

(2017) 02 MP CK 0142
In the Madhya Pradesh High Court
Case No : 14670 of 2005

C K RATHI

APPELLANT

Vs

SUDARSHAN JHAWAR & ANR.

RESPONDENT

Date of Decision : 27-02-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Industrial Disputes Act, 1947, Section 25(f)
Section 2(OO)(BB) - Pro

Citation : (2017) 02 MP CK 0142

Hon'ble Judges : Sujoy Paul

Bench : Single Bench

Advocate : Ashish Shroti, Anoop Nair

Judgement

1. This petition filed under Article 226 of the Constitution of India takes exception to the award dated 30.8.2005 passed in Case No. CGIT LCR 59/1996 by the Central Government Industrial Tribunal-cum-Labour Court (for short "the tribunal"). The respondent workman raised an industrial dispute which was referred for adjudication on 23.2.1996. The terms of reference was as under:

Whether the action of the management of State Bank of India is relation to their Branch at Barula in terminating the services of Sh. Jagjivanlal Patel S/o Sh. Anupam Ram Patel, Messenger is justified ? If not, to what relief, the concerned workman is entitled to ?

2. The tribunal passed the award and answered the reference in favour of the workman. The Tribunal opined that the termination of workman was illegal and void ab initio and workman shall be deemed to be in regular service with wages and allowances from the date of termination. In addition, cost of Rs.2500/- was also imposed on the management.

3. Shri Ashish Shroti, learned counsel for the employer criticised this award by contending that the workman was engaged in two spells; firstly he was engaged

between 1.1.1989 to 4.5.1989 in Sori Khurd branch. Thereafter, he worked between 29.3.1990 to 7.12.1993 in Barula branch. It is submitted that the petitioner was appointed by order Annexure P-10 for a period between 29.3.1990 to 4.5.1990.

4. Learned counsel for the petitioner submits that although the petitioner was appointed up to 4.5.1990, admittedly, he continued in employment till 7.12.1993.

5. By taking this Court to the conditions mentioned in this appointment order, learned counsel for the bank submits that petitioner was appointed on a contract. The appointment order in no uncertain terms makes it clear that his appointment was for a limited period and such appointment will not confer any right whatsoever to continue in employment. It is submitted that the appointment was made for sudden exigency and on regular appointment being made, the petitioner's services were required to be terminated.

6. In this backdrop, it is submitted that Section 2(oo)(bb) of the Industrial Disputes Act, 1947 (for short, "the Act") is attracted. Hence, the tribunal has erred in declaring the termination order as illegal for non compliance of Section 25(F) of the Act.

7. To elaborate, learned counsel for the bank submits that Section 2(oo) has certain exceptions including Section 2(oo) (bb). Since the case of workman is covered by Section 2(oo)(bb), Section 25(F) could not have been applied by the tribunal.

8. The second limb of argument of Shri Shrotri is that between the Unions of the workmen and the management, certain bipartite settlements have been entered into. As per these conditions of settlement, all disputes/cases were required to be withdrawn by the employees. Such temporary employees were not entitled to back-wages in terms of these settlement.

9. Shri Shrotri, learned counsel for the petitioner submits that these settlement were repeatedly and periodically entered into between the Unions and management and this process continued till 1997. The respondent was selected for appointment on regular basis by order dated 31.7.1997, Annexure P-6 but he did not join on the post of Messenger.

10. Shri Shrotri, learned counsel for the management submits that the tribunal has travelled beyond the scope of reference. The reference was relating to the validity of termination of the petitioner. Hence, while deciding the validity of termination, the court below could have decided the question of reinstatement on a post which was occupied by the petitioner at the time of his termination. The petitioner was admittedly a temporary employee hence while directing his reinstatement, the tribunal could not have directed his reinstatement as a regular employee. In addition, it is submitted that the respondent has worked for about three years. Since, he has worked for a very small period of time, the tribunal should not have granted the relief of reinstatement. Indeed, the tribunal

should have granted compensation in lieu of reinstatement.

11. The reliance is placed on the judgments passed in the cases of Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Anr. AIR 2009 SC 3004, U.P. State Road Transport Corporation Vs. Man Singh (2006) 7 SCC 762, Haryana State Electronics Development Corporation Ltd. Vs. Mamni (2006) 9 SCC 434 and Madhya Pradesh Administration Vs. Tribhuban (2007) 9 SCC 748. For the same principle, the reliance is placed to Bharat Sanchar Nigam Lt. Vs. Bhurumal 2015 (1) MPLJ SC 23.

12. Per contra, Shri Anoop Nair, learned counsel for the workman submits that the employer did not raise any objection before the tribunal that termination of the workman falls within the ambit of Section 2(oo)(bb) of the Industrial Disputes Act, 1947. In absence of any such pleading being taken, the objection is without any basis.

13. By taking this Court to the appointment order, learned counsel for the workmen submits that the termination of the workman was not because of non renewal of contract. Although, the workman was appointed for limited period, admittedly he continued beyond it for about three years. Hence, Section 2(oo) (bb) of the ID Act is not attracted.

14. Shri Nair further further submits that workman admittedly found to be suitable for appointment and appointment order was issued in his favour. Thus, admittedly, the workman was required to be given a regular employment.

15. Considering these factual aspects and subsequent events, the tribunal directed his reinstatement on regular post. There is no perversity in such finding and direction.

16. Shri Shrotri in his rejoinder submissions submits that various agreements entered into between the Union and employer show that workman had only right of consideration. In 1993, when the workman was terminated, his status was of a temporary employee. Thus, the question of giving him a regular status does not arise.

17. In view of the M.D. Karnataka Handloom Dev. Corporation Ltd. Vs. Mahadeva Laxman Raval AIR 2007 SC 631, it is argued that the termination of workman falls within the ambit of Section 2(oo) (bb) of the ID Act, 1947.

18. No other point is pressed by counsel for the parties.

19. I have heard counsel for the parties at length.

20. As per rival contentions advanced at the Bar, the following questions emerge for consideration:

(A) Question No.1: Whether the Tribunal was justified in holding that termination order is bad in law for non-complying the mandatory provisions of Section 25-F of the ID Act, 1947 ? And whether in the present case, the termination of

workman is covered under Section 2(oo)(bb) of ID Act, 1947 ?

(B) Question No.2: Whether in view of bipartite settlement between the Bank and the Unions, the industrial dispute could not have been decided by the Tribunal ? and whether because of such settlement, the Tribunal was not justified in awarding the backwages ?

(C) Question No.3: Whether while granting relief of reinstatement as a regular employee to the workman, the Tribunal has travelled beyond the scope of reference ?

(D) Question No.4: Whether the Tribunal has erred in granting the relief of reinstatement and whether the Tribunal should have granted compensation ?

21. As to Question No.1: The appointment order on the strength of which Shri Shroti relied on Section 2(oo)(bb) reads as under:

Shri Jagjiwanlal Patel is hereby appointed as a temporary Messenger of this office for a period of 29.03.1990 to ending on 04.05.1990 with effect from the _____ on a salary of Rs.430/- per mensem, plus allowance and subject to the following terms:

(i) The appointment is purely a temporary one for the period specified above but may be terminated earlier at Bank's discretion, without assigning any reason therefore.

(ii) The employment, unless by written order extended or terminated earlier, shall come to an end on the expiry of the aforesaid period i.e. with the close of business of _____.

(iii) This is temporary appointment, which is made on account of sudden exigencies, will not confer on Shri/Miss/Mrs Jagjiwan Lal Patel, S/o Anupam Ram Patel any right to claim for absorption in the Bank's permanent establishment in any category.

22. Clause (oo)(bb) of Section 2 is an exception to Section 25-F of the ID Act. It is in two parts. The first part contemplates termination of service of the workman as a result of the non-renewal of contract of employment or on its expiry, whereas the second part postulates termination of such contract of employment in terms of the stipulation contained in that behalf. [See: 2006 (3) SCC 81, (Municipal Council, Samrala Vs. Rajkumar)]. Admittedly, in the present case, the termination of workman is neither for non-renewal of contract nor on its expiry. The argument of Shri Shroti is based on second part which deals with termination as per the stipulation contained in that behalf in the appointment order.

23. In the appointment order, there is no stipulation that it will come to an end on appointment of a regular employee. Shri Shroti made an effort to draw inference from Clause (iii) of Annexure-P/10, wherein it is mentioned that the appointment is based on sudden exigency which will not confer any right to claim

absorption. In my opinion, this clause of appointment order, by no stretch of imagination, can be treated to be a specific stipulation as per second portion of Clause (oo)(bb) of Section 2 of ID Act, 1947.

24. In 1998 (6) SCC 538 (Uptron India Ltd. Vs. Shammi Bhan and another), the Apex Court held as under:

The contract of employment referred to in the earlier part of Section 2(oo)(bb) has to be the same as is referred to in the latter part. This is clear by the use of words "such contract" in earlier part of this Clause. Section 2(oo)(bb), therefore, means that there should have been a contract of employment for a fixed-term between the employer and the workman containing a stipulation that the services could be terminated even before the expiry of the period of contract. If such contract, on the expiry of its original period, is not renewed and the services are terminated as a consequence of that period, it would not amount to "retrenchment". Similarly, if the services are terminated even before the expiry of the period of contract but in pursuance of a stipulation contained in that contract that the services could be so terminated, then in that case also, termination would not amount to "retrenchment".

25. The said judgment shows that if termination is based on non-renewal of contract or because of a clear stipulation contained in the contract, Clause (oo) (bb) of Section 2 can be attracted.

26. In 1994 (2) SCC 323 (M. Venugopal Vs. Divisional Manager, Life Insurance Corporation of India, Machilipatnam, AP and another, it was held as under:

"Now with introduction of one more exception to Section 2(oo), under clause (bb), the legislature has excluded from the purview of "retrenchment"? (i) termination of the service of the workman as a result of the nonrenewal of the contract of employment between the employer and the workman concerned on its expiry; (ii) such contract being terminated under a stipulation in that behalf contained in contract of employment. It need not be impressed that if in the contract of employment no such stipulation is provided or prescribed, then such contract shall not be covered by clause (bb) of Section 2(oo)."

[Emphasis Supplied]

27. In the present case, the only aspect which needs consideration for deciding the question is : whether there exists any such stipulation in the contract of employment ?. At the cost of repetition, in my view, Annexure-P/10 cannot be read in the manner suggested by Shri Shrotri. In absence of any specific stipulation as required in second part of Clause 2(oo)(bb), no inference can be drawn from Annexure-P/10. Hence, I am unable to hold that the employer can take benefit of exception clause i.e. 2(oo)(bb), hence the Tribunal has not committed any legal error in declaring the termination order as bad in law for not following the mandatory provisions of Section 25-F of the ID Act, 1947. It is also relevant to mention here that in the written statement filed before the Tribunal,

the employer has not taken any ground relating to exception flowing from Section 2(o)(bb) of ID Act.

28. As to Question No.2: The settlement Annexure-P/3 and subsequent settlement contain a clause that pending dispute / cases initiated by temporary employees/association shall be withdrawn by them as a result of this settlement. The Tribunal was required to answer the reference on merits. If there was breach of settlement, the employer could have taken appropriate steps as per the provisions of ID Act. It cannot be said that the Tribunal has committed any error of law in deciding the reference on merits. Thus, in my view, no such settlement will deprive the Tribunal to decide the dispute on merits.

29. As to Question No.3: Admittedly, at the time of termination of workman, he was working as a temporary employee. The core issue is : whether on setting aside the termination order, he can be reinstated as a regular workman ? In the present case, while directing reinstatement, the Tribunal directed that he should be reinstated as a regular employee. In my view, this is clearly against the law laid down by the Supreme Court in 2013 (10) SCC 324 (Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and others). In the said case, the Apex Court explained the meaning of the word "reinstatement"?. Relevant para reads as under:

21. The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol. 2, 3rd Edn., the word "reinstatement" means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate a former and the word "reinstatement" means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edition, the word "reinstatement" means to reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word "reinstatement" means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Merriam Webster Dictionary, the word "reinstatement" means to place again (as in possession or in a former position), to restore to a previous effective state. As per Black's Law Dictionary, 6th Edition, "reinstatement" means "to reinstall, to re-establish, to place again in a former state, condition, or office; To restore to a state or position from which the object or person had been removed."

22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer."

[Emphasis Supplied]

30. As per the principles laid down, it is clear that while directing reinstatement, the Tribunal could have directed reinstatement on a post form where the workman was terminated. If he was terminated while working as a temporary

employee, his reinstatement can be ordered as a temporary employee. Hence, the Tribunal has acted beyond the scope of reference. This is trite law that while deciding an industrial dispute, the Tribunal cannot travel beyond the scope of reference. [See: Tata Iron and Steel Company Limited Vs. State of Jharkhand and others, (2014) 1 SCC 536]. Relevant para reads as under:

16. The Industrial Tribunal/ Labour Court constituted under the Industrial Disputes Act is a creature of that statute. It acquires jurisdiction on the basis of reference made to it. The Tribunal has to confine itself within the scope of the subject matter of reference and cannot travel beyond the same. This is the view taken by this Court in number of cases including in the case of National Engineering Industries Limited Vs. State of Rajasthan and others, 2000 (1) SCC 371. It is for this reason that it becomes the bounden duty of the appropriate Government to make the reference appropriately which is reflective of the real/ exact nature of "dispute"? between the parties."?

31. Reference, reproduced hereinabove shows that the question of regularization was not the subject matter of reference/dispute. Hence I find force in the argument of Shri Shrotri that the Tribunal has committed an error in directing reinstatement of the petitioner in regular service.

32. The last question is : whether the Tribunal has erred in directing reinstatement or tribunal should have granted compensation ? The workman was terminated in the year 1993. He was terminated about 24 years back while working as temporary employee. He worked for a period of about 3 ??? 1/2 years before his termination.

33. In 2011 AIR SCW 6747 (Bharat Sanchar Nigam Ltd. Vs. Man Singh and others), the Apex Court held that merely because a workman has worked for more than 240 days, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice. The workman in the said case has worked about 240 days with the employer. The Apex Court directed the employer (BSNL) to pay Rs.2 lac to each of the respondents as a full and final claim. This judgment is again followed by the Apex Court in AIR 2014 SCW 528 (B.S.N.L. Vs. Bhurumal). In this case, the workman has worked for about three years. The Apex Court directed the employer to pay Rs.3 lacs as compensation.

34. In the present case, the workman has admittedly worked for more than three years. Accordingly, I deem it proper to modify the award and grant same amount of compensation which was granted by the Supreme Court in the case of Bhurumal (supra).

35. Resultantly, the impugned order to the extent it directs reinstatement and the reinstatement as a regular employee with cost, is set aside. The petitioner/ employer shall pay Rs.3 lacs as compensation to the workman. This amount shall be treated as full and final settlement of the dues of respondent-workman. The said amount shall be paid to the workman within 90 days from the date of

communication of this order.

36. The petition is allowed to the extent indicated above.