
(1992) 11 AHC CK 0071
In the Allahabad High Court
Case No : C.M.W.P. No. 17677 of 1985

Hindustan Aeronautics Ltd.	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 30-11-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 2 LLJ 340 : (1993) 1 UPLBEC 710

Hon'ble Judges : D.S. Sinha, J

Bench : Single Bench

Advocate : Bharati Sapru and Sudhir Chandra, for the Appellant; S.B. Pandey and V.K. Tewari, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—By means of this petition, under Article 226 of the Constitution of India, M/s. Hindustan Aeronautics Limited, the petitioner, seeks to challenge the award dated May 28, 1985 rendered by the Labour Court IV, Kanpur, the respondent No. 2, upon a reference by the Government of Uttar Pradesh u/s 4-K of the U.P. Industrial Disputes Act, 1947 hereinafter called the Act.

2. Heard Sri Sudhir Chandra, learned Senior Advocate, appearing for the petitioner and Sri V.K. Tewari, learned counsel representing the workmen Sri Vishwa Nath Singh, the respondent No.3.

3. The respondent No. 3 was charge-sheeted for certain misconduct. On an ex parte enquiry the charge against him was found to be proved. Consequently his services were dispensed with effect from February 1, 1982. This led to the industrial dispute which culminated into the impugned award. By the impugned award the respondent No. 2 has held the termination of the services of the respondent No. 3 to be neither proper nor legal and directed his reinstatement with incidental benefits.

4. The sole contention raised by Sri Sudhir Chandra, learned senior Advocate,

appearing for the petitioner, is that the respondent No. 2 erred in law in directing reinstatement of the respondent No. 3 ignoring the stand taken by the petitioner that it has lost confidence in the respondent No. 3.

To buttress his contention Sri Sudhir Chandra places reliance on the two decisions of the Hon"ble Supreme Court of India rendered in Chandu Lal Vs. Management of Pan American World Airways Inc., and Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another,

Paragraph 9 of the judgment in the case of Chandu Lal v. The Management of Pan American World Airways Ince. (supra) which is relevant in the context, reads thus: (p. 183)

"Ordinarily, when the order of termination is quashed a declaration follows that the workman continues to be in employment and is, therefore, reinstated in service with full back wages as was held by this Court in Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, . This Court held in Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another, , that u/s 11-A of the Act advisedly wide discretion has been vetoed in the Tribunal in the matter of awarding relief according to circumstances of the case. In Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, this Court has held that the Labour Court has discretion to award compensation instead of reinstatement if the circumstances of a particular case make reinstatement inexpedient or improper. In this case it has been the stand of the respondent that the management had lost confidence in the appellant and there has been some pleading about the importance of the role of confidence in the business set-up of the respondent. Without examining the tenability of the stand on loss of confidence as a defence to reinstatement and accepting the allegations advanced by the respondent that there has been loss of confidence, we are of the view that while the termination of service of the appellant is held to be bad, he may not be reinstated in service, On the other hand he should be adequately compensated."

5. In the judgment rendered in the matter of Workmen of Bharat Fritz Werner (P) Ltd. v. Bharat Fritz Werner (P), Ltd., (supra) paragraphs 18 and 20 deserve notice and as such are extracted below: (pp. 233, 234)

"18. Ever since the decision of the Federal 2 Court in Western India Automobile Association v. Industrial Tribunal Bombay 1949 LLJ 245 the settled position in law is that the Industrial Tribunal has the jurisdiction to direct reinstatement in appropriate cases. In a case of wrongful dismissal the normal rule adopted in industrial adjudication is to order reinstatement. There are, however, exceptions to this rule and even when it is found that the dismissal was wrongful the workman has been denied reinstatement for the reason that it would not be expedient to direct reinstatement."

"21. Reinstatement has not been considered as either desirable or expedient in certain cases where there had been strained relations between the employer and the employee, when the post held by the aggrieved employee had been one of

trust and confidence, or when, though dismissal or discharge was unsustainable owing to some infirmity in the impugned order, the employee was found to have been guilty of an activity subversive or prejudicial to the interests of the industry, Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, . In case where it is felt that it will not be desirable or expedient to direct reinstatement the workman is compensated monetarily by awarding compensation in lieu of reinstatement for loss of future employment."

From the above noted two judgments the following legal position emerges:

(a) Ordinarily, on quashing of the order of termination a declaration that the workman continues to be in service coupled with direction to reinstate him with full back wages ought to be made.

(b) Labour Court/Tribunal is vested with wide discretion in the matter of granting relief keeping in view the facts and circumstances of the case. And in exercise of its wide discretion it may award compensation in lieu of reinstatement if on the facts and circumstances of the case reinstatement is found undesirable and inappropriate.

(c) Strained relations between the employer and the employee holding a post of trust and confidence or proved involvement of the employee in an activity subversive or detrimental to the interest of the industry may constitute a valid ground for departing from the normal rule of ordering reinstatement of a wrongfully dismissed workman and awarding compensation in lieu thereof.

6. In the case of Chandu Lal (supra) the order of termination itself was founded on loss of confidence and there was pleading about the significance of the role of confidence in the industry run by the employer. The Hon"ble Supreme Court, without examining the tenability of the plea of loss of confidence as a defence to reinstatement, accepted the allegations of the employer that there has been loss of confidence and ordered payment of compensation to the workman instead of reinstatement.

7. In the present case the order of termination of the services of the respondent No. 3 is not grounded on loss of confidence. No pleading about the importance of the role of confidence in the industry of the petitioner was set up. Only a feeble suggestion by way of defence by reinstatement was made in paragraph 29 of the rejoinder-statement filed before the respondent No. 2. It was pleaded that the respondent No. 3 was not entitled to reinstatement in view of grave misconduct committed by him and the management had lost confidence in him. Perfunctory pleading of the employer regarding loss of confidence in the workman without factual foundation cannot furnish a tenable ground for departing from the normal rule of reinstatement of wrongfully dismissed workman.

8. In the petition before this Court there is not even a whisper that the plea of loss of confidence, referred to in paragraph 29 of the rejoinder-statement, was pressed and not considered by the respondent No. 2. A reference has been made

by the learned counsel for the petitioner to the averments made in paragraph 5 of the supplementary affidavit filed on behalf of the petitioner. What is stated in paragraph 5 is that the petitioner has lost faith and confidence in the respondent No. 3 and reinstatement would interfere with the management's right to maintain discipline in the premises and create a bad precedent for future. Here also there is no suggestion that the plea of loss of faith and confidence was pressed before the respondent No. 2 and it was not considered. If a plea is not pressed its non-consideration by the Labour Court/Tribunal cannot be made a ground of attack against the award.

9. The finding of the Labour Court is that the charges levelled against the respondent No. 3 were not established and they were levelled against him with a view to victimize him. On this finding the Labour Court had rightly held the termination of the services of the respondent No. 3 to be improper and illegal and in directing his reinstatement with incidental benefits it did not commit any such error which may warrant interference by this Court under Article 226 of the Constitution of India.

10. For the foregoing reasons, the petition fails and is hereby dismissed. There will be no order as to costs.