
(2013) 08 AHC CK 0032

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 51196 of 1999

DCM Shriram Industries Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court II and Another

RESPONDENT

Date of Decision : 16-08-2013

Acts Referred:

Citation : (2013) 4 LLJ 235

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Judgement

Amreshwar Pratap Sahi, J.—This petition is by the employer questioning the correctness of the award passed by the Labour Court in favour of the respondent No. 2 - workman giving him continuity of service and reinstatement with 50% back wages. The workman has been found entitled to full wages with effect from the date of award onwards. An interim order was passed on 10.12.1999 staying the award subject to compliance of the provisions of Section 17-B of the Industrial Disputes Act, 1947. Sri S.D. Singh, learned counsel for the petitioner has stated at the bar that the respondent workman has been paid approximately Rs. 2 lacs 15 thousand by way of salary @ Rs. 2,855/- per month during the pendency of this petition in compliance of the interim order.

2. The respondent workman is stated to be engaged as a temporary weighment clerk having worked between January, 1990 to June, 1990 for a period of 145 days. The said engagement was made under the U.P. Sugarcane (Regulation of Supply of Purchase) Rules, 1954 framed under the 1953 Act. The petitioner employer alleges that engagement being temporary and not seasonal, the respondent workman was not entitled for any relief.

3. Sri S.D. Singh has urged that the status of the respondent workman not being seasonal he was not entitled to any such benefits or even the benefit of reinstatement. He further contends that the respondent workman acted in a manner by negotiating fake parchis for supply of sugarcane that has resulted in loss of confidence. The employer therefore dispensed with his services after

having obtained information on the basis of a preliminary inquiry and accordingly the services were terminated vide letter dated 15.4.1996 copy whereof is annexure 6 to the writ petition. The said termination is on the basis of the report of the Senior Manager (Cane) dated 11.4.1996 copy whereof is Annexure 5 to the writ petition which specifically contains an allegation that on inquiries made at the Computer Section of the Cane Growing Society at Daurala it was revealed that the "parchis" against which supply was being reflected had not been issued from the Society and were fake. For this the evidence relied on, was the computer sheet of the society.

4. It is thereafter that a reference was made before the Labour Court and accordingly the same has been answered holding that the employers have terminated the services of a seasonal employee without holding any inquiry and therefore he was entitled for reinstatement, back wages and continuance. The Labour Court further came to the finding that he was a seasonal employee and not a temporary employee.

5. Sri S.D. Singh contends that on an inquiry it was found that 75 "parchis" were fake and that the respondent workman had admitted weighing sugarcane against 107 "parchis" including the said disputed 75 parchis. This admission according to Sri Singh is there in the statement of the workman which amounts to accepting the guilt. He further contends that the Labour Court committed a manifest error by neither discussing this evidence in correct perspective and the statement of the witnesses on behalf of the employer and has proceeded to deliver the award without any finding on guilt or innocence. He has relied on the decision in the case of Kisan Sahkari Chini Mills Ltd. and Others Vs. Awadhesh Singh, to support his submission that the respondent workman was a temporary employee and not a seasonal workman. He has further substantiated his plea by relying on the Supreme Court decision in the case of U.P. State Sugar Corporation Ltd. Now Dowiala Sugar Co. Ltd. Doiwala through its Executive Director Vs. Niraj Kumar and Others, . He has further urged that the weight of evidence on record categorically indicates that the entire material was there and the respondent workman could not successfully refute the same, particularly, the information received from the Cane Society in the shape of computer sheets establishing that the "parchis" of which reference was made were fake. The weighing was admittedly conducted by the respondent workman and therefore there was no escape from the conclusion that the respondent was fully responsible for such a fake transaction. He contends that the respondent workman did not lead any evidence to contradict the said documentary evidence as well as other documentary evidence in support thereof, the list of which is detailed in Annexure 16 to the writ petition. He questions the correctness of the award on the aforesaid grounds.

6. On the other hand learned counsel for the respondent workman Ms. Sumati Rani Gupta contends that in the absence of any domestic inquiry, which is the admitted position on record, the employer failed to lead any evidence so as to

allow the Tribunal to draw any inference adverse against the workman. She has invited the attention of the court to the decision in the case of *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, to urge that the admitted position being that no inquiry was held vitiates all proceedings. She further submits that the Labour Court has recorded a clear finding about the status of the respondent workman being seasonal and not temporary. It is therefore urged that the said finding is irreversible as the facts on record do not in any way indicate that the engagement was temporary and not seasonal. She further invited the attention of the court to the statement of the witnesses produced on behalf of the employer to contend that no evidence worth the name was led even before the Labour Court to establish that the respondent workman was either guilty of any misconduct or that he did not deserve a reinstatement or back wages.

7. Having considered the aforesaid submissions, this petition is pending since 1999 and under the interim orders of this court the respondent workman has been receiving emoluments under the said interim order. The question is as to whether there was any legal infirmity in the proceedings relating to the termination of the services of the respondent workman from the facts on record.

8. It is admitted that no inquiry was held. The order of termination is preceded by an office note of the Sales Manager which does not appear to be a preliminary inquiry. It was just an information received and on the basis thereof the workman was terminated. It is thus clear that the procedure of domestic inquiry having not been followed the Labour Court's award on this count cannot be faulted with.

9. Coming to the issue of the status of the employee the finding given by the Tribunal clearly indicates that he was a seasonal weightment clerk and the respondent workman had led oral evidence in this regard. The said finding also therefore cannot be interfered with as there was no cogent material to contradict the same, either oral or documentary.

10. Then comes the state of evidence as led by the petitioner employer. The statement of the witnesses do indicate that the Secretary of the Society had proved the documentary evidence including the computer sheet of the society before the Labour Court. However the statements of the employees of the petitioner industry later on wavered in their statements without fixing the guilt on the respondent workman.

11. On the other hand the respondent workman does not appear to have in any way contradicted the contents of the computerized sheets which had been proved by the employer. Thus the position that emerges is that the weighing of the sugarcane against the 75 "parchis" appears to have been done and the "parchis" were taken to be fake as they had not been issued by the Society.

12. The respondent workman however denied his involvement by showing ignorance about the status of the said fake parchis. The employer did not lead

any further evidence to establish that the respondent workman had knowingly utilized these fake "parchis" for weighing sugarcane which was 75 in number. It is only an inference that was sought to be justified by the employer.

13. It is also undisputed at the bar that a criminal case had also been launched against the respondent workman in the same matter which ultimately ended up in a closure absolving him of the charges. Thus the respondent workman could not be indicted on any criminal charge as well. The Labour Court has arrived at the conclusion that the employer had been unable to prove the charge but Sri Singh is right in his submission that a further finding with regard to the question of guilt or innocence is wanting. The aforesaid state of affairs would therefore lead to a situation where either a direction is issued for holding a fresh inquiry after setting aside the award or to allow the Industrial Tribunal itself to examine the issue afresh.

14. In the aforesaid circumstances the matter would again consume a lot of time which would neither be in the interest of the employer or the respondent workman, inasmuch as, the respondent workman would be almost 54 years of age by now. The question of loss of confidence by the employer even though has been mentioned in the termination order was not preceded by any inquiry and the same being a serious charge could not have been made the basis of a termination without holding a proper domestic inquiry which was admittedly not done.

15. In the aforesaid circumstances, it would otherwise also not be appropriate to thrust reinstatement upon the employer when the workman had been unable to dispute the documentary evidence that had been proved by the petitioner employer indicated hereinabove relating to the existence of fake parchis through the computerized sheets and the statement of the Secretary of the Society. The question of loss of confidence would have gained significance in the light of the decision in the case of Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, , but no proper enquiry was held to fix the liability.

16. In the aforesaid circumstances, without compelling the petitioner employer to reinstate the respondent workman, the award is modified to the extent that in lieu of reinstatement, continuance and wages that the respondent workman may be entitled to receive in future would stand settled by a payment of Rs. 2.5 lacs to the respondent workman as full and final settlement in relation to his engagement with the petitioner employer.

17. This figure has been arrived at keeping in view the payments already made through the employer to the respondent workman. The aforesaid sum shall be payable over and above the amounts which have already been paid to the workman. The payment shall be made within one month from today and the petitioner employer shall not be compelled to reinstate the respondent workman. The petition stands disposed of accordingly.