
(2000) 09 BOM CK 0042
In the Bombay High Court
Case No : Writ Petition No. 290 of 1998

Jagatpal Dhuria

APPELLANT

Vs

Madhav Corporation and Others

RESPONDENT

Date of Decision : 05-09-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 11

Citation : (2001) 1 BomCR 375 : (2001) 89 FLR 90 : (2001) 3 LLJ 225 : (2000) 4 MhLj 836

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Judgement

D.Y. Chandrachud, J.—The petitioner seeks to challenge an Award of the Labour Court at Mumbai in a Reference u/s 10 of the Industrial Disputes Act, 1947. By the impugned Award, the Industrial Court has come to the conclusion that the services of the petitioner who had been employed by the first respondent from 1972 until June, 1982 came to be terminated unlawfully without following the procedure established under the law. Neither was any departmental enquiry held, nor was the petitioner paid any retrenchment compensation before his services came to be dispensed with. The Labour Court rejected the defence put forth on behalf of the employer that the petitioner had abandoned service. However, the Court has come to the conclusion that the petitioner would in the circumstances of the present case not be entitled to reinstatement and, consequently a direction has been issued to pay to the petitioner compensation in the amount of Rs. 35,000/ in lieu of reinstatement.

2. The Award of the Labour Court insofar as it declines the relief of reinstatement with back wages, is sought to be impugned in these proceedings under Article 226.

3. The case of the petitioner before the Labour Court, was that he was originally appointed by the first respondent in its establishment at Tamarind Lane, Mumbai, on an initial salary of Rs 100/- per month. He worked with first respondent until

January, 1978. Thereafter, he was transferred to the second respondent which is an Associate group company of the employer. It was the case of the workman that since June 1978 he was working in the godown of the company at Goregaon and that he was required to do clerical work of preparing challans and writing of the inward and outward registers. The last drawn salary of the workman in April, 1982 was Rs. 430/- per month. On May 10, 1982, the workman proceeded on leave which was duly sanctioned by the employer. He was on leave until May 22, 1982. On May 23, 1982 the workman reported back for work. Thereafter, after he rendered service of about nine days, his services were dispensed with on June 1, 1992 without any notice.

4. The Labour Court by its Award dated December 7, 1996, held that no case of abandonment of service had been established by the employer on the record before it. Similarly, the case that the petitioner had misappropriated any funds of the employer, was also not established. The termination had been carried out without holding any enquiry and without payment of retrenchment compensation to the workman u/s 25-F of the Act. Ordinarily, once the termination of service was held to be illegal the normal rule would be to award reinstatement with continuity of service and back wages. The Labour Court, however, held that there were valid reasons to make an exception in the present case, these being (i) though the workman had been removed from the service from June 1, 1982, he had not taken any legal steps against the employer till December 8, 1983; (ii) that in the letter addressed by the workman and his advocate, there was no claim for reinstatement and what was sought was only the payment of bonus and legal dues; (iii) the workman had, therefore, not himself raised a claim for reinstatement and back wages and (iv) that admittedly in the intervening period the workman had been gainfully employed in some temporary work. The Labour Court held that on the basis of the principle enunciated by the Supreme Court in *O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others*, would be entitled to a total compensation of 40 months wages in lieu of reinstatement, amounting to Rs. 17,200/-. The Labour Court felt that in the circumstances of the case, compensation of twice the amount, in the sum of Rs. 35,000/- would meet the ends of justice.

5. I have heard Shri Ganguli, learned advocate for the petitioner and Shri C.U. Singh for the respondents. The learned counsel appearing on behalf of the petitioner submitted that since the termination had been found to be illegal the petitioner ought to have been awarded reinstatement with continuity of service and back wages. On the other hand, the learned counsel appearing on behalf of the respondents laid emphasis on some of the relevant parts of the evidence and submitted that the circumstances on the record were sufficient to warrant a loss of confidence on the part of the employer. He, however, in fairness, stated that the respondent would leave it to this Court to determine reasonable compensation, should this Court be of the view that the compensation which had been awarded was inadequate. During the course of submissions, it was stated on behalf of the respondents that an amount of between Rs. 70,000/- and Rs.

75,000/- would be fair and reasonable which the respondent would be willing to pay.

6. In order to determine whether there were valid grounds for the Labour Court for deviating from the normal rule of awarding reinstatement with continuity of service and back wages, upon a finding that the termination of service was illegal and improper, some guidance can be obtained from the facts as they have emerged from the record. The petitioner was doing the work of cash collection at the godown of the respondent. The fact that there was a shortage discovered at the godown, is an admitted position, this having been deposed to in para 10 of the cross-examination of the workman. The petitioner worked until May 31, 1982. In para 8 of his cross-examination, the petitioner admits that on June 1, 1982, he had not gone to the godown. His explanation was that he did not go there because, according to him, the employer had levelled a false allegation against him. The case of the petitioner is that on June 1, 1982 he reported instead to the office of the employer at Calcutta House and met the proprietor. However, in para 9 of his cross-examination, he has admitted that on June 1, 1982 he was to report for duty at the Goregaon godown and that he did not report for duty there. In para 11 of his cross-examination, the petitioner admits that after June 1, 1982 he did not go to report for work. He admits that he never wrote any letter to the company requesting the employer to take him on the job.

7. One of the employees of the respondent, Shri Shukla who was looking after Accounts, in his evidence deposed to the fact that he had while, on leave received a telegram from the employer on June 6, 1982 informing him that the petitioner had misappropriated in relation to 200 bags of cement. He stated that he had thereafter enquired at the village of the petitioner but the petitioner was not found. On his return to Mumbai on June 15, 1982 he was informed by the proprietor that 200 bags of cement were missing and the petitioner had absconded.

8. The proprietor himself gave evidence before the Labour Court and he stated that on June 1, 1982 the petitioner had disappeared and the bags of cement were not tallying with the stock on the record. The brother of the petitioner thereafter reported to the office and pleaded with the employer not to take action against the petitioner and stated that he shall make good the value of the cement.

9. Having regard to the fact that a domestic enquiry was not held, the Labour Court was justified in coming to the conclusion that the termination of service was illegal. At the same time, the question as to whether, upon a finding, that the termination was illegal, reinstatement should be allowed in a case such as the present, has to be determined. Having regard to the evidence which has been adverted to earlier, there was, in my view, sufficient reason, for the employer to come to the conclusion that petitioner who had been in charge of cash collections at his godown, ought not to be reposed any faith in, due to the incident which had taken place. The plea that the circumstances of the case and

the conduct of the petitioner are such as to result in a loss of confidence is of substance. The finding of the Labour Court therefore that this was a case where reinstatement should not be ordered and that some compensation be paid in lieu thereof, cannot be faulted.

10. Mr. Ganguli, learned counsel appearing on behalf of the petitioner, however, submitted that the compensation which has been awarded by the Labour Court is inadequate. The submission was that the Labour Court proceeded merely on the basis of compensation as and by way of 40 months' wages in lieu of reinstatement. Apart from the compensation in lieu of the reinstatement, it was submitted, the workman should have been granted some compensation (sic) towards the loss of back wages from the date of the termination until the award of the Labour Court. In this regard, reliance was placed on a judgment of the Supreme Court in V.B. Rao Vs. Steel Authority of India Ltd., in which it was held that the entitlement of the employee in regard to the payment back wages cannot be completely denied in determining the compensation payable in lieu of reinstatement. In the present case, the last drawn wages of the workman were Rs. 430/- per month. Forty months' wages at that rate would work out to approximately, Rs. 17,200/-. The learned counsel for the petitioner also submitted that compensation calculated at the rate of 40 months' wages in lieu of reinstatement is postulated on a return of 15 per cent per annum which may not be a realistic yield in the circumstances of the market today. In the circumstances, for calculating the compensation payable, in my view, the rate of 50 months' wages may be allowed which, on a salary of Rs. 430/- per month, would work out to Rs. 21,500/-. As regards the second component, namely loss of back wages, the compensation for 14 years' service between 1982 and 1996 at the rate of Rs. 430/- per month, or Rs. 5160/- per annum would work out to Rs. 70,240/-. The total compensation would thus work out to Rs. 93,740/-. However, having regard to the fact that a lump sum on account of back wages is being made available to the petitioner, I am of the view that compensation in an amount of Rs. 60,000/- as and by way of the component of back wages would meet the interests of justice. In the premises, the petitioner would be entitled to a total compensation of Rs. 81,500/- (Rs. 21,500/- as compensation in lieu of reinstatement and Rs. 60,000/- in lieu of loss of back wages). The petitioner would be paid the aforesaid amount of Rs. 81, 500/- within a period of one month from today. The respondents, it is stated on their behalf, have already deposited an amount of Rs. 25,000/- in this Court and Rs. 10,000/- in the Labour Court. It is stated that the petitioner has withdrawn the amount of Rs. 10,000/- which has been deposited in the Labour Court. The amount of Rs. 25,000/- which is lying in deposit shall be permitted to be withdrawn by the petitioner with accrued interest if any. The balance amount of the compensation shall be payable by the respondent to the petitioner within a period of one month from today. The petition is disposed of accordingly. There shall be no order as to costs.

11. An ordinary copy of this order duly authenticated by the Personal Secretary may be made available to the parties.