
(2015) 04 RAJ CK 0113
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1278 of 2013

District Social Welfare Officer and Others	APPELLANT
Vs	
Brij Mohan Verma and Others	RESPONDENT

Date of Decision : 13-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 38, 39(a), 43
Industrial Disputes Act, 1947 — Section 10(1)(c), 12(5), 25-F, 25-G, 25-H

Citation : (2015) 04 RAJ CK 0113

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : Rishipal Agarwal, Addl. G.C., for the Appellant

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J.—The State-petitioners, in the instant writ application have assailed the legality and validity of the award passed by the Labour Court-II, Jaipur; directing the State-petitioners to reinstate the respondent-workman with 50% of back wages while holding the "retrenchment" dated 1st February, 1995, as illegal and invalid.

2. Briefly, the essential material facts necessary for appreciation of the controversy raised are that the respondent-workman was initially engaged on 1st August, 1989 on daily wages basis. On an industrial dispute raised with reference to termination of employment on 31st July, 1990, the matter was settled before the Conciliation Officer on 30th April, 1991 and the respondent-workman was reinstated on 1st May 1991. The employment of the respondent-workman was again terminated on 1st February, 1995. The respondent-workman again raised an industrial dispute leading to a reference dated 23rd March, 1998, by the State Government in exercise of powers under Section 10(1)(c) read with Section 12(5) of the Industrial Disputes Act, 1947 (for short, the Act of 1947"). The Labour Court-II, Jaipur, taking into consideration, the statement of claim, response filed by the petitioners/employers, evidence adduced by the parties,

and upon hearing the representatives, made the impugned award as aforesaid, of which the petitioners are aggrieved of.

3. Learned counsel for the petitioners/employers, reiterating the pleaded facts and grounds of the writ application, emphasized that the impugned award is against the facts, circumstances and law. Further, the impugned award has been made contrary to the principle of natural justice for the petitioners/employers were not afforded ample opportunity to produce the relevant evidence by the Labour Court-II, Jaipur.

4. Moreover, since the respondent-workman left the job on his own violation, after he got married, he was not entitled to any relief. The Labour Court-II, Jaipur, committed gross illegality for the mandate of Section 25-F of the Act of 1947 is not attracted in a situation where the respondent-workman himself abandoned the job. The respondent-workman is also not entitled to reinstatement with 50% back wages for he was gainfully employed elsewhere during the relevant period.

5. I have heard the learned counsel for the petitioners/employers and with his assistance perused the materials available on record.

6. Indisputably, the respondent-workman was engaged on 1st August, 1989 on daily wages basis and his employment was terminated on 31st March, 1995. On an industrial dispute raised earlier while he was retrenched on 31st July, 1990; the matter was settled between the parties before the Conciliation Officer on 30th April 1991 and the respondent-workman was reinstated and continued in employment up to 31st March, 1995; until his employment was again terminated on 1st April 1995, without notice or notice pay and retrenchment compensation.

7. The respondent-workman specifically pleaded and proved before the Labour Court-II, Jaipur, that he was not paid the wages for the month of February and March, 1995, and therefore, moved an application claiming the wages and in turn his employment was put to an end.

8. The relevant record which reflected the attendance of the respondent-workman was also called for. Ex. D.W. 1 to D.W. 15 were brought on record, in evidence, on behalf of the respondent-workman.

9. Several opportunities, to adduce evidence, were accorded to the petitioners/employers, but no evidence was led and ultimately vide order dated 16th March, 2010, the opportunity to produce the evidence, on behalf of the petitioners/employers, was closed.

10. From the materials available on record, it is further reflected that an application seeking permission, for an opportunity to adduce evidence, was also filed on behalf of the petitioners/employers, but the same was dismissed as not pressed. No steps were taken by the petitioners/employers to adduce evidence in support of their stand, in the response to the statement of claim and to counter the evidence produced on behalf of the respondent-workman.

11. The Labour Court-II, Jaipur has recorded a specific finding to the effect that the termination of employment of the respondent-workman on 31st July, 1990, was settled between the parties with the stipulation that the respondent-workman would not be entitled to any back wages w.e.f. 31st July, 1990, until the date of settlement i.e. 30th April, 1991, and would join the duties on 1st May, 1991. However, continuity of service would be maintained. The respondent-workman, accepting those terms and conditions, joined his duties on 1st May, 1991, but again his employment was put to an end on 1st February, 1995, by the petitioners/employers.

12. The issue whether the respondent-workman left the job on his own violation or his employment was terminated by the petitioners/employers; has been dealt with by the Labour Court-II, Jaipur, considering the pleaded facts of the statement of claim, response filed by the petitioners/employers to the statement of claim and evidence adduced by the parties. Upon hearing the representatives of the contesting parties, after a proper analysis of the evidence and material available on record the Labour Court arrived at the finding that the respondent-workman did claim the wages for the month of February and March, 1995, and in turn the employment of the respondent-workman was put to an end w.e.f. 31st March, 1995. No evidence was led on behalf of the petitioners/employers even after according ample opportunity to do so. Moreover, the application seeking permission to adduce evidence, subsequently filed on 7th March, 2011, was dismissed as "not pressed".

13. In the face of findings arrived at by the Labour Court-II, Jaipur, the assailment of the impugned award for not according ample opportunity of defence to the petitioners/employers, is absolutely baseless and without any factual foundation rather contrary to the material available on record. There is not even an iota of evidence or any circumstance on the basis of which it could be inferred that the petitioners/employers were deprived of the opportunity of hearing and/or to lead evidence resulting into violation of the cardinal principle of natural justice. The argument is absolutely misconceived, misleading and contrary to their own application seeking permission to produce evidence and not pressing the same.

14. The respondent-workman in his statement of claim and by the evidence adduced, specifically indicated the names of junior persons, who were retained while terminating the employment of the respondent-workman. Smt. Pushpa, Chandmal Saini, Bajrang Lal and Prahlad, were the candidates, who were specifically named and pointed out as juniors. The statement made was not disputed by the petitioners/employers.

15. From the pleaded facts, evidence adduced and findings arrived at by the Labour Court-II, Jaipur; the respondent-workman successfully proved the fact of his "retrenchment", in violation of mandate of Section 25-F of the Act of 1947, as well as 25-G and H.

16. In the case of B.S.N.L. Vs. Bhurumal, (2014) 2 ABR 235 : (2014) 1 AD 467 : AIR 2014 SC 1188 : (2014) 140 FLR 901 : (2013) 15 JT 611 : (2014) LabIC 1093 : (2014) 1 LLJ 260 : (2013) 15 SCALE 131 : (2014) 3 SCJ 195 : (2014) 3 SCT 49 : (2014) 1 SLJ 293 , while reiterating the proposition of law that termination of service if found illegal would not lead to reinstatement with full back wages mechanically in all cases. However, their Lordship entered a caveat for there may be cases where termination of a daily wage worker is found to be illegal, on the ground it was resorted to as an unfair labour practice or in violation of the principle of "last come first go". The Hon"ble Apex Court of the land further observed that there may also be a situation where persons junior to the retrenched workman might have been regularized under some policy but the services of the concerned workman were terminated. In such a situation, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation in lieu of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases, for the reasons stated to be in writing, such a relief can be denied.

17. Again, in the case of Jasmer Singh Vs. State of Haryana(2015) 2 AD 215 : (2015) 144 FLR 837 : (2015) 1 SCALE 360 : (2015) 4 SCC 458 : (2015) 2 SCJ 391 : (2015) 2 SCT 91 : (2015) 1 SLJ 389 ; the Hon"ble Supreme Court on a survey of earlier opinions observed that the injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. At this juncture, it will be relevant to consider the observations, made in paragraph No. 12 and 13, which reads thus:

"12. The said Award is challenged by the Respondent-employer in Civil Writ Petition No. 9532 of 2001 urging untenable contentions. In the said writ petition, the High Court exercised its jurisdiction contrary to the judgment of this Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, AIR 1964 SC 477 : (1964) 5 SCR 64 and also the judgment, which was referred to in the case of Harjinder Singh Vs. Punjab State Warehousing Corporation, AIR 2010 SC 1116 : (2010) 124 FLR 700 : (2010) 1 JT 598 : (2010) 2 LLJ 277 : (2010) 1 SCALE 613 : (2010) 3 SCC 192 : (2010) 1 SCC(L&S) 1146 : (2010) 1 SCR 591 : (2010) 2 SLR 15 . The learned Counsel for the Appellant has aptly placed reliance upon another judgment of Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana), (2010) 125 FLR 629 : (2010) 4 JT 229 : (2010) 4 SCALE 203 : (2010) 5 SCC 497 : (2010) 3 SLR 663 in support of her legal submissions that both the learned Single Judge and the Division Bench of the High Court have erred in exercising their supervisory power Under Article 227 of the Constitution of India in setting aside the finding of fact recorded on the facts based on the pleadings and evidence on record.

Further in the case of Harjinder Singh v. Punjab State Warehousing Corporation (supra), wherein this Court opined on the exercise of power by the High Court Under Article 227 of the Constitution of India as under:

21. Before concluding, we consider it necessary to observe that while exercising jurisdiction Under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to sub-serve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J., opined that:

the concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State" *The State of Mysore Vs. The Workers of Gold Mines*, AIR 1958 SC 923 : (1958) 2 LLJ 479 : (1959) 1 SCR 895 .

13. In view of the aforesaid statement of law the setting aside of the Award by the learned Single Judge which is affirmed by the Division Bench is vitiated in law as the same is contrary to the judgments of this Court referred to supra, upon which the learned Counsel for the Appellant has rightly placed reliance in support of the correctness of the finding recorded by the labour court on the various issues, particularly the finding of fact that the workman has worked for more than 240 days in a calendar year and termination order is void ab initio in law for non-compliance of Sections 25-F (Clauses (a) and (b)), 25-G and 25-H of the Act, therefore, the Industrial Tribunal-cum-Labour Court has rightly set aside the order of termination of services of the workman and awarded the order of reinstatement with continuity of service and full back wages. The said relief in favour of the Appellant-workman, particularly the full back wages is supported by the legal principles laid down by this Court in the case of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others*, (2013) 6 ABR 304 : (2013) 10 AD 89 : (2013) 139 FLR 541 : (2013) LabIC 4249 : (2013) 4 LLN 417 : (2013) 11 SCALE 268 : (2013) 10 SCC 324 : (2013) 4 SCT 716 , wherein the Division Bench of this Court to which one of us was a member, after considering three-Judge Bench decision, has held that if the order of termination is void ab initio, the workman is entitled to full back wages. The relevant para of the decision is extracted hereunder:

22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up.

Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

18. In the case of Transmission Corporation of Andhra Pradesh Limited, Hyderabad v. Sayed Ahmed Siddiqui; 2007 (15) SCC 763, as referred to and relied upon by the learned counsel for the petitioners/employers, the Hon'ble Supreme Court examined the matter in the back drop of regulation 28(3) of the A.P. State Electricity Board Service Regulations Part 1, which contemplated a deemed resignation from service in a case where any employee of the Board, who was found guilty of unauthorized absence from duty for continuous period of one year. In the instant case, the abandonment of the of the employment is an issue which has been decided against the petitioners/employers. No material was produced before the Labour Court to sustain the stand that the respondent-workman abandoned the job. Hence, the facts of the case at hand and the facts of the case of Transmission Corporation of Andhra Pradesh Limited, Hyderabad (supra), are entirely different and distinguishable. The opinion of the case aforesaid, has no application to the facts of this case.

19. Learned counsel for the petitioners/employers has also placed reliance on the opinion of the Hon'ble Supreme Court in the case of Vijay S. Sathaye Vs. Indian Airlines Ltd. and Others, (2014) 8 AD 164 : (2013) 139 FLR 988 : (2014) LabIC 1505 : (2014) 3 LLN 40 : (2013) 11 SCALE 386 : (2013) 10 SCC 253 : (2014) 1 SCC(L&S) 760 : (2014) 1 SCT 659 : (2013) 3 SLJ 508 . At the outset, it may be stated that the case referred to and relied upon, has no application to the facts of the present case. The Hon'ble Supreme Court dealt with an issue of abandonment of service in the case of Vijay S. Sathaye (supra). The proposition propounded by the Hon'ble Supreme Court is applicable only in the event when the fact of abandonment was proved by the petitioners/employers before the Labour Court.

20. For the reasons and discussions hereinabove, the writ petition is without any

substance and lacks in merit, and therefore, deserves to be dismissed.

21. Ordered accordingly.

22. No costs.