

(2017) 03 CHH CK 0016
In the Chhattisgarh High Court
Case No : 2131 of 2001

Managing Director & Ors

APPELLANT

Vs

Bhadru & Anr

RESPONDENT

Date of Decision : 08-03-2017

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court
Industrial Disputes Act, 1947, Section 10,
Section 17B, Section 25(b), Section 25(B)(1), Section 25 (F) -
Reference of disputes to Boards, Courts or Tribunals - Payment of full wages to
workman pending proceedings in higher courts - Prohibition of financial aid to illegal
strikes and lock-outs - Prohibition of financial aid to illegal strikes and lock-outs -
Prohibition of financial aid to illegal strikes and lock-outs

Citation : (2017) 03 CHH CK 0016

Hon'ble Judges : Manindra Mohan Shrivastava

Bench : Single Bench

Advocate : Avinash Mishra, S.S. Masih

Judgement

1. This petition under Article 227 of the Constitution of India has been preferred by the employer assailing the correctness and authority of award dated 06/06/2001 passed by the Labour Court, Jagdalpur by which the Labour Court held the retrenchment illegal and directed reinstatement though, without backwages.

2. Factual premise leading to institution of the case and filing of this petition leading to reference of dispute to the Labour Court and petition before this Court, briefly stated, are that the petitioner is a registered Society and an instrumentality of the State Government. It has been registered as a Society under the provisions of M.P. Society Registration Act, 1973. The petitioneremployer at the relevant time was engaged in manufacture of wooden furniture for being supplied to government, semi government and other public institutions. For this purpose, the petitioner had an operating unit at Jagdalpur

where it installed Saw Mills for the purpose of sawing wood and employed number of workmen to carryout the work in the Saw Mill which included manufacture of wooden furniture. Vide notice dated 01/05/1995 (Ex.D/3) the petitioner informed the workman, who were working in the manufacturing unit and the Saw Mill of the petitioner-Society at Jagdalpur that further work shall not be taken from the workman engaged on daily wage basis because except the work of preparation of cots, no other works is left. It was proposed that for executing available residuary work of preparation of cot per piece rate has been prescribed and those who are willing to work on piece rates, may submit their application for the office. In that notice, it was also stated that for want of work, the other work of the unit is closed. This led to a dispute between the workman employed in the manufacturing unit of the petitioner. Reconciliation proceedings were drawn by the Reconciliation Officer which eventually ended in a failure giving rise to a failure report of conciliation. Finally, the appropriate government through its competent authority, in exercise of power under Section 10 of the Industrial Disputes Act, 1947 (for short, "ID Act") referred the dispute for adjudication to the Labour Court, Jagdalpur. The dispute as referred to Labour Court vide 31/03/1998 read thus :- "VERNACULAR MATTER OMITTED"

3. The statement of claim was filed through the representative Union Bhartiya Mazdoor Sangh. In the statement of claim, it was stated inter alia that 61 workmen as per list attached with the statement, were working in the petitioners manufacturing unit since 1981-82 at Jagdalpur. In respect of one Bhadru it was stated he is working since 1982 and in respect of other 60 workmen it was stated that they are working. According to the pleadings made therein, the employees have been retrenched vide notice dated 01/05/1995 without any prior notice and payment of retrenchment compensation, therefore, the retrenchment is illegal. In reply to the aforesaid claim the petitioner employer though admitted that at the relevant time of retrenchment, those 61 employees were actually working as workman, it took the stand that they were engaged to work in a project; no work is left, therefore, notice was given on 01/05/1995; workman are engaged on daily wage basis to be paid on weekly basis at the wages fixed by the Collector; workmen were offered to work on piece rate basis to which they did not respond.

4. In order to prove its case, the employees examined one Ramaulal Sarva, District Zila Mantri, Bhartiya Mazdoor Sangh and the employer examined Shri Lalit Kumar Das, Manager of the petitioner-employer.

5. The Labour Court vide impugned award held that the workers were employed in the unit of the petitioner-employer and having worked continuously for more than 240 days, were entitled to payment of retrenchment compensation as per Section 25 (F) of the ID Act and on the said finding, the Labour Court held illegal, retrenchment, as backwages were not granted. Learned counsel for the petitioner-employer argues that the Labour Court has exceeded its jurisdiction in granting relief of retrenchment by holding that the workers are entitled to retrenchment compensation inasmuch as the finding is in ignorance of admitted

position on record that the workman cannot be said to have worked continuously for one year within the meaning assigned under Section 25 B of the ID Act. According to him, unless the workman prove by leading cogent evidence that they have worked continuously for one year in accordance with the provision of the ID Act, the obligation to pay retrenchment compensation could not be fastened upon the employer prior to retrenchment nor any requirement of prior notice is necessary because the application of Section 25F is altogether excluded. He submits that the petitioner-employer had not adduced oral evidence but also produced documentary evidence Ex.D/1, containing the details of each and every workman which was not disputed and according to the same, none of the workman can be said to have worked for a period of one year within the meaning of Section 25B of the ID Act. The finding of Labour Court, therefore, contrary to the record and the award is apparently erroneous, illegal and unsustainable in law.

6. Per contra, learned counsel for the respondent argues that not only in the statement of the claim but in the evidence also, it has been clearly stated that all the workman on whose behalf the statement of claim was made, had worked continuously for one year. He submits that, in fact, these workmen were engaged to work on different days since 1982-83, therefore, in the spirit of Section 25F of ID Act they have rightly been treated as having work continuously for one year and benefit extended to them by the Labour Court which does not warrant any interference.

7. I have gone through the evidence and perused the record including records of the case of the Labour Court.

8. In the statement of claim filed on behalf of the workman by the Union representative, though in respect of employee Bhadru it has been stated that he has been continuously working since 1982, in respect of remaining 60 workmen, all that has been stated is that they are working. There is no specific statement of claim that except Bhadru, other 60 workmens have also been working continuously for one year or they have worked for more than 240 days or more during 12 calender months preceding the date of their termination. As far as the assertion in the statement of the claim that the 61 workmen were working with the petitioner on the date of issuance of notice 01/05/1995 is concerned, that fact has not been disputed by the petitioneremployer. Therefore, the admitted position on record is that all the 61 employees were working with the petitioner on 01/05/1995.

9. The oral and documentary evidence led by both the parties also reveals that the engagement of 61 workmen by the petitioner is realy not disputed, however, the dispute is whether these workman were entitled to prior notice and retrenchment compensation under Section 25F of the ID Act on the ground that they have continuously working for one year. Only this legal issue arises in this petition.

10. Apart from what has been pleaded by the parties and referred to above, Union in the evidence of Ramaulal Sarva, it has been stated that all the 61 workmen were working continuously for more than 240 days prior to their termination and they were stopped to work under an oral order on 01/05/1995. In his cross-examination, however, he admits that the chart prepared by employer showing the days of work of each of 61 employees as contained in Ex.D/1 is admitted. On the basis of this admission, the correctness of the entries made in the chart Ex.D/1 cannot be doubted and the Court can proceed on the same as admitted position on record.

11. In the chart Ex.D/1, stated 61 workmens have been shown to have worked. Admittedly the workmens were retrenched vide notice dated 01/05/1995. The chart prepared and submitted before the Labour Court Ex.D/1, shows that each of the workman worked during the year 1994-95.

12. The next question which arises for consideration is whether these workers can be said to be employed and in continuous service for not less than one year under the employer, because unless this precondition is fulfilled, the workman may not be in a position to challenge the legality and validity of the retrenchment. Relevant Section of 25F of the ID Act is extracted hereinbelow :-
"25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for [every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

It is clear that in order that Section 25F of ID Act is passed into service, it is to be established that the workman has been in continuous service for not less than one year under employer. As a piece of beneficent legislation, the definition of continuous service has been provided under Section 25B under Chapter VA 1947 it reads thus :-

"[25 B. Definition of continuous service.- For the purpose of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) ninety- five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case."

A rational, fair reading of aforesaid provisions reveals that the legislature in its wisdom has, by legal fiction, treated a period of service as continuous service, even though a workman may not have actually worked throughout a year or during the period of 12 calendar months preceding the date of retrenchment. While sub Section (1) of Section 25B seeks to exclude absence on the account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman, for the purpose of computing the period of uninterrupted service, sub Section (2) creates a legal fiction under sub Section (2) (a) and (b) as to when a workman shall be deemed to be in continuous service for a period of one year and for a period or six months. If the workman during the period of 12 calendar months preceding the date with reference to calculation is made, has actually worked under the employer for not less than 240 days, he shall be deemed to be in continuous service under the employer for a period of one year. Therefore, in order to attract the deeming clause of having continuously worked, it has to be established that during the period of 12 calendar months preceding the date of termination/retrenchment, the workman had worked for atleast 240 days. Per force sub section (1) of Section 25B of ID Act, any interruption, for reason stated therein, will have to be excluded.

13. For the aforesaid facts and circumstances of the case and the admitted evidence on record, it would be found firstly from the chart Annexure D/1 which has been admitted by the witness of the workman, that none of the 61 workmen worked for 240 days during the period year 1994-95 and thereby failed to fulfil the requirement of law of having worked for 240 days in a period of 12 calendar months preceding the relevant date. The relevant date is 01/05/1995 when the notice was issued and work stopped. In the chart Ex. D/1, in the last column, the

period during which the workman worked has been stated. In the oral or documentary evidence it has been proved that from 01/05/1994 till 31/05/1995 any of the workman had worked for atleast 240 days. Though in the oral evidence of Shri Ramauram Sarva, it has been stated that each of the worker has worked for 240 days, from the admitted document Ex.D/1, the same evidence is against the admitted documentary evidence.

14. Once the workman are found to have worked for less than 240 days during the period of 12 calender months immediately preceding their date of termination, they would not be entitled to prior notice or retrenchment compensation as provided under Section 25F of the ID Act. Therefore, in view of above consideration, the award passed against the petitioner-employer cannot be sustained and therefore is set-aside holding that the retrenched workman were not entitled to any notice or compensation and for that reason their retrenchment cannot be said to be illegal. It has to be noticed that by virtue of provision contained under Section 17B of the ID Act the workman were getting last wages drawn. Therefore, whatever amount has been paid to the workman shall not be liable to be refunded nor the petitioner shall make any claim in any fora for recovery of amount from the working. Subject to said observation, petition is dismissed.