
(1997) 01 RAJ CK 0043

In the Rajasthan High Court

Case No : C.W.P. No's. 2746, 2747, 2748 and 2749 of 1995

Amar Singh and Others

APPELLANT

Vs

Labour Court

RESPONDENT

Date of Decision : 02-01-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (1997) 1 LLJ 705 : (1997) 2 RLW 1189 : (1997) WLC 79

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : M.F. Beg, for the Appellant; Raj Birbal and B.S. Ratnu, for the Respondent

Judgement

J.C. Verma, J.—All the above four writ petitions involve the same and similar question of facts, and are therefore being decided by one order. For convenience the facts as narrated, are being taken from S.B.Civil Writ Petition No. 2147/1995 Ram Avatar v. Judge, Labour Court,. Bharatpur and Ors. The writ petitioners in the above writ petitions were employees of M/s Eicher Tractors Ltd., Alwar. All the writ petitions are directed against the order of approval dated March 18, 1995 granted by the Labour Court while exercising the powers u/s 33 (2)(b) of the Industrial Disputes Act. Because of certain reasons and some agitations in the industry of the respondent, the respondent had all of a sudden without any notice, without any charge sheet and without holding any inquiry had dismissed the aforesaid employees from their service vide order dated June 29, 1988 attached as Annexure 1 with the written statement. In the order Annexure R/1 allegations were levelled against the employees and the order of dismissal did contain the stigma as well. However, a wisdom had prevailed on the respondent Management after a short period of the dismissal orders passed against the employees and the order Annexure R/1 was withdrawn by a subsequent order dated August 22, 1988. (Annexure R/2) and the concerned employees i.e the petitioners were taken back on the rolls of the company. It was mentioned in the order Annexure R/2 that they shall not be entitled to any wages for the period

June 29, 1988 to August 21, 1988.

2. It seems that on being advised, still another order was passed in the month of December 1989 to treat the period in between the order of dismissal and the order of withdrawal of the dismissal as a period spent on duty and payment was also made to the employees with the result that the order of dismissal dated June 28/29, 1988 was withdrawn with consequential benefits as well.

3. As rightly advised and to legalise the action contemplated on previous occasion vide their dismissal order of June 1988, the management had thought fit to issue a charge sheet to the workers and to hold enquiry. It is alleged that some charge sheet was published in the Newspapers and ultimately after holding an ex parte inquiry all the employees were again dismissed on December 22, 1989. Admittedly the order of dismissal was passed on some exparte inquiry and on the report given by the Inquiry Officer Shri -Narendra Kumar Gupta on January 15, 1989. In the meantime, the employees had raised an industrial dispute against the order of dismissal dated June 28, 1988 (Annexure R/1) and the employees had also challenged the order of withdrawal of the dismissal order dated August 22, 1988. Both these matters were referred to the appropriate Labour Court vide the reference order dated March 4, 1990, which is still pending before the Labour Court, Bharatpur.

4. For the reason that some industrial dispute was pending concerning the employees, the Management had made an application to the appropriate Labour Court for granting approval to dismiss the above said employees as required under the Law. The Labour Court after going through the pleadings of the parties had granted the approval as required u/s 33(2)(b) of the Act vide its order dated March 18, 1995. This order of the Labour Court has been challenged by the workers involved in the above four writ petitions.

5. The contention of the counsel for the petitioner is that because of the reason that the employees have been dismissed from service in June, 1988, the master and servant relations had come to an end, and therefore, no order of withdrawal of the order of dismissal could be passed subsequently on August 22, 1988, and the legality of order could be tested by the courts only.

6. Counsel for the petitioner wants to submit that even after passing a total illegal order, the employer-Management had no right to withdraw the order even though consequential reliefs were also awarded to them. But, in the present case, the challenge has been made to the impugned order of the Labour Court only, whereby an approval has been granted by the Labour Court, and therefore, in the present circumstances, this court is only to judge the legality of the order of the approval granted by the Labour Court u/s 33(2)(b) of the Industrial Disputes Act.

7. A safeguard has been provided to the working class from being victimised during the pendency of some labour adjudication in the form of provisions of Section 33(2)(b) of the Act. The Labour Court has been clothed to see the prima

facie fact, whether before awarding any punishment, or changing any service condition, the Management has complied with certain principles as laid down in the law . For granting the approval, the Labour Court is to see prima facie whether any inquiry has been held in accordance with the Standing Orders and whether notice has been given to the employees or not, or whether any application has been moved simulatenously or not etc. etc.

8. The Labour Court may not at this juncture go into the merits of the case, which are required to be gone into on the reference to be made by the appropriate Government either u/s 10(1)(c) or Section 33(A) of the Industrial Disputes Act. Even if the approval is ultimately granted, that approval only removes the ban imposed by the Act in terminating the services in certain circumstances. The order of removal or change of condition is still open for challenge in adjudication in appropriate proceedings before the Labour Court when the matter is referred to such appropriate Labour Court.

9. From the reading of the order of the Labour Court, it is clear that the Labour Court after going through the pleadings of the parties came to the conclusion of a prima facie question of facts of compliance of certain mandatory provisions before passing the orders of termination, as provided u/s 33(2)(b) of the Act and had accorded the approval. The approval granted is not res judicata to the real issue of adjudication of the real conflict between the parties.

10. It has been stated at the bar by both the counsel of the parties that even the final order of dismissal i.e. order dated December 22, 1988 is also pending adjudication in the reference before the Labour Court. For the reasons that the petitioners can challenge their order of dismissal on all the grounds, which may be available to them, that is, victimisation, harassment, unfair labour practice, inquiry being held without opportunity, or the order of dismissal being inflicting a harsh punishment, both the counsels have fairly agreed before this court that the parties would be satisfied if all the references in this regard made earlier vide order dated March 4, 1990 wherein, the initial dismissal of June, 1988 and the withdrawal of such dismissal vide order dated December 22, 1989, which references are pending before the Labour Court are decided by the Labour Court and adjudication is made on all these references.

11. In view of such submission, I feel it appropriate not to interfere on the order of approval granted by the Labour Court, which findings of the Labour Court is only prima facie conclusions under the Act and does not amount to res judicata on any Court, as nothing has been decided by the Labour Court except granting of approval and removing the bar of termination.

12. In the circumstances, I leave it to the parties to agitate all their Claims arising out of their disputes which have already been referred to the Labour Court and the petitioners shall be at liberty to attack the orders in reference pending before the Labour Court on any ground available to them under the Law including the grounds of victimisation, discrimination, unfair labour practice, vires

of the inquiry and the inquiry being against the principles of natural justice, which shall be decided by the Labour Court in accordance with Law.

13. Because of the reason that already a long time has passed and the matter is still under adjudication before the Labour Court, it shall be appropriate that the Labour Court should decide all the matters pending before it in this regard i.e. reference in regard to dismissal order passed on June 28/29, 1988, withdrawal of this dismissal order, as referred by the order of Government, dated March 4, 1990 and also the final order for dismissal passed by the Management on December 22, 1989.

14. With the aforesaid directions, the writ petition is disposed off.