A HINDUSTAN PETROLEUM CORPN. LTD.

v.

ASHOK RANGHBA AMBRE

(C.A. No. 391 of 2008)

JANUARY 15, 2008

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[C.K. THAKKER AND J.M. PANCHAL, JJ.]

Labour Laws:

Industrial Disputes Act, 1947 – Appointment of workman C *to the post of compounder/dresser on casual basis – Termination – Re-instatement of workman holding termination illegal and order attaining finality – Claim of permanent status to the post and benefits accruing therefrom – Entitlement of – Held: Not entitled as re-instatement of workman in earlier* D *proceedings cannot be equated with confirmation, and status of permanency cannot be granted – Two things are distinct, different and operate in different areas – Thus, order of High Court that employee entitled to permanent status and all benefits accruing therefrom set aside – However, his case for* E *permanency to be considered sympathetically since he is working for two decades.*

The Appellant-Corporation appointed the respondent on casual basis as compounder/dresser in 1984. The respondent filed a writ petition seeking permanent status F **to the post of compounder/dresser and all benefits flowing therefrom with effect from 6.6.1987. However, from 1996 onwards, the Corporation stopped engaging the respondent since he was not appointed in accordance with the recruitment procedure and also was not qualified.** G **Respondent raised an industrial dispute. The tribunal passed an award of re-instatement of workman with back wages. It held that the workman though appointed as a daily wager, but had worked for more than 240 days in a calendar year just preceding his termination which**

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amounted to retrenchment within the meaning of s. 25 of the Industrial Disputes Act, 1947 and as such was entitled to re-instatement. Both the Single Judge as also Division Bench of the High Court upheld the award. The award attained finality. In the writ petition, the High Court held that the respondent was entitled to the status of permanent employee of the Corporation and all the benefits accruing on that basis with effect from the date of filing of writ petition. Hence the present appeal.

Appellant-Corporation contended that the High Court could not have directed the Corporation to make the respondent permanent and grant benefit on that basis from the date of filing writ petition; that the respondent was never appointed in accordance with the recruitment procedure on regular basis, nor was he qualified to be appointed as Compounder-cum-Dresser, and as such the appellant-Corporation stopped engaging him; and that the order of re-instatement became final and to that extent, the Corporation could not make any grievance.

Respondent-workman contended that when the action of termination of services of the workman was held to be bad and in the Reference, Award was passed in favour of the workman granting reinstatement and full back wages, the order by the High Court granting permanent status and benefits thereto could not be objected; that the High Court did not commit any illegality or impropriety requiring interference by this Court under Article 136 of the Constitution; that it was a consequential action based on earlier award; that the scope of Reference was limited to termination of services of the workman, therefore, the High Court considered the facts and circumstances and rightly granted relief in favour of respondent; and that the petitioner could not be said to be 'not qualified' to be appointed as Compounder/ Dresser.

A Allowing the appeal, the Court

HELD: 1.1 The question with regard to the termination of services of the workman was decided in his favour in earlier proceedings which had become final and it is not open to the Corporation to argue that point. B The Corporation rightly stated that the order holding termination of services of the workman being illegal and contrary to law had reached finality. The workman was reinstated and was also granted all benefits to which he was held entitled in those proceedings. But, it has come C on record that at the time when the services of the workman were terminated in 1996, a writ petition filed by the workman in the year 1992 for the status of permanency and all benefits flowing therefrom was pending in the High Court. [Para 10] [695-F-H; 696-A]

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1.2 Appellant-Corporation was right in submitting that setting aside an action of termination of services being violative of section 25F of the Industrial Disputes Act, 1947 does not necessarily follow that the workman must be held entitled to the benefit of status of permanency and E claim of regular pay scales and other benefits based on permanency. Two things are distinct, different and operate in different areas. In Reference proceedings, the question before the Industrial Tribunal as also before the High Court was whether termination of services of the workman was F in consonance with law. Once it was held that there was breach of section 25F of the Act, it necessarily followed that the order of termination was in violation of law and direction was required to be issued in the form of reinstatement of the workman. Therefore, the said order G was confirmed by the High Court. But in the proceedings before the High Court under Article 226 of the Constitution as to permanency and other benefits on that basis, the writ petitioner could not contend that since the action of termination of his services was held to be illegal and he H was ordered to be reinstated by Industrial Tribunal and

the said Award was confirmed by the High Court, *ipso facto*, he ought to be treated as permanent employee of the Corporation and must be held entitled to the benefits claimed in the writ petition. Therefore, to that extent, the order passed by the High Court is not in consonance with law. [Para 11] [696-B-F]

1.3 The High Court was in clear error in equating reinstatement of employee in service in earlier proceedings with confirmation and granting status of permanency. Continuation in or regularization of service of an employee and extending the benefit of confirmation or making him permanent are two different concepts. [Para 16] [697-G-H]

1.4 In the instant case, according to the appellant-Corporation, the workman was appointed on a purely ad hoc and temporary basis, without following due process of law. Cases of other similarly situated persons were not considered and the appointment was not legal and lawful. In industrial adjudication, an order of termination was quashed as it was not in accordance with law. But that did not mean that the workman had substantive right to hold the post. Therefore, the High Court was wrong in directing the Corporation to make the writ petitioner permanent and to extend him all benefits on that basis from 1992 and the said direction, therefore, is not sustainable. [Para 18] [698-E-G]

1.5 The writ petitioner is working with the appellant-Corporation since 1984 and by now, he has completed more than two decades, and as such his case for permanency be considered by the Corporation sympathetically. Necessary directions issued and observations made. [Para 20] [699-B]

State of Mysore and Anr. v. S.V. Narayanappa, **1967 (1) SCR 128**; *B.N. Nagarajan and Ors. v. State of Karnataka and Ors.*, **1979 (4) SCC 507 – referred to.**

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 391 of 2008.

From the final Judgment and Order dated 28.1.2005 of the High Court of Judicature at Bombay in Writ Petition No. 661 of 1992.

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Mukul Rohtagi, Sanjay Kapur, Shubra Kapur, Rajiv Kapur and Arti Singh for the Appellant.

K. Sarada Devi for the Respondent.

C **C.K. THAKKER, J.** 1. Leave granted.

2. The present appeal is filed by the Hindustan Petroleum Corporation Ltd. ('Corporation' for short) against judgment and final order dated January 28, 2005 in Writ Petition No. 661 of 1992 by the High Court of Judicature at Bombay. By the D impugned order, the High Court allowed the writ petition filed by the respondent-writ petitioner and ruled that he was entitled to the status of permanent employee of the Corporation with effect from the date of filing of the petition *i.e.* March 16, 1992 and all the benefits accruing by virtue of such permanency.

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3. Short facts giving rise to the present appeal are that appellant-Corporation is a Government Company within the meaning of Section 617 of the Companies Act, 1956. It is the case of the Corporation that the writ petitioner was engaged by the Corporation in 1984 on casual basis as an 'unskilled F workman' at its refinery at Bombay. The writ petitioner filed Writ Petition No. 661 of 1992 in the High Court by invoking Article 226 of the Constitution, *inter alia,* praying that he be declared as permanent workman on the post of Compounder/Dresser with effect from June 6, 1987 in the Corporation. A prayer was G also sought to direct the Corporation to extend to the writ petitioner all benefits accrued in his favour by virtue of his permanency with 18% interest. It appears from the record, however, that since the writ petitioner was engaged purely on ad hoc and temporary basis without following proper procedure H of law and without there being any right in his favour, the

Corporation stopped engaging him from June, 1996. Being aggrieved by the said action, the workman raised an industrial dispute. Failure report was submitted by the Conciliation Officer and the Central Government, in exercise of power under Section 10(d) read with Section 10(2A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') referred the dispute for adjudication to the Central Government Industrial Tribunal, Mumbai.

4. The Tribunal vide Award dated April 10, 2003, allowed the Reference. It was held that the workman was not a regularly appointed Compounder/Dresser but was a daily wage employee. But as he had worked for more than 240 days in the calendar year just preceding the date of his oral termination, the action amounted to 'retrenchment' within the meaning of Section 25F of the Act and he was entitled to reinstatement with back wages. The Tribunal, however, made it clear that it was not considering the question of regularization of services of the workman because of two reasons; (i) the Reference did not cover the question of regularization; and (ii) the workman had already filed a writ petition for the relief of regularization which was pending in the High Court. The Award passed by the Industrial Tribunal was challenged by the Corporation in the High Court. A Single Judge of the High Court as well as a Division Bench confirmed the said Award. The matter came to an end there and the award attained finality.

5. The writ petition which was instituted by the writ petitioner-workman then came up for hearing before the Division Bench of the High Court and as stated above, the High Court allowed the petition by making rule absolute and by directing the appellant-Corporation to make the writ petitioner permanent and to grant benefits with effect from the date of filing of the writ petition. The aforesaid order and directions issued in the writ petition by the High Court are challenged by the Corporation in the present appeal.

6. Notice was issued on May 11, 2005 and affidavit in reply

A and rejoinder were filed thereafter. The Registry was then directed to place the matter for final hearing and that is how the matter has been placed before us.

7. We have heard learned counsel for the parties.

B 8. The learned counsel for the appellant-Corporation submitted that the High Court was in grave error in directing the appellant-Corporation to make the writ petitioner permanent by granting all benefits with effect from 1992. It was submitted that the writ petitioner was never appointed in accordance with the C recruitment procedure on regular basis. Nor he was qualified to be appointed as Compounder-cum-Dresser. No doubt, when the Corporation stopped engaging the workman in 1996, he raised an industrial dispute and in a Reference, Industrial Tribunal passed an Award of reinstatement in favour of the D employee which was confirmed by the High Court. To that extent, therefore, the Corporation cannot make any grievance as the order has become final. The workman was accordingly reinstated and was also paid back wages as per the directions in the Award. The counsel, however, submitted that the limited E grievance of the appellant-Corporation is that the High Court, in exercise of power under Article 226 of the Constitution, could not have directed the Corporation to make the writ petitioner permanent and grant benefit on that basis from 1992. When initial appointment of the workman was illegal and he was not having requisite qualifications, it was not open to the High Court F to grant relief which was claimed by the writ petitioner under Article 226 of the Constitution and the appeal deserves to be allowed.

9. The learned counsel for the respondent-workman, on G the other hand, supported the order passed by the High Court. He submitted that when the action of termination of services of the workman was held to be bad and the Reference was allowed and Award was passed in favour of the workman granting reinstatement and full back wages, the order passed by the High Court in the writ petition could not be objected. It is a H

consequential action based on earlier award. Even otherwise, the workman was entitled to all the benefits including permanency and payment of wages and other reliefs. It was made explicitly clear in the Award passed by the Industrial Tribunal that the relief of permanency was not considered in view of the fact that a petition instituted by the workman was pending in the High Court and ambit and scope of Reference was limited to termination of services of the workman. The High Court, therefore, considered the facts and circumstances and rightly granted relief in favour of the writ petitioner. It was also submitted that the petitioner could not be said to be 'not qualified' to be appointed as Compounder/ Dresser. He was appointed as early as in 1984. Even prior to first termination, he had completed services of more than a decade. He had also passed S.S.C. examination as early as in 1969. He had obtained Nursing Certificate from St. John Ambulance Association of India. He had cleared First Aid Examination and was having experience of more than two decades. If, in the light of all these facts, the High Court granted relief in favour of the writ petitioner, it cannot be said that by doing so, the High Court had committed any illegality or impropriety and the said order requires interference in exercise of discretionary jurisdiction of this Court under Article 136 of the Constitution.

10. Having heard learned counsel for the parties, in our opinion, the appeal deserves to be allowed. So far as termination of services of the workman is concerned, the question was decided in his favour in earlier proceedings which had become final and it is not open to the Corporation to argue that point. It has rightly been stated on behalf of the Corporation that the order holding termination of services of the workman being illegal and contrary to law had reached finality. An Award passed by the Industrial Tribunal was confirmed by a Single Judge as well as Division Bench of the High Court. The workman was reinstated and was also granted all benefits to which he was held entitled in those proceedings. But, it has come on record that at the time when the services of the workman were

A terminated in 1996, a writ petition filed by the workman was pending in the High Court. In the year 1992, the workman had approached the High Court for the status of permanency and all benefits flowing therefrom.

B 11. To us, however, the learned counsel for the appellant-Corporation is right in submitting that setting aside an action of termination of services being violative of Section 25F of the Act does not necessarily follow that the workman must be held entitled to the benefits claimed by him in the writ petition, namely, status of permanency and claim of regular pay scales and other C benefits based on permanency. In our judgment, two things are distinct, different and operate in different areas. In Reference proceedings, the question before the Industrial Tribunal as also before the High Court was whether termination of services of the workman was in consonance with law. Once it was held that D there was breach of Section 25F of the Act, it necessarily followed that the order of termination was in violation of law and direction was required to be issued in the form of reinstatement of the workman. The said order was, therefore, confirmed by the High Court. But in our considered opinion, in the proceedings E before the High Court under Article 226 of the Constitution as to permanency and other benefits on that basis, the writ petitioner could not contend that since the action of termination of his services was held to be illegal and he was ordered to be reinstated by Industrial Tribunal and the said Award was F confirmed by the High Court, *ipso facto*, he ought to be treated as permanent employee of the Corporation and must be held entitled to the benefits claimed in the writ petition. To that extent, therefore, the order passed by the High Court is not in consonance with law.

G 12. Both the parties in this connection referred to several judgments in support of their respective contentions. We do not wish to deal with all those judgments since, in our opinion, law is well settled on the point. But as already noted earlier, the High Court, not only continued the appointment of the writ petitioner H but observed that once the appointment was made and the

workman was allowed to work for two decades, it would be hard and harsh to deny him the ***confirmation*** on the post. A

13. The High Court further stated "We, therefore, hold that the petitioner (workman-respondent herein) is entitled to the status of permanent employee of the Corporation and accordingly we make the rule absolute in terms of prayer clause (a) with modification that the petitioner would be entitled to permanency with effect from the date of filing of the petition *i.e.* 16.3.1992. Petition is accordingly disposed of". B

14. Prayer (a) in the Writ Petition before the High Court reads thus: C

> "(a) That this Hon'ble Court be pleased to declare the petitioner to be a permanent workman of the respondents in the post of Compounder/ Dresser w.e.f. 6.6.1987 and direct the respondents to pay the petitioner all the benefits accruing by virtue of his permanency including fitment with annual increments in the appropriate grade with retrospective effect". D

15. The High Court observed that the writ petitioner was working as Compounder/Dresser right from 1984. It was not disputed that there was requirement of Compounder/Dresser at the Refinery which was working all throughout seven days in a week. It also noted the observation of the Tribunal in earlier Award that if the policy decision was breached in the appointment of the workman, the appointment could not be said to be illegal or prohibited by law. Such appointment would be merely irregular but not illegal. E F

16. In our opinion, the High Court was in clear error in equating reinstatement of employee in service in earlier proceedings with confirmation and granting status of permanency. Continuation in or regularization of service of an employee and extending the benefit of confirmation or making him permanent are two different concepts. Before more than four decades, in *State of Mysore & Anr. v. S.V. Narayanappa,* G H

(1967) 1 SCR 128, setting aside the order passed by the High Court of Mysore, this Court observed that the High Court erroneously proceeded on an assumption that 'regularisation' meant 'permanence'. The Court stated that regularization would not mean that the appointment would have to be considered as permanent.

17. Again, in *B.N. Nagarajan & Ors. v. State of Karnataka & Ors.*, (1979) 4 SCC 507, orders were passed by the State Government promoting certain officers as Assistant Engineers 'on a regular basis'. It was argued that the regularization of the promotion gave it the colour of permanence and the appointments of the promotees as Assistant Engineers must, therefore, be deemed to have been made substantively. The Court held that the words 'regular' or 'regularisation' do not connote 'permanence'. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to the methodology followed in making the appointments and cannot be construed so as to convey an idea of the nature of tenure of appointments.

18. In the case on hand, according to the appellant-Corporation, the workman was appointed on a purely ad hoc and temporary basis, without following due process of law. His name was never sponsored by the Employment Exchange nor an advertisement was issued for the purpose of filling the post to which the writ petitioner was appointed. Cases of other similarly situated persons were not considered and the appointment was not legal and lawful. In industrial adjudication, an order of termination was quashed as it was not in accordance with law. But that did not mean that the workman had substantive right to hold the post. The High Court was, therefore, wrong in directing the Corporation to make the writ petitioner permanent and to extend him all benefits on that basis from 1992. The said direction, therefore, has to go.

19. For the foregoing reasons, the appeal is allowed by setting aside the direction issued by the High Court ordering

the appellant-Corporation to make the writ-petitioner (respondent herein) permanent employee of the Corporation and to grant all benefits on that basis with effect from the date of filing of writ petition. A

20. We may, however, observe that since the writ petitioner is working with the appellant-Corporation since 1984 and by now, he has completed more than two decades, his case for permanency be considered by the Corporation sympathetically. If there is age bar in considering the case of the writ petitioner for permanent appointment, the appellant-Corporation will not treat the writ petitioner ineligible on that count in view of the fact that he is already in service of the Corporation since 1984. If there are statutory rules/administrative instructions/guidelines which require minimum educational qualification and/or experience, it is open to the Corporation to insist compliance with such rules/instructions/guidelines. But if there is power of relaxation with the Corporation or any of its Officers, the appellant-Corporation will consider that aspect as well keeping in view the fact that the writ petitioner was appointed in 1984, has completed service of more than twenty years and is having rich experience. B C D E

21. In the result, the appeal is allowed. The order passed and directions issued by the High Court are set aside but with the above observations. On the facts and in the circumstances, however, the parties shall bear their own costs. F

N.J. Appeal allowed.