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Supreme Court of India

Before : Justice S.B. Sinha, Justice Dalveer Bhandari

Gangadhar Pillai

Versus

M/s. Siemens Ltd

Appeal (civil) 4769 of 2006

10.11.2006

JUDGMENT:

(Arising out of SLP (C) No. 9637 of 2006)

S.B. SINHA, J.

Leave granted.

Respondent has its own Engineering and Field Service department which undertakes jobs of industrial project installation, erection, commissioning of electrical/ electronic equipments which are supplied by it or the same are directly brought by its clients at various projects/ sites as per their requirements.

The services of Respondent are utilized for the aforesaid work as a contractor which is a project/ site work required to be completed within the stipulated period, time and quality being the essence of the contract entered into by and between the parties.

Respondent used to engage temporary personnel in the category of skilled, semi-skilled and unskilled workers. Appellant had been appointed by Respondent on temporary basis for duration of the project/ site work and on completion thereof his services used to be terminated.

Indisputably, Appellant used to be employed almost on a regular basis since 1978. His services were availed by Respondent not only for its various projects in India but also in Iraq.

Procedure followed for availing the services of Appellant by Respondent had been that whenever such contract was obtained and project work started at the instance of the Head

Office, a telegram used to be sent to him for availing his services whereupon he was asked to join the site office. Appointment letters used to be issued by the said office were in a prescribed proforma, the relevant portion from a sample copy whereof reads as under:

“LETTER OF APPOINTMENT FOR TEMPORARY PERSONNEL Name : Mrs. R. Gangadharan Pillai Local Address: : Room No. 148/4, Indhira Nagar, Chambur, Bombay-74 Permanent Address: Saraswati Vilasm Ezhlcon P.O. Anitose, Kerala Date of Birth : 22 years Consolidated salary/ Wages per month : Rs. 200/-

Date of Joining : 22.5.78 Type of Employment: Helper Dear Sir, We have pleasure in appointing you on the terms mentioned above and conditions stipulated herebelow:-

Your services are required for execution of erection job at F.C.-1 on purely temporary basis for a period of Three month (s) from 22.5.78 to 21.8.78, at the expiry of which your appointment will automatically stand terminated without any notice, unless the period of appointment is extended in writing. During the temporary period of your service either party is at liberty to terminate the appointment without any notice and/ or assigning any cause or any compensation in lieu thereof”

A declaration used to be given by the employee concerned that the contents thereof had been explained to him and upon understanding the same he used to put his signature.

Before us, a chart has been filed to show that Appellant had worked for as little as 4 days in a project upto 365 days in a year.

It, however, appears that he was temporarily appointed for different projects at Rourkela Steel Plant, details whereof are as under:

S.No.

Site From To No. of days worked

1. Rourkela Steel Plant 18.10.1992 31.03.1994

2.

-do-

01.01.1994 27.08.1994

3.

-do-

26.09.94 06.04.1996

4.

-do-

14.05.1996 10.05.2000 The services of Appellant came to an end on 10.5.2000. He filed a complaint petition before the Industrial Tribunal contending that Respondent herein has resorted to unfair labour practice within the meaning of Item No. 6 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the Act"). Before the Industrial Tribunal, the parties adduced their respective evidences.

In his deposition, Appellant contended that he had regularly been working in various projects of Respondent. It was contended that the services of personnel junior to him had been regularized and despite the fact that in many years he had worked for 240 days, he used to be appointed for temporary periods. According to him, the very fact that he had been working continuously since 1978 is itself an indicator to the fact that the job was perennial in nature.

The Industrial Tribunal by an award dated 4.8.2004, however, opined:

"Admittedly, as on this date, the Complainant has not been in the employment of the Respondent. Therefore, no question arises of giving any direction to the Respondent company to confer any status and privileges of permanent employee on the Complainant. Besides if the Complainant has miserably failed to prove that the break in two appointments of the Complainant was "artificial break". The appointment letter placed on file manifest that the engagement of the Complainant was for a specific period as mentioned therein. Therefore, in my considered view, the substantial controversy emerging from the instant complaint has been in respect of alleged illegality on the part of Respondent company in terminating his services from 10.05.2000″

It further came to the conclusion that the substantial controversy revolved round the termination of Appellant's services on 10.5.2000 and, thus, the same is required to be considered in terms of Item 1 of Schedule IV of the Act and not under Item 9 of Schedule IV thereof.

It was observed:

"I may observe that the Complainant could have taken recourse to section 32 of the M.R.T.U. & P.U.L.P Act, to make prayer before this Court to decide the controversy pertaining to his alleged illegal termination of service dated 10.05.2000, had his services been terminated by the Respondent company pending the complaint under items 5,6 and 9 of Schedule IV for redressal of his grievances of giving permanency in the employment. However, admittedly the Complainant has approached this Court under said items of unfair labour practice, praying for permanency after termination of his services w.e.f. 10.05.2000. I, therefore, find the instant complaint being highly unsustainable as I find the substantial controversy in respect of admitted termination of his services by the Respondent w.e.f. 10.05.2000 for which a special forum viz. Labour Court has been provided under the M.R.T.U. & P.U.L.P. Act."

A writ petition was filed by Appellant aggrieved by and dissatisfied therewith. The said writ petition was also dismissed by a learned Single Judge by a judgment and order dated 8th December, 2004 opining:

“It is well settled by a catena of decisions of this Court as well as of the Apex Court that the project related employees cannot as a matter of right, demand any status and privileges of permanent employee. Considering the same merely because the Petitioner has been engaged from time to time in relation to the projects undertaken by the Respondent Company, no fault can be found in the impugned order holding that there was no unfair labour practice on account of such employment and non grant of status and privileges of permanent employee to the Petitioner”

A Division Bench of the High Court in an intra-court appeal refused to interfere with the judgment of the learned Single Judge stating:

“Then a reasoned order followed thereafter. The learned Judge of the Industrial Court came to the conclusion that the unfair labour practices, as alleged by the complainant present appellant, are not committed. The finding on the issue is given on appreciation of the evidence by the learned Industrial Court. After giving such finding, in paragraph 13 the learned Industrial Judge has observed that factually the services of the appellant were terminated on 10.5.2000 and, therefore, unless he seeks and gets reinstatement to the job, he again complained of an unfair labour practice because the unfair labour practice committed during the course of the employment. The observations in regard to jurisdiction, therefore, were completely ancillary, and the learned Industrial Judge gave a finding that the commission regarding unfair labour practices was not proved. This order was challenged before the learned Single Judge of this Court and the learned Judge, on appreciation of the contentions raised, rejected the writ petition. The learned Single Judge had analysed the order passed by the Industrial Court and has observed as under:-

“The Industrial Court, after hearing the parties on analysis of the materials on record while dismissing the complaint, has held that what has been reiterated in the complaint was that the complainant was engaged at various sites of the respondents after giving artificial breaks in the service.”

Then, the learned Single Judge has given a finding that in such circumstances, there is no question of adoption of an unfair labour practice and, therefore, declined to interfere under Article 227 of the Constitution. That being so, the Letters Patent Appeal, obviously, is not tenable. Even otherwise, we see no fault with the order impugned”

Mr. Colin Gonsalves, learned senior counsel appearing on behalf of Appellant, in support of this appeal would contend that in the instant case a skilled workman of a multinational corporation had been kept on temporary basis for 22 years by giving artificial breaks in service and by engaging and disengaging him on regular basis. Item 6 of Schedule IV of the Act, it was submitted, covers work of a regular or perennial nature and yet the employer appointed Appellant merely on temporary basis. The question of temporary appointment of a project related work, it was urged, would not arise as:

(i) the period is sufficiently large;

(ii) Respondent gets contract on regular basis and number of days for which services of the employee are taken correspondent to the work of a regular employee is more than 240 days a year; and

(iii) no explanation has been offered by Respondent as to why the appointments have to be of such a nature.

Drawing our attention to the evidence produced by Appellant before the Tribunal, it was submitted that from the statements it was necessary to draw an inference as regards existence of a critical case and, particularly, in view of the fact that the juniors to Respondent were made permanent but the same benefit was denied to him. It was urged that the recuse as regards lack of qualification on the part of Appellant could not have been a ground to regularize his services as his experience for a period of 22 years had made up the lack of educational qualification.

Lastly, it was contended that assuming that the termination of the job was valid, Appellant could not have been denied the benefit of 22 years' of service in the event it is held that Respondent is guilty of taking recourse to unfair labour practices within the meaning of the Act.

Mr. P.K. Rele, learned senior counsel appearing on behalf of Respondent, on the other hand, would draw our attention to the chart for the purpose of showing that Appellant had never been appointed in any continuous job and his services were taken as and when the same became available.

Drawing our attention to the practice and procedure for such appointment, as noticed hereinbefore, it was submitted that the appointment letters categorically stated about the nature of job, the period of employment and the fact that on expiry of the said period, his employment would come to an end.

The learned counsel pointed out that not only the legal dues of Appellant had been paid, he had also been paid compensation which has been accepted by him without any demur except the provident fund dues and, thus, it was not open to him to take a different stand before the Tribunal.

The Act was enacted not only for recognition of trade unions but also prevention of unfair labour practices. What is an 'unfair labour practice' has been defined in Section 26 of the Act to mean all the practices listed in Schedules II, III and IV. Section 27 of the Act prohibits engagement of an employee by any employer or union in any unfair labour practice. Section 28 provides for procedure for dealing with complaints relating thereto. Schedule IV of the Act enumerates general unfair labour practices on the part of the employers. Clause 6 of Schedule IV of the Act reads as under:

"6. To employ employee as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent

employees."

The question as to whether an employee had intermittently been engaged as casual or temporary for a number of years is essentially a question of fact. The issue as to whether unfair labour practices had been resorted to by the employer or not must be judged from the entirety of the circumstances brought on records by the parties.

Only because an employee has been engaged as a casual or temporary employee or that he had been employed for a number of years, the same by itself may not lead to the conclusion that such appointment had been made with the object of depriving him of the status and privilege of a permanent employee. Unlike other statutes, the employer does not have any statutory liability to give permanent status to an employee on completion of a period specified therein. What is, therefore, necessary to be considered for drawing an inference in terms of the said provisions would be to consider the entire facts and circumstances of the case.

A finding of fact has been arrived at, keeping in view the nature of engagement offered to Appellant by Respondent, by the Tribunal. The burden to prove that Respondent resorted to unfair labour practice indisputably was on the workman. There had been breaks in service but then it has rightly been held that the same were not artificial ones. Requirement to employ employees on a temporary basis is writ large on the face of the nature of the project undertaken by Respondent. There was nothing on record to show that it had been getting contract on regular basis. We have perused the charts filed by the parties herein wherefrom it appears that the contract awarded in favour of Respondent by its various clients had not only been in different parts of the country but also outside the country. It has also not been disputed before us that although the name of Appellant used to be recommended by the Head Office of Respondent but for employing him, a telegram used to be sent from the site office, in response whereto he would report at the place specified in the telegram and would be offered appointment in the prescribed proforma as noticed supra.

The period of employment had all along been commensurate with the period of work undertaken by Respondent under the respective contracts. It may be a small contract or it may be a big one. Period of contract in each case was indeed bound to be different. Each site office of Respondent Company is also a separate establishment.

It has furthermore not been denied or disputed that services of the employees engaged on such terms would come to an end on completion of the period of contract. Such retrenchment would come within the purview of Section 2(oo)(bb) of the Industrial Disputes Act. Once the period of contract was fixed and the same was done keeping in view the nature of job, it cannot be said that the act of the employer in terminating the services of Appellant was actuated by any malice. Such an act on the part of the employer cannot be said to have been resorted to for defrauding an employee. The object of such temporary employment was bona fide and not to deprive the concerned employee from the benefit of a permanent status. We, having regard to the fact situation obtaining herein, cannot infer that the findings of the Tribunal as also the learned Single Judge of the High Court were

manifestly erroneous warranting exercise of our extraordinary jurisdiction under Article 136 of the Constitution of India.

It is not the law that on completion of 240 days of continuous service in a year, the concerned employee becomes entitled to for regularization of his services and/ or permanent status. The concept of 240 days in a year was introduced in the industrial law for a definite purpose. Under the Industrial Disputes Act, the concept of 240 days was introduced so as to fasten a statutory liabilities upon the employer to pay compensation to be computed in the manner specified in Section 25-F of the Industrial Disputes Act, 1947 before he is retrenched from services and not for any other purpose. In the event a violation of the said provision takes place, termination of services of the employee may be found to be illegal, but only on that account, his services cannot be directed to be regularized. Direction to reinstate the workman would mean that he gets back the same status.

In Madhyamik Siksha Parishad, U.P. v. Anil Kumar Mishra and Others etc. [AIR 1994 SC 1638 : (2005) 5 SCC 122], this Court has categorically held:

"The assignment was an ad hoc one which anticipatedly spent itself out. It is difficult to envisage for them the status of workmen on the analogy of the provisions of the Industrial Disputes Act, 1947, importing the incidents of completion of 240 days' work. The legal consequences that flow from work for that duration under the Industrial Disputes Act, 1947, are entirely different from what, by way of implication, is attributed to the present situation by way of analogy. The completion of 240 days' work does not, under that law import the right to regularisation. It merely imposes certain obligations on the employer at the time of termination of the service. It is not appropriate to import and apply that analogy, in an extended or enlarged form here."

In M.P. Housing Board v. Manoj Shrivastava [(2006) 2 SCC 702], this Court held:

"It is now well settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularised in service. (See Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra; Executive Engineer, ZP Engineering Divn. v. Digambara Rao; Dhampur Sugar Mills Ltd. v. Bhola Singh; Manager, Reserve Bank of India v. S. Mani and Neeraj Awasthi)"

The learned senior counsel placed strong reliance upon a decision of this Court in Chief Conservator of Forests and Another v. Jagannath Maruti Kondhare and Others [(1996) 2 SCC 293] wherein this Court was considering the question of appointment of a person in the social forestry services. The Bench inter alia noticing the decisions of this Court in State of Haryana v. Piara Singh [(1992) 4 SCC 118] opined that they are entitled to regularization of services. Piara Singh (supra) has since been overruled by a Constitution Bench of this Court in Secretary, State of Karnataka and Others v. Umadevi [(2006) 4 SCC 1] It may, however, be noticed that in Chief Conservator of Forests (supra) the employer was the State. Respondent therein used to be employed at the same place by the Conservator of Forests for the same purpose year after year and in that factual matrix, it was opined:

"We have given our due thought to the aforesaid rival contentions and, according to us, the object of the State Act, inter alia, being prevention of certain unfair labour practices, the same would be thwarted or get frustrated if such a burden is placed on a workman which he cannot reasonably discharge. In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years. We further state that the present was such a case inasmuch as from the materials on record we are satisfied that the 25 workmen who went to the Industrial Court of Pune (and 15 to the Industrial Court, Ahmednagar) had been kept as casuals for long years with the primary object of depriving them of the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under the Minimum Wages Act. We can think of no other possible object as, it may be remembered, that the Pachgaon Parwati Scheme was intended to cater to the recreational and educational aspirations also of the populace, which are not ephemeral objects, but par excellence permanent. We would say the same about environment-pollution-care work of Ahmednagar, whose need is on the increase because of increase in pollution. Permanency is thus writ large on the face of both the types of work. If even in such projects, persons are kept in jobs on casual basis for years the object manifests itself; no scrutiny is required. We, therefore, answer the second question also against the appellants."

Our attention was also drawn to Union of India and Others v. Ramchander and Another [(2005) 9 SCC 365] wherein again engagement of the workman on a regular basis for a period of 89 days on each occasion was held to be impermissible in law stating:

"The respondents were appointed against casual labourers but nevertheless they continued in service for four spells and that too their reappointments were made immediately within a few days of termination on completion of 89 days. It shows that sufficient work was available with the employer and had there been no termination on completion of 89 days, they would have completed 240 days of continuous employment. In that view of the matter the appellants had violated Section 25-G of the Industrial Disputes Act. We do not find any error or illegality in the decision rendered by the Division Bench. We direct the appellants to re-employ the respondents as daily-wagers"

In that case, this Court did not lay down any law having universal application. Directions were issued in the facts and circumstances of the case. It is worthwhile to note that this Court did not direct regularisaton of services of the workman but merely directed Appellants therein to reemploy Respondents as daily wagers. The said decision, therefore, does not have any application in the instant case.

Yet again, reliance has been placed on Haryana State Electronics Development Corporation Ltd. v. Mamni [2006 5 SCALE 164 : (2006) 9 SCC 434] wherein having regard to the fact situation obtaining therein the action on the part of the employer to terminate the services of an employee on regular basis and reappoint after a gap of one or two days was found to be infringing the provisions of Section 25-F of the Industrial Disputes Act. This Court held:

"In this case the services of the respondent had been terminated on a regular basis and she

had been re-appointed after a gap of one or two days. Such a course of action was adopted by the Appellant with a view to defeat the object of the Act. Section 2(oo)(bb) of the Industrial Disputes Act, 1947, therefore, is not attracted in the instant case."

Unlike the Act, there is no provision for prevention of unfair labour practices under the Industrial Disputes Act. The view of the High Court as upheld by this Court, merely negatived a contention that such appointment came within the purview of Section 2(oo)(bb) of the Industrial Disputes Act. This Court noticed various decisions rendered by it as regards payment of backwages and in stead and place of reinstatement in service, compensation was directed to be paid.

In Buddhi Nath Chaudhary and Others v. Abahi Kumar and Others [(2001) 3 SCC 328] wherein again reliance has been placed by the learned counsel, has no application in the facts and circumstances of this case.

We, therefore, do not find any reason to differ with the findings of the High Court.

We may, however, notice that this Court by an order dated 12.5.2006 observed:

"It is seen from the papers placed before us that the worker, the petitioner herein, was in employment with the respondent M/s. Siemens Ltd. from 22/5/1978 to 10.5.2000. The chart has also been placed before us showing the order of appointment, period of work, days worked and total days in a year. It is seen from the Chart that the petitioner was appointed on several times and terminated on a number of occasions with some break. The petitioner was terminated from service on 10.5.2000. Since the petitioner was in employment with the respondent herein from 1978 to 2000, we feel that the Management may reconsider the plea of the petitioner on sympathetic grounds and provide employment in the same or different project. The petitioner will not claim any back wages if the Management provides some suitable employment in any of the projects. The learned counsel for the Management, respondent herein, submits that he will ascertain from the respondent and report to this Court after summer vacation."

The learned counsel appearing on behalf of Respondent, however, states that it is not possible for his client to offer any employment to Appellant as it has not been executing any contract job itself any more. According to it, it is not economically viable to appoint an employee on permanent basis and the work is now depleting. Our attention was further drawn to the following statements made in this behalf:

"Engineering & Field Services Department has since discontinued engagement of direct workmen of the profile of the Petitioner at project site/s as an outcome of re-engineering process and has started outsourcing the said jobs in view of the competitive advantage in terms of economy of operation and flexibility it offers. Also in view of the complexity involved in execution of the project execution job combined with the demands of client demanding engagement of personnel with formal qualification including the higher qualification viz. BE, DEE, NCTVT, it is not possible for the Company to engage people of the Petitioner's profile anymore."

Mr. Rele, learned senior counsel, however, submitted that although Appellant had been engaged on contract basis, Respondent was not averse to using its good office with the contractors to see that he is engaged by it on the site where work is going on. An affidavit in this behalf has been filed before this Court stating:

“As stated in the counter affidavit that the Engineering & Field Services Department of the company has since discontinued engagement of direct workmen of the profile of the petitioner at the project sites and that the Company has started outsourcing the said jobs, therefore, I talked to M/s. JT Engineering, proprietor Mr. John Thomas, having its office at Standard CHS, 301, A Wing, Plot No. 394, Lokmanya Nagar, Panvel Pin 410206 one of our contractors, who are handling the work of installation/ erection of equipment currently at Enercon Ltd., Windfarm Project at Ahmednagar, Maharashtra and the said contractor has agreed to engage the petitioner at this site viz Enercon Ltd., Ahmednagar, Maharashtra. The said contractor has further agreed to pay the following emoluments to the petitioner : –

(a) Basic Pay Rs. 7500/- pm

(b) Allowances Rs. 2500/- pm Total = Rs. 10000/- pm”

We, therefore, while dismissing the appeal must express our satisfaction that Respondent has been able to provide some succour to Appellant.

For the views we have taken, we are of the opinion that there is no merit in this case. The appeal is dismissed. No costs.