

Supreme Court of India

Mahesh Narsayya Chintal vs Executive Engineer, Jayakwadi ... on 8 August, 1994

Equivalent citations: JT 1994 (5) SC 328, (1995) ILLJ 445 SC, 1994 (3) SCALE 671, 1994 Supp (3) SCC 255, 1995 (1) UJ 715 SC, (1994) 3 UPLBEC 1966

Bench: A Anand, N Singh

JUDGMENT

1. Leave granted.

2. The appellant was employed as a daily rated workman on 20.5.1972 by the Executive Engineer, Jayakwadi Project, in the State of Maharashtra. On 20.6.1973, he was promoted to the post of Pump Operator. On 1.11.1975, the services of the appellant were transferred to the Lift Irrigation Scheme under the Irrigation Development Corporation of Maharashtra on deputation. Even though he was sent on deputation without obtaining his consent, his service conditions were not changed. The appellant continued to work as Pump Operator. It is the case of the appellant that on 30.9.1979, the Chairman of the Lift Irrigation Scheme (Respondent No. 3) orally terminated the services of the appellant. According to the appellant the Respondent No. 3 had no authority to terminate the services of the appellant, because the appellant was an employee of the State Government, his appointment having been made by the Executive Engineer, Jayakwadi Project, Canal Division, District Aurangabad. Wages were not paid, the appellant filed an application under Section 33(C)(2) of Industrial Dispute Act (hereinafter referred to as "the Act"). In the said application, the stand of the appellant, was that he was the employee of the State Government and only the Executive Engineer (Respondent No. 1) could have terminated the services. As such he was entitled for wages which had not been paid. The Labour Court, Aurangabad, by its order dated 28.7.1980 held that Respondent No. 1, the Executive Engineer, had employed the appellant and had transferred his services to the Corporation. In this background Respondent No. 1 could not have avoided the responsibility of the payment of wages to the appellant. The relevant part of the Order aforesaid is:

7. The liability to pay the amount is solely of opponent No. 1 who employed the applicant and transferred the service to the opponent No. 2. It is pertinent to note that the service conditions of the applicant remained unchanged although he worked with the opponent No. 2. The pump was owned by the opponent No. 1. Its electricity bill was also paid by the opponent No. 1 and the payment of wages to the applicant were also made by the opponent No. 1 through the opponent No. 2. The opponent No. 1 cannot avoid the responsibility simply because the applicant out of ignorance states that the opponent No. 2 was making the payment of wages to the applicant. I therefore hold that the applicant is entitled to claim the amount of benefits from the opponent No. 1.

It is an admitted position that in pursuance of the said direction the Executive Engineer (Respondent No. 1) paid the amount awarded to the appellant. The award under Section 33(C)(2) holding that the appellant continued to be the employee of the State Government under the Executive Engineer (Respondent No. 1) even after his transfer to the Corporation was not challenged before any higher Court and it became final.

3. It may be mentioned that in the year 1979 the appellant had also filed a complaint under Section 28 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the P.U.L.P. Act") making a grievance regarding the unfair trade practice adopted by the respondents to the said application i.e. the Executive Engineer aforesaid, the Managing Director of the Irrigation Development Corporation, Maharashtra and the Chairman, Lift Irrigation Scheme, Patherwala Budruk. That application was disposed of on 21.10.1981 by the Authority constituted under the Act, holding that Respondent No. 3 to that application had adopted an unfair labour practice in terminating the services of the appellant. On that finding the oral termination order dated 30.9.1979 was held to be invalid and a direction was given to the respondent No. 3 to reinstate the appellant in service within one month from the date of publication of the said order. A direction was also given to reinstate the appellant with continuity of service from 1.10.1979. As there was no specific direction against the respondent No. 1, i.e. the Executive Engineer, Jayakwadi Project, Canal Division, against whom also the complaint had been made, appellant filed a writ application before the High Court, for issuance of a specific direction, against the Respondent No. 1 the Executive Engineer. The High Court after having taken note of the facts and circumstances of the case, including the order passed under Section 33(C)(2) of the Act by the Labour Court, observed that no charge of unfair labour practice could be levelled against Respondent No. 1, the Executive Engineer, because the services of the appellant had been terminated by the Chairman/Lift Irrigation Scheme (Respondent No. 3). The writ application of the appellant was dismissed.

4. On behalf of the appellant, it was urged that as he was an employee of the State Government under the Executive Engineer of the project aforesaid since 20.5.1972 and only his services were transferred on 1.11.1975, while he was working as Pump Operator, to the Irrigation Scheme under the Corporation, the appellant never ceased to be an employee of the State Government or became an employee of the Corporation. In this background on basis of any oral order of the Chairman of the Lift Irrigation Scheme, the services of the appellant shall not be deemed to have been terminated. Any such order of termination of the services of the appellant had to be issued by the Executive Engineer on behalf of the State Government.

5. This appeal was adjourned from time to time to enable Mr. Bhasme, the learned Counsel appearing for the State of Maharashtra, to take appropriate instructions on the question as to how the Chairman of the Lift Irrigation Scheme could have terminated the services of the appellant by an oral order, unless the services of the appellant had been terminated by Executive Engineer, the appointing authority, on behalf of the State Government. The learned Counsel appearing for the State, on basis of the materials on record including the affidavits filed on behalf of the State before the High Court, could not point out as to how by mere transfer of the services of the appellant to the Corporation/Scheme aforesaid, the relationship of master and servant between the State Government and the appellant had snapped. It is an admitted position that no order of termination of services whatsoever had been issued by the Executive Engineer in respect of the appellant at any stage.

6. Apart from that a special feature of the present appeal is that, whether the appellant continued to be an employee of the State Government or after the transfer of his services to the

Corporation/Scheme he ceased to be an employee of the State Government, has been considered and adjudicated in the aforesaid proceeding under Section 33(C)(2) of the Act where the Labour Court categorically recorded a finding that the appellant continued to be an employee under the Executive Engineer (Respondent No. 1) and the service condition of the appellant remained unchanged although he worked with the Corporation on be transferred to the Scheme. As the order of the Labour Court was not challenged before the High Court or in any other forum, the quasi judicial order has attained finality and is binding between the appellant and the respondent-State. In such a situation, we are left with no option but to treat the appellant as an employee of the State Government to hold that he has continued as such throughout. In normal course the appellant would have been entitled to reinstatement with back wages since 1.10.1979 but taking all and circumstances into consideration, we are not inclined to direct the payment of backwages for the past 15 years. However, we direct payment of a consolidated amount of Rs. 10,000/- (Ten Thousand only) to the appellant towards back wages as full and final settlement of his claim towards the back wages.

7. Accordingly, the appeal is allowed. The Order of the High Court is set aside. We direct that the appellant be allowed to join under the Executive Engineer, Jayakwadi Project, Canal Division, District Aurangabad, within eight weeks from today. The appellant shall be paid the wages/salary from the date the appellant joins. The amount towards back wages 1 of Rs. 10,000/- (Ten Thousand only) shall be paid to the appellant within eight weeks from the date of the production of this order. We make it clear that if for any reason, it is not possible to allow the appellant to join the post which he was holding at the time he was transferred or his services were terminated, then the respondent, the Executive Engineer, shall allow the appellant to join any other equivalent post, to the post which the appellant was holding on date of his purported termination by the Chairman, Lift irrigation Scheme. There shall be no order as to cost.