SUPREME COURT OF INDIA

Bhavnagar Municipal Corporation

Vs.

Salimbhai Umarbhai Mansuri

C.A.No.5498 of 2013

(K.S.Radhakrishnan and Pinaki Chandra Ghose JJ.)

16.07.2013

JUDGMENT

K.S. RADHAKRISHNAN, J.

Leave granted.

1. We are concerned in this case with the question whether termination of services of the respondent on the expiry of the contract period would amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1948 (for short "the ID Act"). We may refer to the facts in Civil Appeal arising out of SLP(C) No.5390 of 2012 for disposal of both the appeals, since the question of law involved in both the appeals is the same.

2. The respondent in Civil Appeal @ SLP(C) No.5390 of 2012 was appointed on daily wages as a helper in the Water Works Department in the appellant Corporation for two fixed periods from 02.05.1988 to 30.06.1988 and 04.07.1988 to 15.07.1988, under two separate office orders dated 19.05.1988 and 01.07.1988. The service of the respondent stood terminated on 15.07.1988 after serving a total period of 54 days. The respondent raised an industrial dispute on 07.12.1989 and the same was referred to Labour Court for adjudication which was registered as Reference (LCB) No.606 of 1989.

3. The Labour Court on 18.10.2003 passed an award holding that the Corporation had violated Section 25G and H of the ID Act by not calling the respondent for

work before appointing new workmen. The Labour Court then directed the Corporation to reinstate the respondent with continuity in service. Aggrieved by above-mentioned order the Corporation preferred Writ Petition SCA No.3290 of 2004 before the Gujarat High Court. The High Court vide its judgment dated 12.08.2010 set aside the award of the Labour Court and remanded the matter to the Labour Court for fresh consideration. The Labour Court on 15.11.2010 held that the Corporation had violated the provisions of Sections 25G and H of the ID Act and directed the Corporation to reinstate the respondent with continuity in service with consequential benefits. The Corporation then preferred Writ Petition SCA No.7918 of 2011, which was dismissed by the learned Single Judge vide judgment dated 29.06.2011 against which Corporation preferred LPA No.1275 of 2011 which was also dismissed. Aggrieved by the same the Corporation has preferred this appeal.

4. Shri Jatin Zaveri, learned counsel appearing for the Corporation submitted that the Labour Court as well as the High Court has failed to appreciate the various terms and conditions of appointment and committed a grave error in holding that the Corporation had violated the provisions of Section 25G and H of the ID Act. Learned counsel submitted that going by the terms and conditions of the appointment order would clearly indicate that the provisions of Section 2(oo) and (bb) would apply to the facts of the case, consequently, the respondent cannot be said to have been retrenched and hence the provisions of Section 25G and H of the ID Act would not be attracted.

5. Mr. O.P. Bhadani, learned counsel appearing for the respondent, on the other hand, pointed out that there has been a clear violation of the provisions of Section 25G and H of the ID Act by not reinstating the respondent in service. Learned counsel submitted that the Labour Court has elaborately considered the rival contentions of the parties and rendered a reasoned award which has been affirmed by the learned Single Judge as well as the Division Bench of the High Court and, therefore, calls for no interference by this Court under Article 136 of the Constitution of India.

6. We are of the view that the Labour Court as well as the High Court have completely misunderstood the scope of Section 2(oo), (bb), as well as Section 25G and H of the ID Act. The contract of employment and the terms and conditions contained therein are crucial in the application of the above-mentioned provisions. Facts would clearly indicate that the respondent had worked only for 54 days in

two fixed periods and on expiry of the second term his service stood automatically terminated on the basis of the contract of appointment. A reference to the contract would be useful to understand the nature of appointment of the respondent. Clause 1, 2 and 7 to 10 of the office order dated 19.05.1988 are relevant, which are extracted herein below for ready reference:

> "1. With reference to your application dated _____, a meeting was held with us/the Commissioner and subject to the following conditions arrived at with mutual consent you are being appointed as a Daily Wager Helper in the Water Works Department from 1.5.88 to 30.6.88 at a daily minimum wages of Rs.12/13 and dearness allowance, daily special allowance of Rs.10/20 aggregating to Rs.22/33 in accordance with the Approval No.Commi O/CPO/M.No.204 dated 16.5.88 and upon completion of last duty on 30.6.88, your service shall stand automatically terminated.
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> 2. Since a definite date of termination of your service has been specified, the Municipal Corporation shall not be liable and you shall not be entitled to any notice, wages in lieu of notice, retrenchment compensation etc.
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> 3. x x x x
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> 4. x x x x
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> 5. x x x x
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> 6. x x x x
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> 7. If you are transferred as provided in Clause 6 above and if you fail to perform you duty at the appointed time then it would tantamount to that you are not willing to work and this contract of service shall automatically come to an end and as such your services shall stand terminated.
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> 8. As per the aforesaid para no.1 of the Office Order you are being appointed as a daily wager from 2.5.88 to 30.6.66 subject to the condition that you have to come for work as and when required by the Municipal Corporation, that is, if the Municipal Corporation does not require your service during the aforesaid period, then the Municipal Corporation is not bound to give you

the work and you shall not be entitled to demand work for that day, of which you may take a special note.

9. Upon termination of your contract on the date specified above, you are not entitled to claim any right of seniority for the period for which you work nor are you entitled to be reinstated or make such a claim on account of the new appointment of daily wagers.

10. the Corporation shall be entitled to relieve you before the prescribed period if it no longer requires your services."

7. The above order was signed by the respondent and, therefore, bound by the terms and conditions of the office order. The question is, termination of the service of the respondent on the expiry of the periods mentioned above would amount to retrenchment? Facts in this case clearly show, so found by the Labour Court itself that the respondent had not worked continuously for 240 days in an year to claim the benefit of Section 25F, G and H of the ID Act. Therefore, the only question to be considered is whether termination of service of the respondent on the basis of the contract of appointment would amount to retrenchment within the meaning of Section 25H of the ID Act so as to claim reinstatement.

8. A reference to Section 2(oo) and (bb) of the Act would be apposite. "2 Definitions:-

(oo) "retrenchment" means 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, but does not include-

xxx xxx xxx

xxx xxx xxx

(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."

9. Section 2(bb) says that if the termination of the service of workman is as a result of non-renewal of the contract between the employer and the workman on its expiry of such contract being terminated under a stipulation in that behalf contained therein, the same would not constitute retrenchment.

10. Facts would clearly indicate that the respondent's service was terminated on the expiry of the fixed periods mentioned in the office orders and that he had worked only for 54 days. The mere fact that the appointment orders used the expression "daily wages" does not make the appointment "Casual" because it is the substance that matters, not the form. The contract of appointment consciously entered into by the employer and the employee would, over and above the specific terms of the written agreement, indicates that the employment is short-lived and the same is liable to termination, on the fixed period mentioned in the contract of appointment.

11. Learned counsel appearing for the respondent submitted that the respondent is entitled to the benefit of Section 25G & H, the same are extracted herein below:

> "25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.
>
> 25H. Re- employment of retrenched workmen.- Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2[to the retrenched workmen who are citizens of India to offer themselves for re-employment and such retrenched workman] who offer themselves for re-employment shall have preference over other persons."

12. Section 25H will apply only if the respondent establishes that there had been retrenchment. Facts will clearly indicate that there was no retrenchment under Section 2(oo) read with Section 2(bb) of the ID Act. Consequently, Section 25H would not apply to the facts of the case. Similar is the factual and legal situation in the civil appeal arising out of SLP(C) No.5387 of 2012 as well.

13. We are sorry to note that the Labour Court, learned Single Judge and the Division Bench have not properly appreciated the factual and legal position in this case. When rights of parties are being adjudicated, needless to say, serious thoughts have to be bestowed by the Labour Court as well as the High Court. For the above-mentioned reasons we allow both the appeals, set aside the award passed by the Labour Court and confirmed by the High Court. However, there will be no order as to costs.