
(2010) 06 CAL CK 0095
In the Calcutta High Court
Case No : Writ Petition No. 522 (W) of 2002

Bata India Ltd.

APPELLANT

Vs

Fourth Industrial Tribunal and Others

RESPONDENT

Date of Decision : 18-06-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 227
Industrial Disputes Act, 1947 — Section 17B, 25F, 25G

Citation : (2011) 1 LLJ 431 : (2011) LLR 68

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Dipak Kumar Ghosh and Ranjay De, for the Appellant; Subir Sayal and Ratul Biswar, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The Petitioner in this Article 226 petition dated January 17, 2002 is questioning the award of the Fourth Industrial Tribunal, West Bengal dated August 7, 2001, Annexure P6 at p. 117, that the second Respondent, the workman, is entitled to reinstatement in service with full back wages and other consequential benefits.

2. The second Respondent was working in the Petitioner's Lindsay Street shop as a sales-man from January 24, 1997 on Rs. 58.85 per day. On February 22, 1998 his service was terminated without any notice. Feeling aggrieved, he raised an industrial dispute. Consequently, the State Government referred the dispute to the Tribunal.

3. The points of dispute specified in the order of reference dated August 21, 2000 were as follows:

a) Whether the termination of services of Shri Sabyasachi Ghosh, w.e.f. February 12, 1998 is justified?

(b) What relief, if any, is he entitled to?

4. After considering the cases of the parties stated in their respective written statements and the oral and documentary evidence given by the parties in proof of their respective cases, the Tribunal submitted the impugned award to the State Government. The Tribunal held that the second Respondent was retrenched by the Petitioner without complying with the conditions mentioned in Section 25F of the Industrial Disputes Act, 1947.

5. Mr. Ghosh, counsel for the Petitioner, has argued two points: (i) reinstatement cannot be the relief in a case of termination of service without complying with the conditions mentioned in Section 25F of the Industrial Disputes Act, 1947; and (ii) even if reinstatement can be the relief, it is not an automatic relief, because compensatory payment in lieu thereof is the rule.

6. Mr. Sanyal, counsel for the second Respondent, has argued that if the retrenchment is in contravention of the provisions of Section 25F, then reinstatement with full back wages is the automatic relief. .

7. In *Mohan Lal Vs. Management of Bharat Electronics Ltd.*, cited by Mr. Sanyal, the Supreme Court held as follows at p. 75 of LLJ:

9. Reverting to the facts of this case, termination of service of the Appellant does, not fall within any of the excepted, or to be precise, excluded categories. Undoubtedly therefore the termination would constitute retrenchment and by a catena of decisions it is well settled that where prerequisite for valid retrenchment as laid down in Section 25F has not been complied with, retrenchment bringing about termination of service is ab initio void. In *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, this Court held that failure to comply with the requirement of Section 25F which prescribes a condition precedent for a valid retrenchment renders the order of retrenchment invalid and inoperative. In other words, it does not bring about a cessation of service of the workman and the workman continues to be in service. This was not even seriously controverted before us.

8. In *Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain and Others*, , it was held (para 5) that in case of an appointment on a temporary basis the person does not acquire any substantive right to the post, even though the post itself may be permanent; and that it is an implied term of such appointment that it may be terminated at any time and without notice.

9. Mr. Ghosh has relied on this decision in support of his argument that since the second Respondent, appointed admittedly on a temporary basis, was not appointed to any post, there was no scope for reinstating him in any post and hence the Tribunal could not order his reinstatement. To this Mr. Sanyal has argued that the proposition is totally irrelevant in case of a termination of service in violation of Section 25F.

10. In *General Manager, Haryana Roadways Vs. Rudhan Singh*, the question whether reinstatement is the automatic relief in case of a retrenchment without

complying with the conditions mentioned in Section 25F of the Industrial Disputes Act, 1947 was not the question under consideration. What their Lordships of the Supreme Court examined was whether the workman was entitled to back wages. Mr. Sanyal, relying on the decision, has argued that the implied ratio of the case is that reinstatement is the automatic relief.

11. There is nothing like an implied ratio of a case decided by the Supreme Court. The ratio of a case must be apparent from the decision in the case, because it is the general rule applying which the case was decided and without which the case would have been decided otherwise.

12. In *Management of Sonapat Cooperative Sugar Mills Ltd. Vs. Ajit Singh*, the question whether reinstatement should be the relief in case of a retrenchment without fulfilling the conditions of Section 25F was not raised, and what was raised was: reinstatement could not be ordered in a post to which the workman had not been appointed. According to Mr. Sanyal, the decision answers at least one of his contentions that for reinstatement a post is not necessary in every case:.

13. In *Hindustan Petroleum Corpn. Ltd. Vs. Ashok Ranghba Ambre*, cited by Mr. Sanyal. the question was whether relying on an award of the Tribunal ordering reinstatement of the workman on the ground that he was retrenched without complying with the conditions of Section 25F of the Industrial Disputes Act, 1947, an order could be made by the High Court under Article 226 directing the employer to give the workman a permanent status.

14. In *Ghaziabad Development Authority and Another Vs. Ashok Kumar and Another*, considered by both counsel, the Supreme Court held (para 18) that if a post does not exist, reinstatement should not be ordered. Dealing with this decision Mr. Sanyal has argued that while applying the proposition one should keep in mind the distinction between an employer which is a State under Article 12 and a private employer. According to Mr. Ghosh, there is no question of making a distinction between these employers.

15. In *Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another*, , considered by both counsel, the Supreme Court held (para 15) as follows:

15. It would be thus, seen that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wages has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee....

16. In *Harjinder Singh Vs. Punjab State Warehousing Corporation*, , cited by Mr.

Sanyal, the Supreme Court held (para 23) as follows:

23. Of late, there has been a visible shift in the Courts approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalisation are fast becoming the *raison d'être* of the judicial process and an impression has been created that the constitutional Courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman-employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The Courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood. It needs no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity/the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the Courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer-public or private.

17. In *Senior Superintendent Telegraph (Traffic) Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others*, cited by Mr. Ghosh, the Supreme Court held (para 6) as follows:

6. In last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

18. In *Ghaziabad Development Authority and Anr. v. Ashok Kumar and Anr.* (supra) it was found that the workman was retrenched without complying with the conditions of the statutory provisions similar to the ones in Section 25F of the Industrial Disputes Act, 1947. The Supreme Court was examining the question whether the labour Court was justified in granting the relief of reinstatement with full back wages.

19. Considering the facts that the workman had worked for a bit more than two years, was appointed on Rs. 17 per day and no post was in existence, the Supreme Court held that the Tribunal should not have directed reinstatement of

the workman in service with full back wages. Their Lordships ordered the employer to pay the workman Rs. 50,000 compensation in lieu of reinstatement with full back wages.

20. In *Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr.*, (supra), the workman was working on a daily basis, and it was found that he was retrenched without complying with the conditions of Section 25F of the Industrial Disputes Act, 1947. The Labour Court ordered reinstatement with, continuity of service and full back wages. The High Court held that neither reinstatement nor back wages could be granted by the labour Court.

21. Their Lordships of the Supreme Court held that the High Court, justified in holding that reinstatement was not the relief, ought to have ordered the employer to pay the workman compensation.

22. Their Lordships ordered the employer to pay the workman Rs. 50,000 compensation in lieu of reinstatement with full back wages, and in the process said (para 7) as follows:

7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

23. The decision in *Harjinder Singh v. Punjab State Warehousing Corporation* (supra), was given without considering the decisions in *Ghaziabad Development Authority and Anr. v. Ashok Kumar and Anr.* (supra), and *Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr.* (supra)

24. In *Harjinder Singh v. Punjab State Warehousing Corporation* (supra), the workman was not appointed to any sanctioned post. He was retrenched fulfilling the conditions of Section 25F, but in violation of Section 25G of the Industrial Disputes Act, 1947. The Labour Court ordered his reinstatement with 50% back wages. The High Court did not approve the order for reinstatement and substituted its order directing the employer to pay the workman Rs. 87,582 compensation for the award. The order of the High Court was set aside on the ground that the High Court did not keep in view the parameters laid down by the Supreme Court for exercising jurisdiction under Articles 226 and 227.

25. In *Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal and Ors.* (supra), the workmen were engaged on a daily basis. It was found by the Tribunal that they were retrenched without complying with the conditions of Section 25F of the Industrial Disputes Act, 1947. The Tribunal ordered

reinstatement with full back wages. It was argued before their Lordships that in the facts and circumstances of the case reinstatement with back wages was not justified, and that at best compensatory payment could have been ordered.

26. The decision in *Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal and Ors.* (supra), was given after considering the decisions in *Ghaziabad Development Authority and Anr. v. Ashok Kumar and Anr.* (supra) and *Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr.* (supra), but not the one in *Harjinder Singh v. Punjab State Warehousing Corporation* (supra).

27. Their Lordships held that in view of the legal position (stated in para 6 of the report and quoted hereinbefore) the relief of reinstatement with back wages was not justified, and that compensatory payment in lieu thereof "would subserve the ends of justice". Noticing that the workmen had worked on a daily basis twenty-five years ago hardly for two or three years, the employer was ordered to pay them at the rate of Rs. 40,000 compensation.

28. In view of the above-noted decisions of the Supreme Court and the provisions of the Industrial Disputes Act, 1947, especially those of Section 25F, I am unable to accept the proposition that when a workman is retrenched without complying with the conditions mentioned in Section 25F of the Industrial Disputes Act, 1947 reinstatement with back wages cannot be the relief at all.

29. It is evident from what the Supreme Court has consistently held that reinstatement with back wages can definitely be a relief, but it is not an automatic relief. I am of the view that if it is found that the workman was retrenched without complying with the conditions mentioned in Section 25F of the Industrial Disputes Act, 1947, the question whether reinstatement with back wages full or part should be ordered is always to be closely examined.

30. Here Mr. Ghosh has argued that on the facts the Tribunal should not have ordered the second Respondent's reinstatement with back wages. Mr. Sanyal has argued that in the absence of any evidence given by the Petitioner to show why the relief of reinstatement with back wages was not to be granted, the Tribunal was justified in granting the relief. His submission is that there is no error apparent on the face of the award, and hence the High Court cannot interfere with it in exercise of power under Article 226.

31. In my opinion, if it is found that the Tribunal has granted the relief of reinstatement with full back wages without recording the reasons for which the workman should be given such relief and not compensatory payment in lieu thereof, then it can be said that the award is vitiated by an error apparent on the face of it.

32. The relevant findings of fact recorded by the Tribunal are these. The second Respondent was first appointed as a shop assistant in October, 1987. He worked upto 1994. He was again appointed on January 24, 1997 and worked continuously upto February 12, 1998 when he was verbally retrenched. He was

selling shoes and maintaining godowns. He worked for 384 days on Rs. 58.85 per day.

33. It is, therefore, the admitted position that the second Respondent worked for a little more than a year. He was not appointed on a permanent basis to any post, but on Rs. 58.85 per day.

34. On these facts and in view of the law clearly laid down by their Lordships of the Supreme Court in Ghaziabad Development Authority and Anr. v. Ashok Kumar and Anr. (supra), Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr. (supra) and Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal and Ors. (supra), I am of the opinion that the Tribunal was not justified in ordering the second Respondent's reinstatement in service with back wages.

35. It is important to note that the Tribunal did not say a single word why reinstatement with back wages should be the relief. It is evident from the award that it granted the relief of course, presumably, on the basis that once the termination was found illegal, the relief of reinstatement with back wages would be automatic. In my opinion, the relief of compensatory payment in lieu of reinstatement with back wages was the proper relief in the case.

36. In view of order made in the second Respondent's application u/s 17B of the Industrial Disputes Act, 1947, the Petitioner has been paying the second Respondent what is payable u/s 17B. In the facts and circumstances, I am of the view that if the Petitioner is ordered to pay the second Respondent Rs. 50,000 compensation in lieu of the relief of reinstatement with back wages ordered by the Tribunal, purpose of justice will be adequately served.

37. For these reasons, I partly allow the petition and modify the award of the Tribunal ordering as follows. In lieu of the relief of reinstatement with back wages ordered by the Tribunal the Petitioner shall pay the second Respondent Rs. 50,000 compensation within six weeks. The Petitioner's failure to pay in terms of this order shall make it liable to pay interest on the amount at the rate of 9% per annum from the date it becomes payable till the date of actual payment. No costs. Certified xerox.