
**(2011) 7 ALLMR 590 : (2010) 112 BOMLR 4686 : (2011) 128 FLR 213 : (2011) 2 LLJ
408 : (2011) 1 MhLj 115**

Bombay High Court

Case No: Writ Petition No. 6513 of 1998

Keru Kisan Rokade

APPELLANT

Vs

Geoffery Manners and
Co. Ltd.

RESPONDENT

Date of Decision: Oct. 29, 2010

Acts Referred:

Industrial Disputes Act, 1947 " Section 2, 25F, 9A

Citation: (2011) 7 ALLMR 590 : (2010) 112 BOMLR 4686 : (2011) 128 FLR 213 : (2011) 2 LLJ
408 : (2011) 1 MhLj 115

Hon'ble Judges: Nishita Mhatre, J

Bench: Single Bench

Advocate: M.S. Karnik and H.M. Inamdar, for the Appellant; J.P. Cama instructed by Crawford
Bayley and Co., for the Respondent

Judgement

Nishita Mhatre, J.

The Award in Reference (IDA) No. 48 of 1991 passed by the Presiding Officer, Labour
Court, Nasik on 5th January,

1998 has been challenged in this Writ Petition. The said Reference has been dismissed.

2. The petitioner was initially appointed on a temporary basis with the
respondent-Company. Although his appointment was for a fixed period, he

was continued in service from time to time. According to the petitioner, he worked for
several years without being made permanent. His services

were terminated by the respondent on 5th September, 1989. The petitioner, therefore,
approached the machinery available under the Industrial

Disputes Act, 1947, (for short "the I.D. Act"), and obtained a Reference for adjudication of his dispute with respect to reinstatement with

continuity of service and back-wages.

3. In his statement of claim, the petitioner pleaded inter alia that he had worked continuously with the respondent from 4th August, 1984 to 4th

September, 1989 and had put in more than 240 days in each year of service. He contended that his services were terminated without following the

due process of law. According to him, he has not been paid any retrenchment compensation, nor wages in lieu of notice prior to terminating his

services.

4. The respondent contested the claim of the petitioner and contended that the appointment orders issued to the petitioner from time to time were

for fixed periods of time. These orders were issued depending on the specific exigencies of work. The respondent contended that the non renewal

of the contract of employment for the period from 6th May, 1989 to 5th September, 1989 could not amount to termination of service which should

be preceded by payment of retrenchment compensation.

5. The petitioner examined himself before the Labour Court in support of his demands. The Personnel Officer of the respondent deposed on its

behalf. The Labour Court after considering the evidence on record and hearing the parties has dismissed the Reference (IDA) No. 48 of 1991.

The Labour Court has found that the order terminating the services of the petitioner was justified and therefore the petitioner was not entitled to

reinstatement with continuity of service and full back-wages.

6. Mr. Karnik, the learned Advocate appearing for the petitioner, pointed out that the appointment orders which were issued to the petitioner-

workman from 13th March, 1986 onwards indicated that the petitioner was being appointed because of exigencies of work. His services were

terminated within 15 days and he was reappointed on 8th June, 1986, again for a period of one month. After completion of that period of one

month, he was appointed immediately thereafter without a break for another period of 2½ months. An order of termination was issued to him

again on 5th December, 1986. Then from 8th September, 1988, he worked continuously till 5th September, 1989, albeit with different

appointment letters being issued to him during this period. There was no break in service during this period, according to Mr. Karnik, and in any

case the petitioner had completed 240 days in service during the 12 months preceding his date of termination i.e. 5th September, 1989. Mr.

Karnik then submitted that the salary slips which were produced on record indicate that there was no break in service during this period and

therefore it was established before the Labour Court that the petitioner-workman had completed 240 days in service. Mr. Karnik submitted that

the fresh appointment orders were issued to the petitioner-workman from time to time only in order to avoid making him permanent. He also drew

my attention to the fact that the pay slips which were filed before the Labour Court indicated that the petitioner-workman had not only worked for

303 days from September, 1988 to September, 1989, but had also worked overtime during this period. Mr. Karnik submitted that there was no

question of the employment being for a fixed term, as envisaged u/s 2(oo)(bb) of the I.D. Act, as contended by the respondent. According to him,

the very fact that several appointment orders were issued to the petitioner-workman indicated that the work was of a perennial nature and that he

had been deprived of the benefits of permanency.

7. Mr. Cama, the learned Counsel appearing for the respondent, submitted that the petitioner had willingly accepted the short term employments.

These terms of employment indicated the duration of employment, at the end of which the petitioner-workman was liable to be terminated from

service. According to Mr. Cama, these were fixed term appointments and the termination of service at the end of the term could not be considered

as retrenchment but falls within the exception carved out to Section 2(oo), namely, Section 2(oo)(bb) of the I.D. Act. Mr. Cama, therefore,

submitted that the fact that the petitioner-workman had put in 240 days of service in the preceding 12 calendar months prior to his termination of

services is irrelevant in a fixed term employment and therefore Section 25F of the I.D. Act has no application. He termed the petitioner as an

unscrupulous workman who had accepted employment on a fixed term with eyes open"". The petitioner-workman, therefore, cannot contend now

that the termination of service was bad in law, urged Mr. Cama.

8. Both the learned Counsel have referred to several judgments which I will presently advert to. The fact that the petitioner had worked for more

than 240 days in the 12 preceding calendar months prior to termination of services is not disputed. However, the Labour Court has found that the

non renewal of the contract of employment after 5th September, 1989 was not a termination of service which fall within the ambit of Section 2(oo)

of the I.D. Act.

9. In the case of M. Venugopal v. Life Insurance Corporation of India, Machilipatnam, A.P. and Anr. reported in 1994 I CLR 544, the Supreme

Court was dealing with a case where the services of a probationer had been terminated because he did not fulfill the targets stipulated in his letter

of appointment. These targets were with regard to the performance of the workman during the period of probation stipulated in Regulation 14 of

the Life Insurance Corporation of India (Staff Regulations), 1960. The workman in that case had not achieved these performance targets and,

therefore, it was held that the termination of a probationer in such circumstances would be covered by the exception contained in Clause (bb) of

Section 2(oo) of the I.D. Act. The Supreme Court further observed that where no stipulation is provided or prescribed in the contract of

employment, such a contract shall not be covered by Clause (bb) of Section 2(oo) of the I.D. Act. In the case before it, the Court noted that the

termination of service of the employee was as a result of the contract of employment having been terminated under the stipulations specifically

provided under Regulation 14 and the order of appointment. In this background, the non compliance of the requirement of Section 25F of the I.D.

Act did not vitiate or nullify the order of termination of service of the employee. This judgment which has been cited by Mr. Cama has no

application in the present case. The contract of employment in the present case did not require the worker to achieve a particular target for

satisfactorily completing the period of probation. In the present case the petitioner-worker was appointed on a temporary basis and not on

probation and, therefore, this judgment has no application.

10. In the case of Alexandar Yesudas Maikel Vs. Perfect Oil Seals and Isp and Others, , a learned Single Judge of this Court (B.N. Srikrishna, J.,

as he then was) has opined that Section 2(oo)(bb) of the I.D. Act has been restrictively interpreted and the judicial consensus appeared to be that

if the post continues and the work continues, Clause (bb) cannot be said to operate as a charter for unscrupulous employers to jettison their

workmen. The learned Judge has relied on several judgments including in the case of Dilip Hanumantrao Shirke and others Vs. Zilla Parishad

Yavatmal and others, . It appears however the judgment in M. Venugopal's case was not brought to the notice of the Court.

11. However, in the case of Maharashtra State Electricity Board v. Suresh Vaidyanath Pagar and Anr. reported in 1995 II CLR 1046, Srikrishna,

J. after considering the judgment of the Supreme Court in the case of M. Venugopal (supra) held that the view taken in the case of Dilip

Hanumantrao Shirke and Ors. (supra) must be held to be impliedly overruled. The learned Judge therefore followed the interpretation placed by

the Supreme Court on the provisions of Section 2(oo)(bb) of the I.D. Act in the case of M. Venugopal (supra) and held that the termination of

services of the workmen in the case before him was a consequence of non fulfillment of certain stipulations incorporated in the letters of

appointment. The learned Judge therefore was of the view that the termination of service falls squarely within the exception contemplated by

Clause (bb) of Section 2(oo) of the I.D. Act.

12. In the case of Executive Engineer, District Panchayat Bharuch v. Shankarbhai Jivabhai Patel reported in 2006 II CLR 1027, a learned Single

Judge of the Gujarat High Court after considering various judgments of the Supreme Court on the interpretation of Section 2(oo)(bb) of the I.D.

Act has held that the very fact that the workman was continued in service without a break for more than four years indicated that the work

performed by the workman was of a perennial nature and, therefore, the provisions of Section 2(oo)(bb) of the I.D. Act would not apply.

13. In the present case, a few appointment letters have been annexed to the Petition. The appointment letters do not indicate any stipulations which

are required to be fulfilled by the workman. The only condition in the appointment letters is as follows:

5. It must be clearly understood that your fixed period of appointment will automatically come to an end or be terminated without notice or

compensation on the expiry of the period as stipulated in Clause 1 above. However, should it be deemed necessary, your contract will be

terminated earlier without notice and without assigning any reason whatsoever.

14. Therefore, M. Venugopal's case does not apply to the facts in the present case. Mr. Cama, the learned Counsel for the respondent, has

submitted that the workman was employed for a fixed period due to exigencies of work. He was employed only for execution of certain contracts

obtained by the Company and, therefore, must be considered to be employed on a project for a fixed period of time. In the case of S.M. Nilajkar

and Others Vs. Telecom, District Manager, Karnataka, , the Supreme Court has laid down certain criteria which could be considered to ascertain

whether a workman is engaged in a scheme or project and whether the termination of service of such a workman would fall within Clause (bb) of

Section 2(oo) of the I.D. Act. The Supreme Court has observed thus:

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 not 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 to 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 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.

[Emphasis supplied].

15. The respondent has not placed any evidence on record indicating that the petitioner was appointed on a particular scheme or project.

Therefore, the petitioner cannot be considered a project employee whose termination from service falls within the mischief of Section 2(oo)(bb) of

the I.D. Act.

16. Mr. Cama was at pains to point out that the employment of the petitioner was purely a contractual employment and the completion of 240

days in service would make no difference to the termination of service if it is for a fixed period of time. He relied on the judgment in the case of

Harmohinder Singh Vs. Kharga Canteen, Ambala Cantt., , in support of his submission. The Supreme Court noted that the basic question which

arose in the Appeal was whether an employee's service can be terminated in accordance with the Standing Orders introduced subsequent to his

entering into service. The issue was whether a notice u/s 9A of the I.D. Act was required to be furnished on the employee when such a term was

introduced in the Standing Orders. The Court noted that the termination of service was as a result of superannuation and in these circumstances it

observed that the services of a workman can be terminated on the expiry of the contract of service u/s 2(oo)(bb) of the I.D. Act without following

the principles of natural justice.

17. Mr. Cama has argued that the respondent is an unscrupulous workman who had accepted employment with his eyes open and knowing full

well that it would be for a fixed term. He cannot therefore now contend that the termination of service is bad in law. The initial appointment of the

petitioner was on 13th March, 1986, wherein there was a stipulation that the appointment was being made on a temporary basis and that the

respondent would not be entitled to a permanent employment. Less than a month thereafter, a letter was issued to the workman indicating that his

services have been terminated. A fresh letter of appointment was issued on 8th June, 1986, wherein it was mentioned that the period of

appointment would be for two months. It was also mentioned that his appointment would be subject to the rules and regulations/Standing Orders

of the Company. This appointment order came to an end and a termination order was issued on 8th July, 1986, even prior to the completion of

two months period for which the petitioner was appointed. A fresh order of appointment was issued on 13th July, 1986 within the period of two

months fixed in the letter of appointment dated 8th June, 1986. The employment was to continue upto 30th September, 1986. The stipulation

contained in the letter again mentioned that the petitioner was appointed as a temporary workman and would not be entitled to permanency. Soon

thereafter, the order of termination of service was passed on 19th August, 1986. A fresh order of appointment for 2½ months was issued on 5th

December, 1986. Several such appointment orders were issued to the workman, the last of which appears to have been issued on 6th May, 1989

for a period of two months i.e. from 6th May, 1989 to 15th July, 1989. Again a stipulation contained in the letter was that the appointment being

temporary in nature would automatically cease without notice or compensation on the expiry of the period stipulated in the letter. The workman, it

appears, was continued in service right upto 4th September, 1989 on which date his services came to an end. In my opinion, the contention of Mr.

Cama that these appointments are for a fixed term is unsustainable. The workman has been continued in service over many years by continuously

issuing appointment orders for a month or two. There is evidence on record to indicate that work was available with the respondent. In any case,

the petitioner-workman has completed 240 days in service in the 12 preceding calendar months. The appointment letters were merely a ruse of the

employer to get out of the clutches of Section 25F of the I.D. Act which mandates the payment of compensation in case it terminates the services

of the workman. It is difficult to appreciate the submission of Mr. Cama that the employment of the workman was on a contractual basis and,

therefore, the provisions of Section 25F of the I.D. Act had no application.

18. Accordingly, the Award in Reference (IDA) No. 48 of 1991 passed by the Presiding Officer, Labour Court, Nasik on 5th January, 1998 is

set aside.

19. The petitioner-workman is entitled to reinstatement with continuity of service. However, it would be necessary to remand the Reference (IDA)

No. 48 of 1991 to the Labour Court, Nasik, for quantification of the back-wages payable to the workman.

20. Accordingly, the Reference (IDA) No. 48 of 1991 is remanded to the Labour Court, Nasik, for determining the back wages payable to the

workman.

21. Parties are permitted to lead evidence on this count. The Labour Court, Nasik, will decide this issue within a period of three months from

today.

22. Rule is made absolute accordingly.

23. No order as to costs.