

RAJKUMAR S/O ROHITLAL MISHRA
v.
JALAGAON MUNICIPAL CORPORATION
(Civil Appeal No. 855 of 2013 etc.)

FEBRUARY 01, 2013

[T.S. THAKUR AND M.Y. EQBAL, JJ.]

Labour Laws – Termination – Of temporary daily wagers – Delay of 8-10 years on part of four workmen and delay of 2-3 years on the part of one workman in approaching the Labour Commissioner for conciliation – On failure of conciliation, disputes referred to Labour Court – Award by Labour Court holding that termination was illegal and reinstatement directed – Writ Petition – Single Judge holding that dispute could not have been referred to Labour Court due to inordinate delay in approaching the Labour Commissioner – However, direction to Management to pay Rs. 10,000/- each to the workmen – Order upheld by Division Bench of High Court – On appeal, held: Orders passed by Single Judge as well as Division Bench of High Court was correct – However, Rs. 10,000/- not sufficient to compensate the workmen – The workmen who approached the Commissioner after 8-10 years entitled to Rs. 50,000/- each and who approached after 2-3 years entitled to Rs. 1,00,000/-.

The five appellants were temporarily employed with the respondent-Corporation on different dates on daily wages as and when work was available. They were terminated from their services on different dates. Appellant Nos. 1 to 4 approached the Labour Commissioner for conciliation after 8 to 10 years from the date of their termination. Appellant No. 5 approached the Labour Commissioner for conciliation after 2 to 3 years from the date of his termination. When the conciliation failed, the disputes were referred to Labour Court.

A Labour Court passed the award holding that the termination was illegal and directed reinstatement of the appellants.

B Respondent-Corporation filed Writ Petition against the order of Labour Court. Single Judge of High Court allowed the petition and quashed the award holding that the dispute could not have been referred to the Labour Court for adjudication as there was inordinate delay in approaching the Labour Commissioner. However, the Court directed the respondent-Corporation to pay Rs. C 10,000/- each to the appellants by way of compensation. In writ appeals, Division Bench of High Court upheld the order of Single Judge. Hence the present appeals.

Disposing of the appeals, the Court

D HELD: In view of the concurrent finding recorded by the High Court that the appellants were temporarily appointed on daily wages as and when work was available and they were not posted on regular basis against sanctioned post, there is no reason and E justification to interfere with the same. However, the direction for payment of Rs.10,000/- each to the appellants will not compensate the appellants. Hence, the appellants who approached for the conciliation after 8 to 10 years from the date of termination are entitled to a sum of F Rs.50,000/- each whereas one of the appellants who has approached the Conciliation Officer within 2 to 3 years shall be entitled to get a sum of Rs. 1,00,000/-. [Para 6] [709-F-H; 710-A]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 855 of 2013.

From the Judgment & Order dated 13.09.2007 of the High Court of Judicature of Bombay, Bench at Aurangabad in LPA No. 142 of 2007 in Writ Petition No. 2410 of 2005. H

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WITH

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C.A. No. 861-864 of 2013

Anish R. Shah, Sunil Kumar Verma for the Appellant.

Shivaji M. Jadhav for the Respondent.

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The Judgment of the Court was delivered by

M.Y. EQBAL, J. 1. Leave granted.

2. The appellants have preferred these appeals against the common judgment and order passed by the Division Bench of the Bombay High Court at Aurangabad in Letters Patent Appeals arising out of Writ Petitions whereby the order passed by the Learned Single Judge quashing the award passed by the Labour Court, Jalagaon, has been affirmed.

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3. The facts of the case lie in a narrow compass. All the appellants were employed with the Respondent Corporation on daily wages or on temporary basis. One of the appellant was engaged as daily coolie in Construction Department of the Corporation, some time in 1989 and his services were terminated after two years in 1991. Second appellant was appointed as casual labour in Building Department of the Corporation in March 1980 and his services were terminated in 1992. The 3rd appellant was appointed as a labourer in Water Supply Department of Respondent Corporation, some time in July 1996 and was terminated in May, 1997. Similarly, the 4th appellant was engaged as casual labourer in Building Department of the Respondent in January 1989 and was terminated in December, 1991. The 5th appellant was appointed as supervisor in March 1989 and his services were terminated in 1991. Four of the appellants approached the Labour Commissioner (Conciliation officer) some time in 2001 and the 5th appellant approached the conciliation officer some time in 2000. When the conciliation failed the dispute was referred to Labour Court for adjudication as to whether the

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A termination of services was illegal. The Labour Court passed an award holding the termination as illegal and directed reinstatement of the appellants. Aggrieved by the said order the Respondent-Corporation moved the High Court by filing writ petitions. The learned Single Judge, after hearing the parties, B allowed the writ petitions and quashed the award passed by the Labour Court. However, the Respondent – Corporation was directed to pay Rs.10,000/- each to the appellants by way of compensation. The learned Single Judge noticed that out of five, four appellants approached the Labour Commissioner for C conciliation after 8 to 10 years from the date of termination of service. Only the 5th appellant approached the Labour Commissioner after three years and ten months from the date of termination of service. The learned Single Judge, following the earlier decisions of this Court held that there had been gross and inordinate delay in approaching the Labour Commissioner D and, therefore, the dispute could not have been referred to the Labour Court for adjudication.

4. It was held by the learned Single Judge that the Labour Court had committed serious error of law in passing the award E of reinstatement. Accordingly, the award was quashed with a direction to the Respondent Corporation to pay Rs.10,000/- each to the appellants by way of compensation. All the five appellants dissatisfied with the judgment and order passed by the learned Single Judge filed Letters Patent Appeals which F were numbered as 140-144 of 2007. The Division Bench noticed the undisputed facts that all the appellants were temporarily employed on daily wages or temporary basis, and that their services were terminated after they worked for five years. It was further noticed that delay in approaching the G conciliation officer was totally unexplained and there is nothing on record to infer that the appellants were continuously approaching the Corporation for their reinstatement in service. The Division Bench, therefore, while dismissing the appeals observed:

H “We also agree with the learned Single Judge that

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there is another stumbling block in the path of workers/ appellants. Admittedly, they were temporary workers doing the job on daily wages, as and when work was available. It is not their case that they were posted on any regular vacant posts, nor it is their case that they had gone through due process of selection. In the light of ratio laid down by the Constitution Bench of the Hon'ble the Supreme Court in the matter of Secretary, State of Karnataka and others vs. Umadevi and others, reported in 2006 AIR SCW 1991, the learned Single Judge was justified in holding that no remedy is available to the workers since they were not the workers appointed on regular vacant posts by due process of selection."

5. We have heard Mr. Anish R. Shah and Shivaji M. Jadhav, learned counsel for the appearing parties. Mr. Shah, counsel for the appellant contended that the courts below have erred in holding that the Labour Court ought not to have passed an award of reinstatement in a case where the appellants approached for conciliation about 8-10 years of the termination. It is submitted that while making the aforesaid observation the courts below failed to appreciate that the appellants were continuously making representation to the Respondent-Corporation and only on the basis of the assurance given by the Respondent Corporation the appellant had not taken any steps to enforce their right through the process of the court.

6. In view of the concurrent finding recorded by both the learned Single Judge and Division Bench in appeal that the appellants were temporarily appointed on daily wages as and when work was available and they were not posted on regular basis against sanctioned post, we do not find any reason and justification to interfere with the orders passed by the two courts. However, we are of the view that the direction for payment of Rs.10,000/- each to the appellants will not compensate the appellants. Hence, the appellants who approached for the conciliation after 8 to 10 years from the date of termination are

A entitled to a sum of Rs.50,000/- each whereas one of the appellants namely Rajkumar Rohital who has approached the Conciliation Officer within 2 to 3 years shall be entitled to get a sum of Rs. 1,00,000/-.

B 7. The impugned judgment passed by the learned Single Judge is modified to that extent. These appeals are, accordingly disposed of.

K.K.T.

Appeals disposed of.