
(2008) 01 MP CK 0056
In the Madhya Pradesh High Court

M.P. Rajya Beej Evam Farm Vikas Nigam and Others	APPELLANT
Vs	
Ashok Kumar	RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F, 25FFF, 25O

Citation : (2008) 117 FLR 506 : (2008) ILR (MP) 474 : (2008) 3 LLJ 47 : (2008) 2 MPHT 90 : (2008) 2 MPJR 119 : (2008) 2 MPLJ 130

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Gangele, J.

Because both the petitions, [Writ Petition No. 5167/2005 (S) by the Employee and Writ Petition No. 6285/2006 (S) by the employer] have been filed against a common award dated 8-4-2005 passed in Case No. 11/A/ID Act/ Ref./2002, hence both the petitions are being heard together and decided by this common order.

The employee, Ashok Kumar, complained to the Appropriate Government that he was engaged by the Corporation at Dabra Center w.e.f. 6-8-1992 on daily wage basis to perform the work of Clerk. He was not made permanent hence he filed an application before the Labour Court under the provisions of Madhya Pradesh Industrial Relations Act for his classification. The Labour Court granted stay of status quo. In spite of that vide letter dated 31-8-1999 his services were terminated. The matter was ceased in the conciliation and after failure of conciliation proceedings it was referred to the Labour Court for adjudication.

Before the Labour Court the employee in his statement of claim stated that he was engaged as daily wager Clerk w.e.f. 6-8-1992. Because, thereafter he filed an application for classification before the Labour Court under the provisions of Madhya Pradesh Industrial Relations Act hence vide order dated 31-8-1999 his

services were terminated. Before termination of services no inquiry was conducted neither any retrenchment compensation was given to him, hence the order of termination was void and contrary to Section 25F of the Industrial Disputes Act.

The employer in its statement of claim admitted the fact that Mr. Ashok Kumar was engaged on daily wage basis, however, it has been denied by the employer that he had worked continuously. It has further been stated by the employer in Para 23 of the written statement that w.e.f. April, 2002 the center was closed.

Before the Labour Court the employee submitted his affidavit in support of his claim and stated same things. On behalf of employer affidavit of Mr. Jagdish Singh Yadav was filed. He stated that the Dabra Process Center was closed and no employee had been working there. It was further admitted in the affidavit that Mr. Ashok Kumar was working on daily wage basis. On 22-7-2004 Regional Manager of the Corporation, Mr. Jagdish Singh Yadav in his cross-examination admitted the fact that no retrenchment compensation was paid to Mr. Ashok Kumar at the time of termination of services vide order dated 31-8-1999. He further admitted that in the Corporation production of various crops and development of high quality seeds was being done and there were so many centers of the Corporation for the aforesaid purpose. The processing of seeds was also done and seeds have been sold through various centers. He further stated that hundreds of employees were working in the Corporation. , Thereafter, on the basis of the above evidence on record, oral and documentary, the Labour Court has held that the services of the workman were terminated because he filed an application before the Labour Court for his classification and he had worked for more than 240 days in a calendar year continuously from 6-8-1992 to 1999 as per Exhs. P-1 to P-4. The Labour Court further observed that because the center was closed hence the workman will be entitled the retrenchment compensation in accordance with Section 25FFF of the Industrial Disputes Act and passed the award accordingly.

The employee alongwith the petition has filed the photostat copies of attendance register and payment of wages to the employee. As per the aforesaid record it is clear that the employee has worked for 147 days in 1992, for 363 days in 1993, for 361 days in 1994, for 363 days in 1995, for 360 days in 1996, for 361 days in 1997, for 362 days in 1998 and 236 days in 1999. The employer has not controverted the aforesaid facts. The copies of the payment register have been filed after obtaining the same from the employer under the Right to Information. Hence, the aforesaid documents cannot be disputed.

Learned Counsel for the workman has submitted that there was no valid closure of the Center and other employees were absorbed in other Centers, hence the workman is entitled reinstatement. Contrary to this, learned Counsel for employer has submitted that the findings recorded by the Labour Court that employee worked for more than 240 days in a calendar year are perverse and the center was closed, hence the learned Labour Court has rightly awarded

compensation in favour of the employee. In support of his contention learned Counsel relied upon the judgment of this Court in *State of M.P. and Ors. v. Arjunlal Rajak* 2006(2) JLJ 24 and *District Red Cross Society v. Babita Arora and Ors.* 2007 AIR SCW 5260.

Undisputed facts of the case are that employee, Ashok Kumar was engaged on daily wage basis in the Corporation on 6-8-1992. He filed an application before the Labour Court for classification and during pendency of the application vide order dated 31-8-1999 his services were terminated. In support of his claim the employee submitted his affidavit as evidence and on behalf of the employer Regional Manager submitted his affidavit. He was also cross-examined. Alongwith the petition the employee also submitted details of Attendance Register and Wage Register as mentioned above in this order. As per the aforesaid registers, it is clear that the employee had worked for more than 240 days in a calendar year. Because the aforesaid documents have been received by the employee from the employer under the Right to Information, hence the authenticity of the documents cannot be disputed. Apart from this, the employer has also not denied the aforesaid documents. Consequently, in my opinion, the findings of fact recorded by the Labour Court that employee worked for more than 240 days in a calendar year are as per law.

With regard to the second contention raised by the learned Counsel for the employee that the direction issued by the learned Labour Court with regard to grant of retrenchment compensation is illegal. It is clear that the employer in its statement of claim before the Labour Court stated that the center was closed in April, 2001 where the workman was employed, however, during cross-examination the Regional manager in his statement stated that he could not say that any permission from the Labour Department was obtained before closure of the Center neither any such documents have been filed in the case. Section 25O of the Industrial Disputes Act, 1947 prescribes the procedure with regard to closure, which is as under:

25-O. Procedure for closing down an undertaking.- (1) An employer who intends to close down an undertaking of an industrial establishment to which this chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the Appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under Sub-section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen

and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under Sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of Sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under Sub-section (2) or refer the matter to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under Sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of Sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under Sub-section (2) or where permission for closure is deemed to be granted under Sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months.

There is amendment to this provision by State of Madhya Pradesh, however, the procedure is the same.

It is clear from the mandatory procedure of Section 25O that no permission was taken by the Corporation before closure of the Center at Dabra. Apart from this, there is no clear evidence except the pleading in the written statement of the employer that the Dabra Center was closed. It was a plea of the employer that the Dabra Center was closed, hence the burden of proof was on the employer to lead cogent evidence in support of the pleading. In my opinion, the Labour Court has committed an error of law in arriving at a finding that the Dabra Center of the Corporation was closed. A Constitution Bench of Hon''ble the Supreme Court in *Hariprasad Shivshankar Shukla Vs. A.D. Divikar*, , has held as under with regard to interpretation of the word "retrenchment" as contained in Section 2(oo) of the I.D. Act:

For the reasons given above, we hold, contrary to the view expressed by the Bombay High Court, that retrenchment as defined in Section 2(oo) and as used in Section 25F has no wider meaning than the ordinary, accepted connotation of the word : it means the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and bonafide closure of business as in the case of *Shri Dinesh Mills Ltd.* or where the services of all workmen have been terminated by the employer on the business or undertaking being taken over by another employer in circumstances like those of the Railway Company.

(Emphasis in original)

Hence, when there is no closure of the Center. Then from the facts of the case it is clear that there was a retrenchment and the employee is entitled for reinstatement because his services were terminated in violation of Section 25F of the Industrial Disputes Act.

With regard to grant of backwages, it is clear that the employee was engaged in 1992 on daily wage basis. He had worked upto 1999 and during that period he filed an application before the Labour Court for his classification under the provisions of Madhya Pradesh Industrial Relations Act. During pendency of the aforesaid application the services of the employee had been terminated. Hon''ble the Supreme Court in *General Manager, Haryana Roadways Vs. Rudhan Singh*, has held as under with regard to grant of back wages:

8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, i.e., whether after proper advertisement of the the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be

taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period, i.e., from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.

Looking to the principle of law laid down by Hon"ble the Supreme Court and looking to the facts of the case that the employee was engaged in 1992 on daily wage basis and his services were terminated in 1999 and award has been passed by the Labour Court in 2005, in my opinion, the workman will be entitled 25% (twenty five percent) back wages from the date of termination of his services upto pronouncement of the award.

Consequently, the petition of the management, Writ Petition No. 6285/2006 (S) is hereby dismissed. The petition filed by the employee, Ashok Kumar, being Writ Petition No. 5167/2005 (S) is partly allowed and award passed by the Labour Court, Annexure P-I, dated 8-4-2005 is modified to the extent that the employee will be entitled reinstatement with 25% back wages from the date of termination of his services up to the date of pronouncement of award. After the date of pronouncement of award the employee will be entitled full back wages. No order as to costs.