IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6125 OF 2007

Prakash S. Hande .. Petitioner

Versus

Hindustan Lever Limited .. Respondent

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Mr. Devendranath Shrikant Joshi for the Petitioner.

Mr. Kiran Bapat, Senior Advocate a/w Mr. R. N. Shah & Mr. Netaji Gawade i/b M/s. Sanjay Udeshi & Co. for the Respondent.

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CORAM : SANDEEP V. MARNE J.
RESERVED ON : 18 APRIL 2024.
PRONOUNCED ON : 25 APRIL 2024.

JUDGMENT :-

1) Petitioner has filed this Petition under Articles 226 and 227 of the Constitution of India challenging Award dated 14 February 2007 passed by 12th Labour Court, Mumbai in Reference (IDA) No. 748 of 2001. The Labour Court has answered the Reference in the negative and has dismissed the same. The Labour Court however granted liberty to Respondent to offer appropriate post to Petitioner on priority basis, subject to compliance with the eligibility tests as per its rules and regulations.

2) Briefly stated, facts of the case are that Petitioner is a Commerce Graduate and claims to have been employed on the post of Clerk/Steno-Typist in Respondent-Company during 1 June 1987 to 21 January 1998. He was posted in the Head Office as well as in the Research Center of Respondent-Company at Andheri. That his service during 1 June 1987 to 30 November 1994 and from December 1995 to 21 January 1998 was at Head Office and during the period from 9 December 1994 to 7 November 1995, he worked at Research Centre at Andheri as English Language Stenographer. He claims that he was doing work of permanent employee on a clear and permanent post. That no appointment letter was issued to him, nor any contract of employment was executed with him. Petitioners claims that he completed 240 days of service in several years, despite grant of artificial breaks for depriving him of his lawful status and benefit as permanent employee. Petitioner claims that he last reported for work on 22 January 1998, when his services were orally terminated without following due process of law.

3) Petitioner served a Demand Notice on Respondent-Company on 22 June 2000 for reinstatement with full backwages from 22 January 1998. Parties appeared before Conciliation Officer where, according to Petitioner, Respondent promised and assured in writing that it would provide some temporary work to Petitioner at the Head Office and upon accrual of vacancy on permanent post, they would consider his case for permanent appointment. That Petitioner reported before Personnel Officer in the Head Office on 14 June 2001 for joining duties but was sent to another office, where again he was just made to wait without any job. That he was not offered any job and therefore Assistant Labour Commissioner submitted failure report. In the meantime, Respondent sent letter dated 24 July 2001 to Petitioner offering him an opportunity to appear in a test scheduled to be

held for permanent position in the Company. Petitioner participated in the test, but could not clear the same.

4) Deputy Labour Commissioner made a reference under Section 10 read with Section 12 of the Industrial Disputes Act, 1947 to Labour Court, Mumbai by Order dated 20 November 2001. The Reference made to the Labour Court was registered as Reference (IDA) No. 748 of 2001. Petitioner filed his Statement of Claim and challenged termination effected from 22 January 1998 and prayed for reinstatement with continuity and full backwages without conducting any further interview and by taking into consideration the number of years of service rendered by him.

5) Respondent appeared in the Reference and filed Written Statement contending that Petitioner was engaged merely as temporary workman on contract basis intermittently during the years 1987 to 1998, whenever there was exigency of work. That on expiry of last period of contract from 12 March 1998 to 17 April 1998, the same was not renewed due to lack of work. Respondent therefore claimed that appointment of the Petitioner was covered under Section 2(oo)(bb) of Industrial Disputes Act, 1947. Petitioner also offered temporary job during conciliation proceedings, which offer was declined by Petitioner.

6) Petitioner examined himself before the Labour Court. Respondent examined three witnesses viz Ajay Kumar, Management Development Manager, Raghvan Unnikrishnan Menon, H. R. Officer and Bharat R. Thakker, an employee working with another employee for proving Petitioner's gainful employment.

7) After considering the evidence on record, Labour Court delivered Award dated 14 February 2007 and rejected the Reference. The Labour Court however granted liberty to Respondent to offer appropriate job to Petitioner subject to he clearing the eligibility tests as per its rules and regulations. Aggrieved by the Award of the Labour Court, Petitioner has filed the present Petition. By Order dated 3 September 2007, this Court admitted the Petition.

8) Mr. Joshi, the learned counsel appearing for Petitioner would submit that the Labour Court has erred in dismissing the Reference without appreciating the fact that Petitioner's services were terminated without following the due process of law. That Petitioner completed more than 240 days of service in any calendar years and that therefore his services could not have been terminated without payment of retrenchment compensation, notice wages and without following provisions of Industrial Disputes Act, 1947 (**ID Act**). He would submit that Respondent adopted false defence of contractual engagement of Petitioner without producing even a single contract on record. That the Petitioner contended before the Labour Court that he was in continuous service with the Respondent from 1 June 1987 to 21 January 1998. That it is Respondent, who took a defence that Petitioners engagement was for specified period and that therefore, the burden of proving the said contention was on Respondent, who failed to produce even a single document on record to prove that Petitioner was engaged either on contract basis or for specified period. That not even a single letter of appointment was produced by Respondent before Labour Court. That in absence of any documentary evidence, Labour Court erred in believing the defence of the Respondent about appointment being effected either on temporary basis or for specified period. Mr. Joshi would submit that Provident Fund was deposited in respect of service of Petitioner which was

indicative of permanent nature of appointment. That Respondent deliberately avoided to produce documents relating to service of the Petitioner with a view to avoid liability in respect of Petitioner's services. That the entire record of service is maintained by Respondent and it was erroneous on the part of Labour Court to except Petitioner to produce documentary evidence in respect of his employment. That the contention raised in the Written Statement about tenure of last contract employment during 12 March 1998 to 17 April 1998 ought to have been proved by protection of either copy of contract or appointment letter in respect of that period, which was not produced by Respondent. Mr. Joshi would then invite my attention to the evidence produced by Respondent's witnesses, which, according to Mr. Joshi, contains specific admissions about completion of 240 days of service by Petitioner. He would submit that Respondent's witness Mr. Raghvan Unnikrishnan Menon stated in his Affidavit of Examination in Chief that Petitioner worked during the period from 9 December 1994 to 7 December 1995, which constitutes continuous service of 263 days. That therefore completion of 240 days of service was clearly admitted by Respondent's witness. Mr. Joshi would therefore submit that the whole theory of contractual employment was totally baseless. That therefore provisions of Section 2(oo)(bb) of Industrial Disputes Act are not attracted in the present case. That since services of the Petitioner are not terminated on account of any misconduct, the same would constitute retrenchment of his services under Section 2(oo) of the Industrial Disputes Act. So far as failure to pass test conducted by Respondent is concerned, Mr. Joshi would rely upon judgment of the Apex Court in ***Santosh Gupta Vs. State Bank of Patiala***[1] and submit that a workman cannot be discharged form service on the ground of failure to pass the tests. Mr. Joshi would therefore pray for setting aside the Award of Labour Court. It must be observed here that

[1] AIR 1980 SC 1219

Petitioner has apparently attempted to appear in person by discharging his earlier Advocate and during the process has filed rejoinder affidavits along with which several judgments are produced. However only those submissions, which are canvassed across the Bar by Mr. Joshi and only those judgments, on which reliance is placed by Mr. Joshi, are considered for deciding the Petition.

9) Mr. Bapat, the learned senior advocate appearing for Respondent -employer would oppose the Petition and submit that making of reference Order was itself unwarranted in the facts of the present case, where Respondent offered temporary job to Petitioner and thereafter invited him to participate in the regular selection process by appearing in the test. That Respondent appeared in the selection process and thus no industrial dispute existed, which could have been referred for adjudication before the Labour Court.

10) Mr. Bapat would further submit that Petitioner himself admitted in the Statement of Claim that he worked intermittently with Respondent. He would submit that Petitioner's services were utilised as and when there was exigency of work. That he never worked continuously and that the burden of proving continuous service for 240 days was on Respondent. In support of this contention, Mr. Bapat would rely upon Judgment of the Apex Court in ***Range Forest Officer Vs. S. T. Hadimani.***[2]

11) Mr. Bapat would further submit that Petitioner did not approach Labour Court with clean hands. That by filing an Affidavit he made a false statement on oath that he was not gainfully employed. That the said contention was proved to be false by Respondent by examining the employer

[2] (2002) 3 SCC 25

of Petitioner who deposed before the Labour Court that Petitioner was working with that company since April 2003 and drawing in gross salary of Rs. 9,400/- per month. He would submit that mere deposit of Provident Fund cannot be determinative of any rights being created in favour of the workman as the employer is under statutory obligation to deposit Provident Fund in respect of every tranche of service rendered by the workman. Mr. Bapat would pray for dismissal of the Petition.

12) Rival contentions of the parties now fall for my consideration.

13) Petitioner claims that he rendered service with Respondent employer from 1 June 1987 to 21 March 1998. He admits in the Petition that he was deliberately given artificial breaks. This means that Petitioner himself admits that his services during the years 1987 to 1998 were not continuous. On the contrary he claims that he rendered 240 days of service during 9 December 1994 to 7 November 1995. In this connection pleadings in para 16 of the Petition are relevant which reads thus:

> *"**16.** The Petitioner states that to prove that he was in the employment of the Company for more than one decade i.e. from 1987 to 1998 and that during this period he had completed 240 days of continuous service in 12 calendar months, he produced before the Labour Court his available attendance records signed by the officers of the Company, showing his month-wise attendance records for a period of one year i.e. from December, 1994 to November, 1995. Annexed hereto as **Exhibit "M-1" to "M-12"** are true copies of the same. According to these documents, signed by the Technical Manager / Technical Support Specialist of the Company, the actual days of attendance of the Petitioner with the Company for the period from 9.12.1994 to 7.11.1995 are as under:*
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> | | |
> |---|---|
> | *December, 1994* | *19 days* |
> | *January, 1995* | *25 days* |
> | *February, 1995* | *23 days* |
> | *March, 1995* | *27 days* |
> | *April, 1995* | *25 days* |
> | *May, 1995* | *27 days* |
> | *June, 1995* | *25 days* |
> | *July, 1995* | *26 days* |
> | *August, 1995* | *27 days* |
> | *September, 1995* | *26 days* |

October, 1995	*26 days*
November, 1995	*6 days*
Total:	*282 days*

If 52 weekly offs are added to the above actual days of work performed, the total number of days will be 334 days. This is apart from the other national and festival paid holidays. Even if only the calendar year of 1995 is taken, still during the 11 months from January, 1995 to November, 1995, the actual number of days the Petitioner performed the work in the Company is 263 days. Apart from this there are also paid holidays and weekly offs."

14) Thus, Petitioner admittedly did not render continuous service with Respondent from 1 June 1987 to 21 January 1998.

15) Respondent took a defence that Petitioner's services were utilised as and when required and that after requirement of his service was over, he was not engaged after 17 April 1998. Since Petitioner admitted that his services during 1987 to 1998 were not continuous, the burden of proving completion of 240 days of service in any calendar year and particularly during 12 months preceding alleged termination rested on the shoulders of Petitioner. In this connection, reliance on judgment of the Apex Court in ***Range Forest Officer*** (supra) by Mr. Bapat is apposite. The Apex Court held in para 3 of the judgment as under:

*"**3.** For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratamsingh Narsinh Parmar. In our opinion the tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year Preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr Hegde appearing for the Department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today."*

16) Since the burden of proving completion of 240 days of service in any calendar year was on Respondent, it was necessary for him to produce cogent evidence in that regard. After considering the entire evidence on record, the Labour Court has rendered a finding of fact that Petitioner did not prove completion of 240 days of service in any calendar year. In this regard finding recorded by the Labour Court in para Nos. 36 and 37 read thus:

> *"**36.** Admittedly, from the aforesaid material on record comprising of both, oral as well as documentary evidence it has established from the side of the second party workman that there was neither any appointment letter with the mention of specific period of employment with the first party. Nor, there is any contract/agreement in writing to the effect of fixed period of his employment with it. However, the service certificates issued by the first party in his favour, as well as conditions given by the second party in his cross examination below Exh.U.14 on oath before the Court as mentioned above. Cumulatively it goes to show and indicate that the second party has worked on temporary basis for the specific period. It is the clinching point to be mentioned here that the second party could not give details and how many days he has worked during each period.*
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> ***37.** However, in the statement of claim itself he has admitted that he has worked with the intermittent break in service official and unofficially. The second party workman has not proved that during the last preceding 12 months to the date of his impugned termination i.e. 22-1-1998 he has worked for 240 days of continuous service within the meaning of section 25B of the I.D. Act, 1947.*

17) Far from pointing out any perversity in the above findings, Petitioner has relied upon statement in the Affidavit of Examination in Chief of Mr. Raghvan Unnikrishnan Menon, Respondent's witness, in para 2 as under:

> *"**2.** I say that the 2nd party has worked with Hindustan Lever Research Centre as temporary workman on fixed term contract during the period from 09.12.1994 to 07.12.1995, intermittently, whenever there was exigency of work on temporary assignment basis."*

In my view, the above statement of Respondent's witness cannot be misread to mean that Petitioner worked continuously during the period from 9 December 1994 to 7 December 1995 as he clearly used the word "intermittently". During the course of submissions, my attention is not invited

to any piece evidence on the basis of which a conclusion can be drawn by Petitioner completed 240 days of service prior to termination of his services.

18) Though Petitioner has placed reliance on services rendered by him from December 1994 to December 1995 for 282 days, in my view the same alone would not create any right in favour of Petitioner to remain in continuous employment with the Respondent-Company. Admittedly, before his termination, he did not complete 240 days of service in last preceding 12 months. Therefore, even if it is assumed that Petitioner worked for 282 days during December 1994 to December 1995, it cannot be stated that the action of the Respondent-employer in not engaging Petitioner after the last tenure of his service was in any manner unlawful. After all, it was not that this is the first time in 1998 when his service was discontinued. This was a regular phenomenon during 11 years of service of Petitioner when he was intermittently engaged as and when the work was available. There appears to be some discrepancy between the exact date of Petitioner's discontinuance. While Petitioner claims that he was discontinued on 22 January 1998, when he was not offered job, the Respondent averred in the written statement that last tenure of his engagement was from 12 March 1998 to 17 April 1998. Be that as it may. From evidence on record, it is clear that on several occasions in the past, Respondent's services were discontinued when the same were not needed. In fact, if Petitioner desired permanent appointment in services of Respondent, which is a reason why he participated in the selection process convened by Respondent in the year 2001 and appeared in the test held on 30 July 2001. His participation in the selection process for regular appointment is indicative of the fact that Petitioner admitted temporary nature of his service and his desire to become permanent employee.

19) In fact, it is highly debatable as to whether any industrial dispute indeed existed at the time when the Order of reference was made on 1 December 2001. It appears that, during the conciliation proceedings Petitioner was offered temporary job which he was willing to accept till he was given chance to appear in regular service. It appears that Petitioner was invited to work on temporary basis by letter dated 2 July 2001, which is placed on record by him at Exhibit 'B' to the Petition. There appears to be some debate about the factum of Petitioner accepting the said offer. While Petitioner contends that he was not allowed to join, it is Respondent's case that he declined the offer. Be that as it may. Petitioner subsequently accepted the offer for participation in the regular selection process for becoming permanent employee and appeared in the test held on 30 July 2001. He however could not clear the same. This conduct of the Respondent clearly disentitles him from claiming that he had right to continue in service of Respondent.

20) There is yet another factor which clearly disentitles Petitioner from claiming any equitable reliefs from this Court in exercise of jurisdiction under Article 226 or 227 of Constitution of India. Petitioner filed a false Affidavit before Labour Court on 31 December 2003 that he was till unemployed and could not find any alternative employment except for 4 months in the year 2001. This statement of Petitioner was proved to be false by deposition of Mr. Bharat R. Thakker, who deposed before the Labour Court on 18 October 2006 that Petitioner was working with his company since April 2003 and continued to work till the date of deposition. Thus, Petitioner's statement that, he was unemployed as on 31 December 2003 was proved to be false.

21) Reliance by Mr. Joshi on the Apex Court in ***Santosh Gupta*** (supra) does not get any ice. The issue before the Apex Court was whether discontinuation of services for failure to clear a test would constitute retrenchment or not. In the present case Petitioners services are not retrenched due to failure to clear the test. He appeared in the test subsequently and took a chance of becoming the permanent employee of Respondent. His failure in the test has no relationship with discontinuation of services.

22) After considering overall conspectus of the case, I am of the view that no patent error can be traced in the well-reasoned Award of the Labour Court. The same is unexceptionable. Writ Petition is devoid of merits. It is dismissed without any Orders as to costs. Rule is discharged.

[SANDEEP V. MARNE J.]