer limit of the service tenure of the workman. As such the aforementioned provisions would not be applicable.

20. The learned counsel appearing for the respondent-bank has placed reliance on a decision of the Supreme Court to the effect that this is a

matter which should be left to be determined before the forum provided under the Industrial Disputes Act, 1947. Had there been any disputed

question of fact that course would have been adopted and the workman and his Union could have been asked to pursue that remedy as there is no

disputed question of fact and as a matter of fact the view of this Court is that interference can be made under Article 226 of the Constitution of

India. Such is the view expressed in Mukhtyar Singh v. Food Corporation of India 1992 MPLJ 902.

21. The learned counsel appearing for the respondent-bank has also placed reliance on several other decisions with a view to contend that the

workman was not entitled to reinstatement. These decisions are State of Haryana and others Vs. Piara Singh and others etc. etc., , M. Venugopal

v. The Divisional Manager Life Insurance Corporation of India, Machillipatnam Andhra Pradesh. It may be seen that in all these cases what has

been stated is that an employee has no right to seek relief of regularisation. In this case, the petitioner is not seeking reguiarisation, but he is

challenging the act of termination on the part of the respondent bank. In none of the cases referred to above this aspect of the matter was in issue.

As such, this case would be squarely governed by the ratio of the decisions dealing with Section 25F of the Act, which have been noted above.

22. Another argument which has been raised by the learned counsel for the respondent-bank is that the petitioner-workman was appointed against

a casual vacancy. It may again be seen that merely because there is some omission on the part of the employer in the matter of giving employment

it cannot be made a ground to absolve them of the requirement to, comply with the provisions of Section 25F of the" Act. In Punjab Land

Development and Reclamation Corporation Ltd., Chandigarh (supra) an argument was raised that the appointment of the workman was not by the

Competent Authority. The Supreme Court was of the view that this is a matter with which the workman is not concerned. As such, this argument is

also of no avail to the respondent-bank.

23. The last argument which has been raised by the learned counsel for the respondent-bank is that another person has since been appointed in his

place. The name of this person is indicated as Gangaprasad. Merely because the petitioner has acted contrary to law in terminating tenure of

service and appointed somebody else is again no ground not to grant relief to the petitioner. In this regard, it is reiterated that it is not the case of

the bank that this Gangaprasad was appointed against the vacancy caused by the petitioner. In any case, as the statutory provisions have not been

complied with, the petitioner is entitled to the relief. This petition (W.P.No. 135/88) is allowed. The workman would he entitled to reinstatement.

With regard to back wages, the workman would be at liberty to seek remedy before the appropriate forum. This is because the disputed questions

of fact as to whether the workman was gainfully employed or not, cannot be gone into in this writ petition and the petitioner, as such, would be

entitled to the relief of reinstatement only.

24. Coming to the case of writ petition No. 1375/1988, 1 am of the view that there is again no merit in the contentions raised by the employer. The

workman was given initial appointment vide order, Annexure P-2, thereafter his service tenure was extended from time to time. At one stage, the

respondent workman was appointed for 89 days. Realising that this may confirm some benefit to the Respondent No. 1, this order later on was

sought to be modified. No doubt Section 2(oo)(bb) thus does contemplate a situation where termination would not be retrenchment but the facts

of each case are to be examined and the provision as noticed above has to be construed strictly. No foundation has been laid by the employer to

contend that the workman is not entitled to retrenchment compensation on account of the provisions of Section 2(oo)(bb) of the Act. If the

workman continues in service, the non-renewal of the contract can be deemed as mala fide and it may amount to be fraud on the statute. In the

present case, nothing has been brought on record that the work for which the petitioner had been passing orders from time to time extending the

service tenure of the Respondent No. 1. As a matter of fact, it is a case of Respondent No. l that another person, namely, S.K. Bhatnagar was

appointed vide order dated December 31, 1985 and that this person is continuing in service with the petitioner. The requisite averment has been

made in para 3 of the return filed by Respondent No. 1. The facts in this case are similar to those in case of Haryana State Federation of

Consumer Co-operative Wholesale Stores Ltd. 1994 (3) Ser v. case Today 420. Merely because term of appointment was extended from time to

lime cannot be made a ground to stifle the basic and benevolent provisions of the Act. As such I am of the view that the stand taken by the

petitioner that the case of the petitioner falls within the ambit of Section 2(oo)(bb) is not sound. Therefore, the order passed by the Labour Court

calls for no interference by this Court.

25. Again, no exception can be taken to the grant of back wages as held by the Supreme Court in the case of Hindustan Tin Works Pvt. Ltd. Vs.

The Employees of Hindustan Tin Works Pvt. Ltd. and Others, : the grant of back wages is a normal consequence which must ensue whenever the

order of reinstatement is passed by the Labour Court. It is for the employer to prove that the workman was gainfully employed. Such is not the

situation in this case. No exception can be taken to grant of back wages. This petition is without merit

26. In the result, the writ petition No. l 35/1988 (Madhya Pradesh Bank Karmachari Sangh v. Syndicate Bank and Anr.) is allowed with costs.

Costs Rs. 500/-. The writ petition No. 1375 of 1988 (Gajra Raja Medical College v. Bhishm Kumar Lalwani and Anr.) is dismissed with costs.

Costs Rs. 500/-.