SUPREME COURT OF INDIA

Mahindra & Mahindra Ltd.

Vs.

Avinash Dhaniramji Kamble

C.A.No.7993 of 2009

(Tarun Chatterjee, Rajendra Mal Lodha and Dr.B.S.Chauhan JJ.)

03.12.2009

JUDGEMENT

R.M. Lodha, J.

1. Leave granted.

2. In this group of 26 appeals, the common judgment dated March 3, 2008 passed by the Division Bench of the High Court of Bombay, Nagpur Bench, Nagpur is under challenge at the instance of the employer.

3. In light of the order that we intend to pass, it is not necessary to set out the facts in detail. Suffice it to say that in the complaints by the present respondents seeking declaration of unfair labour practices on the part of the employer under Items 5, 6, 9 and 10 of Schedule IV of *Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices, Act, 1971* (for short MRTU & PULP Act"), the Industrial Court, Maharashtra (Nagpur Bench) Nagpur, in its order dated March 19, 2003 held that complaints were not maintainable under Item 6 of Schedule IV to the MRTU & PULP Act. The Industrial Court also held that the complaints were liable to be rejected in so far as it related to Items 5 & 10 of Schedule IV but as regards the unfair labour practice under Item No.9 of Schedule IV, although relief was granted by the Industrial Court to 149 temporary workmen who had completed 240 days of continuous service, no relief was granted to the present respondents as they have not completed 240 days of continuous service as required under the Model Standing Orders. The Industrial Court, in its order, in respect of the present respondents held as follows:

> "From the evidence adduced by the complainants in all other complaints it appears that in all 58 complainants have not at all completed 240 days working during the entire period they were in the employment of the respondent. The list of these complainants is at Ex.101. Hence, their confirmation in service as per clause 4-C of the Model Standing Orders does not arise."

4. Dealing with the writ petitions challenging the order of the Industrial Court at the instance of the employees as well as employer, the single Judge in his judgment dated April 29, 2005, inter alia, did notice that there was dispute between parties about putting of uninterrupted service of 240 days by the employees but while dealing with this aspect of the controversy, he held that the period during which the employer engaged other batch or other persons in place of the employees (like the present respondents) will have to be treated as period of `involuntary unemployment'. The single Judge held thus:

> “.........The case of the present nature where employer resorts to rotation and grants employment only in batches, considering the scheme of Model Standing Orders, it is apparent that the period during which employer engaged other batch or other person in place of employee like present complainants, will have to be treated as period of "involuntary unemployment". It is not the case where no work is available for an employee with employer but the case is where employer gives that work to another temporary employee..........”

5. The aforesaid judgment of the single Judge was assailed by the employer in a group of Letters Patent Appeals.

> “The Division Bench heard these Letters Patent Appeals together and disposed of them by a common judgment dated March 3, 2008. The Division Bench, inter alia, held as follows:
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> "........Though the workman had not been able to establish that the employer had engaged two sets of temporaries employed alternatively, they have demonstrated that though the work was still available a temporary workman appointed for a fixed term was not re-employed or continued, but was given a break. Another temporary was appointed likewise for a fixed period and then again given a break.
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> ....
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> ....In any case, it would not be open to the employer to now contend that the work was not available after having entered into agreement with the employees' representative on 12.1.2008, whereby it has undertaken to grant permanency to 105 workmen.”

6. Pertinently, the present respondents in the complaints set up a specific case that they had completed 240 days uninterrupted service as required under the Model Standing Orders. Having pleaded that, they also pleaded that they were employed for six months in rotation with other temporaries and upon expiry of each terms of six months they were replaced by another set of temporaries and that this practice was followed with a view to prevent them to complete 240 days uninterrupted service. That these employees (present respondents) have not actually completed 240 days of uninterrupted service is not in dispute. As regards rotational employment to temporaries, the Division Bench held that the concerned workmen had not been able to establish that the employer had engaged two sets of temporaries

employed alternatively. Despite having held that, the Division Bench concluded that although work was available, temporary workmen appointed for a fixed term were not re-employed or continued but were given break. It is here that we find that findings of the Division Bench are inconsistent.

> "The Industrial Court recorded a categorical finding of fact in respect of the present respondents that they had never completed 240 days of continuous service. But the single Judge as well as the Division Bench, however, treated the gaps between diverse spells of employment as part of continuous service on the ground that these were due to involuntary unemployment. This approach of the High Court suffers from legal flaw for more than one reason. For one, this was not even the case set up by the complainants in the complaints.
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> Secondly, and more importantly, the termination and fresh employment in respect of some temporaries had been several times and none of the complainants (present respondents) challenged their termination being illegal as and when their services were brought to an end on expiry of the period for which they were engaged under the contract of service."

7. Although the judgment of the Division Bench runs into more than 50 foolscap typed pages and reflects good amount of industry put therein but as noticed above crucial aspects have been mixed up necessitating reconsideration of letters patent appeals by the Division Bench of the High Court.

> "In view thereof, we deem it unnecessary to deal with the diverse contentions raised by the learned senior counsel and counsel for the parties and leave all these contentions to be raised before the Division Bench."

8. By way of footnote, we may observe that during course of hearing, Mr. C.U. Singh, learned senior counsel for the employer made a proposal for amicable settlement that benefit of permanency to the present respondents as per agreement dated January 12, 2008 could be given from 2005 or so but even such fair and reasonable proposal was not acceptable to Mr. S.D. Thakur learned counsel for the respondents.

9. In what we have discussed above, the impugned judgment dated March 3, 2008 is set aside. Letters Patent Appeals are restored to the file of the High Court for fresh hearing and disposal in accordance with law. All contentions of the parties are kept open to be agitated before the Division Bench of the High Court. No order as to costs. Pending applications, if any, stand disposed of.