

(2015) 07 CAL CK 0008
In the Calcutta High Court
Case No : M.A. No. 004 of 2015

Christopher Minj		APPELLANT
	Vs	
The Andaman and Nicobar Administration and Others		RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 114 (iii)(g)
Industrial Disputes Act, 1947 — Section 2(oo), 2(oo)(bb), 25F

Citation : (2015) 147 FLR 245 : (2015) 3 LLJ 329 : (2015) 4 LLN 75

Hon'ble Judges : Soumen Sen, J;Arijit Banerjee, J

Bench : Division Bench

Advocate : Gopala Binu Kumar, for the Appellant; Santosh Kumar Mandal and Satish Chandra Mishra, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Arijit Banerjee, J.—This is an appeal against the judgement and order dated 18th November, 2014 passed in WP No. 408 of 2014. By the impugned judgement and order, the learned Judge quashed the Award dated 11th September, 2013 passed by the learned Labour Court, Andaman and Nicobar Islands, Port Blair in Industrial Tribunal Case No. 08 of 2006 (Shri. Christopher Minj v. The Divisional Forest Officer Baratang). By the said Award, the learned Labour Court had held that the service of the appellant was terminated without compliance with the provisions of section 25F of the Industrial Disputes Act, 1947 and this amounted to unlawful retrenchment. The learned Labour Court directed the respondents to reinstate the appellant in service with 50% back wages.

2. The material facts of the case, shorn of unnecessary details, are as follows:--

"The appellant was appointed as daily rated mazdoor by an office order dated 10th August, 1990 for the period from 1st July, 1990 to 30th September, 1990 in connection with the first year weeding of 1990 NRA at Pawajig construction coupe NRA. It was specifically mentioned in the appointment order that the

service of the appellant will stand terminated on expiry of three months or earlier when his service was not required without any notice."

3. Thereafter, from time to time, the appellant was appointed for the said job by issuance of office orders for a fixed tenure and in each such case the office order provided that his service would stand terminated on the expiry of the period mentioned therein without any notice. It appears that last time the appellant was appointed for the period from 1st November, 1991 to 28th February, 1992 by office order dated 29.11.1999.

4. After about nine years the appellant raised a dispute that his service had been terminated without following the requirement of law. Conciliation proceedings before the Assistant Labour Commissioner, North and Middle Andaman failed. The appropriate Government, vide notification dated 12.01.2006, referred the dispute between the parties for adjudication to the Labour Court. The terms of reference was:--

"Whether the action of Divisional Forest Officer, Baratang, in terminating/ disengaging the services of Shri Christopher Minj, Ex- DRM, is legal and justified? If so, to what relief the concerned workman is entitled to?"

5. Before the Labour Court, the appellant contended that his service was illegally terminated without adhering to the provisions of the Industrial Disputes Act. He contended that, after his termination, the respondent authority had engaged new persons. In such circumstances, he prayed for reinstatement as well as back wages. The respondents contended that the appellant was engaged on certain conditions mainly for seasonal work. The appointment of the appellant was for a fixed tenure of time with the specific stipulation that, upon expiry of such tenure, the appellant's service shall stand terminated ipso facto. The respondents also contended that the case was covered by Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and as such it cannot be said that the appellant was retrenched. Finally, the respondents contended that the long delay of 9/10 years on the part of the appellant in claiming reinstatement disentitles him to any relief.

6. The learned Labour Court by an Award dated 16.11.2011 held that section 2(oo)(bb) of the Industrial Disputes Act was not attracted. However, the learned Judge refused to grant any relief to the appellant in view of the long delay on the part of the appellant in initiating proceedings for reinstatement.

7. Being aggrieved by the said Award, the appellant filed a writ petition before this court. In the writ application, he contended that the Labour Court, by dismissing the appellant's claim on the ground of delay, had traveled beyond the scope of reference and this amounted to a jurisdictional error. This court by a judgement and order dated 20.06.2012 set aside the Award and remanded the matter to the Labour Court for fresh consideration.

8. Upon remand, the Labour Court heard the matter afresh and passed an Award on 11.09.2013. In the Award, the Labour Court recorded that no evidence was

adduced on behalf of the respondent/employer. The Labour Court further recorded that the respondent/employer had admitted in its written note of arguments that the workmen had worked for more than 240 days in 12 calendar months during the period of his employment as daily rated mazdoor but, his employment was purely seasonal in nature. The Labour Court came to a conclusion that section 25F of the Industrial Disputes Act, 1947 was attracted to the facts of the case and the respondent not having complied with the provisions of section 25F, the termination of the appellant's service amounted to unlawful retrenchment. The Labour Court directed the respondent to reinstate the appellant in service along with 50% back wages.

9. Being aggrieved by the Award of the Labour Court, the employer challenged the same by filing WP 408 of 2013 before a learned Single Judge of this court. The learned Judge held that this was a case of seasonal employment. The appellant/workman was employed for performing a certain type of work during certain seasons and it was specifically mentioned in the letters of appointment that his service would be terminated on expiry of the period mentioned in the letters of appointment or at any time when his service would not be required without any advance notice. The workman had accepted the terms and worked seasonally under the employer as and when the employer felt the requirement to employ the workman.

10. The learned Judge further held that the present case is covered by section 2(oo)(bb) of the Industrial Disputes Act being a case of termination of service of the workman as a result of non-renewal of contract of employment on its expiry. As such, termination of workman's service did not amount to retrenchment and there was no requirement for the employer to comply with the provision of section 25F of the I.D. Act.

11. In coming to such conclusion, the learned Judge relied on a decision of the Hon'ble Supreme Court in the Case of Morinda Co-op. Sugar Mills Ltd. Vs. Ram Krishan and others etc., AIR 1996 SC 332 : AIR 1995 SC 332 : (1995) 71 FLR 822 : (1995) 6 JT 547 : (1996) 1 LLJ 870 : (1995) 5 SCALE 198 : (1995) 5 SCC 653 : (1995) 3 SCR 85 Supp : (1995) 2 UJ 742 . In that case the respondents were provided with service only during crushing seasons and they did not work throughout the year. Once the crushing season was over, their service stood terminated. The employer had furnished the details of crushing seasons from 1987-1988 to 1993-1994 indicating the dates from which the seasons started and the dates on which the seasons closed. Both the Labour Court as well as the High Court held that, since the respondents had worked for more than 240 days in a year, they were retrenched workman within the meaning of Section 2(oo) of the I.D. Act. Since the employer did not comply with the provisions of section 25F of the said Act, the retrenchment was held to be bad and the respondents were directed to be reinstated. The Hon'ble Apex Court however held that since it was only a seasonal work the respondents cannot be said to have been retrenched in view of the provision of section 2(oo)(bb) of the said Act. The Apex

Court set aside the judgements of the Labour Court and the High Court.

12. The learned Judge also relied on another decision of the Hon^{ble} Apex Court in the case of General Manager, Haryana Roadways Vs. Rudhan Singh, AIR 2005 SC 3966 : (2005) 3 ESC 484 : (2005) 6 JT 137 : (2005) 3 LLJ 4 : (2005) 141 PLR 397 : (2005) 5 SCC 591 : (2005) SCC(L&S) 716 : (2005) 1 SCR 569 Supp : (2005) 3 SLJ 170 : (2005) 2 UJ 932 . In that case the Supreme Court accepted the contention of the appellant that the respondent had been appointed for a fix period and his appointment came to an end automatically after the expiry of such period and, therefore, it was not a case of retrenchment in view of section 2(oo)(bb) of the I.D. Act. The Supreme Court observed that in view of section 2(oo)(bb) of the said Act, termination of service of a workman as a result of non renewal of contract of employment on its expiry would not amount to retrenchment.

13. The learned Judge held that the Labour Court wrongly applied Section 25F of the I.D. Act to the present case. Accordingly, the learned Judge quashed the Award of the Labour Court.

14. Being aggrieved by the judgement and order dated 18.11.2014 passed by the learned single Judge, the workman has preferred the instant appeal.

15. Learned counsel for the appellant submitted that, admittedly, the appellant had worked for more than 240 days in 12 calendar months and as such the service could be terminated only upon compliance of Section 25F of the I.D. Act. Since the provisions of Section 25F have not been complied with in the instant case, the termination of the appellant's service amounted to unlawful retrenchment. He further submitted that the respondents did not lead any evidence before the Labour Court. There was no material before the Labour Court on the basis of which the Labour Court could have come to a finding that the appellant's service was seasonal in nature.

16. The appointment letters that were issued by the respondents for engaging the appellant were not part of the evidence before the Labour Court. The writ court should not have relied on such appointment letters to come to a finding that the appellant's service was seasonal in nature.

17. Learned counsel submitted that the writ court sat in appeal over the decision of the Labour Court which is not permissible in law. It is beyond the domain of the writ court to reappraise the evidence recorded by the Tribunal which is the ultimate fact finding forum. He submitted that the writ court should not have interfered with the decision of the Labour Court and should have dismissed the writ application.

18. Learned counsel for the respondents submitted that the Labour Court fell into a fundamental error of law by holding that section 25F of the I.D. Act is attracted to the facts of this case. Such an error goes to the root of the matter and is a jurisdictional error. The Labour Court failed to construe the letters of appointment

of the appellant correctly. It would appear from such letters of appointment that the appellant was engaged from time to time for specific periods of time and in each case the appellant's stood terminated ipso facto upon expiry of the period mention in the letters of appointment. The appellant's service was purely seasonal in nature and there was no continuity of service. The mere fact that the appellant may have worked for more than 240 days in 12 calendar months by itself would not attract the provisions of Section 25F of the I.D. Act. The Labour Court failed to appreciate the import of effect of the judgement of the Hon''ble Supreme Court in the case of Morinda Coop. Sugar Mills Ltd. (supra) and in the case of General Manager, Haryana Roadway (supra). The Award of the Labour Court was patently illegal and the writ court rightly quashed the Award.

19. We have carefully considered the rival contentions of the parties. In our view, the fundamental issue that arises for determination is whether or not the service of the appellant was seasonal in nature. If it be held that indeed the appellant's service was seasonal in nature and he was engaged by the employer at intervals of time as and when his service was required, then, there would be a lot of force in the submission made on behalf of the respondents. Each appointment of the appellant would constitute a separate contract of employment for a specific period and the service stood terminated ipso facto upon expiry of such period. If so, the provision of section 2(oo)(bb) of the I.D. Act would be attracted and termination of the appellant's service would not amount to retrenchment. On the other hand, if it be found that the appellant was in regular service under the respondents with a reasonable degree of continuity in service, Section 25F of the I.D. Act would be attracted and termination of appellant's service would have to be held to be unlawful in view of the respondents failure to comply with the provisions of Section 25F of the I.D. Act.

20. There was no material before the Labour Court to come to a conclusion that the appellant's service was seasonal in nature. The respondents did not tender the appointment letters in evidence before the Labour Court. Hence, in our view, the decision of the Labour Court on the basis of evidence before it apparently cannot be faulted. The writ court ought not to have relied on the appointment letters to come to the finding that the appellant's service was seasonal in nature.

21. It is settled law that judicial review is not concerned with the merits of the decision but it is concerned only with the decision making process. The High Court exercising the power of judicial review ought not to substitute its own decision in the place and stead of the decision arrived at by a court or Tribunal inferior to it.

22. The scope of judicial review is to ensure that the Labour Court/Tribunal does not transgress its jurisdiction and that there is no glaring infirmity in the procedure adopted by the Labour Court/Tribunal while arriving at a decision. The High Court while exercising its jurisdiction under 226 of the Constitution of India does not act as a court of appeal and does not reappraise the evidence recorded before the Labour Court/Tribunal. So long, as the Labour Court/Tribunal has

acted within its jurisdiction and has passed an order in compliance with the principles of natural justice, the writ court will be slow to interfere.

23. In view of the aforesaid, we are of the opinion that the learned single Judge should not have interfered with the Award of the Labour Court. The documents on the basis of which the learned Single Judge arrived at a finding that the appellant's service was seasonal in nature were not part of the evidence before the Labour Court and the same should not have been relied on by the writ court. Accordingly, the appeal succeeds and the order under appeal is set aside.

24. However, we cannot stop here. For doing complete justice between the parties, we feel that the fundamental issue of the nature of the appellant's service ought to be decided on the basis of proper evidence. For this purpose, we are minded to remand the matter back to the Labour Court. The learned counsel for the respondents has categorically submitted that, although no evidence on behalf of the respondents was adduced before the Labour Court, the respondents would now like to adduce evidence before the Labour Court to establish that the appellant's service was seasonal in nature. It is not appreciated as to why, on the last occasion, the respondents refrained from adducing evidence before the Tribunal. Such casual approach of the respondents is deprecated.

25. Generally, it is the duty of the party to lead the best evidence in his possession, which could throw light on the issue in controversy and in case such material evidence is withheld, the Court may draw adverse inference under section 114 (iii)(g) of the Evidence Act notwithstanding the onus of proof did not lie on such party and it was not called upon to produce such evidence. (Union of India (UOI) Vs. Ibrahim Uddin and Another, (2012) 6 JT 466 : (2012) 4 RCR(Civil) 727 : (2012) 6 SCALE 476 : (2012) 8 SCC 148 : (2013) AIRSCW 2752 : (2012) 4 Supreme 585). In the case of Sriram Industrial Enterprises Ltd. Vs. Mahak Singh and Others, AIR 2007 SC 1370 : (2007) 4 JT 278 : (2007) 2 LLJ 393 : (2007) 4 SCALE 237 : (2007) 4 SCC 94 : (2007) 1 SCC(L&S) 961 : (2007) 3 SCR 783 : (2007) AIRSCW 1712 : (2007) 3 Supreme 553 , the Hon''ble Supreme Court on review of all the earlier decisions held that the best evidence having been withheld by the employer, the High Court was entitled to draw an adverse inference against the employer.

26. However, we feel that the letters of appointment of the appellant are material document and we cannot totally ignore the same. Hence, for the ends of justice, the respondents are permitted to adduce evidence before the Labour Court including the said letters of appointment. However, this will be subject to the respondents paying costs to the appellant assessed at Rs. 25,000/-. If such costs are paid by the respondents within a fortnight from date, they will be entitled to approach the Labour Court for consideration of the matter afresh within three weeks from the date of payment of costs. In the event the Labour Court is so approached, it will answer the reference after considering the matter afresh including the evidence that the respondents may adduce. In doing so, the Labour Court will not be influenced by its earlier Award or by the judgement and order of

the learned Single Judge of the High Court or the present judgement and order of this court. In the event the respondents do not approach the Labour Court within the time stipulated above, the Award of the Labour Court passed on 11.09.2013 shall stand affirmed.

27. M.A. No. 004 of 2015 is accordingly disposed of.

Soumen Sen, J.

I agree.