
(1986) 05 AHC CK 0023
In the Allahabad High Court
Case No : Writ Petition No. 6249 of 1983

Naresh Chandra Srivastava

APPELLANT

Vs

Scooters India Ltd., Lucknow and another

RESPONDENT

Date of Decision : 01-05-1986

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo), 25B, 25F

Citation : (1986) 05 AHC CK 0023

Hon'ble Judges : S.Saghir Ahmad, J and Brijesh Kumar, J

Final Decision : Allowed

Judgement

S. Saghir Ahmad, J.—This is a petition under Article 226 of the Constitution.

2. The petitioner who obtained a Diploma in the trade of Machinist from Industrial Training Institute, Lucknow underwent apprenticeship training in M/s. Scooters India Ltd., Lucknow (Opposite Party No.1) with effect from 1081979 to 1681980. He was subsequently issued the certificate of having completed the training on 2081980 by the Superintendent (Safety and Training), Scooters India Ltd., Lucknow of which a copy is Annexure1 to the petition. In para 3 of the petition it has been stated by the petitioner that he was appointed as casual worker on 1351982. The period during which he worked on that post is indicated below.

Period days

1. 1851982 to 3181982 106

2. 791982 to 1111982 56

3. 17111982 to 3131983 174

336

3. The petitioner was not employed after 31st March, 1983 and his services were treated by the opposite parties to have come to an end automatically. It is in

these circumstances that the petitioner has filed the present petition in which the principal contention raised is that the petitioner could not have been thrown out of services without first complying with the provisions of Section 25F of the Industrial Disputes Act, as he had put in more than 240 days of service with opposite party No.1 in one calendar year.

4. The opposite parties have contested the petition. They have filed a counteraffidavit in which the period during which the petitioner had worked as Casual Worker has been set out in para 4. It is contended by the opposite parties that the petitioner's services had come to an end at different points of time and he was reemployed several times. He could not, therefore, be said to have been in "continuous? service for a period of 240 days. It is further contended by the opposite parties that the petitioner is not entitled to the benefit of the provisions contained in Section 25C, 25D 25E and 25F of the Industrial Disputes Act. In any case, the petitioner it is contended, has an alternative remedy before the Labour Court and the" present petition is, therefore, liable, to be dismissed.

5. The petitioner has filed a rejoinder affidavit. He has denied the account of working days set out by the opposite parties in para 5 of the counter affidavit and has given his own account as follows:

May, 1982 12 days

June, 1982 26 days

July, 1982 27 days

August, 1982 26 days

September, 1982 21 days

October, 1982 23 days

November, 1982 12 days

December, 1982 25 and 1/2 days

January, 1983 25 days

February, 1983 24 days

March, 1983 24 days

Total : 245 and 1/2 days

6. We have heard the learned counsel for the parties.

7. Section 25F of the Industrial Disputes Act provides as under:

"25F. No workman employed in any industry who has 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 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 days⁵ 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.?

8. The phrase "continuous service for not less than one year" has been defined in Section 25B which is reproduced below :

"25B. For the purposes 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 lockout 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) ninetyfive days, in the case of a workman employed below ground in a mine; and

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

Explanation. For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which

(i) He has been laid off under an agreement or as permitted by Standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

- (ii) He has been on leave with full wages, earned in the previous year;
- (iii) He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) In the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed twelve weeks.?

9. A perusal of subsection (2) (a) of Section 25B indicates that if a workman has put in 240 days of service, then he shall be deemed to be in "continuous service" under an employer for a period of one year. In *Ram Krishna Ram Nath v. Labour Court*, (1970) 2, Labour Law Journal 306, the Supreme Court held that if a workman has, during a period of twelve calendar months, actually worked in an industry for not less than 240 days, he shall be deemed to have completed one year's service in the industry. It was further observed that an enquiry has, therefore, to be made to find out whether the workman had actually worked for not less than 240 days during the period of twelve calendar months immediately preceding the retrenchment! The Supreme Court again in the case of *Surendra Kumar Verma v. Central Government Industrial Tribunal Cum Labour Court* AIR 1981 SC 422, observed that a workman who has actually worked under an employer for not less than 240 days in 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 was observed that it was enough that the workman had worked for 240 days in a period of twelve months.

10. The words "actually worked under the employer" came to be considered by the Supreme Court in *Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation*, AIR 1986 SC 458, in which it was laid down as under :

"The expression which we are required to construe is "Actually worked under the employer." This expression according to us, cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc....."

11. It will be seen that in the above decision the Supreme Court had allowed the workman the benefit of several days on which he had not actually worked in the industry, i. e. Sundays, on which the industry was closed.

12. Learned counsel for the opposite parties has stated that the above decision will not be applicable to the facts of this case, as in that case the workman was paid his wages for Sundays on which he has not actually worked. This is precisely what is claimed by the petitioner in the instant case and, therefore, the Supreme Court decision will be fully applicable. The Supreme Court itself had observed

that the expression "actually worked under the employer? necessarily comprehends all those days for which the workman had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.

13. Under the orders of this Court dated 29/11/1984, both the parties were required to produce the payslips. The petitioner has produced his original payslips which have also been shown to the counsel for the opposite parties. The payslips indicate that the petitioner has worked for more than 240 days. This is fully supported by the documents produced by the opposite parties who have summarised the account as follows:

Statement showing number of days actually worked and number of days taken into consideration for payment of wages to Shri N.C. Srivastava.

Month/Year Actual No. of days worked Number of days taken into consideration for payment of wages Total Days for which wages paid

1 2 3 4

May, 1982 12 12

June, 1982 26 26

July, 1982 26 1 27

(Idul Fitar Holiday on 23/7/1982)

August, 1982 25 1 26

(Independence day on 15/8/1982)

September, 1982 21 21

October, 1982 22 1 23

(Mahatma Gandhi's birth day on 21/10/1982)

November, 1982 12 12

December, 1982 24? 1 25?

(XMas Holiday on 25/12/1982)

January, 1983 24 1 25

(Republic day Holiday on 26/1/1983)

February, 1983 23 1 24

(Sanctioned leave for 25/2/1983)

March, 1983 23 1 24

(Sanctioned leave with pay for 15/3/1983)

238? days 7 days 245? days.

14. The petitioner was paid his wages for seven additional days on which he had not actually worked. These days will have to be counted towards the period for which the petitioner had worked under the opposite parties. If these seven days are added then the number of days for which the petitioner had worked would come to 245? days. The petitioner had, therefore, clearly rendered continuous service with the opposite parties for more than 240 days and was, therefore, entitled to the benefit of Section 25F of the Industrial Disputes Act.

15. The petitioner having worked for more than 240 days during the period in which he was in the employment of the opposite parties, shall be deemed to have put in continuous service for a year and thus be entitled to the benefit of Section 25F.

16. Learned counsel for the opposite parties has contended that the petitioner was employed by the opposite parties for specific periods and every time it was mentioned that his services would stand terminated automatically after the expiry of that period. After the expiry of the period for which he was employed, he was given fresh employment with the stipulation that his services would stand terminated automatically. In these circumstances it is contended by the counsel for the opposite parties that the petitioner's termination would not amount to "retrenchment" within the meaning of Section 25F.

17. "Retrenchment" has been defined in Section 2(00) of the Industrial Disputes Act. The definition may be quoted below:

"2(00) "retrenchment" means the termination by the employer of the service of workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include

(a) voluntary retirement of the workman, or retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf or termination of the service of the workman as a result of the nonrenewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(b) termination of the service of a workman as a result of the non renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein : or

(c) termination of the service of a workman on the ground of continued illhealth.?

18. The Supreme Court has held times out of number that the definition of "retrenchment" is of very wide import and that every form of termination for whatsoever reason it may be, would amount to retrenchment (See State Bank of

India v. N. Sundaram, AIR 1976 SC 1111, Robert D" Souza v. Executive Engineer, Southern Railway and another, 1982 (1) SCC 645.

19. In M/s Hindustan Steels Ltd., v. P.O. Labour Court, 1976 (4) SCC 222 it has been held that even if the services of an employee come to an end by efflux of time it would be a case of "retrenchment? within the meaning of the Industrial Disputes Act.

20. In view of the above, even if the petitioner's appointment came to an end by efflux of time or by the expiry of the period for which he was appointed, he would be entitled to the protection of Section 25F as the termination of his services would amount to "retrenchment.?

21. Learned counsel for the opposite parties pointed out that definition of ""retrenchment? as contained in Section 2(00) has been amended with effect from 1881984 by Act No.49 of 1984 by which clause (bb) has been added in the definition of retrenchment. This may be reproduced below:

?(bb) termination of the service of the workman as a result of the now renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or?

22. It is on the basis of this provision that it has been contended that because in the instant case the services of the petitioner had come to an end in view of the specific stipulation in the appointment letter, the termination would not amount to retrenchment. The amendment introduced in the definition of retrenchment is not retrospective. It was introduced, as stated above, with effect from 1881984. It would not, therefore be applicable to the termination in the instant case which was brought about on 2731983.

23. Learned counsel for the opposite parties then contended that the writ petition may be dismissed in view of the fact that the petitioner has an efficacious alternative remedy under the Industrial Disputes Act by approaching the Labour Court for the redress of his grievance.

24. This writ petition is pending in this Court for the last about three years. In was admitted on 24111983 and although it was mentioned that the question of maintainability can be raised at a later stage, we are not, in the peculiar circumstances of the case, particularly when the parties have exchanged their affidavits on the merits of the question involved in the petition and particularly when it has come to our notice that the petitioner's services have been terminated in complete disregard of the statutory protection available to him under the Industrial Disputes Act, prepared to throw out this writ petition merely on the ground that the petitioner has an alternative remedy before the Labour Court.

25. In view of the above, the writ petition is allowed. The opposite parties are directed to put back the petitioner on duty as Machinistcum,Machineman on the

terms on which he was working earlier with all consequential benefits and to allow him to continue in service till his services are terminated in accordance with law. There will be no order as to costs.

26. Immediately after we had dictated the judgment learned counsel for the opposite parties made a request that a certificate to leave to appeal to the Supreme Court may be granted. The decision rendered by us is based on the principles enunciated by the Supreme Court and in our opinion no question of law of general importance is involved which may be required to be considered by the Supreme Court. The certificate prayed for is refused.