
(2012) 08 MP CK 0003
In the Madhya Pradesh High Court
Case No : W.P No. 2147 of 2004

M/s Gajra Gears (P) Limited

APPELLANT

Vs

Lakhabnlal Verma

RESPONDENT

Date of Decision : 09-08-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 17b, 2(oo), 2(oo)(bb), 25f, 25g

Citation : (2012) 08 MP CK 0003

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : G.S. Patwardhan, for the Appellant; R.K. Pradhan, Learned Counsel, for the Respondent

Judgement

Hon''ble Mr Justice S.C. Sharma

1. The petitioner before this Court has filed the present petition being aggrieved by order dated 29.9.98 passed by the Presiding Officer, Labour Court and order dated 9.1.2004 passed by the Industrial Court in an appeal preferred by the present petitioner. In the present case, it has been stated that the respondent was appointed as trainee on 1.9.91 and after completion of apprenticeship he was appointed on probation for a period of 6 months. However he was discontinued after 27.2.93 and being aggrieved by his discontinuance, an application u/s 31(3) r/w sections 61 and 62 of MPIR Act was filed before the Labour Court. An order was passed on 29.9.98 allowing the application preferred by the workman and reinstatement with back wages has been ordered. An appeal was preferred before the Industrial Court and the appeal has been dismissed. The grievance of the petitioner is that the services of the workman were discontinued on account of unsatisfactory performance and such discontinuance does not casts a stigma, therefore, the findings arrived at by the Labour Court and the Industrial Court are bad in law and the order passed by the courts below deserves to be set aside. It has also been stated that the respondent was a probationer and after completion of his probationary period his

suitability was judged. He was found not suitable and, therefore, the case of the respondent was covered u/s 2 (oo) (bb) of the Industrial Dispute Act, 1947 and therefore the order passed by the Labour Court and the order passed by the Industrial Court deserves to be set aside.

2. A reply has been filed by the workman and it has been stated that the plea of termination of employment as covered under the exception (bb) to section 2 (oo) of Industrial Dispute Act, 1947 is being raised for the first time before this Court. It has also been stated that the petitioner was appointed on 21.1.91 as a daily rated employee/apprentice and his apprenticeship was over on 21.7.91. It has been further stated that his contract of employment was renewed further for 6 months from 1.9.92 to 28.2.93 and he was very much in employment with the petitioner company. It has also been stated that the findings arrived at by the Labour Court, which were confirmed by the Industrial Court holding the termination as bad in law, as the provisions of Section 25f and 25g of the Act of 1947 were not complied with, does not warrant any interference. It has also been stated that a specific plea was raised before the labour court that the respondent was unemployed during the period when he was out of service and no evidence contrary to the aforesaid fact was produced by the employer before the labour court, hence the back wages have also been awarded to the workman.

3. Heard the Learned Counsel for the parties at length and perused the records.

4. In the present case, the order passed by the labour court dated 29.9.98 clearly reflects that the respondent was an employee of the petitioner company and without following the statutory provisions as contained u/s 25f and 25g of the Act of 1947, the services of the respondent were put to an end. Not only this, the question of applicability of section 2(oo) (bb) in the peculiar facts and circumstances of the case does not arise. The Apex Court in the case of Mohan Lal Vs. Management of Bharat Electronics Ltd., in paragraph 17 has held as under :

17. The last submission was that looking to the record of the appellant this Court should not grant reinstatement but award compensation. If the termination of service is ab initio void and inoperative, there is no question of granting reinstatement because there is no cessation of service and a mere declaration follows that he continues to be in service with all consequential benefits. Undoubtedly, in some decisions of this Court such as Ruby General Insurance Co. Ltd. v. P. P. Chopra. (1970) 1 Lab LJ 63 and Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, it was held that the Court before granting reinstatement must weigh all the facts and exercise discretion properly whether to grant reinstatement or to award compensation. But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the Courts in the field of social justice and we do not

propose to depart in this case.

5. Keeping in view the totality of the circumstances of the case, as the employee was very much in the services of the petitioner company and he has also been reinstated in compliance to the provisions of section 17b of the Act of 1947, he is very much continuing in service, no case for interference is made out in the matter. The petition is disposed of only with a modification in the impugned award that the workman shall be entitled for 50% of the back wages.

5. No order as to costs.

6. Arguments heard. Order passed separately.