

(2015) 07 MP CK 0019
In the Madhya Pradesh High Court
Case No : WP. 1918 and 1920 of 2015

Nagar Palika Nigam

APPELLANT

Vs

Arun Sharma

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Constitution of India, 1950 — Article 227

Industrial Disputes Act, 1947 — Section 2(oo), 2(oo)(bb), 2(ra), 25-B, 25-B(2)(a)(ii)

Citation : (2015) 07 MP CK 0019

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Sushil Chaturvedi, for the Appellant

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—Heard.

2. Shri Chaturvedi submits that both the matters are identical and therefore, these matters may be decided on the basis of facts and pleadings mentioned in WP No. 1918/2015.

3. Learned counsel for the petitioner submits that award of Labour Court dated 19.12.2014 is bad in law. The Labour Court has erred in directing the reinstatement of the workman with 60% backwages. The stand of the employer before the Labour Court was that the workman was engaged for 89-89 days. Putting it differently, it is contended that workman was given one day's break on completion of every 89 days. Shri Chaturvedi contends that workman has not completed continuous service of 240 days. No other point is pressed by him. In nutshell, he contended that since workman has not completed 240 days' service, Section 25F of Industrial Disputes Act, 1947 is not attracted.

4. I have heard him at length.

5. The Court below in para 16 of the award opined that exhibit P/2 and P/3 are

attendance sheet and salary statement respectively. These documents are for a period between July, 2005 to March, 2008. The Court below gave a finding of fact that during this period, workman has continuously worked with the employer and his work was satisfactory. His services are terminated by oral order on 01.04.2008. The Labour Court opined that it amounts to illegal retrenchment under Section 2(oo) of ID Act, 1947.

6. In my view, the point raised by Shri Chaturvedi is no more *res integra*. A break of one day given by employer after 89 days is treated by the courts as "artificial break". Such break cannot deprive the workman from the protection under Section 25F of ID Act. The workman was required to show that he has worked for more than 240 days preceding his termination. In the present case, there is a finding of fact in this regard recorded by Labour Court on the basis of attendance sheet and salary statement. Thus, there is no perversity in the order dated 19.12.2014.

7. The Apex court considered the aspect of artificial breaks and effect of non-compliance of Section 25F and opined as under:-

Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, AIR 1981 SC 422 : (1980) LabIC 1292 : (1981) 1 LLJ 386 : (1980) 4 SCC 443 : (1981) 1 SCR 789 : (1981) 1 SLJ 107

"9. Section 25F of the Act clearly designed to provide that a workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months; it is not necessary that he should have been in the service of the employer for one whole year.

14. It is sufficient for the purposes of Section 25-B(2)(a)(ii) that he has actually worked for not less than 240 days during the preceding period of 12 calendar months."

Haryana State Electronics Development Corporation Ltd. Vs. Mamni, AIR 2006 SC 2427 : (2006) 11 JT 232 : (2006) 2 LLJ 744 : (2006) 5 SCALE 164 : (2006) 9 SCC 434 : (2006) SCC(L&S) 1830 : (2006) 1 SCR 638 Supp : (2007) 1 SLJ 158 : (2006) AIRSCW 2979 : (2006) 5 Supreme 56 ,

"9. The respondent was appointed from time to time. Her services used to be terminated on the expiry of 89 days on regular basis. However, it is noticed that she used to be appointed after a gap of one or two days upon completion of each term. Such an action on the part of the appellant cannot be said to be *bona fide*. The High Court rejected the contention raised on behalf of the appellant herein stating:

"... It is not possible for us to accept the aforesaid plea raised at the hands of the

management on account of the fact that the factual position, which has not been disputed, reveals that the respondent workman was repeatedly engaged on 89 days" basis. It is, therefore, clear that the intention of the management was not to engage the respondent workman for a specified period, as alleged, but was to defeat the rights available to her under Section 25-F of the Act. The aforesaid practice at the hands of the petitioner management to employ the workman repeatedly after a notional break, clearly falls within the ambit and scope of unfair labour practice...."

10. A finding of fact was arrived at that her services were terminated on regular basis but she was reappointed after a gap of one or two days. In that view of the matter, the Labour Court or the High Court cannot be said to have committed any illegality.

11. In this case the services of the respondent had been terminated on a regular basis and she had been reappointed after a gap of one or two days. Such a course of action was adopted by the appellant with a view to defeat the object of the Act. Section 2(oo)(bb) of the Industrial Disputes Act, 1947, therefore, is not attracted in the instant case."

Ramesh Kumar Vs. State of Haryana, AIR 2010 SC 683 : (2010) 126 FLR 55 : (2010) 3 JT 184 : (2010) 1 LLJ 841 : (2010) 1 SCALE 432 : (2010) 2 SCC 543 : (2010) 1 SCC(L&S) 420 : (2010) 2 SCR 532 : (2010) AIRSCW 897 ,

"18. It is to be noted in the case of termination of casual employee what is required to be seen is whether a workman has completed 240 days in the preceding 12 months or not. If sufficient materials are shown that the workman has completed 240 days then his service cannot be terminated without giving notice or compensation in lieu of it in terms of Section 25-F. The High Court failed to appreciate that in the present case the appellant has completed 240 days in the preceding 12 months and no notice or compensation in lieu of it was given to him, in such circumstances his termination was illegal. All the decisions relied on by the High Court are not applicable to the case on hand more particularly, in view of the specific factual finding by the Labour Court."

Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Ltd., AIR 2014 SC 2258 : (2014) AIRSCW 3157 : (2014) 6 JT 190 : (2014) 3 LLJ 478 : (2014) 6 SCALE 119 .

"27. Very interestingly, the periods of service extends to close to 6 years save the artificial breaks made by the respondent with an oblique motive so as to retain the appellant as a temporary worker and deprive the appellant of his statutory right of permanent worker status. The aforesaid conduct of the respondent perpetuates "unfair labour practice" as defined under Section 2(ra) of the ID Act, which is not permissible in view of Sections 25-T and 25U of the ID Act read with entry at Serial No. 10 in the Vth Schedule to the ID Act regarding unfair labour practices.

29. Therefore, we deem it fit to construe that the appellant has rendered continuous service for six continuous years (save the artificially imposed break) as provided under Section 25-B of the ID Act and can therefore be subjected to retrenchment only through the procedure mentioned in the ID Act or the State Act in pari materia.

30. Therefore, we answer Point (ii) in favour of the appellant holding that the Labour Court was correct in holding that the action of the respondent employer is a clear case of retrenchment of the appellant, which action requires to comply with the mandatory requirement of the provisions of Section 6-N of the U.P. ID Act. Undisputedly, the same has not been complied with and therefore, the order of retrenchment has been rendered void ab initio in law."

Sudarshan Rajpoot Vs. U.P. State Road Transport Corporation, (2015) 1 ESC 109 : (2015) 144 FLR 7 : (2015) 1 LLN 292 : (2015) 1 SCJ 74 : (2015) 1 SLJ 274

"10. Sections 6-N and 6-Q rendered the order of termination passed against the appellant void ab initio in law. The conditions precedent as laid down under Section 6-N of the UPID Act for retrenchment of workmen have not been complied with though the appellant workman has put in continuous service of more than 240 days in a calendar year from the date of appointment till the date of his termination passed by the respondent Corporation. Non-consideration of this important legal aspect of the case by the High Court while setting aside the finding of facts recorded by the Labour Court in its award that the order of the respondent Corporation terminating the services of the appellant workman and non-compliance with mandatory provision of Section 6-N of the UPID Act, rendered the order of termination void ab initio in law."

Mackinnon Mackenzie and Company Ltd. Vs. Mackinnon Employees Union AIR 2015 SC 1373 : (2015) 145 FLR 184 : (2015) LabIC 1645 : (2015) 2 LLJ 151 : (2015) 2 LLN 279 : (2015) LLR 337 : (2015) 2 SCALE 707 : (2015) 4 SCC 544 : (2015) 3 SCJ 512

"34. Further, with regard to the allegation against the appellant Company that its action of retrenchment of the workmen concerned is in contravention with the provisions of Section 25-F clauses (a), (b) and (c) of the ID Act. Section 25-F clause (a) states that no workmen employed in continuous service for not less than one year under an employer shall be retrenched until 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 notice. In the case on hand, the workmen were served with the retrenchment notice on 27-7-1992 stating that their services stand retrenched from the close of business hours on 4-8-1992 in terms of the reasons appended to the said notice and further stated the amount of retrenchment compensation and one month's salary in lieu of notice that would be due to the workmen concerned. However, no cogent evidence has been brought before us by the appellant Company to prove that the abovereferred one

month's salary of the workmen concerned in lieu of the retrenchment notice has been actually paid to them. Further, the workmen concerned were given notice of retrenchment with statement of reasons appended therewith by the appellant Company only on 27-7-1992 which was effective from 4-8-1992. Therefore, one month's notice was not given to the workmen concerned before their retrenchment came into effect nor one month's salary in lieu of the retrenchment notice was paid to the workmen concerned. Therefore, the said action by the appellant Company is a clear-cut breach of the abovesaid provision of condition precedent for retrenchment of the workmen as provided under Section 25-F clause (a) of the ID Act. The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25-F clause (b) in the negative since no evidence has been produced by the respondent Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25-F clause (c), the appellant Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the workmen concerned. Therefore, we have to hold that the appellant Company has not complied with the conditions precedent to retrenchment as per Section 25-F clauses (a) and (c) of the ID Act which are mandatory in law."

8. Hence, I do not see any merit in the contention advanced by Shri Chaturvedi.

9. The scope of interference under Article 227 of the Constitution is limited. If order is shown to be passed by a Court having no jurisdiction, it suffers from manifest procedural impropriety or perversity, interference can be made. Even an erroneous order is not required to be corrected in these proceedings under Article 227 of the Constitution. The basic purpose of exercising the said jurisdiction is to keep the courts below within the bounds of their authority. Interference can be made sparingly for the said purpose and not for correcting error of facts and law in a routine manner. Another view is possible, is not a ground for interference. This view is taken in *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, (2011) 1 CTC 854 : (2010) 7 JT 529 : (2011) 1 RCR(Rent) 1 : (2010) 7 SCALE 428 : (2010) 8 SCC 329 : (2010) 8 SCR 836 : (2010) AIRSCW 6387 . There is no ingredient on which interference can be made in this petition.

10. Petition fails and is hereby dismissed.