KISHORE CHANDRA SAMAL

v.

THE DIVISIONAL MANAGER, ORISSA STATE CASHEW DEVELOPMENT CORPORATION LTD. DHENKANAL

NOVEMBER 17, 2005

[ARIJIT PASAYAT AND R.V. RAVEENDRAN, JJ.]

Industrial Disputes Act, 1947—Sections 2(oo)(bb) and 25-F—Retrenchment—Termination of workman appointed for a fixed period, after expiry of said period—Held: Does not amount to retrenchment.

Appellant was appointed for fixed periods from time to time. When no further extension was given, his service automatically ceased. Alleging that refusal of work amounted to retrenchment, he raised industrial dispute. Labour Court held that termination of his service was illegal and directed his reinstatement. High Court held that since the engagements were for fixed period, award of the Labour Court was to be set aside. Hence the present appeal.

Dismissing the appeal, the Court

HELD: The respondents cannot be said to have been retrenched in view of what is stated in clause (bb) of Section 2(oo) of the Industrial Disputes Act, 1947. In the instant case in all the orders of engagement, specific periods have been mentioned. Therefore, the High Court's order does not suffer from any infirmity. [297-C]

S.M. Nilaikar and Ors. **v.** *Telecom District Manager, Karnataka* **[2003] 4 SCC 27, held inapplicable.**

Morinda Coop. Sugar Mills Ltd. **v.** *Ram Kishan and Ors.*, **[1995] 5 SCC 653;** *Anil Bapurao Kanase* **v.** *Krishna Sahakari Sakhar Karkhana Ltd. and Anr.*, **[1997] 10 SCC 599 and** *Batala Co-operative Sugar Mills Ltd.* **v.** *Sowaran Singh,* **(2005) 7 Supreme 165, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5458 of 2004.

From the Judgment and Order dated 22.1.2003 of the Orissa High Court in O.J.C. No. 9152 of 1998.

A Ramesh Chandra Pandey for the Appellant.

Janaranjan Das and Swetaketu Mishra for the Respondent.

The Judgment of the Court was delivered by

B **ARIJIT PASAYAT, J.** Appellant calls in question legality of the judgment rendered by a Division Bench of the Orissa High Court setting aside the award of Labour Court, Bhubaneswar dated 29.10.1997 passed in I.D. Case No.90 of 1994 which directed the appellant-Corporation to reinstate the present appellant with full back wages.

C Factual background in a nutshell is as under:-

The case of the appellant was that he was appointed as Junior Typist on N.M.R. basis by the respondent with effect from 12.7.1982. He continued in the said post for more than one year. All of a sudden another order was issued appointing him for 44 days with effect from 1.10.1983. On its expiry on D 15.11.1983 another appointment order was issued on 5.12.1983 for a fixed period giving effect from 16.11.1983. Thereafter, he was allowed to continue for about 8 months. Later he was appointed on *ad hoc* basis in the usual scale of pay of Rs.255-5-285-EB-7-306-12-390/- with effect from 23.7.1985. Thereafter without any rhyme or reason, he was again kept in N.M.R. on payment of E Rs.10/- per day for a period of 90 days from 1.12.1985 to 28.2.1986. Thereafter he was allowed to continue from 29.6.1986 to 25.9.1986 and further from 27.9.1986 to 24.12.1986. Thereafter, he was allowed to continue without any break till 11.8.1989. Alleging that refusal of work beyond 11.8.1989 amounting to retrenchment, he raised dispute giving rise to the above reference.

F The respondent's case before the Labour Court was that the appellant was working on N.M.R. basis as a Typist with effect from 12.7.1982. He was appointed for a specific period on daily wage basis. On consideration of the representation for further engagement and having regard to the requirement, he was engaged again and again on daily wage basis for specific period. The last order of appointment on N.M.R. basis was issued to him on 28.4.1989. G Thereafter no further extension was given. Thereafter, his service automatically ceased and it is not a case of retrenchment.

The Labour Court on perusal of the evidence on record held that the appellant served continuously for many years covering the requisite period H of continuous service in a calendar year. Although there is no evidence that

the post of Typist was a permanent one, he was engaged from time to time and at the time of termination as the provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short the 'Act') had not been complied with, termination of his service is illegal and unjustified. On the basis of the said finding, the Labour Court directed the appellant to be reinstated in his former post.

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The High Court accepted the stand of the respondent-Corporation that the appointment of the writ petitioner (appellant herein) was on N.M.R. basis for a fixed period of time on the basis of payment at different rates. The contractual period of engagement ended on 3.5.1989 and there was no renewal thereafter. Since the engagement was for a fixed period, the High Court held that the award of the Labour Court was to be set aside.

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In support of the appeal, learned counsel for the appellant submitted that the High Court failed to notice that the period fixed was a camouflage to avoid regularization. Reliance was placed on a decision of this Court in *S.M. Nilaikar and Ors.* v. *Telecom District Manger, Karnataka,* [2003] 4 SCC 27 where it was held that mere mention about the engagement being temporary without indication of any period attracts Section 25-F of the Act if it is proved that the concerned workman had worked continuously for more than 240 days.

D

The position of law relating to fixed appointments and the scope and ambit of Section 2(oo)(bb) and Section 25-F were examined by this Court in several cases. In *Morinda Coop. Sugar Mills Ltd.* v. *Ram Kishan and Ors.,* [1995] 5 SCC 653 it was observed as follows:

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> "4. It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.
>
> 5. The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in clause (bb) of Section 2(oo) of the Act. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated hereinbefore and when the new season starts the appellant should

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A make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work."

The position was re-iterated by a three-Judge Bench of this Court Court in *Anil Bapurao Kanase* v. *Krishna Sahakari Sakhar Karkhana Ltd. and* B *Anr.*, [1997] 10 SCC 599. It was noted as follows:

"The learned counsel for the appellant contends that the judgment of the High Court of Bombay relied on in the impugned order dated 28.3.1995 in Writ Petition No.488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be C treated as retrenched employee and if the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In *Morinda Coop.Sugar Mills Ltd.* v. *Ram Kishan,* in para 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing; in D para 4 it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, in para 5, it was held that it is not 'retrenchment' within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the E principles of the Act have no application. However, this Court has directed that the respondent management should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are F already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above."

Recently, the question was examined in *Batala Co-operative Sugar* G *Mills Ltd.* v. *Sowaran Singh,* [2005] 7 Supreme 165

Section 2(oo) of the Act reads as follows:

"Section 2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise H than as a punishment inflicted by way of disciplinary action, but does

not include - A

(a) .....

(b) .....

(bb) termination of the service of the workman as a result of the non-removal 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" B

The decision in *S.M. Nilaikar's* case (supra) has no application because in that case no period was indicated and only indication was the temporary nature of engagement. In the instant case in all the orders of engagement, specific periods have been mentioned. Therefore, the High Court's order does not suffer from any infirmity. C

The High Court had noted that its order would not stand in the way of Corporation considering the case of the workman for appointment. It is submitted by learned counsel for the appellant that representation was made in this regard which has been turned down. Learned counsel for the respondent-Corporation submitted that the representation was for a permanent absorption. Since there was no post vacant, the representation was rejected. The dismissal of the present appeal shall not stand on the way of the Corporation engaging appellant taking into account his experience and while considering the appellant's case the claims of others making similar claims shall be considered in proper perspective. D E

Appeal is dismissed. Costs made easy.

D.G. Appeal dismissed. F