

The Executive Engineer Vs. Mohandas Chintaman Somkunwar

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Court : Mumbai Nagpur

Decided On : Jun-25-2015

Judge : A.S. Chandurkar

Appeal No. : Writ Petition No. 1247 of 2008

Appellant : The Executive Engineer

Respondent : Mohandas Chintaman Somkunwar

Judgement :

Oral Judgment:

1. By this writ petition the petitioner challenges the award dated 19.04.2005 passed by the Labour Court answering the reference in affirmative and declaring that the petitioner had terminated the services of the respondent illegally. A direction for reinstatement without back wages was given.

2. It is the case of the respondent that he was in service with the Public Works Department, Wardha as a labourer from 22.01.1984. His services were dispensed with on 21.04.1986 without any valid reason. In the year 1997 after giving approach notice a reference was made by the appropriate government to the Labour Court under Section 10 read with Section 12 of the Industrial Disputes Act, 1947 (for short the said Act). In the statement of claim it was stated that there was violation of provisions of Section 25F of the said Act and that two juniors had been retained in service, after services of the respondent had been dispensed with.

3. The petitioner filed its reply and denied that the order of termination was illegal. It was stated that the approach notice had been given after more than 11 years in 1997 and hence, there was delay in that regard. It was also stated that the records were not retained beyond period of five years and hence, claim of the respondent could not be verified.

4. The respondent examined himself vide Exh.10 and stated that his services were dispensed with without following the prescribed procedure resulting in violation of provisions of Section 25F and 25G of the said Act. He stated that two letters were issued in the year 1997 after, which a demand notice was issued on 21.07.1997. He has further stated that the seniority list was not prepared and two other persons junior to him had been retained in service. In his cross-examination, he admitted that a seniority list was published in the year 1986 and his name was not mentioned in the seniority list. He stated that though he had made a complaint that his name was not mentioned in the seniority list, such complaint was not filed on record.

5. On behalf of the petitioner one Sunil Kalamkar was examined vide Exh.20. He referred to clause 272 of the P.W.D. manual and submitted that the records of daily wages was destroyed after five years. In his cross-examination he stated that though notice to produce documents had been given, the documents demanded had not been filed.

6. The Labour Court after considering the evidence on record proceeded to draw adverse inference against the petitioner for non-production of the records and by holding that the provisions of Section 25F and 25G of the Act had not been complied with, directed reinstatement on the former post. Back-wages were however, denied on the ground of delay. This order is under challenge in the present writ petition.

7. Shri S.M. Bhagde, the learned Assistant Government Pleader appearing for the petitioner submitted that the delay of more than 11 years in making the reference had not been considered. He submitted that the stand regarding delay had been specifically taken in the written statement by relying upon clause 272 of the Public Works Manual. He further submitted that in absence of such records same could

not be duly produced. He, therefore, submitted that the reference was liable to be rejected on the ground that the same had been belatedly moved. In that regard he placed reliance on the judgment of the learned Single Judge reported in 2011 (4) Mh.L.J. 33 Executive Engineer, Public Works Department v. Namdeo Govindrao Nandurkar. He further submitted that by drawing adverse inference against the petitioner the finding had been recorded that the respondent had worked for 240 days. He, therefore, submitted that the impugned award deserves to be set aside.

8. Shri S.A. Kalbande, the learned counsel for the respondent supported the impugned judgment. According to him, the Labour Court was bound to answer the reference once the same was made to it. He submitted that as notice to produce the documents had been given by the respondent and said documents were not produced, the Labour Court was justified in drawing an adverse inference. He then submitted that the finding regarding breach of provisions of Section 25F and 25G of the Act had been rightly arrived at and Labour Court found it fit to deny back wages for the period of delay. He, therefore, submitted that the award as passed was liable to be maintained. In support of his submissions the learned counsel relied on the decisions of the Supreme Court in (i) AIR 1986 SC 132 H.D. Singh v. Reserve Bank of India and others, (ii) (2005) 12 SCC 141 Shahaji v. Executive Engineer, PWD and (iii) 2010 (1) SCALE 613 Harjinder Singh v. Punjab State Warehousing Corporation.

9. I have carefully considered the respective submissions and I have gone through the records of the case. It is not in dispute that the services of the respondent were terminated on 21.04.1986 and the notices demanding work had been given by the respondent in the year 1997. The approach notice given by the respondent is dated 21.07.1997 after which proceedings for conciliation were held. It is further not in dispute that in the written statement a specific plea that after lapse of five years the service records of daily rated employees were being destroyed as per clause 272 of the Public Works Manual has been specifically taken. The witness examined on behalf of the petitioner deposed on said lines by relying upon clause 272 at Exh.22.

10. The aspect of delay in seeking reinstatement has been considered by learned Single Judge in Executive Engineer (supra). After considering the various decisions of the Supreme Court it has been observed that relief can be appropriately moulded by exercising judicial discretion in case of delay. It was further observed that such delay will be fatal if it has resulted in material evidence having been rendered unavailable. The fact that relief can be moulded in case of delay has also been held in Shaji (supra).

11. In the present case, it is the specific stand the petitioner that in terms of clause 272 of the Public Works manual the records of daily rated employees are destroyed after a period of five years. It is in the light of said provisions that the matter would have been examined. The services of the respondent were terminated on 21.04.1986 and hence, period of more than five years had elapsed when he had given the first approach notice. Such notice has been given in the year 1997. It is for this reason that the material evidence for which notice to produce documents was given by the respondent for being produced was not available on the record. A specific stand in that regard was taken in the written statement and was reiterated in the deposition of the petitioner's witness. In that context therefore, especially when the records were not available due to their destruction, the delay as caused certainly prejudiced the petitioner.

12. The Labour Court proceeded to draw adverse inference against the petitioner on the ground that despite such notice for producing documents having been given the, said documents had not been produced. It is thereafter, that a finding has been recorded on the basis of adverse inference that the respondent had completed 240 days of service. While doing so the Labour Court completely ignored the effect of clause 272 of the Public Works Manual on the basis of which the records were claimed to have been destroyed. Similarly, the seniority list published in the year 1986 did not include the name of the respondent for which though it was stated that a grievance was made but no document in that regard was filed.

13. The Supreme Court in Harjinder Singh (supra) has held that adverse inference can be drawn on account of failure to produce the records as demanded. In said

case the employee therein had come up with the stand that the employer had tampered with the records and despite notice did not produce the documents. It is on that basis that an adverse inference came to be drawn therein. In the present case, from filing of the written statement itself a stand had been taken about destruction of records. This was further justified by leading evidence in that regard. In this background therefore, the Labour Court was not justified in drawing adverse inference against the petitioner and thereafter, proceeding to hold that there had been violation of provisions of Section 25F and 25G of the said Act. Moreover, while drawing such adverse inference the specific stand of the petitioner has been completely ignored. In the peculiar facts of the present case, adverse inference could not have been drawn against the petitioner.

14. As relief has been granted to the respondent only on the basis of such adverse inference which has been found to be unsustainable, the order of reinstatement passed on that basis cannot be sustained. In view of aforesaid adjudication, the following order is passed:

[i] The award dated 19.04.2005 passed in Reference (IDA) No.37/1998 stands set aside.

[ii] The earlier interim order directing payment of last drawn wages under Section 17B of the said Act shall operate till today and the respondent shall be paid accordingly.

[iii] The amounts that would be deposited by the petitioner till the date of this judgment shall be permitted to be withdrawn by the respondent.

[iv] The writ petition is allowed in aforesaid terms. No costs.

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