

(1958) 06 BOM CK 0006

In the Bombay High Court

Case No : Special Civil Application No. 46 of 1958

Devidayal Nanakchand

APPELLANT

Vs

State Industrial Court Nagpur and Others

RESPONDENT

Date of Decision : 20-06-1958

Acts Referred:

Central Provinces and Berar Industrial Disputes Settlement Act, 1947 — Section 16, 16(2), 16(3)
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 16(2), 2(OO), 25F, 25J

Citation : AIR 1959 Bom 65 : (1958) 60 BOMLR 1253 : (1959) ILR (Bom) 419 : (1961) 1 LLJ 167

Hon'ble Judges : S.P. Kotwal, J; J.R. Mudholkar, J

Bench : Division Bench

Advocate : V.P. Sathe, for the Appellant; A.S. Bobde, for the Respondent

Judgement

J.R. Mudholkar, J.—This is a petition under Articles 226 and 227 of the Constitution and is directed against the order of the State Industrial Court, Nagpur, which confirmed the order of the Assistant Labour Commissioner, Nagpur, refusing to order re-instatement of the petitioner.

2. It is common ground that the petitioner was employed as a Fitter with R.S. Rekchand Mohota Mills, Hinganghat, and was removed from service a form 19-10-1954 after having been offered one month's salary in lieu of notice.

3. The petitioner's contention before the two Tribunals below was and still is that the action taken against him was, in fact, one of dismissal and that as he was not given an opportunity to show cause against his dismissal that dismissal was erroneous. It is pointed out on his behalf that under Standing Order 25 in cases of this type opportunity has to be given to the employee before his dismissal from service.

4. On behalf of the respondent No. 3 R.S. Rekchand Mohota Mills, it was contended that the action taken was under Standing Order 23 which did not

require any opportunity to be given to the petitioner to show cause against the termination of his service. This contention of the respondent No. 3 was negated by both the Tribunals below and they held that the petitioner was wrongfully dismissed from service.

5. Both the Tribunals however only awarded compensation to the extent of Rs. 500/- to the petitioner. It is contended on his behalf by Shri Sathe that u/s 16 of the C.P. and Berar Industrial Disputes Settlement Act, 1947, the Labour Commissioner was bound to order reinstatement and that his refusal to do so was erroneous in law. It is further contended on behalf of the petitioner that even assuming that the Labour Commissioner had discretion in the matter that discretion was not judicially exercised by him in this case. He also contends that the State Industrial Court was likewise in error in holding that the petitioner was not entitled to reinstatement in this case and that compensation was an adequate relief.

6. We shall first deal with the contention of the respondent No. 3 to the effect that the removal from service of the petitioner was under Standing Order 23 that this cannot be regarded as a case of wrongful dismissal at all and that therefore the petitioner was not entitled to any relief whatsoever.

7. We may point out that upon the argument advanced on behalf of the respondent No. 3, the petitioner would be disentitled even to the compensation. But the order made in his favour awarding compensation was not challenged by the respondent No. 3 before the State Industrial Court or even before this Court. Shri Sathe contends that in view of this circumstance it is no longer open to the respondent No. 3 to say that the termination of the petitioner's service was not a case of wrongful dismissal. In our opinion, there is no force in this contention. It is true that the petitioner was awarded the relief of compensation on the basis that the termination of his service amounted to a wrongful dismissal. But even though the respondent No. 3 does not challenge the award of the relief of compensation to the petitioner, it is still open to him to say that the other relief, i.e., that of reinstatement should not be granted because in point of fact the petitioner has not been wrongfully dismissed. The respondent No. 3 is not barred from raising the ground merely because upon that ground he could also have challenged the grant of compensation to the petitioner, but has not so challenged it.

8. Be that as it may, we are of opinion that the respondent No. 3 is not entitled to rely upon Standing Order 23, because that Order must now be deemed to be subject to the provisions of Chap. V-A of the Industrial Disputes Act, 1947. This is specifically provided for by Section 25J which occurs in that Chapter. Section 25F of that Act provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until certain conditions are satisfied. Now, the word "retrenchment" has been defined thus in Section 2(oo) of the Act:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation, if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(c) termination of the service of a workman on the ground of continued ill-health".

The definition, though an artificial one is certainly very wide and would, we take it, include termination of services even in pursuance of a Standing Order. The heading of Section 25F leaves no doubt that the observance of the provisions thereof is a condition precedent to retrenchment of a workman to whom the section applies. It would therefore follow that before action could be taken under Standing Order 23, the provisions of Section 25F had to be complied with. It is not disputed that these provisions have not been complied with. In the circumstances therefore the respondent No. 3 does not get the benefit of Standing Order 23.

9. We now come to the point raised by Shri Sathe. His main contention which we have already referred to is that u/s 16 of the Act, as it stood prior to its amendment in the year 1955. the Labour Commissioner is bound to order reinstatement in every case of wrongful dismissal, discharge or removal from service. The provisions of Sub-section (2) of Section 16 and of Sub-section (3) thereof are relied on by the learned counsel for that purpose. They are as below:

"(2) If on such reference being made, the Labour Commissioner, after such inquiry as may be prescribed finds that the dismissal, discharge, removal or suspension was in contravention of any of the provisions of this Act or in contravention of Standing Order made or sanctioned under this Act, he may direct that the employee be reinstated forth with or by a specified date or paid such sum not exceeding five hundred rupees by way of compensation as the Labour Commissioner may determine with due regard to the loss of wages suffered by such employee. If the employer refuses to reinstate the employee, the Labour Commissioner may direct that the employee be paid by the employer such further sum not exceeding two thousand rupees by way of compensation as the Labour Commissioner may determine with due regard to the loss of employment and the possibility of getting suitable employment thereafter.

3. Upon receiving such direction the employer shall employ as directed any pay him the compensation awarded and if the employer fails to pay the said compensation, it shall be recovered from him in such manner as may be prescribed."

10. A reading of Sub-section (2) would show at first glance, that provision gives

a choice to the Labour Commissioner either to order reinstatement of an employee or to order payment to him of a sum not exceeding Rs. 500/- by way of compensation. It is however contended that the word "or" used from the last time in the first sentence should be read as "and" and in support of this contention Shri Sathe placed reliance upon a decision of a Division Bench of this Court consisting of Chainani and Badkas JJ. in Special Civil Appln. No. 321 of 1957, D/-24-1-1958 (Bom-at Nag) (A). The learned judges have observed in their judgment:

"The word "or" is sometimes to be read in the sense of "and" in order to carry out the intention of the Legislature: See Maxwell on the Interpretation of Statutes, 1953 edition, page 238. The latter part of Sub-section (2) empowers the Labour Commissioner to award such "further" sum not exceeding Rs. 2000/- as he may determine as compensation, in case the employer refuses to reinstate the employee. The word "further" means "in addition to" or "over and above." The use of this word in the latter part of this sub-section, therefore, shows that in addition to an order for reinstatement the Labour Commissioner may also award compensation not exceeding Rs. 500/- under the first part of Sub-section (2). That this was the intention of the Legislature is also borne out by the provisions of Sub-section (3) which state that upon receiving the direction given under Sub-section (2), the employer shall employ the employee as directed and pay him the compensation awarded. There can be no doubt, therefore, that under the first part of Sub-section (2), the Labour Commissioner could, in addition to passing an order for reinstatement of the employee, also award him compensation not exceeding Rs. 500/-."

A contrary view was taken by the Nagpur High Court in Ganpatsingh v. Nagpur Electric Light and Power Co. (Nag) (B). An appeal was taken from the decision of the High Court to the Supreme Court and we are informed that the appeal was summarily dismissed. We do not know the grounds which were raised before the Supreme Court and therefore it is not possible for us to say whether the view taken by the Nagpur High Court was affirmed by their Lordships.

11. Though at first sight it would appear that the grant of compensation under Sub-section (2) is an alternative relief for reinstatement, a consideration of the last part of Sub-section (2) and of Sub-section (3) would lead to the conclusion that the word "or" must be read as "and". Sub-section (3) refers to the receipt by the employer of "such direction" i.e., the direction of reinstating an employee and ordering payment of compensation to him, and enjoins on him the duty to carry out the direction both as regards reinstatement as well as payment of compensation. Now, if the Labour Commissioner had a discretion to award one of the two reliefs Sub-section (3) would have been worded differently and not in the way it has been worded. Thus, instead of saying "the employer shall employ as directed or pay him the compensation awarded, as the case may be." Again, as pointed out by the learned Judges in the case referred to above, the expression "further sum" used in Sub-section (2) clearly shows that even where

reinstatement is ordered, compensation has also to be awarded. We are therefore in respectful agreement with the view taken by the learned Judges of this Court in the above mentioned case. Accordingly, we accept the petitioner's contention that he was entitled to be awarded the relief of reinstatement in addition to that of compensation not exceeding Rs. 500/- in respect of loss of wages suffered by him.

12. We would however, like to point out that under Sub-section (2) of Section 16, as it stood at the relevant time, the respondent No. 3 can still refuse to reinstate the petitioner and instead pay such sum not exceeding Rs. 2000/- by way of compensation as the Labour Commissioner may determine to the petitioner.

13. Accordingly, we allow the petition and direct that the respondent No. 3 shall reinstate the petitioner. If it refuses to do so, then the Labour Commissioner will have to determine the compensation payable to the petitioner under the last part of Sub-section (2) of Section 16.

14. Costs of this petition will be borne by the respondent No. 3.

15. Petition allowed.