

(2008) 08 BOM CK 0049

In the Bombay High Court

Case No : C.A.J.W.P. No. 2529 of 1997

Balasaheb Rodoba Nagpure

APPELLANT

Vs

Ashok Card Centre and Another

RESPONDENT

Date of Decision : 21-08-2008

Acts Referred:

Citation : (2008) 119 FLR 527 : (2009) 1 LLJ 744

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : K.S. Bapat, for the Appellant; R.M. Patne, for the Respondent

Judgement

Nishita Mhatre, J.—The petitioner has challenged the award of the Labour Court in Reference (IDA) No. 198/1988. The petitioner was working as Binder in the Printing establishment run by respondent No. 1. His last drawn wages were Rs. 850/- per month. Admittedly, the petitioner was a permanent workman. It appears that the petitioner was orally terminated from service on August 1, 1987. According to the petitioner, he was falsely implicated in a criminal case of theft by the Proprietor of the respondent, leading to termination of his service. The petitioner was acquitted on September 15, 1989 by the Chief Judicial Magistrate, Pune.

2. The petitioner raised an industrial dispute after his services were terminated on August 1, 1987. The dispute was referred for adjudication and registered as Reference (IDA) No. 198/1988. The petitioner filed his statement: of claim contending that the respondent which was a proprietary concern was a shop registered under the Bombay Shops and Establishments Act and that he was entitled to be paid minimum wages under the Minimum Wages Act. The; petitioner also contended that there were no certified standing orders that and the respondent followed the Industrial Employment (Standing Orders) Act. He has also contended that no reasons were assigned to him by the Proprietor of the respondent concern while terminating his services on August 1, 1987. He has also contended that he made attempts to resume duty on 3 or 4 occasions

thereafter, but to no avail.

3. The respondent in its written statement; contended that the petitioner was not terminated from service and in fact he had remained absent from duty.

4. After considering the evidence on record the Labour Court has held that the petitioner's services had been illegally terminated. The Labour Court has observed that assuming the respondent's contention that the petitioner had abandoned his service was correct, it was necessary for the respondent to hold an enquiry and to proceed against the petitioner in accordance with the rules of natural justice. The Labour Court has held that the petitioner had proved that the termination of his services was illegal. It has disbelieved the respondent's theory of abandonment of service termination. The Labour Court, however, has denied the petitioner reinstatement with continuity of service and full back wages. Instead, it has awarded him Rs. 5,000/- in lieu of reinstatement, alongwith retrenchment compensation. This view has been taken by the Labour Court since according to it, the respondent had crossed the age of superannuation. Besides this, the Labour Court was of the view that there was no point in reinstating the petitioner in service as he and the proprietor of the respondent were relatives and due to the litigation, their relations were not cordial.

5. At this stage, Mr. Patne appears and asks for an adjournment since Mr. Nargolkar, who appears for the respondent has a sore throat. The matter was heard at length on an earlier date and it had been adjourned to explore the possibility of settlement. When the matter started today, nobody appeared for the respondent. I have heard Mr. Bapat and, therefore, I have proceeded to deliver the judgment. I do not think it necessary to adjourn the matter now at this stage.

6. The main contention raised by Mr. Bapat, appearing for the petitioner, is that the reasons given by the Labour Court for denying reinstatement with continuity of service and full back wages to the workmen are unsustainable in law. He submits that the mere fact that the relations between the employer and employee are estranged, would not necessarily lead to the conclusion that the employee should be denied reinstatement if he has been illegally and unjustifiably removed from service. He further submits that there is no evidence on record to indicate that the workman was " expected to retire at the age of 60 years or that the age of 60 was the age of superannuation. According to him, the Model Standing Orders do not apply to the establishment since the number of workmen employed by the respondent No. 1 are less than 50. Therefore, he contends the petitioner ought to have been continued in service, till he was physically and mentally capable of working. He submits that by awarding the petitioner a pittance of Rs. 5000/- in lieu of reinstatement, the Labour Court has done extreme injustice to the petitioner. He submits that there is nothing on record to indicate that the petitioner was not physically or mentally capable of working after 7 the age of 60. He points out that in fact the Proprietor who has been examined has admitted that the petitioner was working beyond the age of

60 years.

7. In my opinion, the Labour Court erred in awarding only Rs. 5000/- to the workman as compensation in lieu of reinstatement, besides retrenchment compensation. The evidence on record indicates that there were less than 4 employees engaged by the respondents. In fact, the proprietor of the respondents has stated so in his evidence. He has further stated that the petitioner who was his maternal uncle was employed by him and continued to work even after he had crossed the age of 60 years. It was only because the petitioner had stolen some money from the cash box that his services were terminated on June 29, 1987. However, later he was permitted to resume duty. In the cross-examination he has admitted that there was no rule regarding the age of retirement of the employees working with him. Thus, there is no evidence at all on record to indicate that the age of 60 years was the retirement age. Nor is there any material to show that the petitioner was not capable of working beyond the age of 60 years. In fact, the evidence discloses quite to the contrary. In such a situation, in my opinion, unless the workman was physically and mentally unfit for work, he could not have been denied the relief of reinstatement of service with continuity of service and full back wages by the Labour Court. Admittedly there were less than 50 workers and therefore, the Industrial Employment (Standing Orders) Act was not applicable to the establishment. Thus, there was no specific age of retirement as admitted by the proprietor in his evidence. He has also admitted that the workman was working even beyond the age of 60 years with him. In my opinion, therefore, the Labour Court has erred in denying reinstatement to the workman while passing the award.

8. The age mentioned by the petitioner when his evidence was recorded in 1993 is 68 years. Thus, today, he would be 83 years of age. In my opinion, although there is no bar for a workman who is physically fit and mentally fit at this age to work in an establishment such as the respondents, it would not be appropriate to direct the respondent to reinstate him at this age. Instead, the compensation awarded by the Labour Court can be enhanced.

9. Apart from this, the Labour Court has not awarded any backwages to the workman. There is no evidence on record to indicate that the Petitioner was gainfully employed after his services were terminated. In fact he has stated in his examination-in-chief that he was not employed elsewhere. He has not been cross-examined on this issue. Nor has the respondent led evidence to the contrary. His services were terminated in 1987 and the award has been delivered in 1994. Thus, in any event, the workman would have been entitled to Rs. 74,800/-.

10. In my opinion, therefore, the award of the Labour Court must be modified by directing the respondent to pay to the petitioner a sum of Rs. 100,000/- (Rupees One Lakh only) as compensation in lieu of reinstatement with continuity of service and full back wages, within a period of eight weeks from today.

Rule made absolute accordingly, with cost.