
(2015) 02 RAJ CK 0181

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 1861 of 2014

Hindustan Petroleum Corporation Ltd.

APPELLANT

Vs

Rajendra Kumar Sharma and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2015) 02 RAJ CK 0181

Hon'ble Judges : Ajay Rastogi, J;Prakash Gupta, J

Bench : Division Bench

Advocate : N.K. Maloo, Senior Advocate and V.S. Yadav, for the Appellant; S.S. Shekhawat, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Instant appeal has been preferred against interim order passed by learned Single Judge in the pending writ petition dt. 15.10.2014.

2. The brief facts which are relevant for disposal of the instant intra-court appeal are that the respondent workman was initially appointed as Clerk-cum-Typist on 15.10.1992 on daily wages basis and worked upto 30.04.1994 and his services were terminated w.e.f. 01.05.1994 and that came to be challenged by raising an industrial dispute under the Industrial Disputes Act, 1947 ("Act, 1947") and after hearing the parties the learned Tribunal answered the reference and while holding the action of the appellant to be in violation of Sec. 25F of the Act, 1947 but in lieu of reinstatement awarded compensation of Rs. 15,000/- vide its Award dt. 28.04.1998 and that came to be challenged before the learned Single Judge in a writ petition at the instance of the respondent workman and that finally came to be allowed holding that he was entitled for reinstatement with continuity of service with 50% back wages, vide order dt. 15.01.2003 and that was assailed by filing special appeal at the instance of the present appellant and initially the order in respect to reinstatement passed by the learned Single Judge dt. 15.01.2003 was made subject to final decision of the pending appeal and as

regards 50% back wages to that extent it was kept in abeyance. However, the special appeal was finally decided vide order dt. 19.07.2006 and it was observed that since the employee has been reinstated on the basis of interim order, his reinstatement was confirmed but the order of the learned Single Judge in respect of 50% back wages dt. 15.01.2003 to that extent it was set aside.

3. However, his services again came to be terminated vide order dt. 31.05.2007 and it was pleaded by the appellant employer and as alleged that it was after due compliance of Sec. 25F of the Act, 1947 and that became the subject matter of challenge in writ petition No. 5147/2007 in which there was no stay granted by the learned Single Judge but the respondent workman was reinstated pending writ petition vide order dt. 09.07.2009 keeping the rights of the employer reserved pending final decision/outcome of the writ petition No. 5147/2007. After the workman was reinstated pending writ petition No. 5147/2007 without prejudice to their rights, application was filed seeking amendment in the writ petition and prayed that he may be granted continuity in service, regular pay-scale, arrears from 10.04.2009 and that amendment application was opposed by the appellant but the learned Single Judge after hearing the parties allowed the amendment application vide its order dt. 11.12.2012 and that was again the subject matter of challenge at the instance of the present appellant by filing D.B. Special Appeal (Writ) No. 346/2013 which came to be dismissed by the Division Bench by a detailed order with cost of Rs. 5,000/-dt. 18.04.2013.

4. The appellant thereafter again terminated services of the respondent workman as alleged after due compliance of Sec. 25F of the Act, 1947 vide order dt. 21.02.2014 and since order was passed pending writ petition, apart from stay application, the respondent workman filed second application seeking amendment in the writ petition assailing subsequent order of termination dt. 21.02.2014 and that application came to be allowed vide order dt. 18.08.2014 which was again made a subject matter of challenge at the instance of the present appellant by filing D.B. Special Appeal No. 1478/2014 and that came to be dismissed vide order dt. 07.10.2014.

5. It is informed to this Court that after the permission for seeking amendment in the writ petition was granted by the learned Single Judge vide order dt. 18.08.2014, reply has been filed by the appellant and at this stage when the matter came up before the Court on stay application prayed for as regards the order of termination dt. 21.02.2014 during pendency of the writ petition, taking overall view of the matter the learned Single Judge stayed future operation of the later order of termination dt. 21.02.2014 and directed the appellant to reinstate and continue him in service during pendency of writ petition No. 5147/2007 vide its order dt. 15.10.2014 which is the subject matter of challenge in the instant intra-court appeal.

6. We have noticed the facts in chronological way just to show that the workman who is not in a bargaining position but still fighting for his legitimate cause since 1994 and after having been reinstated apart from the other facts referred to

supra during pendency of proceedings by the appellant vide order dt. 09.07.2009 without prejudice to their rights pending writ petition No. 5147/2007 and it is still pending before the learned Single Judge the matter was never reviewed and it is not the case of the appellant that during pendency of proceedings his services are not satisfactory after reinstated on 09.07.2009 and nothing is pointed out or came on record to indicate the justification if any for passing the later order dt. 21.02.2014 terminating his services after he has served for almost five years and every time whenever misc. application came to be preferred by the workman seeking amendment, every order passed in the proceedings came to be challenged by the appellant by filing special appeal and as we have already referred regarding the special appeals preferred at the instance of the appellant came to be dismissed by detailed orders, taking note of overall facts and circumstances in a given case the learned Single Judge arrived to a prima facie conclusion that the order of termination dt. 21.02.2014 deserves to be kept in abeyance and he deserves to be allowed to continue in service on the post held by him. Sometimes it becomes necessary in the peculiar facts to maintain status-quo ante in the interest of justice without expressing any opinion on merits, we do find that the workman deserves indulgence which the learned Single Judge has taken note of and granted under its order impugned dt. 15.10.2014 and in the present appeal which has been preferred by the appellant employer, his bone of contention is that by interim order dt. 15.10.2014 the learned Single Judge has granted final relief at the interim stage which is not sustainable in law and in support of submission placed reliance upon the judgments in State of U.P. and Others Vs. Sandeep Kumar Balmiki and Others, (2009) 123 FLR 1046 : (2010) 1 LLJ 10 : (2009) 17 SCC 555 and State of Uttar Pradesh and Others Vs. Ram Sukhi Devi, AIR 2005 SC 284 : (2005) 1 ESC 75 : (2004) 8 JT 264 : (2005) 1 LLJ 505 : (2004) 8 SCALE 536 : (2005) 9 SCC 733 : (2005) SCC(L&S) 560 : (2005) 1 SLJ 349 : (2004) AIRSCW 6955 and submits that Hon"ble Apex Court has always deprecated the practice where the interim order passed in pending writ petition tantamounts to final relief prayed for and submits that in light of the judgments of the Apex Court, referred to supra, order of the learned Single Judge is not sustainable in law and deserves to be quashed and set aside.

7. Counsel for respondent on the other hand while supporting order impugned herein of the learned Single Judge submits that the workman is fighting against the almighty for his legitimate right since 1994 for his reinstatement and on one fine morning may be on account of change of management or the concerned officer his services time and again came to be terminated vide order dt. 21.02.2014 and the amendment application which he filed that was allowed against which appeal came to be preferred by the appellant and that too was dismissed by the Division Bench of this Court vide judgment dt. 07.10.2014 and the order which came to be passed on stay application dt. 15.10.2014 that has again made a subject matter of challenge in the instant intra court appeal.

8. Counsel further submits that ordinarily what is being taken note of in the peculiar facts and circumstances by the learned Single Judge will alone serve the

purpose and if interim protection is not granted to him he will be deprived of his livelihood and being the only bread winner, the whole of the family will be put to starvation and even in terms of order of the learned Single Judge impugned in the instant proceedings dt. 15.10.2014 he has not been reinstated so far and submits that the order passed by the learned Single Judge does not require any interference and the present appeal which has been filed that too pending writ petition to be examined by the learned Single Judge where the parties can address on merits, the present appeal deserves to be dismissed.

9. It is true that the interim protection in the given circumstances ordinarily is not to be granted at the interim stage which amounts to a final relief but at the same time in the peculiar facts and circumstances of the case some time it becomes imperative to protect rights of the party pending proceedings at the interim stage but that is always open to be examined in the given facts of each case.

10. In *State of U.P. and Others Vs. Sandeep Kumar Balmiki and Others*, (2009) 123 FLR 1046 : (2010) 1 LLJ 10 : (2009) 17 SCC 555, it was a case where the order of termination was challenged and interim protection regarding stay of the termination order was granted by the learned Single Judge and counter affidavit was yet to be filed by the respondents justifying their action of terminating services passed by the authority and at this stage when the matter came to be examined by the Apex Court, it was observed that grant of final relief at the interim stage may not be legally sustainable.

11. In *State of Uttar Pradesh and Others Vs. Ram Sukhi Devi*, AIR 2005 SC 284 : (2005) 1 ESC 75 : (2004) 8 JT 264 : (2005) 1 LLJ 505 : (2004) 8 SCALE 536 : (2005) 9 SCC 733 : (2005) SCC(L&S) 560 : (2005) 1 SLJ 349 : (2004) AIRSCW 6955, it was a case seeking appointment by dependant of a deceased employee who died while in service but there was a clear rider under the Scheme of Rules that benefit could not be extended to a dependant of part time employee and the deceased employee was a part time tubewell operator and still order was passed at the interim stage by the learned Single Judge of the Court directing the competent authorities to consider the writ petitioner's claim of giving compassionate appointment under the Rules ignoring government order which the Division Bench also affirmed and when the matter came up before the Apex Court it was observed that where the Rule clearly prohibits to consider dependant of a part time employee under the scheme of Rules, 1974 seeking compassionate appointment, pending proceedings directing the employer to give compassionate appointment to a dependant of deceased employee cannot be appreciated since such relief tantamount to final relief at the interim stage which was deprecated by the Apex Court.

12. At the outset we too are of the view that if the final relief prayed for is granted at the interim stage pending writ petition the writ petition automatically stands allowed without the parties being permitted to place their respective defence at the time of final hearing of the writ petition and that is normally to be

adhered to but there cannot be a straight jacket formula which could be made applicable in rem in all the cases of alike nature coming up before the Court for consideration and each case has to be examined on its own facts.

13. In the instant case we find that the respondent workman was initially awarded compensation in lieu of reinstatement by an award dt. 28.04.1998 and after intervention of this Court the award was modified and he was allowed to be reinstated with 50% back wages vide order dt. 15.01.2003 and that was subject matter of challenge in the special appeal and the Division Bench in appeal while upholding reinstatement, the order in respect to 50% back wages awarded by the learned Single Judge under order impugned was set aside vide judgment dt. 19.07.2006 and he was reinstated pending appeal vide order dt. 13.03.2003. However, his services again came to be terminated vide order dt. 31.05.2007 and that was the subject matter of challenge in the pending writ petition No. 5147/2007 and there was no interim order granted by the Court but he was reinstated by the appellant without prejudice to their rights pending writ petition No. 5147/2007 vide order dt. 09.07.2009 and after having worked for almost five years again his services came to be terminated by later order dt. 21.02.2014 and the writ petition is still pending to be examined on merits by the learned Single Judge and at this stage when the respondent workman came up with stay application after the permission for amendment was granted and confirmed in the special appeal preferred at the instance of the appellant, under these facts and circumstances the learned Single Judge took a serious note of the factual matrix brought to his notice and arrived to a conclusion that it will be just and proper to grant interim protection to the workman and accordingly stayed operation of the order of termination dt. 21.02.2014 and directed the appellant to reinstate the workman and allow him to continue on the post held by him and under the peculiar facts and circumstances brought on record and without expressing any opinion on merits we too are of the view that the interim protection was imperative if would not have been granted to the respondent workman and being a bread winner of the family would have been deprived of his livelihood and when there is no allegation against him of any kind while discharging his duties since 09.07.2009 certainly some interim protection was needed to protect his rights and this what the learned Single Judge in exercise of his judicious discretion considered and granted interim protection in the facts and circumstances of the instant case and we are of the view that the interim order passed by the learned Single Judge impugned in the proceedings is always open to be examined in the pending proceedings and at least does not call for any interference by this Court in the instant intra court appeal.

14. As informed to this Court, the pleadings are complete and reply to the second amended petition has been filed by the appellant.

15. In the interest of justice we consider it appropriate to observe that if any party makes request before the learned Single Judge to expedite hearing of the pending writ petition may grant indulgence and expedite hearing of the writ

petition. It is made clear that what is being observed by this Court is only for the purpose of disposal of the instant intra court appeal and it is always open to the parties to address before the learned Single Judge in the pending proceedings on merits.

16. Consequently, in our considered view the appeal is devoid of merit and accordingly deserves to be dismissed.