
(2015) 05 RAJ CK 0134

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 508 of 2014

CIMMCO Birla Ltd.

APPELLANT

Vs

Mahendra Singh and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Citation : (2015) 147 FLR 332 : (2015) 2 LLN 796

Hon'ble Judges : Ajay Rastogi, J;J.K. Ranka, J

Bench : Division Bench

Advocate : G.K. Garg, Senior Counsel assisted by Anita Agarwal, Counsel, for the Appellant; J.P. Sharma, Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Instant intra-court appeal has been preferred against order of the Id. Single Judge dt.15.01.2014 affirming the award of the Id. Labour Court dt.01.04.2004 and upholding the finding that retrenchment of the respondent-workman was in violation of Sec. 25-F of the Act, 1947.

2. The Id. Labour Court, Bharatpur while holding that termination was in violation of Sec. 25-F of the Act, 1947 directed that the workman shall be entitled for reinstatement and continuity in service along with all consequential benefit including salary but when the writ petition came to be preferred by the present appellant, the Id. Single Judge confirmed the finding of fact as regards violation of Sec. 25-F of the Act, 1947, however, looking to the fact that the respondent-workman served as a Driver for the period from April, 1986 to January, 1988 and much water has flown thereafter and in these facts and circumstances, considered it appropriate that in lieu of reinstatement, he may be awarded a lump-sum amount of compensation of Rs. 1,50,000/-.

3. The main thrust of submission of counsel for the appellant is that the respondent-workman had worked as a Driver but he was engaged through the Contractor and his service conditions were regulated under the Contract Labour

(Regulation and Abolition) Act, 1970 and as regards the present appellant is concerned, he is not entitled to seek protection of Sec. 25-F of the Act, 1947.

4. Counsel further submits that the primary evidence which was placed on record has not been appreciated by the Id. Labour Court while recording a finding that the present appellant was employer of the respondent-workman and the finding is wholly perverse and even if this court comes to the conclusion that there was a violation of Sec. 25-F of the Act, 1947, the amount of compensation which has been awarded in lieu of reinstatement of Rs. 1,50,000/- by the Id. Single Judge under order impugned, no factual material has come on record and the Id. Single Judge has not appreciated the law on the question as to what should be the compensation which in the given facts and circumstances, the respondent-workman is entitled for in lieu of reinstatement and in support of his submissions, counsel for appellant has placed reliance on the judgments of the Apex Court, for the purpose of compensation to be awarded to the respondent-workman in lieu of reinstatement in the given facts and circumstances, in the case of *Bajaj Auto Limited Vs. Rajendra Kumar Jagannath Kathar and Others*, (2013) 4 ABR 519 : (2013) 10 AD 552 : (2013) 137 FLR 695 : (2013) 4 JT 470 : (2013) 3 LLJ 482 : (2013) 5 SCALE 296 : (2013) 5 SCC 691 : (2013) 2 SCC(L&S) 403 ; and *Employers, Management of Central P and D Inst. Ltd. Vs. Union of India (UOI) and Another*, AIR 2005 SC 633 : (2005) 104 FLR 373 : (2005) 1 JT 148 : (2005) 1 LLJ 552 : (2004) 10 SCALE 521 : (2005) 9 SCC 171 and submits that the compensation awarded in lieu of reinstatement by the Id. Single Judge is also on the higher side keeping in view the guidelines laid down by the Supreme Court and that requires interference by this court.

5. Counsel for the respondent while supporting order of the Id. Single Judge submits that he is in litigation for the last 28 years and after the finding has been recorded of his retrenchment being in violation of Sec. 25-F of the Act, 1947, ordinarily the workman deserves indulgence of reinstatement along with all consequential benefits, which the Id. Labour Court has awarded to him under the impugned award but the Id. Single Judge has modified the award and in lieu of reinstatement, he has been awarded lump-sum amount of compensation of Rs. 1,50,000/- and submits that since he is a very poor and indigent person and fighting for his livelihood and has no means for survival and at least what has been awarded to him in lieu of reinstatement, may not require interference by this court.

6. As regards first question raised by the counsel for appellant that service of the respondent-workman was regulated under the Act of 1970 and he could not be considered to be his employee, as contemplated u/Sec. 2(s) of the Act, 1947 and is not entitled to seek compensation in lieu of reinstatement, is without substance for the reason that this question was raised by the appellant in the written statement and evidence adduced in support thereof has been extensively examined by the Id. Labour Court in para 9 and 10 of the impugned award and taking note thereof, arrived to a conclusion that the respondent-workman has

served as a Driver for the period from 01.04.1986 to 22.01.1988 and the present appellant was his employer and these are the modes of circumventing the rights which the employee is entitled for under the Act of 1947 and the finding has been recorded after due appreciation of record by the Id. Labour Court under the award impugned and we find no perversity in the finding recorded by the Id. Labour Court which may call for our interference in the instant intra-court appeal and we find no difficulty in holding, based on the finding recorded by the Id. Labour Court under the impugned award, that the present appellant was employer of the respondent-workman who served as a Driver in their organization and he is entitled to seek protection of Sec. 25-F of the Act, 1947.

7. Indisputably, the period of his working from 01.04.1986 to 22.01.1988 has never been challenged by the appellant and the only question was as to who is the employer of the respondent-workman and his services are governed either under the Contract Labour (Regulation and Abolition) Act, 1970 or under the Act of 1947, which has been considered by the Id. Labour Court and we too have examined the same on the basis of record and find no difficulty in upholding the finding that the Act of 1970 has no application, which has been recorded by the Id. Labour Court under the impugned award.

8. As regards the question in regard to compensation awarded in lieu of reinstatement is concerned, we find from the record that the Id. Labour Court after recording a finding of retrenchment being in violation of Sec. 25-F of the Act, 1947, ordinarily the workman is entitled to seek reinstatement with all consequential benefits and this what the Id. Labour court has awarded in its award dt.01.04.2004. However, when the writ petition came to be preferred by the appellant, the Id. Single Judge after taking note of the given facts and circumstances and in view of the guidelines laid down by the Apex Court, considered it appropriate that it may meet the ends of justice if the respondent-workman is adequately compensated in lieu of reinstatement and taking assistance of the judgments relied upon, arrived to the conclusion that at least in the fitness of things, if he is awarded a lump-sum amount of compensation of Rs. 1,50,000/- in lieu of reinstatement that would meet the ends of justice.

9. Counsel for appellant has placed reliance on the judgments of the Hon'ble Supreme Court in Bajaj Auto Ltd.; and Central P&D Inst. Ltd. (supra) but we find that there can be no mathematic formula in arriving to a conclusion as to what should be the just compensation to which the workman is entitled for and what has been laid down by the Apex Court may be for guidance of the employer in taking a decision as to what should be a just compensation, in a given case where the workman has worked as a Driver in their organization and was never at fault in ventilating his grievance, which is available to him under the law, for the last 28 years and was entitled for reinstatement and the action of the appellant being in violation of Sec. 25-F of the Act, 1947 and taking note of the judgment of the Apex Court, the Id. Single Judge arrived to a conclusion that the respondent-workman may not be entitled for reinstatement but Rs. 1,50,000/-

would be adequate to compensate him in lieu of reinstatement for pursuing his grievance for last 28 years.

10. There may be a situation where no compensation in lieu of reinstatement is to be granted to the workman but after discretion being exercised, the Id. Single Judge arrived to the conclusion that Rs. 1,50,000/- would be adequate to compensate him in lieu of reinstatement, we do not find any error in what has been expressed by the Id. Single Judge under the order impugned and there cannot be any mathematic formula for assessing the just compensation to be awarded to a workman in lieu of reinstatement and what has been considered by the Id. Single Judge under order impugned, in our considered view, does not call for interference in the instant intra court appeal.

11. Counsel for appellant further submits that apart from compensation which has been awarded in lieu of reinstatement to the respondent-workman under the order impugned, he has further been awarded for interest which in the ordinary circumstances is not awarded to the workman.

12. In our considered view, the submission made is wholly without substance for the reason that the Id. Single Judge under order impugned has awarded a compensation of Rs. 1,50,000/- to be paid to the respondent-workman in lieu of reinstatement and if the employer fails to pay the same within the time stipulated, certainly that amount may carry interest and this what the Id. Single has rightly awarded under order impugned.

13. After hearing counsel for the parties, we do not find any substance in the instant intra-court appeal which is devoid of merit, accordingly stands dismissed.