
(2000) 12 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4125 of 2000

Lala Ram

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 11-12-2000

Acts Referred:

Constitution of India, 1950 — Article 16
Industrial Disputes Act, 1947 — Section 25, 25

Citation : (2001) 3 RLW 1508 : (2001) 3 WLN 326

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : R.S. Saluja, for the Appellant; G.K. Vyas, for the Respondent

Final Decision : Dismissed

Judgement

Balia, J.

(1). Heard learned counsel for the parties.

(2). The petitioner challenges the award dt. 15.10.99 (Annexure- 9) to the extent it has refused the reinstatement after finding the retrenchment of the petitioner by the respondent-employer was in violation of Sec. 25F of the Industrial Disputes Act, 1947 (for short "the Act of 1947") and not valid and has granted a lump-sum compensation of Rs. 90,000/- in all as the compensation in lieu of reinstatement.

(3). In the first instance learned counsel for the petitioner contended that by catena of decision of Supreme Court law has been well settled that on finding retrenchment to be invalid in non-compliance of any provisions of Chapter V-A of the Act of 1947, the reinstatement is necessary consequence but the matter of grant of back wages may be within the discretion of adjudicating Tribunal and therefore the Labour Court was patently in error In denying the reinstatement on the basis of decision of the Supreme Court in Delhi Development Horticulture Employees' Union vs. Delhi Administration Delhi & Ors. (1), which was not a

case of invalid retrenchment but deals with issue of parity in emoluments and regularisation of ad hoc and temporary employees solely on basis of some duration of employment. He places reliance in support of his contention on decisions of Supreme Court in *M/s. Hindustan Tin Works Pvt. Ltd. vs. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. & Ors.* (2) and *Surender Kumar Verma vs. The Central Government Industrial Tribunal - cum - Labour Court, New Delhi & another* (3), *Mohanlal vs. The Management of M/s. Bharat Electronics Ltd.* (4), *Gammon India Ltd. vs. Niranjana Dass* (5) and in *Narofam Chopra vs. Presiding Officer, Labour Court & Ors* (6).

(4). Having carefully considered the contention I am of the opinion that the principle that can be deduced from the aforesaid decisions cannot travel beyond that ordinarily reinstatement be granted, where retrenchment is found to be invalid but ultimately it is within the discretion of the Court deciding validity of retrenchment to devise the appropriate relief in the given circumstances and therefore what actual relief has been granted in particular case by itself may not be precedent but only can be a illustrative guideline for consideration while considering the facts and circumstances of each case on its own merit by the Court.

(5). In *Hindustan Tin Works Pvt. Ltd. case* (supra) the Supreme Court made it clear that leave was granted on the limited question of grant of back wages, namely where termination of service either by dismissal, discharge or even retrenchment is held invalid and the relief of reinstatement with continuity of service is awarded, what ought to be the criterion for grant of compensation; to the extent of full wages or a part of it?

(6). It was further made clear in para 5 of the judgment that "for the limited purpose of arriving at a just decision on the question whether the workmen should be awarded full back wages, we should look into the compelling necessity for retrenchment of the workman". Therefore as a precedent decision in *Hindustan Tin Works case* (supra) can only be read for ratio what it decides. As *Hindustan Pvt. Ltd.*'s case dealt with only question whether the full back wages is necessary accompaniment of reinstatement or it can be truncated under award. It did not consider nor laid on principle such proposition that in no circumstances reinstatement could be denied.

(7). In *Surendra Kumar's case* (supra) was also judgment of three Judges Bench, this question directly arose before the Supreme Court. The Court enunciated the principle in the following terms wherein Chinnappa Reddy J. speaking for the Court said:

"Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and workmen to direct

reinstatement with full back wages. For instance, the industry might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the Court to make appropriate consequential orders".

(7). Learned counsel for the petitioner stated that in no situation reinstatement can be denied in quite opposite to what above case lays down.

(8). In Mohanlal's case (supra) the question was not that Court could or could not grant reinstatement but Court on finding retrenchment to be invalid granted relief of reinstatement with full back wages in the facts of the case.

(9). Again in Gammon India Ltd. like in Mohanlal's case (supra) the Court was not considering the power of the Court to grant appropriate relief in case retrenchment is found to be invalid, but on merit of the case finding that the retrenchment was invalid and irregular reinstatement with full back wages was granted.

(10). Lastly in Narotam Chopra (supra) Court found that Labour Court after finding the retrenchment to be invalid had only awarded compensation which was payable to the workman in terms of Sec. 25(b) and not any other relief at all or reinstatement or back wages. The Labour Court has neither granted reinstatement, nor any compensation in lieu of reinstatement, it has merely awarded the amount that was payable by the employer, had he complied with Sec. 25F viz. the salary in lieu of notice and retrenchment compensation at the scale payable u/S. 25F(b) as if by payment of that sum the Court was regularising the retrenchment by curing the invalidity. That obviously was not permissible. What is a condition precedent cannot be cured by complying subsequently as a condition subsequent. It is in the above circumstances the Court set aside the order of Labour Court and granted reinstatement with full back wages. However, it did not decide upon the powers of the Court to grant any relief other than reinstatement, as it may deem appropriate. It was a case, wherein the Court was interfered with injudicious discretion exercised by granting relief which may ordinarily follow finding of invalid retrenchment.

(11). From the aforesaid decisions relied on by the learned counsel for the petitioner it is clear that only precedent in which question about discretion of Court in granting relief on finding invalidity of retrenchment was considered and answered by the Supreme Court was in the case of Surendar Kumar Verma (supra) and it was held in unequivocal terms that it is in the discretion of the Court to grant appropriate consequential relief on finding retrenchment to be invalid. Obviously such discretion has to be exercised judiciously depending upon the facts and circumstances of the case in each case. Therefore it must be held that it depends on the circumstances in each case whether the Labour Court would grant relief of reinstatement or would grant compensation in lieu thereof.

(12). On this premise if one were to consider the order under challenge it is apparent that Labour Court has culled out principle governing relief to be granted

by considering principles enunciated by the Supreme Court in chain of decisions in the development of this particular branch of adjudication and considering the caution sounded by the Court in Delhi Horticulture Development's case against the danger with which practice of granting protection against termination of services in mechanical way is fraught with, by helping develop malpractice of providing irregular employment contrary to rules and the breach of Article 16. The Court said:-

"We may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 days or more days, has been leading. Although there is Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchange, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal consideration including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchange for years. Not all those who gain such back-door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in Government Departments, Public Undertakings or Agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 days or more days have to be absorbed as regular employees although the workers are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts".

(13). Taking into consideration the aforesaid principle for the purpose of devising the appropriate relief in the facts and circumstances of the present case cannot be said to be wholly irrelevant and error apparent from record so as to render the adjudication made by the Labour Court invalid on that count alone.

(14). I find that learned Labour Court has summarised his grounds for considering why the reinstatement would not be appropriate relief to be granted in the present case. The petitioner was employed as daily rated workman without

following any procedure was being paid on the minimum wages, and even if were to be reinstated he could only be reinstated as daily rated employee on minimum wages, that there is no rule for the department to continue with the daily rated workman, the period that has elapsed between the date of termination of service and the date when the reinstatement could be granted, and the possibility of the petitioner being employed elsewhere during this period, keeping in view of his age and alternate employment that the workman must have taken during this period and other complications likely to arise from claims for regularisation in service as an automatic consequence of continued service deemed to follow as a result of reinstatement, that will again be fraught with danger in violating regular process of recruitment and provisions of Article 16, and also taking into consideration the decisions of Supreme Court recently rendered in which the Court instead of reinstatement granted lump sum compensation, has thought it to be more appropriate remedy for awarding Rs, 90,000/- as a lump sum payment in lieu of reinstatement.

(15). Such consideration while exercising discretion in devising consequential relief cannot be considered to be injudicious or arbitrary so as to warrant interference.

(16). Learned counsel for the petitioner does not dispute so far as quantification of compensation is concerned.

(17). As a result this petition fails and is hereby dismissed.