
(2008) 07 RAJ CK 0034
In the Rajasthan High Court

J.K. Industries Ltd.

APPELLANT

Vs

Jagdish Chandra Agarwal and Another

RESPONDENT

Date of Decision : 07-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25N

Citation : (2008) 07 RAJ CK 0034

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Govind Mathur, J.—To challenge validity, propriety and correctness of the award dated 5.3.2005, passed by the Labour Court, Udaipur, this petition for writ is preferred by the employer.

2. The factual matrix, necessary for adjudication of the dispute, is that the respondent workman, a Tyre Trimmer with the employer, while returning to the duties, on 20.9.1978 after availing leave, met with an accident at Beawar, consequent thereto his right leg was imputed during the course of treatment. The workman after undergoing treatment at Amritkaur Government Hospital, Beawar from 20.9.1978 to 13.4.1979 reported on duties on 15.4.1979. While reporting, he also submitted a fitness certificate issued by Dr. J.S. Dhaka, Medical Officer, Amritkaur Government Hospital, Beawar. An industrial dispute was raised by the workman as the employer did not permit him to join the duties, and that was referred for its adjudication to Labour Court, Udaipur by the appropriate government under a notification dated 1.1.1980 in following terms:

D;k Jh txnh"k pUnz vxzoky] Vk;j fV?ej dks fu;kstd ts- ds- b.MLV?ht fy0 dkadjksyh }kjk fnukad 15-04-1979 ls lsok es ugh fy;k tkuk U;k;ksfpr gS\\ ;fn ugh rks Jfed fdl jkgr dk gdnkj gS\\

3. By the award dated 12.2.1993 the Labour Court, Udaipur answered the

reference in negative by holding discontinuation of the workman from service a valid one. A challenge was given by the workman to the award aforesaid by way of filing a writ petition before this Court (S.B. Civil Writ Petition No. 3949/1993) and that came to be accepted by judgment dated 15.2.2001. This Court set aside the award dated 12.2.1993 and remanded the matter to Labour Court for fresh adjudication in following terms:

Taking into consideration the question of livelihood of the petitioner and in the attending circumstances, I deems it just and proper to allow this petition by setting aside the order of labour Court and remit the matter back to the Labour court with the direction to consider the matter afresh by constituting an Expert Committee of three persons which should include one Doctor to objectively assess the capacity of the petitioner to work as Tyre Trimmer and on the basis of the report of that Committee, the dispute be accordingly decided thereafter in accordance with law.

In the result, therefore, the petition succeeds and the impugned order is set aside. The matter is remitted back to the Labour Court for fresh decision in accordance with observations made hereinabove.

4. In pursuant to the directions given by this Court a committee comprising of Dr. R.N. Laddha, Shri M.S. Samar and Shri I.S. Soni was constituted to examine working of the respondent workman on the trimming machine. The committee examined the respondent workman on 13.7.2004 and opined as follows:

1. The right lower limb of the incumbent has been amputated below knee and part of right index finger has also been amputated. 02. The committee saw the incumbent doing tyre trimming. The committee is of the opinion that the incumbent can do tyre trimming though the quality of work is not so perfect.

5. The Labour Court by the award impugned dated 5.3.2005 answered the reference by holding that the termination of the workman from service w.e.f. 15.4.1979 was not valid and, therefore, the same was set aside, however, the workman acquired the age of superannuation on 7.5.2004, therefore, instead of reinstatement, the Labour Court computed the wages for which the workman was entitled, accordingly a direction was given to make payment of the sum of Rs. 11,69,209/- to the workman with interest @ 6% per annum in the event of non-payment of wages within the period prescribed i.e. of three months from the date of publication of award.

6. While assailing validity of the award aforesaid the contentions of learned Counsel for the petitioner are that:

(1) the Labour Court erred while holding that the respondent workman was competent enough to discharge the duties of Tyre Trimmer, thus, the employer wrongly discontinued him from service;

(2) the Labour Court failed to appreciate that the workman while reporting on duties failed to submit a fitness certificate as required under Clause 17-A of the

applicable standing orders; and

(3) the Labour Court allowed the back wages to the workman without examining the issue regarding gainful employment of the workman. Heard counsel for the parties. Clause 17-A of the applicable standing orders prescribes that "every workman shall be subject to Medical Examination by the Company's Medical Officer or any other Doctor who may be so authorised by the Management to examine medically not only at the time of appointment but also at such intervals as the Management may decide. Medical certificates sent from outside Kankroli, shall be from a Medical Officer not below the rank of Registered Medical Practitioner, and for failure to submit such certificate the period shall be treated as unauthorised absence and the concerned workman will be liable for disciplinary action.

7. The Labour Court by the award impugned held that Dr. J.S. Dhaka was working as Medical Officer with Amritkaur Government Hospital, Beawar and, therefore, the fitness certificate issued by him was sufficient to permit the respondent workman to join the duties. The contention of counsel for the petitioner is that Clause 17-A in quite unambiguous terms prescribes that a medical certificate was required to be issued by the doctor authorised by the Management and not by any other Medical Officer and as such in absence of a valid certificate the employer rightly denied the workman to resume the duties.

8. I have examined the provisions of Clause 17-A of the applicable standing orders. As per Clause 17-A if medical certificate is sent from outside Kankroli then that should have been from a Medical Officer not below the rank of Registered Medical Practitioner. In the instant matter the accident took place at Beawar and the workman while reporting to join duties produced a fitness certificate issued by a doctor under whom he took the treatment at Beawar. The submission of a fitness certificate issued by a medical officer working at a Government Hospital, therefore, was in accordance with Clause 17-A of the standing orders. The employer by permitting the workman to resume the duties may have examined his working efficiency and may have taken adequate steps, if required, but there was no occasion to discontinue him from service. On failure to produce a certificate as per Clause 17-A of the standing orders, the employer could have proceed with disciplinary action against the workman, but no occasion was there to terminate him from service. As such, I do not find any illegality in the finding given by the Labour Court that adequate compliance of Clause 17-A was made by submitting a certificate issued by Dr. J.S. Dhaka, Medical Officer at Amritkaur Government Hospital, Beawar and the employer was wrong in terminating the workman from service.

9. I also do not find any substance in the contention that the three members committee opined that working quality of the workman was below the standards and, therefore, no direction could have been given for reinstatement in service or for payment of back wages in lieu of reinstatement in service. The workman was discontinued from service on 15.4.1979 and his efficiency was examined on

13.7.2004 i.e. after a lapse of about 25 years from the date of discontinuation from service. The committee found that the workman was capable to do tyre trimming though the quality of the work was not so perfect. The question of perfection depends on so many factors including the age of person. At the time of examination by the committee concerned the respondent workman was of about 57 years and, therefore, he was not having such perfection as that would have been in the year 1978. Worthwhile to note that if the respondents may have continued the workman in service from 1979, he would have been promoted to higher posts as per his seniority. An other employee who too was working with the respondent workman reached upto the post of General Manager and for that post the working efficiency as Tyre Trimmer is not required. Evidence is also produced by the workman before the Labour Court that the other employee acquired the status of General Manager on getting promotion as per his seniority. The Labour Court also held that after a lapse of about 25 years the examination of the working efficiency is required to be assessed by giving adequate consideration to the age of the workman. I do not find any error in the finding given by the Labour Court for the reasons stated above.

10. So far as the contention regarding grant of wages is concerned, it depends upon various circumstances. As per counsel for the petitioner, in view of U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, , the Court should have examined the issue regarding gainful employment of the workman during the period he remained out of employment. It is true that the back wages cannot be granted in a mechanical manner and while granting such relief judicial application of mind by the Labour Court is necessary. However, in the instant matter the workman suffered an accident and consequent thereto he lost his right leg and after getting treated he reported before the employer to resume duties but the employer did not permit him to resume the duties. The employer should have extended certain sympathy to the workman who reported to join duties after facing a serious accident. If the employer was of the view that the workman was not in position to discharge the duties of Tyre Trimmer an alternative employment would have been offered to him or atleast his services could have been discontinued by adhering the provisions of Section 25N of the Industrial Disputes Act, 1947. The Labour Court granted wages to the workman in lieu of reinstatement as the workman attained the age of superannuation in the year 2004. As a matter of fact, the Labour Court was having no other alternative than to grant the back wages, as the physical reinstatement was impossible. Thus, the wages granted is nothing but compensation. In totality of the facts of the case, I am of the considered opinion that the Labour Court rightly exercised its discretion in granting wages to the workman in lieu of reinstatement.

11. The award impugned does not suffer from any error, thus, no interference of this Court under Articles 226 and 227 of the Constitution of India is warranted. The petition for writ, therefore, is dismissed.