

DIVISIONAL CONTROLLER MAHARASHTRA STATE ROAD TRANSPORT CORPORATION A

v.

KALAWATI PANDURANG FULZELE

(Civil Appeal No. 463 of 2022) B

JANUARY 31, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Industrial Disputes Act, 1947: ss. 25F and 25G – Retrenchment of workman – On facts, termination of workman set aside by courts below except Industrial Court and ordered reinstatement with back wages – Correctness of – Held: Appointment of the workman was on contractual basis at a fixed honorarium, she worked for approximately for four years and there were no allegations on any unfair labour practice – Only finding recorded by the labour court was termination in breach of ss. 25F and 25G – Thus, order of reinstatement and back wages not warranted and instead lumpsum compensation is awarded, modifying the order passed by the labour court – s. 2(oo)(bb) – Industrial Disputes Act (Bombay) Rules, 1957 – r. 81. C D E

Partly allowing the appeal, the Court

HELD: 1.1 It is true that as such all the three courts below (except the Industrial Court) held the termination of the respondent-workman in breach of Sections 25-F and 25-G of the Industrial Disputes Act and, therefore, the Labour Court ordered reinstatement with back wages. However, it is required to be noted that even as per the appointment order produced by the respondent herself, her appointment was on contractual basis at a fixed salary/honorarium of Rs. 500/- per month. Though, it is a case on behalf of the appellant that her appointment was a fixed term appointment, however, considering the appointment order, the appointment was till further orders. It also cannot be disputed that she worked approximately for four years as a sweeper. As such there were no specific averments/allegations in the complaint on any unfair labour practice. Even there was no specific F G H

- A finding recorded by the Labour Court that there was any unfair labour practice adopted by the MSRTC. The only finding recorded by the Labour Court was that the termination was in breach of Sections 25-F and 25-G of the Industrial Disputes Act. In the peculiar facts and circumstances of the case, when the appointment was purely on contractual basis and on a fixed salary/
- B honorarium of Rs.500/- per month, the order of reinstatement with back wages was not warranted and instead if the lumpsum compensation of Rs. Three lakhs only is awarded in lieu of reinstatement and back wages, it would meet the ends of justice. In view thereof, the impugned judgment and order passed
- C by the Division Bench of the High Court and the judgment and award passed by the Labour Court ordering reinstatement with back wages is hereby modified and the appellant is directed to pay a lumpsum compensation of Rs.3,00,000/- (Rupees Three Lakhs only) to the respondent, within the stipulated period. [Paras 6-8][403-D-G; 404-A-D]
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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 463 of 2022.

- From the Judgment and Order dated 30.01.2020 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Letters Patent Appeal
- E No.37 of 2008 in Writ Petition No.3819 of 2003.

Ms. Mayuri Raghuvanshi, Vyom Raghuvanshi, Ms. Purvat Wali, Advs. for the Appellant.

Subhasish Bhowmick, Ms. Manisha Pandey, Harsh Gupta, John Thomas Hrakal, Advs. for the Respondent.

- F The Judgment of the Court was delivered by
- M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 30.01.2020 passed by the High Court of Judicature at
- G Bombay at Nagpur in LPA No. 37 of 2008 by which the Division Bench of the High Court has dismissed the said appeal and has confirmed the judgment and order passed by the learned Single Judge quashing and setting aside the judgment and order passed by the Industrial Tribunal and restoring the award passed by the Labour Court directing the appellant

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to reinstate the respondent with back wages, the employer – Maharashtra State Road Transport Corporation (hereinafter referred to as MSRTC) has preferred the present appeal. A

2. That the respondent herein was appointed as sweeper firstly, by written order of appointment dated 08.06.1989 and by another order dated 01.04.1991 on a consolidated honorarium of Rs.500/- per month. B
That there was an increase of Rs.50/- per month in her consolidated honorarium. She continuously worked as sweeper till she was lastly terminated on 01.08.1994. It appears that her husband was working as a coolie in MSRTC, Chandrapur Depot and suddenly he became blind and his family thus abruptly went in a state of penury. Therefore, she was employed as a sweeper on contractual basis. She filed a complaint under Section 28 read with item (1) of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 before the Labour Court, Chandrapur against the appellant – MSRTC. In the complaint basically she challenged her termination. It was her case in the complaint that she worked without any break and while terminating her services she was neither paid any retrenchment compensation nor notice of one month or wages in lieu thereof were given to her. No seniority list was either prepared or published and there was violation of Section 25-G and Rule 81 of the Industrial Disputes Act (Bombay) Rules, 1957. C D E

2.1 The Labour Court vide judgment and award dated 20.06.2002 directed the appellant to reinstate her with back wages on the ground that termination was in breach of Sections 25-F and 25-G of the Industrial Disputes Act. The Labour Court also held that the provision of Section 2(o)(bb) of the Industrial Disputes Act shall be applicable. F

2.2 Feeling aggrieved and dissatisfied with the order passed by the Labour Court of reinstatement and back wages, the MSRTC preferred revision petition before the Industrial Court and by judgment and order dated 01.07.2003, the Industrial Court allowed the said Revision Application No.339 of 2002 and set aside the judgment and award passed by the Labour Court dated 20.06.2002 in Complaint (ULPA) No. 135 of 1994. G

2.3 Feeling aggrieved and dissatisfied with the judgment and order passed by the Industrial Court, the respondent-workman preferred writ petition before the High Court being Writ Petition No. 3819 of 2003. By judgment and order dated 04.06.2007, the learned Single Judge of the H

- A High Court allowed the said writ petition and set aside the judgment and order passed by the Industrial Court and restored the award passed by the Labour Court of reinstatement and back wages.

- 2.4 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge restoring the award passed by the Labour Court of reinstatement and back wages and holding the termination of the respondent in breach of Sections 25-F and 25-G of the Industrial Disputes Act, the MSRTC preferred the Letters Patent Appeal before the Division Bench of the High Court and by the impugned judgment and order, the Division Bench of the High Court has dismissed the said appeal, hence the MSRTC has preferred the present appeal.

- C 3. Ms. Mayuri Raghuwanshi, learned counsel appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in ordering reinstatement of the respondent with back wages. It is submitted that the High Court has materially erred in observing and/or confirming the order passed by the Labour Court holding that there was a breach of Sections 25-F and 25-G of the Industrial Disputes Act. It is submitted that the appointment of the respondent was on purely contractual basis and for a particular period and on completion of the contractual period, her services were put to end. It is therefore submitted that when she was serving as a part-timer on contractual basis, Section 2(oo)(bb) of the Industrial Disputes Act shall not be applicable and therefore there is no question of breach of Sections 25-F and 25-G of the Industrial Disputes Act as held by the Labour Court and confirmed by the High Court.

- F 3.1 Making above submissions, it is prayed to allow the present appeal.

4. Present appeal is vehemently opposed by Shri Subhasish Bhowmick, learned counsel appearing on behalf of the respondent – workman.

- G 4.1 It is submitted that as such there are concurrent findings recorded by the three courts below that the termination of the respondent was in breach of Sections 25-F and 25-G of the Industrial Disputes Act. It is submitted that once it is found that the termination was in breach of Sections 25-F and 25-G of the Industrial Disputes Act, the Labour Court rightly ordered reinstatement with back wages.

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4.2 It is further submitted by Shri Subhasish Bhowmick, learned counsel appearing on behalf of the respondent- workman that as such the complaint was made by the respondent alleging unfair labour practices. It is submitted that the respondent was appointed in place of her husband, who was serving as a coolie in the MSRTC, however, unfortunately, he became blind and, in his place, the respondent was appointed. It is submitted that as she continuously worked till her services were terminated and there was no break in service, the termination is rightly held to be in violation of Sections 25-F and 25-G of the Industrial Disputes Act.

4.3 Making above submissions, it is prayed to dismiss the present appeal.

5. We have heard the learned counsel appearing for the respective parties at length.

6. It is true that as such all the three courts below (except the Industrial Court) held the termination of the respondent – workman in breach of Sections 25-F and 25-G of the Industrial Disputes Act and, therefore, the Labour Court ordered reinstatement with back wages. However, it is required to be noted that even as per the appointment order produced by the respondent herself, her appointment was on contractual basis at a fixed salary/honorarium of Rs. 500/- per month. Though, it is a case on behalf of the appellant that her appointment was a fixed term appointment, however, considering the appointment order, the appointment was till further orders. Be that it may, the fact remains that her appointment was on contractual basis and on a fixed salary/honorarium of Rs.500/- per month. It also cannot be disputed that she worked approximately for four years as a sweeper. As such there were no specific averments/allegations in the complaint on any unfair labour practice. Even there was no specific finding recorded by the Labour Court that there was any unfair labour practice adopted by the MSRTC. The only finding recorded by the Labour Court was that the termination was in breach of Sections 25-F and 25-G of the Industrial Disputes Act.

7. Having heard the learned counsel for the respective parties and considering the nature of appointment of the respondent namely as contractual appointment on a fixed salary/honorarium of Rs.500/- per month and she worked for approximately four years, we are of the opinion that in lieu of reinstatement and back wages, if a lumpsum compensation

- A of Rs.3,00,000/- (Rupees Three Lakhs only) is awarded, it will meet the ends of justice. In the peculiar facts and circumstances of the case, when the appointment was purely on contractual basis and on a fixed salary/honorarium of Rs.500/- per month, the order of reinstatement with back wages was not warranted and instead if the lumpsum compensation is awarded in lieu of reinstatement and back wages as observed hereinabove, it will meet the ends of justice.
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8. In view of the above and for the reasons stated above, present appeal succeeds in part. The impugned judgment and order passed by the Division Bench of the High Court and the judgment and award passed by the Labour Court ordering reinstatement with back wages is hereby modified and in lieu of reinstatement and back wages, the appellant is directed to pay a lumpsum compensation of Rs.3,00,000/- (Rupees Three Lakhs only) to the respondent, to be paid within a period of four weeks from today.
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- D Present appeal is partly allowed to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

Pending application(s), if any, also stand disposed of.