

(2020) 05 MP CK 0095
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5111 Of 2014

Gajra Differential Gears Ltd.

APPELLANT

Vs

Arif Sheikh

RESPONDENT

Date of Decision : 19-05-2020

Acts Referred:

Madhya Pradesh Industrial Relations Act, 1960 — Section 31(3), 65
Industrial Disputes Act, 1947 — Section 25B, 25F, 25G, 25H
Constitution Of India, 1950 — Article 12

Citation : (2020) 05 MP CK 0095

Hon'ble Judges : S. C. Sharma, J; Shailendra Shukla, J

Bench : Division Bench

Advocate : G.S. Patwardhan, B.M. Gehlod

Final Decision : Disposed Of

Judgement

1. Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order, they are being disposed of by this Court. Facts of the Writ Petition No.5111/2014 are narrated hereunder.

2. The present petition is arising out of the award dated 06.03.2014 passed by the Industrial Court, Indore. The facts of the case reveal that the petitioner-company is a company registered under the Companies Act having manufacturing unit at Dewas.

3. The respondent before this Court was a casual employee working in the factory. He has worked w.e.f. 07.12.2003 to 31.05.2004 and as there was no need of any casual employee, he was not engaged beyond 31.05.2004 and in those circumstances, by invoking the provisions as contained under Section 31(3) of M.P.I.R. Act, he has approached the labour court.

4. Before the labour court, the finding of facts has been arrived at that the workman in question has never worked for 240 days in a year and therefore, he

is not entitled for retrenchment compensation.

5. In spite of the aforesaid, the labour court vide order dated 03.06.2006 has allowed the application preferred by the employee. Against which, an appeal was preferred under Section 65 of MPIR Act. The workman has challenged the order passed by the labour court claiming back-wages. The industrial court vide order dated 18.04.2007 has dismissed both the appeals holding that compliance/application of Section 25(h) and the requirement of working 240 days is not required.

6. The present petitioner being aggrieved by the order passed by the labour court has preferred a writ petition i.e. W.P. No.2740/207 (s) and this Court vide order dated 27.09.2007 has allowed the writ petition and remanded the matter back to the labour court. Thereafter, the labour Court has again decided the issue that the workman was held entitled for reinstatement without back-wages vide order dated 09.04.2008. It is also pertinent to note that the present petitioner has also filed a miscellaneous civil case before this Court i.e. MCC No.300/2009, which was dismissed by this Court vide order dated 28.08.2009.

7. After the order was passed by the labour court, an appeal was preferred before the industrial tribunal and the appeal was dismissed on 06.03.2014 and the employer as well as the workman have challenged the order passed by the courts below.

8. The petitioner's contention is that the order passed by the labour court is bad in law as the workman has put in only 143 days w.e.f. 06.12.2003 to 07.06.2004. It was not a case of employment of other workman in place of present workman and as the workman has not put in 240 days, the question of paying retrenchment compensation does not arise and therefore, the order to the extent passed by the labour court as well as by the industrial court are bad in law.

9. On the other side, learned counsel for the workman has argued before this Court that the order passed by the labour Court as well as by the Industrial Court, to the extent backwages have not been paid, are bad in law.

10. Reliance has been placed upon a judgment delivered in the case of Jaipur Development Authority v/s Ramshai & Another reported in 2007 (1) SCC (L&S) 518.

11. This Court has carefully gone through the aforesaid judgment but the fact remains that the workman has worked from 07.12.2003 to 31.05.2004 i.e. only for a period of 143 days with the employer. He has undisputedly not at all worked for 240 days in a calendar year, he was not regularly appointed and he was not in the continuous service.

12. Section 25-B and 25-F of the Industrial Disputes Act, 1947 reads as under:-

25B. Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for

that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) ninety- five days, in the case of a workman employed below ground in a mine; and one hundred and twenty days, in any other case.

Explanation.-- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which--

(i) he has been laid- off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.]

25F. Conditions precedent to retrenchment of workmen.- 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--

(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation

which shall be equivalent to fifteen days' average pay 2 for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

13. The aforesaid statutory provisions of law make it very clear that a workman cannot be retrenched without following the provisions as contained under the Industrial Disputes Act, 1947, in case, he has worked for a period of 240 days in a calender year. In the present case, the workman has worked for a period of 143 days, and therefore, in the considered opinion of this Court at this juncture, keeping in view the impugned order dated 06.03.2014, the question of directing reinstatement does not arise. However, in light of judgment relied upon in the case of Jaipur Development Authority (supra), he shall be entitled for a sum of Rs.1,00,000/- as compensation, as has been paid by the Hon'ble Supreme Court. Paragrpah - 28 of the judgment delivered in the case of Jaipur Development Authority (supra) reads as under:-

28. We would, therefore, proceed on the basis that there had been a violation of Sections 25G and 25H of the Act, but, the same by itself, in our opinion, would not mean that the Labour Court should have passed an Award of re-instatement with entire back wages. This Court time and again has held that the jurisdiction under Section 11A must be exercised judiciously. The workman must be employed by a State within the meaning of Article 12 of the Constitution of India, having regard to the doctrine of public employment. It is also required to recruit employees in terms of the provisions of the rules for recruitment framed by it. Respondent had not regularly served Appellant. The job was not of perennial nature. There was nothing to show that he, when his services were terminated any person who was junior to him in the same category, had been retained. His services were dispensed with as early as in 1987. It would not be proper to direct his reinstatement with back wages. We, therefore, are of the opinion that interest of justice would be sub-served if instead and in place of re- instatement of his services, a sum of Rs.75,000/- is awarded to Respondent by way of compensation as has been done by this Court in a number of its judgments. [See State of Rajasthan & Anr. vs. Ghyan Chand (Civil Appeal No.3214 of 2006, disposed of on 28th July, 2006.

14. In the aforesaid case, the Hon'ble Supreme Court after taking into account Section 25-G and 25-H of the Industrial Disputes Act, 1947 has directed payment of compensation to the tune of Rs.75,000/-, and therefore, the interest of justice would be subserved by awarding compensation to the tune of Rs.1,00,000/- to the workman in question.

15. Resultantly, the employer shall pay Rs.1,00,000/- to the workman in question within a period of 6 months from the date of receipt of certified copy of this order.

16. With the aforesaid, the present Writ Petition (W.P. No.5111/2014) stands disposed of.

In light of the aforesaid order, the connected writ petition i.e. W.P. No.4371/2014 also stands disposed of.

Certified copy, as per rules.