
(2012) 01 CAL CK 0060

In the Calcutta High Court

Case No : CWJ (AS) W.P. No. 20650 (W) of 2007

Debnath Chakraborty

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10(1), 2, 25B, 25F

Citation : (2012) 133 FLR 187 : (2012) 3 LLJ 231 : (2012) LLR 425

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Advocate : Lakshman Chandra Halder, for the Appellant; A.K. Gupta, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Indira Baherjee, J.—In this writ petition, the petitioner has challenged an award dated 11th July, 2007 passed by the Central Government Industrial Tribunal at Kolkata, hereinafter referred to as the learned Tribunal, in Reference No. 15 of 1995 arising out of an order of reference dated 30th June, 1995 to the extent the petitioner has been denied the relief of reinstatement and granted only compensation. The petitioner was apparently engaged as a casual labour/daily rated mazdoor under the Sub-Divisional Officer (Phones) at the 66 Exchange. The petitioner was posted at Howrah.

2. According to the petitioner, the petitioner worked for 296 days continuously up to 18th February, 1989, after which the service of the petitioner was transferred to 66 Exchange with effect from 1st March, 1989. The petitioner worked in the 66 Exchange up to 30th June, 1989 for a period of 310 days from 28th June, 1988 till 30th June, 1989.

3. The petitioner claims to have completed over 240 days of continuous service in each year. The petitioner claims protection of Section 25B of the Industrial Disputes Act, 1947.

4. According to the petitioner, an identity card was issued to the petitioner and the petitioner also submitted certificates which indicate that the petitioner had rendered over 240 days of continuous service in a year.

5. According to the petitioner, the services of the petitioner were terminated with effect from 1st July, 1989 without any notice. The petitioner approached the Regional Labour Commissioner, Government of India.

6. By an order dated 30th June, 1995, the Central Government, in exercise of power u/s 10(1)(d) read with Section 2(a) of the Industrial Disputes Act, 1947, hereinafter referred to as the said Act, referred to the Central Government Industrial Tribunal for adjudication the following dispute:

Whether the action of the Management of Calcutta Telephones in terminating the service of Shri Debnath Chakraborty, Ex-casual workman with effect from 1.7.1989 was legal and justified? If not, to what relief the workman would be entitled to?

7. The respondent No. 3, filed a writ petition under Article 226 of the Constitution of India, being W. P. No. 1982 of 1999 challenging the order of reference. The writ petition was disposed of by giving liberty to the respondent No. 3 to take all objections before the Tribunal.

8. By the award impugned, the learned Tribunal held that the termination of the service of the workman was not in conformity with the provisions of the Industrial Disputes Act, 1947 and thus illegal void ab initio. The aforesaid finding has not been challenged by the respondents.

9. The learned Tribunal, however, held that there was no rule of thumb that in every case where the Industrial Tribunal gave a finding that termination was in violation of Section 25F of the Act, the entire back-wages should be awarded. On an overall consideration of all facts and circumstances, the learned Tribunal granted the petitioner compensation of Rs. 35,000.

10. In the Affidavit-in-Opposition, the respondents have contended that the reference in itself was not maintainable because Calcutta Telephones was not an industry and the Chief General Manager against whom the reference was directed, had no legal status independent of Union of India, which had not even been impleaded as party.

11. In Mohan Lal Vs. Management of Bharat Electronics Ltd., the Supreme Court held that termination of Services of the employee in that case who had rendered service for a period of 240 days within the period of 12 months was void and inoperative and made a declaration that he continued to be in service with all consequential benefits.

12. In the aforesaid case, the concerned Salesman had been appointed on probation for six months and subsequently on the expiry of the initial period, the period of probation was extended up to 18th September, 1974 and on the

extended period of probation, his service was terminated by letter dated 12th October, 1974.

13. The Labour Court on evaluation of evidence found that the termination would not constitute retrenchment within the meaning of Section 2(oo) read with Section 25F of the Industrial Disputes Act, 1947. The Supreme Court found that the only point for determination was whether even in the circumstances, as pleaded by the respondent termination of service of the appellant would amount to retrenchment within the meaning of the expression of Section 2(oo) of the Industrial Disputes Act, 1947.

14. If the answer to the aforesaid question was in the affirmative, the Labour Court would have to answer the consequential question of whether the appellant would be entitled to reinstatement with back-wages in the affirmative in view of admitted position that the mandatory precondition prescribed by Section 25F was not satisfied.

15. In *Municipal Council, Samrala Vs. Sukhwinder Kaur*, , cited on behalf of the respondent, the Supreme Court held that termination of services of contractual employee within the span of 18 months could not be challenged on the ground of non-conformity with the provisions of Section 25F of the Industrial Disputes Act, 1947. The judgment is distinguishable on facts in that the petitioner was not a contractual employee.

16. In *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, a five-Judge Constitution Bench of the Supreme Court held that employment on daily wage does not confer any right of permanent employment. The judgment in *Uma Devi (supra)* has no application in the facts and circumstances of this case since the petitioner has not claimed permanent employment.

17. The respondent contended that after 30th June, 1989, the engagement of the petitioner, which was need based, was temporarily suspended after which the petitioner was re-engaged for 110 days from September, 1991 to July, 1992.

18. Learned Tribunal, however, held that it had been proved in a positive way that the petitioner had completed more than 240 days of service prior to the relevant date of 1st July, 1989, when the petitioner was refused employment, without compliance with the provisions of Section 25F of the Industrial Disputes Act, 1947. The respondent Tribunal held that the refusal of employment was void, ab initio.

19. The respondent Tribunal observed "As regards the relief to be granted in his favour in this case, it is no doubt true that the general rule of reinstatement with back-wages is the principle to be followed but recently the Supreme Court in number of cases decided for laying down principles to be followed in this connection. The Hon"ble Court has asked to take a pragmatic view in the matter by keeping number of factors in mind, i.e., realizing that an industry may not be compelled to pay to the workman for the period during which he apparently

contributed little or nothing at all to it and/or for a period spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched."

20. Relying on the judgment of the Supreme Court in *Haryana Roadways v. Rohan Singh* reported in AIR 2005 SCW 4634, the respondent Tribunal found that there was no rule of thumb that in every case, where the Tribunal gave a finding that termination of service was in violation of Section 25F of the Act, the entire back-wages should be awarded.

21. The judgments referred to in the impugned award support the finding that full back-wages need not always be granted. Whether at all back-wages should be granted, and if so to what extent, would depend on several factors.

22. The respondent Tribunal rightly held that it had no obligation to award full back-wages. The aforesaid finding is reasoned and supported by judgments of the Supreme Court. The respondent Tribunal has, in its discretion, awarded compensation of Rs. 35,000 with interest. The award of compensation does not call for interference.

23. There is, however, no cogent reason assigned for refusing the relief of reinstatement. In view of the definite finding of the respondent Tribunal that the refusal of employment of the petitioner was void ab initio, there could be no justification in not directing reinstatement. The petitioner should have been reinstated in the position in which the petitioner had been engaged. The writ application is thus allowed. The impugned award is set aside to the extent that the petitioner has been denied the relief of reinstatement. The respondents are directed to reinstate the petitioner in the capacity/position in which the petitioner was engaged prior to his termination, in addition to making payment of compensation as directed by the respondent Tribunal.