

CASE NO.:
Appeal (civil) 3416 of 2006

PETITIONER:
Municipal Council, Samrala

RESPONDENT:
Sukhwinder Kaur

DATE OF JUDGMENT: 08/08/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
(Arising out of SLP(C)Nos. 25491-92 of 2004)

S.B. Sinha, J.

Leave granted.

The appellant is a municipal council. The respondent was engaged on a contractual basis at a fixed pay of Rs.1000/- per month by an Office Order dated 6.11.1995. She worked for a period from 8.11.1995 to 17.6.1996. The said Office Order dated 6.11.1995 reads as under :

"Office of the Nagar Council, Samrala (Ludhiana)

No.588

Dated : 06.11.1995

Office Order No.

On dated 6.11.1995 vide order dated 6.11.1995 you are appointed as clerk on the contract basis at the fixed rate of Rs.1000/- per month as per the directions of the Government, it is purely temporary appointment. No one will force against this post. Executive Officer has the powers to dismiss you without issuing any notice. All the terms and conditions issued by the office will be accepted by you.

Sd/- Executive Officer
Nagar Council, Samrala"

She again worked under an offer of appointment on a contractual basis in terms of an office order dated 20.6.1996. For the period between 3.9.1996 and 23.5.1997 she furthermore worked on similar terms and conditions in terms of an offer of appointment dated 20.10.1996. On her services being terminated, an industrial dispute was raised.

The Presiding Officer of the Labour Court by an Award dated 11.2.2003 opined that the termination of the respondent from services was not in conformity with the provisions of 25-F of the Industrial Disputes Act, 1947 ('the Act', for short). It directed her reinstatement with continuity of service with 25% of the backwages.

The appellant herein filed a writ petition before the Punjab and Haryana High Court questioning the correctness or otherwise of the said Award, inter alia, contending that as the appointment of the respondent answers the description of Section 2(o)(bb) of the Act; the provisions of Section 25-F thereof are not attracted. The said contention of the appellant

was rejected stating :

"The Labour Court has also found that there is nothing on the file to show that the work was not available after the date of termination of services of the workman. It has also been accepted by the parties that the services of the workman were terminated without any notice, charge sheet, enquiry or payment of compensation. The Labour Court therefore, held that there has been violation of Section 25 of the Industrial Disputes Act, 1947. However, the workman was ordered to be reinstated with only 25 per cent back wages."

A Review Petition filed by the appellant before the High Court was also dismissed.

The respondent, within a span of about 18 months, was appointed thrice and disengaged thrice. As noticed hereinbefore, she was appointed on a contractual basis. The appointments were temporary ones. She was aware that her services could be terminated without notice. She accepted the terms and conditions of the said offers of appointments without any demur. Section 2(oo) of the Act defines retrenchment to mean termination by the employer of service of the workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include :

"(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;.."

Although, there was no fixed period of contract of employment between the employer and the workman concerned and thus, no question of its renewal on its expiry, but there existed a stipulation in the contract that the Executive Officer has the power to dismiss her without issuing any notice. The question, which now arises for consideration, is whether Section 2(oo)(bb) of the Act is attracted to the facts and circumstances of this case.

We would, in this behalf, may take note of some precedents operating in the field.

In Municipal Council, Samrala vs. Raj Kumar [(2006) 3 SCC 81], it was held :

"The appellant is a Municipal Council. It is governed by the provisions of a statute. The matter relating to the appointment of employees as also the terms and conditions of their services indisputably are governed by the provisions of the relevant Municipal Act and/or the rules framed thereunder. Furthermore, there is no doubt that the matter relating to the employment in the Municipal Council should be governed by the statutory provisions and thus such offer of appointment must be made by a person authorised therefor. The agenda in question was placed before the Executive Council with a view to obtain requisite direction from it wherefor the said letter was written. The reason for such appointment on contract basis has explicitly been stated therein, namely, that one post was vacant and two employees were on leave and in that view of the matter, services of a person were immediately required in the Council. Thus, keeping in view the exigency of the situation, the respondent came to be appointed on the terms and conditions approved by the Municipal Council.

We have noticed hereinbefore that the respondent understood that his appointment would be short-lived. He furthermore understood that his services could be terminated at any point of time as it was on a contract basis. It is only in that view of the matter, as noticed hereinbefore, that he affirmed an affidavit stating that the Municipal Council of Samrala could dispense with his services and that they have a right to do so."

S.M. Nilajkar & Ors. vs. Telecom District Manager, Karnataka [(2003) 4 SCC 27], was distinguished therein stating :

"In the decision of this Court in S.M. Nilajkar v. Telecom Distt. Manager whereupon the learned counsel for the respondent placed strong reliance, this Court was concerned with a different fact situation obtaining therein. In that case, a scheme for absorption of the employees who were appointed for digging, laying cables, erecting poles, drawing lines and other connected works was made which came into force with effect from 1-10-1989, and only those whose names were not included for regularisation under the said scheme, raised disputes before the Assistant Labor Commissioner, Mangalore. The termination of the services of casual mazdoors by the management of Telecom District Manager, Belgaum, thus came to be questioned in the reference made by the appropriate Government in exercise of its power conferred upon it under Section 10 of the Industrial Disputes Act. This Court, having regard to the contentions raised by the respondents that the appellant therein was engaged in a particular type of work, namely, digging, laying cables, erecting poles, drawing lines and other connected works in the project and expansion of the Telecom Office in the district of Belgaum was of the opinion : (SCC p.37, para 13)

"13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied :

(i) that the workman was engaged in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project;

(iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract; and

(iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment."

Raj Kumar (supra) has been followed by this Court in The Haryana State Agricultural Marketing Board vs. Subhash Chand & Anr. [2006 (2) SCALE 614] holding :

"It is the contention of the appellant that the respondent was appointed during the 'wheat season' or 'paddy season'. It is also not in dispute that the appellant

is a statutory body constituted under the Punjab and Haryana Agriculture Produce Marketing Board Act. In terms of the provisions of the said Act, indisputably, regulations are framed by the Board laying down terms and conditions of services of the employees working in the Market Committees. A bare perusal of the offer of appointment clearly goes to show that the appointments were made on contract basis. It was not a case where a workman was continuously appointed with artificial gap of 1 day only. Indisputably, the respondent had been re-employed after termination of his services on contract basis after a considerable period(s).

The question as to whether Chapter VA of the Act will apply or not would dependent on the issue as to whether an order of retrenchment comes within the purview of Section 2(oo)(bb) of the Act or not. If the termination of service in view of the exception contained in clauses (bb) of Section 2(oo) of the Act is not a 'retrenchment', the question of applicability of Chapter VA thereof would not arise."

The High Court furthermore did not consider the question as to whether the appellant had any vacancy in respect of the post.

We, therefore, are of the opinion that the said decisions are applicable in the instant case.

However, it appears, before the High Court in the review application, the appellant itself had made a proposal to give lump sum compensation in lieu of her reinstatement. In view of that the appellant itself was before the High Court, we are of the opinion that interest of justice shall be met if a sum of Rs.30,000/- is directed to be paid to the respondent, as was directed in State of M.P. & Ors. vs. Arjunlal Rajak [2006 (2) SCALE 610], Nagar Mahapalika (Now Municipal Corpn.) vs. State of U.P. & Ors. [2006 (5) SCALE 145] and Haryana State Electronics Development Corporation Ltd. vs. Mamni [2006 (5) SCALE 164].

The aforementioned amount shall be paid to the respondent within a period of four weeks from the date of receipt of a copy of this order failing which she would be entitled to interest thereupon @6% per annum till the date of payment.

The appeals are disposed of on the above terms.