

(2020) 10 SHI CK 0323

In the High Court Of Himachal Pradesh

Case No : Latter Patent Appeals No. 44 Of 2020

Lal Babu Gupta

APPELLANT

Vs

M/S Vardhman & Spinning Mills & Another

RESPONDENT

Date of Decision : 07-10-2020

Acts Referred:

Constitution Of India, 1950 — Article 21
Industrial Disputes Act, 1947 — Section 2A
Employees State Insurance Act, 1948 — Section 53

Citation : (2020) 10 SHI CK 0323

Hon'ble Judges : L. Narayana Swamy, CJ;Anoop Chitkara, J

Bench : Division Bench

Advocate : Rakesh Manta, Ramakant Sharma, Devyani Sharma

Final Decision : Disposed Of

Judgement

L. Narayana Swamy, CJ

1. Initially, the appellant was terminated from service by respondent-employer vide order, dated 5th September, 2016. The said termination order was subject matter in the proceedings before the Industrial Tribunal-cum- Labour Court (hereinafter referred to as 'the Industrial Tribunal') filed under Section 2A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the ID Act') wherein a prayer was made to set aside the order of termination. The case of the appellant-employee before the Industrial Tribunal was that while working for the respondent-employer, he suffered an eye injury resulting in 100% disability. The appellant-employee suffered the injury, causing the said disability, in the year 2008 and he continued as such, till the order of retirement came to be passed on 31st January, 2020. The termination order, dated 5th September, 2016, which was the subject matter before the Industrial Tribunal, later on, came to be withdrawn by the respondent-employer. Even thereafter, the proceedings before the Industrial Tribunal were not closed for having become infructuous. Under these circumstances, the respondent-employer approached this Court by way of

CWP No. 665 of 2018, which came to be disposed of vide judgment, dated 30th October, 2019, by closing the proceedings under Section 2A of the ID Act pending before the Industrial Tribunal, since the order of termination was withdrawn by the respondent-employer. It has further been observed in the said judgment that the closure of the proceedings under Section 2A of the ID Act will not come in the way of the appellant-employee for invoking the independent statutory remedies available to him. It is against this judgment and order passed by the learned Single Judge, the appellant-employee has come up before this Court by way of the instant LPA.

2. The prayer made by the appellant-employee in the instant appeal is to set aside the judgment and order, dated 30th October, 2019, passed by the learned Single Judge in CWP No. 665 of 2018 and to direct the Industrial Tribunal to restore the proceedings initiated by the appellant-employee under Section 2A of the ID Act.

3. The case of the appellant-employee is that he has got a case on merit since the order of termination issued by the respondent-employer was punitive in nature and he is entitled for the relief. A prayer has, therefore, been made to set aside the impugned judgment with the further direction to restore the proceedings before the Industrial tribunal under Section 2A of the ID Act, to its original number.

4. While referring to the judgment rendered by the apex Court in case titled Sudarshan Rajpoot versus Uttar Pradesh State Road Transport Corporation, reported in (2015) 2 Supreme Court Cases 317, learned counsel for the appellant-employee submitted that order of termination as also the order of retirement, dated 31st January, 2020, are in violation of Article 21 of the Constitution of India and also the provisions of the Employees State Insurance Act, 1948 (hereinafter referred to as 'the ESI Act').

5. It is his further submission that in view of the disability suffered by the appellant-employee during the course of the employment, he and his family members are at the verge of starvation, therefore, under these circumstances, the proceedings before the Industrial Tribunal may be ordered to be restored.

6. Learned Senior Counsel appearing for respondent- employer, on the other hand, submitted that though the appellant-employee suffered disability in the year 2008, but, he has been allowed to remain on duty till the order of retirement has been issued on 31st January, 2020. He further submitted that though, the appellant-employee could not and has not worked because of his 100% disability, but, the salary and other allowances attached to his post have been regularly paid to him for the last about twelve years.

7. It is further argued that the appellant-employee had approached the Tribunal under ESI Act by way of application for grant of statutory benefits under ESI Act, which was allowed and the statutory benefits have also been paid to the appellant-employee.

8. It is next contended by the learned Senior Counsel that at the time of his appointment, the appellant-employee has accepted all the terms and conditions contained in the appointment letter, clause 13 whereof specifically provides that the Certified Standing Orders of the respondent-Company will be applicable to him, and as per Standing Order No. 21, every permanent workman shall superannuate on the date of his attaining the age of 58 years or is declared medically unfit.

Now, he has been declared medically unfit on account of his 100% disability and he has got all the statutory benefits under ESI Act.

9. It is his further submission that the prayer in the appeal is to set aside the impugned judgment, dated 30th October, 2019, passed by the learned Single Judge in CWP No. 665 of 2018, which may not be appropriate for the appellant-workman himself, since the learned Single Judge has not closed any right of the appellant, seeking the redressal of his grievances invoking the provisions of ID Act or any other statute. If the appellant-employee is aggrieved by the order of retirement, dated 31st January, 2020, it is always open for him to challenge the same. He has, therefore, prayed for dismissal of the appeal.

10. We have heard learned counsel for both the parties and have perused the record.

11. The order of termination, which was the subject matter before the Industrial Tribunal, had become infructuous in view of the withdrawal of the termination order. Consequently, though, the Industrial Tribunal, on its own, should have closed the matter, having become infructuous, but it did not do so. Hence, the employer approached this Court by way of CWP No. 665 of 2018, which came to be disposed of vide impugned judgment, closing the proceedings before the Industrial Tribunal under Section 2A of the ID Act, having become infructuous.

12. Moreover, when the illegality committed by the respondent-employer has been settled by withdrawing the termination order, nothing survived before the Industrial Tribunal. Even, it has been specifically mentioned in para 10 of the impugned judgment that closure of the proceedings under Section 2A of the ID Act will not come in the way of the appellant-employee for invoking the provisions of ID Act or any other statute for redressal of his grievances, if any.

13. In case the appellant-employee challenges the order of retirement, dated 31st January, 2020, as per Section 53 of the ESI Act, there is a statutory bar which dis-entitles an employee to receive or recover any compensation or damages from the employer, once it is settled.

14. Be that as it may, without expressing any opinion on this issue, we are of the view that it is for the appellant- employee to challenge the order of retirement, if so advised.

15. In view of the above, we do not see any reason to interfere with the impugned judgment and the same is accordingly upheld. The appeal is disposed

of accordingly, with liberty, as granted by the learned Single Judge.

16. Pending miscellaneous applications, if any, are also disposed of accordingly.