

(1999) 09 DEL CK 0114

In the Delhi High Court

Case No : Letters Patent Appeal No. 117 of 1982

Delhi Transport Corporation

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 23-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 2

LIFE INSURANCE CORPORATION ACT, 1956 — Section 25F, 25G, 25H, 48

Citation : (1999) 6 AD 723 : (1999) 82 DLT 648 : (1999) 51 DRJ 363

Hon'ble Judges : Usha Mehra, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Mr. S.N. Bhandari, for the Appellant; Mr. D.N. Vohra, for the Respondent

Judgement

Madan B. Lokur, J.—The Appellant in this appeal under Clause X of the Letters Patent has impugned the judgment and order dated 24th August, 1982 passed by a learned Single Judge of this Court in Civil Writ Petition No. 36 of 1971. By the impugned judgment and order, it was directed that the Award dated 16th July, 1970 passed by Respondent No. 1, the Industrial Tribunal be set aside and it was held that the termination of the services of Respondent No. 2 Workman was void ab initio and inoperative. The learned Single Judge further directed that the Workman continues in service with consequential benefits, namely, full back wages.

2. The Workman was initially employed by the Appellant as a Retainer Crew Conductor on 25th February, 1966. He was thereafter appointed on 2nd November, 1966 as a Conductor on probation for one year. The probation period was extended till 31st October, 1968. On 29th/30th October, 1968 the services of the Workman were terminated by the Appellant in exercise of powers conferred by Regulation 9(a)(i) of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952, (for short the Regulations). No reasons were assigned for the termination as indeed by they were not required

to be assigned. Regulation 9(a) of the Regulations reads as follows:

"9. Termination of Services - (a) Except as otherwise specified in the appointment orders, the services of an employee of the Authority may be terminated without any notice or pay in lieu of notice -

(i) during the period of probation and without assigning any reasons thereof,

(ii) for misconduct,

(iii) on the completion of specific period of appointment,

(iv) in the case of employees engaged on contract for a specific period, on the expiration of such period in accordance with the terms of appointment."

3. It may be mentioned, en passant, that learned counsel for the Appellant insisted on saying that the services of the Workman were not terminated by that his services were not confirmed. However, the letter dated 29th/30th October, 1968 unambiguously states that "The services are hereby terminated with effect from 31.10.1968...under Clause 9(a)(i) of the D.R.T.A. (Conditions of Appointment and service) Regulations, 1952". As noticed above, text of the said clause also uses the word `termination".

4. Be that as it may, the Workman raised an industrial dispute which was referred to the Industrial Tribunal on 30th September, 1969. The term of reference was as follows:

"(1) Whether the termination of services of Jai Kishan, Conductor, is illegal and/or unjustified and if so to what relief is he entitled?"

5. The Industrial Tribunal gave its Award on 16th July, 1970 holding that the termination of the Workman's services was proper and valid and he was not entitled to any relief. The correctness of the Award was challenged by the Workman by filing a Civil Writ Petition in this Court. As mentioned above, the Writ Petition was allowed by the learned Single Judge.

6. An analysis of the impugned judgment and order shows that the learned Single Judge merely followed the law laid down by the Supreme Court in the case of The State Bank of India Vs. Shri N. Sundara Money, . This decision of the Supreme Court was approved and followed by the Supreme Court in several subsequent decisions. The view expressed by the Supreme Court in that case, after considering the provisions of Section 2(oo) of the Industrial Disputes Act, 1947 (for short "the Act"), was that "Whatever the reason, every termination spells retrenchment." (paragraph 9 of the Report). This view of the Supreme Court was endorsed by it in several subsequent decisions, more particularly in The Punjab Land Development & Reclamation Corporation Ltd., Chandigarh Vs. The Presiding Officer, Labour Court & Ors. 1990 (4) SLR 154 decided by a Constitution Bench of the Supreme Court. The Constitution Bench said in paragraph 82 of the Report as follows:

"Applying the above reasonings; principles and precedents, to the definition in Sec. 2(oo) of the Act, we hold that "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section."

7. With the decision of the Supreme Court in Sundara Money staring at his face, learned counsel for the Appellant employed all his skill, learning and ingenuity to unshackle the rigour of the law. He failed in his first innings before the learned Single Judge and in his second innings (before us) he, unfortunately, fares only a little better.

8. Learned counsel for the Appellant raised five principal contentions before us when we heard him on 2nd, 9th and 16th September, 1999 when judgment was reserved.

9. It was firstly contended that the Workman could not be allowed to raise a new plea based on the decision in Sundara Money. It was submitted that the question whether the termination amounts to retrenchment was not raised before the Industrial Tribunal or in the pleadings before the learned Single Judge. It was raised only during the oral hearing of the Writ Petition. Secondly, it was submitted that the learned Single Judge was in error in directing reinstatement of the Workman. It was submitted that reinstatement is not the inevitable consequence of quashing an order of termination. Compensation in lieu of reinstatement could, and should, have been awarded by the learned Single Judge. Thirdly, it was contended that the grant of back wages to the Workman as a consequence of his reinstatement was in the absence of any finding that during this period, the Workman was unemployed. Fourthly, that the finding of the Industrial Tribunal that the work of the Workman was unsatisfactory had not been upset by the learned Single Judge. It was, Therefore, submitted that the Appellant cannot be compelled to take back into service an employee whose work was unsatisfactory. It was finally contended that the Appellant will be faced with a chaotic situation if the impugned judgment and order is not upset because then, the Appellant would have to comply with the provisions of Section 25G and 25H of the Act, which will put an impossible burden on the Appellant.

10. We are unable to agree with learned counsel for the Appellant that the Workman raised a new plea before the learned Single Judge to the effect that his termination amounts to retrenchment. The reference before the Industrial Tribunal was whether the termination of the Workman was illegal or unjustified. The Workman was at liberty to raise any legal contention to show that his termination was illegal or unjustified. He was entitled to raise the contention that his termination amounted to retrenchment within the meaning of Section 2(oo) of the Act. That the Workman chose not to advance this contention before the Industrial Tribunal is another matter. The point is that he could have done so.

11. Similarly, before the learned Single Judge it was specifically pleaded in paragraph 8 of the Writ Petition that the Workman's services were arbitrarily

terminated. This enabled the Workman to raise a plea that his termination was contrary to Section 25F of the Act. Therefore, we are not in agreement with learned counsel for the Appellant that the Workman raised a new plea or that he was not entitled to raise the plea that his termination amounted to retrenchment.

12. Learned counsel for the Appellant relied upon the decision of the Supreme Court in the case of Pfizer Ltd., Vs. Mazdoor Congress & Ors. 1996 Lab. I.C. 2259 in support of his contention. We have perused the decision of the Supreme Court and find that in that case the contention that was urged was that the employer had acted in undue haste in terminating the services of the employee. In that context, the Supreme Court stated in paragraph 19 of the Report that whether the employer acted in undue haste is a question of fact that has to be determined on the basis of the facts on record. In that case, there were no particulars of undue haste nor was any evidence led in that regard. Similarly, in para 21 of the Report, the Supreme Court stated that it would depend upon the evidence in each case whether the employer had acted in undue haste or not. Insofar as the present appeal is concerned, learned counsel for the Workman relied entirely on the evidence that was already before the Industrial Tribunal and it was on the basis of that evidence that he raised the contention of retrenchment. Learned counsel for the Workman neither went beyond the pleadings nor did he argue his case on the basis of material that was not on record. As such, we feel that reliance on the above Supreme Court decision by learned counsel for the Appellant is misplaced.

13. Learned counsel for the Appellant also relied upon the decision of the Andhra Pradesh High Court in E. Ramesh Kumar Vs. The Administrative Officer 1996 Lab. I.C. 2154. In that decision, it is specifically mentioned in paragraph 11 of the Report that the contention that the termination was hit by Section 25F of the Act was not raised in the Writ Petition but was taken for the first time in appeal. This decision is also clearly distinguishable.

14. Nearer home, a Division Bench of our High Court in the case of Management of Hamdard (Waqf) Laboratory Lal Kuan, Delhi Vs. Raunaq Hussain and Another, held that where the ground raised is purely one of law based on the admitted facts of the case, the litigant is entitled to raise that ground in a petition under Article 226 of the Constitution. We are bound by that decision which, according to us, lays down the correct legal position. This is notwithstanding our finding above that the ground was available to be raised to the Workman even before the Industrial Tribunal. Accordingly, we reject the first contention of learned counsel for the Appellant.

15. On the merits of the termination, learned counsel for the Appellant placed reliance on the decision of the Supreme Court in M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another, . We find this decision to be distinguishable for two reasons. Firstly, the termination in that case was under the exclusionary clause (bb) of Section 2(oo) of the Act. This exclusionary clause was inserted with effect from 21st

August, 1984. Admittedly, this clause was not retrospective in operation and, Therefore, it cannot apply to the facts of the present case. Secondly, the Supreme Court held in Venugopal that the amendments introduced in Section 48 of the Life Insurance Corporation Act, 1956 (namely the introduction of sub-sections 2(oo), 2A, 2B and 2C with effect from 31st January, 1981) clearly excluded the provisions of the Act insofar as they were in conflict with the rules framed under the provisions of Section 48(2)(oo) of the Life Insurance Corporation Act, 1956 (as amended). Consequently, the termination of the services of Venugopal was deemed not to be retrenchment within the meaning of Section 2(oo) of the Act, even if the exclusionary clause (bb) had not been introduced in that sub-section. We are, Therefore, of view that reliance by learned counsel for the Appellant on Venugopal is misplaced.

16. On the question whether the Workman is entitled to reinstatement, it is quite clear from the decision of the Supreme Court in Sundara Money that due to non-compliance of the provisions of Section 25F of the Act the order of termination is void and inoperative. In Sundara Money, the Supreme Court ordered reinstatement with back wages. Similar directions were given by the Supreme Court in subsequent cases such as Hindustan Steel Ltd. Vs. Labour Court, Orissa (1976) 49 FJR 397, Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukharji (1979) 55 FJR 210, Santosh Gupta Vs. State Bank of Patiala (1980) 56 FJR 594, Mohan Lal Vs. Management of Bharat Electronics Ltd., and L. Robert D'Souza Vs. Executive Engineer, Southern Railway (1982) 60 FJR 144.

17. However, in the case of Coimbatore Pioneer "B" Mills Ltd. Vs. Labour Court, Coimbatore & Ors. (1979) 54 FJR 236, Division Bench of the Madras High Court was of the view that where there was non-compliance with the provisions of Section 25F of the Act, the termination was bona fide, then reinstatement can be declined and compensation in lieu of reinstatement can be awarded. This decision was followed by another Division Bench of the High Court in the case of Mount Mettur Pharmaceuticals Ltd. Vs. Second Additional Labour Court, Madras & Anr. (1985) 67 FJR 60 wherein it was categorically stated that it is not law that reinstatement follows in every case where the termination order is quashed for having been made without complying with the provisions of Section 25F of the Act.

18. The earlier decision of the Madras High Court, namely, Coimbatore Pioneer Mills was considered by the Supreme Court. A perusal of the decision of the Supreme Court in the case of Workmen of Coimbatore "B" Mills Ltd. Vs. Labour Court & Ors. (1982) 61 FJR 180 shows that the Supreme Court declined to grant Special Leave to Appeal on the question of reinstatement. The Supreme Court granted leave only on the question of the amount of compensation to be awarded.

19. There are now two recent decisions of the Supreme Court, namely, Gujarat State Road Transport Corpn., and another Vs. Mulu Amra, and Rattan Singh v. Union of India, (1997) 11 SCC 396 wherein reinstatement was declined to the workman who was instead awarded compensation in lieu thereof.

20. In Rolston John, the Supreme Court was dealing with an Award of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, Madhya Pradesh dated 19th December, 1977. The Supreme Court rendered its decision on 28th January, 1992, that is, about 14 years later. Even though the Supreme Court held the retrenchment to be void and ineffective since the provisions of Section 25F of the Act had not been complied with by the employer, the Supreme Court considered the "long lapse of time" between the date of the Award and the date of its decision and awarded lumpsum compensation of Rs. 50,000/- to the workman.

21. Similarly, in Rattan Singh, the termination of the workman took place in 1976 and the Supreme Court rendered its decision in 1996. The Supreme Court was of the view that because of the lapse of nearly 20 years since the termination, it was not a fit case for directing reinstatement. The Supreme Court accordingly awarded Rs. 25,000/- to the workman in lieu of compensation for back wages and reinstatement.

22. However, on the other hand, learned counsel for the Workman relied upon the decision of the Supreme Court in the case of Gammon India Ltd. Vs. Niranjan Dass (1984) 64 FJR 60 where the termination of the workman was in October, 1967 and by a judgment and order rendered in December, 1983, the Supreme Court set aside his termination. It was pointed out to the Supreme Court that during the pendency of the appeal, the workman had reached the age of superannuation. Notwithstanding this, the Supreme Court directed his reinstatement with all back wages and other service benefits.

23. In view of this, we propose to consider the question of reinstatement along with the third submission advanced by learned counsel for the Appellant (regarding payment of back wages) when we consider the question of relief.

24. As regards the fourth submission, we find from the Award passed by the Industrial Tribunal that the probation of the Workman was terminated because the Appellant was not satisfied with his work. The order terminating the probation does not suggest any misconduct on the part of the Workman. If there was any such misconduct, the Appellant would have acted under Regulation 9(a) (ii) and not Regulation 9(a)(i) as it did. Therefore, learned counsel for the Appellant is not right in contending that the work of the Workman was "unsatisfactory" in the sense of imputing misconduct-it is only that the Appellant was "not satisfied" with the work of the Workman and, Therefore, terminated his probation without casting, or intending to cast, any stigma on him. It is this action of the Appellant that was struck down by the learned Single Judge, who had no reason to advert to the question whether the work of the Workman was satisfactory or not.

25. The final submission of learned counsel for the Appellant is stated only to be rejected. There was no chaos in the industrial law after the decision of the Supreme Court in Sundara Money. In fact, that decision has been followed for

more than two decades without any chaos or turbulence. Consequently, we see absolutely no merit in this contention urged by learned counsel for the Appellant.

26. The position, Therefore, is that the order terminating the services of the Workman amounts to retrenchment within the meaning of Section 2(oo) of the Act. Since the Appellant has not complied with the provisions of Section 25F of the Act, the order of termination is void ab initio and inoperative. The only question that now remains to be determined is the relief to be granted to the Workman.

27. We find from the decisions of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the Workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in *The Punjab Land Development & Reclamation Corporation Ltd., Chandigarh* seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since we are bound to follow the decision of the Constitution Bench, we Therefore conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.

28. Considering the facts of this case, we are persuaded to award compensation in lieu of reinstatement and back wages to the Workman. The reasons are that if the workman is to be reinstated then it has to be as a Conductor on probation. Since his services were terminated in October, 1968, it would be impossible for anybody to hazard a guess what his career profile would have been over the last 31st years. By directing his reinstatement, we may be inviting a host of hypothetical questions such as seniority, promotions, etc. Moreover, the reason for the termination of the services of the Workman was that the Appellant was not satisfied with his work. Under these circumstances, we feel that it may be unfair to the Appellant if the Workman is thrust upon it, especially when the Workman can be given adequate compensation.

29. The question that now arises is: What is the compensation to be given to the Workman in lieu of reinstatement and back wages?

30. From the record of the appeal paperbook, we find that by an order dated 3rd December, 1982 the Appellant was directed to deposit the entire back wages up to 31st July, 1982. This order appears to have been complied with by the Appellant who deposited Rs. 33,288.75. Out of this amount, the Workman unconditionally withdrew Rs. 8,322/- and the balance was withdrawn on furnishing a security.

31. Thereafter, the Workman moved an application for subsistence allowance and future wages. During the course of hearing of this application, on 1st May, 1986 learned counsel for the Workman stated that his client would be content (for the time being (if a sum of Rs. 10,000/- is paid to him and if this appeal is decided within two years. This amount was given to the Workman (Rs. 5,000/-

unconditionally and Rs. 5,000/- on furnishing a security). A further amount of Rs. 10,000/- was later directed to be given to the Workman by an order dated 15th October, 1990 - namely, Rs. 5,000/- unconditionally and Rs. 5,000/- on his furnishing a security.

32. The Workman, Therefore, has been granted back wages-compensation of Rs. 33,288.75 (for the period since his termination in October, 1968 till 31st July, 1982) plus Rs. 10,000/- from 1st August, 1982 till 1st May, 1986 and a further sum of Rs. 10,000/- from 1st May, 1986 till 15th October, 1990. In other words, he has been granted back wages/compensation of about Rs. 54, 000/- for a period of notional service of about 22 years. This works out to an average of Rs. 2,500/- per annum which was thought to be adequate by the various Division Benches of this Court.

33. We have, Therefore, to consider the amount of compensation to be given to the Workman from October, 1990 till date. We are of the view that a sum of Rs. 2,500/- per annum is now quite low and it ought to be increased in view of the passage of time and increase in the cost of living. Accordingly, we are of the view that the Workman should be paid an amount of Rs. 50,000/- (which is a little more than Rs. 5,000/- per annum for 9 years from October, 1990 till date) in addition to the amount already directed to be given by this Court, from time to time.

34. Consequently, the appeal is partly allowed and the amounts deposited by the Appellant in this Court (in favor of the Workman) should be released to him unconditionally. The security bonds given by the Workman deserve to be discharged. In addition, the Appellant will compensate the Workman to the extent of Rs. 50,000/- in lieu of reinstatement and back wages.

35. The Appellant will also pay to the Workman litigation costs of Rs. 5,000/-.