
(2000) 08 CAL CK 0015
In the Calcutta High Court
Case No : Writ Petition No. 1659 of 2000

Northern Coalfields Limited	Vs	APPELLANT
Ajanta Deb and Others		RESPONDENT

Date of Decision : 17-08-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2001) 3 LLJ 821

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—In this writ application the employer, Northern Coalfields Limited, has challenged an award dated December 14, 1999 passed by the Presiding Officer, Central Government Industrial Tribunal, Calcutta in reference No. 21/96 published vide Notification bearing No. L-22012/308/9-5/IR(C)-II.

2. The following disputes were referred to the Tribunal for adjudication:-

"Whether the action of the Management of Northern Coalfields Limited of Calcutta Office in terminating the service of Smt. Ajanta Deb, Hindi Typist with effect from May 4, 1994 is legal and justified? If not, what relief the workman is entitled to?"

3. By the award impugned herein, the Tribunal below has answered the aforesaid questions in favour of the workman and had directed the petitioner to reinstate the concerned workman in service with effect from the date of termination along with back wages at the rate of Rs. 50/- a day.

4. The case of the workman was that she was duly appointed to the post with effect from April 12, 1993 for remuneration at the rate of Rs. 50/- a day. The said appointment was approved by the management in its note sheet dated April

2, 1993 and since her appointment, she had been performing her duties regularly with responsibility. However, after completion of more than 240 days of continuous service, the management all of a sudden terminated her service with effect from May 3, 1994. She applied for reinstatement but without any effect. Management having thus refused to reinstate her in service, the union raised an industrial dispute giving rise to the instant proceeding.

5. The management filed written statement thereby contending that at the relevant time the management was required to publish two internal magazines called "Basundhara" and "Coal Bulletin" and Sri R.R. Mishra the then incharge of the Public Relation Department for the same felt the necessity of typing huge number of pages for that purpose. The management had to spend approximately Rs. 2 to 2.50 per page for such typing from outsiders. Mr. Mishra felt that a typist could be engaged for doing the typing work as such, engagement was likely to save time and money of the management. Mr. Mishra accordingly recommended that the concerned workman could be entrusted with the job of typing the entire papers relating to the magazines. The workman was asked approximately to type 25 pages a day and accordingly a sum of Rs. 50/- was fixed as her remuneration per day assessing Rs. 2/- per page for the same. The management also alleged that the concerned workman was clearly informed that she was not to take such engagement as any kind of appointment either a temporary or permanent. In spite of abolition of Public Relations Department on March 25, 1994, some outstanding works of typing were yet to be done and such works were completed on May 2, 1994 and the position was explained to Smt. Deb and she had agreed and ultimately stopped attending office with effect from May 3, 1994. The management thus alleged that the concerned workman having been engaged for doing a particular specific job which was assigned to her and she having been supposed to complete the said job within a specific time and against particular monetary consideration, it was a matter of simple contract creating no relationship of employer and employee between them.

6. Before the Tribunal below two witnesses were examined on behalf of each side.

As indicated earlier, the learned Tribunal below on consideration of the entire materials on record disbelieved the case of the management that the workman voluntarily ceased to attend office from May 3, 1994 and further held that it was a case of retrenchment within the meaning of Section 25-F of the Industrial Disputes Act and as such in the absence of any notice under the aforesaid section such retrenchment was illegal justifying reinstatement of the workman with back wages.

Being dissatisfied, the employer has come up with the instant writ application.

7. Mr. Bandhopadhyay, the learned counsel appearing on behalf of the petitioner has vehemently contended that the employment of the petitioner was not in conformity with the rules of the petitioner and she was given employment on contractual basis only for the purpose of doing typing job for a specific purpose.

The said purpose, Mr. Bandhopadhyay continues, having come to an end, her service automatically ceased and as such the case cannot come within the purview of Section 25-F of the Act.

In support of such contention Mr. Bandhopadhyay strongly relies upon the decision of the Apex Court in the case of Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others, .

8. Mr. Bhattacharya, the learned counsel appearing on behalf of the employee has on the other hand supported the order of the Tribunal and has contended that the decision cited by Mr. Bandhopadhyay has no application to the fact and circumstances of the present case. Mr. Bhattacharya contends that this is not a case of regularisation of service but the only point involved before the Tribunal was whether the termination of the service of the respondent without a notice u/s 25-F of the aforesaid Act was legal or not? Mr. Bhattacharya points out that in the aforesaid case of Himanshu Kumar Vidyarthi and Ors. (supra) the Apex Court held that the concerned department of the Government in that case could not be treated to be industry and as such the workmen concerned could not get benefit of Section 25-F of the Act.

9. For the purpose of appreciation of the questions involved in this application the following provisions of the Industrial Disputes Act, 1947 ("Act") are quoted hereunder:-

"Section 25-F. 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 appropriate Government by notification in the Official Gazette.

Section 2(j), "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

Section 2(oo). "retrenchment" means the termination by the employer of the service of a 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

b) 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

bb) termination of the service of the 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 ill-health.

Section 2(s). "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an "industrial dispute, includes any such person who has been dismissed, discharged "or retrenched in connection with or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

i) who is subject to the Air Force Act, 1950 or the Army Act, 1950, or the Navy Act, 1957; or

ii) who is employed in the police service or as an officer or other employee of a prison, or

iii) who is employed mainly in a managerial or administrative capacity; or

iv) who, being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

10. In order that the aforesaid provision contained in Section 25-F of the Act applies to a given case the concerned workman must be held to be employed in an industry and such workman must be retrenched by the employer. In addition to the aforesaid conditions, the concerned workman must be employed in the industry for a continuous period of (sic) not less than one year.

11. In the instant case, there is no dispute that the establishment of the petitioner is an industry and that the respondent worked continuously for more than 240 days. Therefore, if it is established from the materials on record that the respondent is a workman and that she was retrenched she would be entitled to a notice u/s 25-F of the Act. It appears from the definition of the workman that even if a person does not come within the first part of the said definition, for the purpose of Section 25-F, a person will be deemed to be workman if his case comes within the definition of retrenchment. In the instant case, it is nobody's case that any punishment has been inflicted by way of disciplinary action nor is it a case of voluntary retirement or retirement of the workman on reaching the age

of superannuation or on the ground of continued ill health. The management has made out a case as mentioned in Clause (bb) of Section 2(oo) of the Act. There is no dispute that in the instant case there is no written agreement between the parties. If the employer wants to take a defence mentioned in the aforesaid Clause (bb), the onus is entirely upon such employer to prove that the workman concerned comes within such clause.

12. In the instant case, R.R. Mishra, an officer of the employer has admitted in his cross-examination that there is nothing to show nor was anything produced before the Tribunal to indicate that the service of the concerned workman was temporary or contractual. He further admitted that the concerned workman had worked for more than 240 days. He further admitted that there was nothing in the note sheet or in the order of the General Manager, who sanctioned the assignment to prove that the job was temporary in nature. The other witness for the management viz. Chinmoy Sammadder also could not produce any material showing that there was any such contract between the parties. In cross-examination he stated that since the concerned workman was not given any appointment letter, he was asserting that the workman was not appointed.

13. The learned Tribunal below on consideration of the entire materials on record placed reliance on Exhibit "M1", the note sheet dated April 2, 1993 showing that there was no indication in the note sheet justifying a conclusion that the appointment was temporary or contractual in nature. No statutory rules in respect of employment to any post under the employer was also placed before the Tribunal. Under such circumstances, the Tribunal below believed the evidence adduced on behalf of the workman and disbelieved the case of the management and on appreciation of the evidence on record arrived at the conclusion that it was a case of retrenchment within the meaning of Section 2(oo) of the Act and thus concluded that in the absence of a notice u/s 25-F of the Act such retrenchment was illegal.

14. Those findings are essentially findings of fact based on materials on record. It cannot by any stretch of imagination be argued that such finding is based on no evidence nor can it be said that the findings were perverse findings of fact. I have already indicated that the onus was upon the management to prove that this case comes within Clause (bb) of Section 2(oo) of the Act; but the management having failed to lead any evidence in support of such plea, the initial onus could not be discharged and thus the Tribunal below rightly held that this was a case of retrenchment.

15. The decision cited by Mr. Bandhopadhyay, in my opinion, docs not apply to the fact of the present case. In the case of Himanshu Kumar Vidyarthi (supra), on the fact of the said case the Apex Court arrived at a conclusion that the concerned department of the Government could not be treated to be industry and as such Section 25-F could not have any application to the fact of the said case. In the case before us I have already pointed out that Northern Coalfields Limited is an industry within the meaning of the Act and the case of

retrenchment has been proved. There is thus no scope of argument that Section 25-F will not be applicable to the instant case.

16. I therefore find no substance in the writ application and the same is dismissed. In the facts and circumstances there will be however no order as to costs.