IN THE HIGH COURT OF BOMBAY AT GOA
****

WRIT PETITION NO. 300 OF 1999

Shri Ashok V. Gaonkar,
r/o Talewada, Bethora,
Ponda, Goa, 403 401. ... Petitioner.

Versus

1. The Telecom District
Manager, Goa, Mathias
Plaza Bldg., Panaji,
Goa, 403 001,

2. The Sub-Divisional Officer,
Telegraphs, Ponda, Goa,
403 401,

3. The Central Government,
Industrial Tribunal No.II,
Second floor, Shrama Raksha
Bhavan, Shivshrushti Road,
Opp. Priyadarshini, Off
Eastern Express Highway,
Sion, Mumbai, 400 002. ... Respondents.

Shri P. A. Kholkar, advocate for the petitioner.

Shri V. P. Thali, Senior Central Govt. Standing Counsel with Ms. G. Pednekar, advcoate for the respondents.

CORAM : R. J. KOCHAR, J.

DATE : 26th September, 2003.

ORAL JUDGMENT

The chronology of the graph of the petition reflects a pathetic and unfortunate story of the present litigation. The petitioner claims to have joined the employment of the respondents on 1st September, 1984, as a casual Mazdoor. His case appears to have been that he was continuously in the employment of the respondents as a casual Mazdoor doing the work as and when work was available and the work was given to him. He has given the other details of his working year-to-year, with which presently I

am not concerned. It is the grievance of the petitioner that he was orally discontinued from employment with effect from 1st November, 1989. It is the case of the petitioner that from lst November, 1989, to 9th June, 1991, he continued to visit the respondents' officers and, in particular the respondent no.2, begging for casual employment. According to him, he was assured that he would be given work as and when available. He lived on the said hopeful assurance given by respondent no.2 and, therefore, he abstained from approaching the appropriate authority to seek the redressal of his grievance in respect of illegal and improper termination of employment by the respondents. It appears that the department of the respondents had issued a Circular containing the guidelines to deal with the matters of granting temporary status to the eligible casual Mazdoors. It further appears that the petitioner was informed by the Union about the said Circular and, therefore, he made a representation to the respondent no.1 on 10th June, 1991, requesting him to reinstate the petitioner and to grant him temporary status. It further appears that his case was taken up by the Union alongwith the cases of other casual Mazdoors. It further appears that on investigation by the Sub-Committee, his case was finally rejected on the ground that he had no documentary evidence to satisfy the conditions stipulated in the Circular in which guidelines were prescribed to considered the cases of casual Mazdoors to confer temporary status on them. The

petitioner appears to have failed to pursue his dispute at that level and, thereafter, he approached the appropriate authority requesting them to refer the dispute for adjudication under Section 10(1)(c) of the Industrial Disputes Act, 1947.

2. The appropriate authority has referred the industrial dispute between the parties for adjudication to the Industrial Tribunal. Both the parties filed their pleadings and documents. They also adduced oral evidence in support of their respective contentions. On the basis of the material on record, the learned Presiding Officer of the Central Government Industrial Tribunal No.II by his Award dated 20th April, 1999, held that the action of the Department in discontinuing the petitioner with effect from 1st November, 1989, was proper and justified.

3. I have carefully gone through the Award given by the learned Presiding Officer of the Tribunal. To say the least, the final conclusion of the learned Presiding Officer is totally illegal, improper and erroneous. It was an admitted factual position from the documents of the respondents, that the petitioner had worked for 262 days as a casual workman from 1st April, 1988, to 31st March, 1989. There does not appear to be a serious dispute that the petitioner was in employment even from 1st April, 1989 till he was discontinued from 1st November, 1989. The learned

Judge has committed serious error of computation of the period of 240 days prior to the relevant date of discontinuation. Considering the entire span of this period, there is no dispute that he has completed more than 240 days of continuous uninterrupted service from 1st April, 1989 to 31st October, 1989 and, therefore, he is entitled to get the benefit of Section 25-F of the Industrial Disputes Act, 1947. I fail to understand how the learned Judge has computed that the petitioner has not completed 240 days continuously when it is an admitted position that the petitioner was in continuous employment from 1st April, 1988, to the date of discontinuation, i.e. 1st November, 1989.

4. It is well-established that if the employer violates the mandatory provisions of Section 25-F of the Act a workman is entitled to be reinstated with full back wages and continuity of service as a normal rule, unless the employer satisfies with cogent material, that departure from this normal rule is necessary. In the present case, it is not the case of the respondents that they complied with Section 25-F of the Act. It is, therefore, clear that there is violation of the mandatory provisions of Section 25-F of the Act, which would clearly attract the order of re-instatement with full back wages and continuity of service. There is no question of bringing in Section 25-B of the Act in the present case, as it is clearly established

that the petitioner was in continuous employment from lst April, 1988 to lst November, 1989, and was, therefore, entitled to get the benefit of the mandatory provision of Section 25-F of the Act. The learned Presiding Officer has in his operative Order come to the conclusion that the order of discontinuing the petitioner from lst November, 1989, was "proper" and "justified". I do not find any whisper in the Award in respect of justification given by the respondents to discontinue the present petitioner as a casual workman. The learned Presiding Officer has been careful to the extent of only saying that the Order was "proper" and "justified". The propriety and justifiability of an order would be a subsequent aspect to be considered. If the order is per se illegal, there is no question of holding it proper and justifiable, as an illegal order cannot be said to be proper and justified. It is crystal clear from the facts of this case that the order passed by the respondents to discontinue the casual employment of the petitioner from lst November, 1989, after completion of continuous employment from 1st April, 1988, in violation of Section 25-F of the Act is, per se, illegal being in violation of the mandatory provision of Section 25-F of the Act. The conclusion is inescapable that the order is illegal and if that is so, the normal relief of re-instatement with full back wages and continuity of service has to follow. The respondents have not placed any cogent material before the Tribunal to enable the Tribunal to consider to depart from the normal rule of reinstatement

will full back wages. Even otherwise, the respondents ought to have computed the wages and retrenchment compensation in lieu of notice, as contemplated under Section 25-F of the Act and ought to have offered the same at the time of discontinuing the petitioner and that would have solved the entire problem. The lethargic bureaucrats of the respondents as yet has not been learnt from the umpteen number of judgments of the Supreme Court and this Court that Section 25-F of the Industrial Disputes Act is mandatory and has to be complied with at the time of retrenchment or discontinuation of the employment even of a casual worker, who was in continuous employment for a period of 240 days. Instead of complying with the said provisions, the respondents as usual put forward a false case of abandonment of employment by the petitioner. The Tribunal has rightly discarded the said theory of abandonment by holding that in normal course nobody abandons the service and particularly the casual labourers. The learned Tribunal has also taken judicial notice of the fact that there is dearth of employment and jobs and, therefore, the Tribunal has rejected the plea of abandonment put forward by the respondents. The respondents being the State authorities ought not to have taken such false pleas. The Tribunal has also held that it was not the case of the respondents that the workman was gainfully employed in some other place and, therefore, he had no reason to abandon the service. I fail to understand the logic of the Tribunal in rejecting normal

relief to the petitioner after holding that the respondents had violated Section 25-F of the Act and that the petitioner had not abandoned the employment on his own. I further fail to understand how the Tribunal could not hold and declare that the discontinuation of the petitioner from employment with effect from 1st November, 1989, was illegal. The Tribunal ought to have held that the Order was illegal and there was no question of propriety or justifiability of the Order once the Order was held to be illegal.

5. Under these circumstances, I am inclined to quash and set aside the Award of the Industrial Tribunal rejecting the relief to the petitioner. I hold that the Order to discontinue the petitioner with effect from 1st November, 1989 was illegal, being in contravention of the mandatory provision of Section 25-F of the Industrial Disputes Act, 1947. There is nothing on record to suggest that the said Order was proper and justified. To hold that such an Order is proper and justified something more is required. The respondents have failed to place any material on record to justify that it is not an illegal order of retrenchment. It is to the contrary, that the respondents have come out with a false case of abandonment. In these circumstances, the petitioner is entitled to reinstatement with continuity of service. As far as the relief of back wages is concerned, the respondents being Government Departments, it will not be proper for this Court,

considering the fact that the petitioner was only a casual workman, to burden the respondents with the amount of full back wages. I am, therefore, inclined to mould the relief by granting reinstatement with continuity of service from the first date of employment of the petitioner for the purpose of terminal benefits and not for any other benefits. The petitioner, however, will not be entitled to get any monetary relief for the entire period. To compensate this particular fact of denial of full back wages to the petitioner, I hereby direct the respondents to reinstate the petitioner as a permanent workman in the category in which he was employed at the time of his termination. The respondents shall reinstate the petitioner on and from 15th October, 2003. In any case, he will be entitled to full back wages from 15th October, 2003, onwards. The learned counsel for the respondents has fairly assured the Court that the petitioner would be reinstated without back wages, but with continuity of service, with effect from 15th October, 2003, as held by me.

The Writ Petition is partly allowed. No order as to costs.

C.C. expedited.

Ordinary copy be given to the Senior Central Government Standing Counsel for early compliance.

R. J. KOCHAR, J.

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