Employment Laws
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BOMBAY HIGH COURT ON UNFAIR LABOUR PRACTICES

A. Introduction

In a recent judgement of the Bombay High Court (**HC**) in the case of *Shankar Bhimrao Kadam*,[1] it was held that the employer was liable to pay compensation to workmen for unfair labour practices under the Industrial Disputes Act, 1947 ("**ID Act**").

B. Brief Facts:

1. The petitioners were former temporary employees ("**Employee(s)**") of Tata Motors Limited ("**Employer**"), skilled in car manufacturing. About 1500 employees raised an industrial dispute of unfair labour practices in 2005 under Section 2-A[2] of the ID Act. Due to unfavourable orders from the labour courts, only 52 employees appealed to the HC seeking reinstatement with back wages.

2. They claimed that the Employer deliberately terminated them before their completion of 240 days of continuous employment to avoid granting them 'permanent workmen' status. They submitted that they were being discriminated as against the permanent workers by payment of one-third of their salary.

3. The Employer contended that:
   a. The Employees were only engaged when there was a temporary rise in work;
   b. The work allotted to them was not of a continuous character;
   c. After every appointment order, the concerned Employee was issued a termination order as the contract of employment ended and was non-renewable.
   d. Hence, they came under the exception to retrenchment under Section 2(oo)(bb)[3] of the ID Act.

4. However, the HC took note from the admissions made by the Employer that the Employees were:
   a. Not engaged on account on any particular project.
   b. Engaged in core activities of the Employer-establishment.

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[1] *Shankar Bhimrao Kadam and Ors. vs. Tata Motors Limited* (26.02.2022 - BOMHC) : MANU/MH/0760/2022.
[2] ID Act, Section 2A *(Dismissal, etc., of an individual workman to be deemed to be an industrial dispute).*
[3] The definition of 'retrenchment' in Section 2(oo) of the ID Act, at (bb) excludes "*termination of the service of the workman as a result of the non- renewal 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.*"

C. Order and Reasoning:

The HC:

1. Held, with respect to application of the above exception:"*It may not sound retrenchment, since the worker technically did not complete 240 days. But, it would certainly not be covered by sub-clause (bb).*"[4]

2. Raised two questions:
   a. How many times an employer could enter into temporary employment contracts with employees and deploy them in core activities?
   b. Could an employer be permitted to exploit the temporary workers by issuing appointment letters and argue that they were contractual appointments?

   However, it does not attempt to answer these questions.

3. Opined that the *modus operandi* of the Employer in establishing a dedicated department for recruitment and termination of thousands of temporary employees affirmed the Employer's objective to exploit employees. It observed: *"In the cases in hands, considering the analysis of evidence in the foregoing paragraphs, it is obvious that the respondent-management systematically monitored the working of the temporaries, through it's (sic) special department. The said department clearly appears to be carefully monitoring these temporaries and, it was ensured that none of them would complete 240 days. Instances discussed above, would prove this aspect."*[5]

4. Observed that no evidence was adduced by the Employer to indicate that any of the Employees had been regularised in the employment even though temporary employees constituted nearly two-thirds of the workforce.

5. Partly allowed the appeal declaring that the Employer has indulged in unfair labour practices listed in the Fifth Schedule to the ID Act.[6]

6. Refused to grant permanent employment to the Employees but directed the Employer to pay compensation.

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[4] Para 34 of the Judgment.

[5] Para 48 of the Judgment.

[6] (5) *To discharge or dismiss workmen - (a) by way of victimisation; and (b) not in good faith, but in the colourable exercise of the employer's rights; (9) To show favouritism or partiality to one set of workers regardless of merit; (9) To employ workmen 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 workmen.*