

(1999) 10 DEL CK 0002

In the Delhi High Court

Case No : Regular First Appeal 23 of 1989

I.B.P. Company Ltd.

APPELLANT

Vs

B.S. Bharti

RESPONDENT

Date of Decision : 26-10-1999

Acts Referred:

Citation : (1999) 6 AD 551 : (1999) 82 DLT 334 : (1999) 51 DRJ 541 : (2000) 1 LLJ 682

Hon'ble Judges : Surinder Kumar Aggarwal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. V.N. Kaura, for the Appellant; Mr. L.D. Adhlakha, for the Respondent

Judgement

S.K. Agarwal, J.—This appeal is directed against the judgment and decree dated 19th November, 1988 passed by the court of Ms. Kamlesh Sabharwal, Sub Judge, Delhi declaring the order dated 24th January, 1974, terminating the service of the respondent / plaintiff by the appellant/ defendant, to be illegal and without jurisdiction and holding the respondent to be in continuous service entitled to full salary and other benefits. A decree of Rs. 10,993.53 was also passed against the appellants towards claim of arrears of salary, TA Bills and bonus etc.

2. Brief facts are that the respondent filed a suit alleging therein that the appellant is a Government undertaking having more than one hundred employees; Industrial Employment (Standing Order) Act, 1946 was applicable to the workmen employed in the company. Respondent joined at its IBP Depot, Shakur Basti, Delhi as a Fitter on 21st December, 1971 on daily basis at the rate of Rs. 15/- per day and continued to be in employment without break till 1973. He was not given the regular scale because of his union activities. Appellant company started interviews to make appointments of filling in regular scale of on 2.4.73; when union protested he was given appointment letter dated 23rd April, 1973, but was put under probation for a period of six months, which expired on 25th October, 1973; thereafter instead of making him permanent he was issued

another letter dated 31st October, 1973 illegally extending his period of probation period for three months, and ultimately his services were terminated vide letter dated 24th January, 1974 in violation of the statutory rules governing his service conditions; that the said termination order, was a nullity and that he continued to be in employment of the appellant. He claimed Rs. 8000/- as wages from 24th January, 1974 to 23rd September, 1974 at the rate of Rs. 400/- per month; Rs. 433.53 towards T.A. bills for the said period; Rs. 960/- towards bonus at the rate of Rs. 20/- of the salary from 21st December, 1971 to 10th April, 1973 and Rs. 1600/- being bonus from 24th January, 1974 to 23rd September, 1974, totalling Rs. 10,953.53.

3. The appellant filed written statement denying the claim of the respondent inter alia, taking preliminary objection that the jurisdiction of the civil court was barred. On merits it was pleaded that the company registered under the Companies Act is not a statutory body; that Industrial Employment (Standing Orders), Act, 1946 was not applicable; that prior to 25.4.73 the respondent used to perform electrical and fitting work paid on the basis of the work basis ; and that after 23rd April, 73 the respondent was on probation and his services were terminated in accordance with law.

4. On the basis of the pleadings following issues were framed:-

"1. Whether the plaintiff has no civil right enforceable by a civil court as alleged in preliminary objections of the written statement? OPD

2. Whether the order of termination dated 24. 1. 1974 is illegal, malafide wrongful and against the principles of natural justice. If so its effect ? OPP.

3. Whether the plaintiff is entitled to the amounts claimed in the suit ? OPP

4. Relief"

5. Respondent examined himself in support of his case and proved several documents. Appellant also examined one of its officer in support of its case. On the basis of material on record trial court recorded findings against the appellant on all the issues.

6. We have heard Mr. V.N. Kaura, learned counsel for the appellant and Mr. L.D. Adlakha, learned counsel for the respondent and have been taken through the records.

7. Learned counsel for the appellant argued that the jurisdiction of the civil court to adjudicate upon the dispute raised by the respondent was barred. Learned counsel for the respondent while supporting the findings of the trial court argued that jurisdiction was not barred: termination order of the respondent was in fact retrenchment and that his services could not be terminated without following the pre- conditions mentioned u/s 25(F) of the Industrial Disputes Act. He relied upon the following observation of this court in Jai Kishan Vs. Delhi Transport Undertaking, .

"That the definition of the word "retrenchment" in Sec. 2(00) of the Industrial Disputes Act, 1947 is extremely wide, almost admitting of no exception. Whether may be the reason every retrenchment is a termination. For practical purposes retrenchment and termination are synonymous. The term retrenchment is not limited only to a case of discharge of surplus labour . It is true that in common parlance it refers to retrenchment of redundant work force. But the words " for any reason whatsoever " mean what they say.

"That a probationer is a workman, even though he is on trial. No one will deny this. A nine days employee, a daily worker, a substitute , were all held entitled to statutory protection because they had served for more than 240 days. A probationer is not in a worse position, He also puts his labour , on agreed terms, at the disposal of another. There is an employment relationship. The relationship of employment is that which exists between one who works and the person for whom he is working."

8. As noticed above, in the plaint the respondent alleged that he was in employment of the appellant company from 21. 12.71 till 1973 without any break, but was not given the regular scale; on protest by the union he was issued letter dated 23.4.73 vide which he was appointed on probation; the company could not appoint him on probation under the statutory rules of service and standing orders and that in any case on expiry of probation and period he became permanent employee of the appellant and his services stood confirmed; the period of probation could not be extended retrospectively and that the order of termination dated 24.1.74 was illegal.

9. Supreme Court in Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, , after examining several earlier decisions summarised the principles flowing from its earlier decisions on the question of jurisdiction of civil courts to entertain suits in such like matters :-

"(1) Where the dispute arises from general law of contract, i.e. where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an " industrial dispute" within the meaning of Section 2(K) or Section 2-A of the Industrial Disputes Act, 1947

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 which can be called " sister enactments" to Industrial Disputes Act and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(K) and Section 2-A of the Industrial Disputes Act

or where such enactment says such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex facie*. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is *ex facie* frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to parliament and the State Legislatures to make a provision enabling a workman to approach the Labour court/ Industrial Tribunal directly i.e. without the requirement of a reference by the Government - in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing orders framed and under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an Industrial dispute." (emphasis supplied)

10. The dispute raised by the respondent relate to the termination of his services to be void because of non-compliance of Section 25-F of the Industrial Disputes Act, 1947 and non-following of the provisions of the Industrial Employment (Standing Orders). Consequently he had prayed for declaration that he was in continuous service. As such the respondent's suit undoubtedly would be covered by the aforementioned principles 2 and 3. The Industrial Disputes Act and the Industrial Employment (Standing Orders) Act, 1946 do provide a forum for resolution of such disputes. Therefore the only remedy available to the

respondent was to approach the forums created by the Industrial Disputes Act. In fact the respondent himself admitted in his evidence that he had filed a case before the labour court for reinstatement and full backwages vide his statement of claim Ex. D1. He further admitted that the labour court held that the termination of his services was in accordance with law and that the dispute about his employment was held to be not fit for reference as the termination of his services was in terms of the appointment letter. Admittedly he did not challenge the said order in any court. He could have sought mandamus by filling a writ petition directing the State to refer the disputes for adjudication, the allegations made by the respondent regarding his retrenchment or termination is deemed to be an industrial dispute u/s 2(A) of the Industrial Disputes Act and the same could be adjudicated by the labour court.

11. In this regard the conclusion of the trial court is recorded in the impugned judgment as " if the defendant has failed to follow the provisions of law as referred above i.e. Section 25-F of the Industrial Disputes Act and the Industrial Employment Standing Orders Act, 1946, then the jurisdiction of the Civil court is not barred to hear the suits as the civil right accrues in favor of the effected person and he can get the same enforced through the Civil Court. Hence , this issue is decided against the defendant and in favor of the plaintiff." Such conclusion is clearly contrary to the authoritative pronouncements of the Apex Court and same is not sustainable in law and is hereby set aside.

12. Even on merits the trial court held that the order of termination dated 24.1.74 of the respondent was illegal and mala fide. it may be noticed that the respondent in his evidence admitted that he was appointed on probation vide letter dated 23.4.73 for a period of six months: that there were complaints about his work during the probation period and that the probation period was extended. He further admitted that he did not possess any document showing that he was in employment of the company since 31.12.71 and that he became regular employee on 25.10.73.

13. An employee appointed for six months continues as probationer even after the expiry of this period if his services are neither terminated nor confirmed after six months. Supreme Court in *The Management of the Express Newspapers (Private) Ltd. Madurai Vs. The Presiding Officer, Labour Court, Madurai and Another*, held as under :-

"At the end of the six months period the employer can either confirm him or terminate his services, because his service is found unsatisfactory. If no action is taken by the employer either by way of confirmation or way of termination, the employee continues to be in service as a probationer. There cannot be automatic termination of services of the employee after the expiry of the period of six months."

14. In view of the above, the findings of the trial court that order dated 24.1.74 terminating the services of the respondent was bad in law is also not sustainable

and is liable to be set aside.

15. With regard to the decretal amount of Rs. 10,993.53, which was paid to the respondent at the time of admission of this appeal, learned counsel for the appellant stated that the appellant would not press for the recovery of the said amount , even if the appeal is allowed.

16. In view of the above conclusion, the appeal is thus accepted, the impugned judgment and decree of the learned trial court is set aside. Consequently the suit of the respondent would stand dismissed. However, the amount of Rs. 10,993.53 already paid to the respondent would not be refunded to the appellant. No order as to costs.