
(2013) 11 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2582/2001

Pali Central Co-operative Bank Ltd.

APPELLANT

Vs

Judge, Labour Court

RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Citation : (2014) 3 WLN 309

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Lohra, J.—The petitioner-employer has assailed the impugned award dt. 9th May, 2001 passed by the Labour Court, Jodhpur in the instant writ petition. The learned Labour Court, by the award under challenge, has answered the reference in favour of respondent-workman and against the petitioner by holding that termination of the workman w.e.f., 01.01.1991 is illegal and void and as such he is liable to be reinstated in the services of the petitioner with continuity of services and 25% back wages from the date of reference till his reinstatement. The factual matrix, giving rise to this writ petition, is that the second respondent-workman was appointed as Peon by the petitioner-Bank on 12.03.1987 and continued to serve the Bank in the said capacity for more than three years. On 01.01.1991 services of the respondent-workman were dispensed with.

2. Feeling aggrieved from this action of the petitioner-employer, the respondent-workman raised an industrial dispute, inter alia, on the ground that his services have been terminated in gross violation of Sections 25-F & G of the Industrial Disputes Act, 1947 (for brevity, "the Act of 1947"). The Conciliation Officer, while entertaining the dispute of the second respondent, summoned the petitioner for making efforts to settle the matter amicably. The conciliation proceedings undertaken by the Conciliation Officer ultimately failed and thereupon a failure report was sent to the appropriate Government. The appropriate Government thereafter taking into account the existence of an industrial dispute between the

rival parties referred the dispute for adjudication to the Labour Court, Jodhpur.

3. Before the learned Labour Court, the respondent submitted his statement of claim and ventilated his grievances against the alleged illegal action of the petitioner-employer. In the statement of claim, it was, inter alia, pleaded by the respondent that he was employed by the petitioner-Bank as Peon on 12.03.1987 and he has served various branches of the Bank in this capacity without interruption upto 31.12.1990. It is also averred in the statement of claim that at the threshold, the respondent was paid daily wages at the rate of Rs. 12/-, which was subsequently enhanced to Rs. 14/- and the requisite amount was paid to him by the end of the month. Asserting that during his entire service tenure, he has discharged his duties with sincerity and diligence the respondent has also submitted, in the statement of claim, that his attendance was also recorded in the attendance register. Voicing his grievance against his illegal termination, the second respondent has alleged in the statement of claim that his services were terminated abruptly without any notice/pay in lieu of notice and without offering him retrenchment compensation. The respondent has also alleged violation of Rule 77 of the Rajasthan Industrial Disputes Rules, 1958 in his statement of claim.

4. The statement of claim was replied by the petitioner. In the reply, a specific plea was raised on behalf of the petitioner that under the petitioner-Bank appointing authority for peon is Managing Director and there is a prescribed procedure for such recruitment. While responding to the averments contained in the statement of claim, the petitioner has asserted in the reply that in case of respondent-workman, the prescribed procedure for recruitment was not adhered to and even the so called appointment was not accorded by the competent authority, and therefore, the same is de hors the rules. With this plea, the petitioner has asserted that the respondent-workman is not entitled for any relief. While joining the issue with the respondent-workman, the petitioner has also refuted the averment that the workman remained in continuous employment for three years. As per the version of the petitioner-Bank, the respondent has not worked for 240 days in any calendar year. On the strength of the aforesaid pleas, the Bank has resisted the claim of the respondent and prayed for answering reference in its favour.

5. After exchange of pleadings by the rival parties, evidence were tendered by both the parties and finally, the learned Labour Court adjudicated the reference and by its impugned award found the termination of the respondent-workman void and illegal and granted him the relief of reinstatement besides other benefits as set out in the operative portion of the award.

6. The matter came up before this Court and the Court was pleased to admit the writ petition by order dt. 04.07.2002. While admitting the writ petition, the Court was pleased to stay the operation of the impugned award. After passing of the impugned order, the respondent-workman preferred an application under Sec. 17-B of the Act of 1947 on 19.02.2003, but no orders were passed on the said

application. The respondent-workman thereafter once again moved an application under Sec. 17-B of the Act of 1947 on 08.07.2008 and the said application also remained pending and no orders were passed on the same. In view of these developments, since filing of the writ petition, the respondent-workman was neither reinstated in the services, nor he was allowed any benefit flowing from Section 17-B of the Act of 1947. All these facts and circumstances are having definite bearing on the matter, and therefore, these facts shall be taken into consideration while adjudicating the lis involved in this petition.

7. Learned counsel for the petitioner, Mr. Chaitanya Gahlot, has vehemently argued that the appointment/engagement of the respondent-workman was not in accordance with the rules and procedure. According to learned counsel even on daily wages, the Branch Manager was not competent to engage the respondent without approval of the Managing Director of the Bank. Laying great emphasis on this plea, learned counsel has contended that the respondent is not entitled for protection of Chapter V-A of the Act of 1947. While substantiating this argument, the learned counsel for the petitioner, Mr. Chaitanya Gahlot, would urge that while adjudicating the reference the learned Labour Court has not examined this vital aspect and as a matter of fact from the impugned award it is clearly discernible that the learned Labour Court has not addressed on this issue while answering reference in favour of the respondent-workman, and therefore, the award impugned cannot be sustained. Learned counsel for the petitioner has also made an attempt to assail the finding of fact recorded by the Court below, inasmuch as he has questioned the finding that the respondent-workman has worked for 240 days in a calender year preceding the date of retrenchment. Mr. Gahlot has also urged that the learned Labour Court has erroneously drawn adverse inference against the petitioner-Bank for non-production of relevant record because according to him burden of proving the factum of employment and duration of employment was on the respondent-workman and the said burden cannot be shifted on the employer. Mr. Chaitanya Gahlot has urged with full emphasis, at his command, that the findings recorded by the learned Court below are perverse and the same suffer from the vice of an error apparent on the face of record, which is required to be interfered with by this Court.

8. E-converso, the learned counsel for the respondent-workman, Mr. A.K. Rajvanshy has put stiff defence in support of the impugned award and submitted that same is not liable to be interfered with. Mr. Rajvanshy would urge that the learned Labour Court has thrashed out the matter, in its entirety, and on appreciation of evidence has recorded a categorical finding that the respondent-workman has worked for more than 240 days in a calender year preceding his date of retrenchment, which cannot be made subject-matter of judicial review in exercise of supervisory jurisdiction of this Court.

9. While negating the contention of the learned counsel for the petitioner founded on the plea that the appointment of the respondent was dehors the recruitment rules, Mr. Rajvanshy submits that this plea is not available to the

petitioner employer and in view of the fact that the retrenchment of the respondent-workman is made in violation of Chapter V-A of the Act of 1947, no interference with the finding of fact is called for. In support of his contentions, Mr. Rajvanshy has placed reliance on the case of Harjinder Singh Vs. Punjab State Warehousing Corporation, In the said verdict, the Hon"ble Apex Court has made following observations in Paras 21 to 26:-

21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Arts. 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

"10.... The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State."

(State of Mysore vs. Workers of Gold Mines, AIR p. 928, Para 10.)

22. In Y.A. Mamarde vs. Authority under the Minimum Wages Act, this Court, while interpreting the provisions of the Minimum Wages Act, 1948, observed: (SCC pp. 109-10)

"The anxiety on the part of the Society for improving the general economic condition of some of its less favoured members appears to be in supersession of the old principle of absolute freedom of contract and the doctrine of laissez faire and in recognition of the new principles of social welfare and common good. Prior to our Constitution this principle was advocated by the movement for liberal employment in civilised countries and the Act which is a pre-Constitution measure was the offspring of that movement. Under our present Constitution the State is now expressly directed to endeavour to secure to all workers (whether agricultural, industrial or otherwise) not only bare physical subsistence but a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure. This directive principle of State policy being conducive to the general interest of the nation as a whole, merely lays down the foundation for appropriate social structure in which the labour will find its place of dignity, legitimately due to it in lieu of its contribution to the progress of national economic prosperity."

23. The Preamble and various articles contained in Part IV of the Constitution promote social justice so that life of every individual becomes meaningful and he

is able to live with human dignity. The concept of social justice engrafted in the Constitution consists of diverse principles essentially for the orderly growth and development of personality of every citizen. Social justice is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic devise to mitigate the sufferings of the poor, weak, Dalits, tribals and deprived sections of the Society and to elevate them to the level of equality to live a life with dignity of person. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation of every section of the Society.

24. In a developing Society like ours which is full of unbridgeable and ever widening gaps of inequality in status and of opportunity, law is a catalyst to reach the ladder of justice. The philosophy of welfare State and social justice is amply reflected in large number of judgments of this Court, various High Courts, National and State Industrial Tribunals involving interpretation of the provisions of the Industrial Disputes Act, Factories Act, 1948; Payment of Wages Act, 1936; Minimum Wages Act, 1948; Payment of Bonus Act, 1965; Workmen's Compensation Act, 1923; Employees' State Insurance Act, 1948; Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Shops and Commercial Establishments Act enacted by different States.

25. In *Ramon Services (P) Ltd. vs. Subhash Kapoor*, R.P. Sethi, J. observed that: (SCC p. 127, Para 21)

"21. After independence the concept of social justice has become a part of our legal system. This concept gives meaning and significance to the democratic ways of life and of making the life dynamic. The concept of welfare State would remain in oblivion unless social justice is dispensed. Dispensation of social justice and achieving the goals set forth in the Constitution are not possible without the active, concerted and dynamic efforts made by the person concerned with the justice dispensation system."

26. In *LIC vs. Consumer Education and Research Centre*, K. Ramaswamy, J. observed that social justice is a device to ensure life to be meaningful and livable with human dignity. The State is obliged to provide to workmen facilities to reach minimum standards of health, economic security and civilised living. The principle laid down by this law requires Courts to ensure that a workman who has not been found guilty cannot be deprived of what he is entitled to get. Obviously when a workman has been illegally deprived of his device then that is misconduct on the part of the employer and employer cannot possibly be permitted to deprive a person of what is due to him.

10. I have heard the learned counsel for the parties, perused the impugned award and other materials on record.

11. Upon perusal of the impugned award per se the same is based on proper appreciation of evidence. The learned Labour Court, while considering the

available material, has recorded a categorical finding that the respondent-workman has worked as Peon in the petitioner-Bank from 12.03.1987 to 31.12.1990 and before dispensing with his services, mandatory provisions of Sections 25-F and G were not complied with by the petitioner-employer. The issue canvassed on behalf of the petitioner that the appointment of respondent was dehors the rules has also been properly addressed by the learned Court below and, while dealing with the same, the same has been brushed aside on the ground that even if the appointment is treated to be dehors the rules, compliance of mandatory provisions, enshrined in Chapter V-A of the Act of 1947, was essential. The Court is quite conscious that supervisory jurisdiction under Art. 227 of the Constitution of India is not akin to that of appellate jurisdiction and reappraisal of evidence while exercising the said jurisdiction is not desirable. It is trite that supervisory jurisdiction is to be exercised with great care and circumspection and the Court is not obliged to upset a decision even if it is erroneous. Analyzing the impugned award, critically this Court feels that the learned Labour Court has not committed any procedural irregularity or an error apparent on the face of record while passing the impugned award. Therefore, the findings and conclusions of the learned Labour Court to the extent that retrenchment of the respondent-workman is bad in law being in clear violation of Section 25-F of the Act of 1947 is not liable to be disturbed. However, the matter requires consideration so far as relief granted to the respondent-workman is concerned.

12. True, it is that the learned Labour Court has found retrenchment of the respondent-workman as bad in law, but the relevant fact is that his services were dispensed with on 31.12.1990 and since then almost 13 years have elapsed and during pendency of this writ petition the award remained stayed for almost a decade. These are some of the mitigating factors, which in the considered opinion of this Court, are very vital and germane so as to deviate from the general principle/practice that in the event of retrenchment being found void ab initio, consequence of reinstatement must follow. As a matter of fact, industrial adjudicator is not bound to grant some relief, because it will be lawful to do so. Three Judges' Bench of Hon'ble Apex Court in the case of Manager, R.B.I., Bangalore Vs. S. Mani and Others, has made following observations in Para 54 of the verdict:-

54. Mr. Phadke, as noticed hereinbefore, has referred to a large number of decisions for demonstrating that this Court had directed reinstatement even if the workmen concerned were daily wagers or were employed intermittently. No proposition of law was laid down in the aforementioned judgments. The said judgments of this Court, moreover, do not lay down any principle having universal application so that the Tribunals, or for that matter the High Court, or this Court, may feel compelled to direct reinstatement with continuity of service and back wages. The Tribunal has some discretion in this matter. Grant of relief must depend on the fact situation obtaining in a particular case. The Industrial adjudicator cannot be held to be bound to grant some relief only because it will

be lawful to do so.

13. The passage of time of almost 13 years is a significant fact, which has dissuaded me to maintain the relief of reinstatement granted by the impugned award. My this view is fully fortified by a decision of Hon''ble Supreme Court in the case of Rattan Singh vs. Union of India & Anr., (1997) 11 SCC 396. In the said case, while considering the passage of time, the Hon''ble Apex Court has granted relief of lump sum amount of compensation in lieu of reinstatement. Para 3 of the said verdict reads as under:-

3. We find merit in the said submission of Shri Ashri. From the dates mentioned in the judgment of the first appellate Court dt. 22.01.1985, it appears that the appellant had continuously worked for more than 240 days in a year. Since he was a workman, he was entitled to the protection of Section 25-F of the Act and the said protection could not be denied to him on the ground that he was a daily rated worker. It is not the case of the respondents that the provisions of Section 25-F of the Act were complied with while terminating the services of the appellant. In these circumstances, the termination of services of the appellant cannot be upheld and has to be set aside. The services of the appellant were terminated in the year 1976. Nearly 20 years have elapsed since then. In these circumstances, we are not inclined to direct reinstatement of the appellant. But having regard to the facts and circumstances of the case, we direct that a consolidated sum of Rs. 25,000 be paid to the appellant in lieu of compensation for back wages as well as reinstatement. This amount is being paid in full and final settlement of all the claims of the appellant. The said amount shall be paid within two months. The appeal is disposed of accordingly. No costs.

14. The said view was also endorsed by the Hon''ble Apex Court in the case of S.P. Borkar & Ors. vs. N.T.C. (S.M.) Ltd. & Ors., 2001 AIR SCW 2540. In Para 3 of the said verdict, the Hon''ble Apex Court has made following observations:-

3. We have examined the records of the cases and are of the view that there was no agreement between parties in passing the order. However, it is clear that the Industrial Court had taken into consideration various suggestions made by the learned counsel appearing for either of the parties and came to the conclusion as stated above. In the circumstances, it would not be fit or proper on our part to interfere with the order made by the Industrial Court as affirmed by the High Court. We decline to interfere with the same. The appeals are dismissed accordingly.

15. The learned counsel for the petitioner has placed reliance on the case of Harjinder Singh (supra), but that was a case, wherein the Hon''ble Apex Court has affirmed the finding of fact that retrenchment of the workman was in violation of the principle of "Last Come First Go" and his appointment was also in a pay-scale and he was not employed as daily rated worker. Thus, in the backdrop of the facts and circumstances of the instant case, substituting the relief of reinstatement by lump sum amount of compensation in lieu of

reinstatement is also considered just and appropriate as on the day, the respondent has crossed the age of 45 years. A redeeming fact, which has weighed heavily in favour of a workman for granting adequate compensation in lieu of reinstatement is that during the pendency of this writ petition, an application under Sec. 17-B of the Act of 1947 was laid by the workman, which remained inconclusive in spite of the fact that the same was not contested by the petitioner. Grant of the last wages drawn to an incumbent-workman is a mandatory condition during pendency of proceedings before the higher Courts and the amount to be paid is in the form of subsistence allowance for survival of the workman is required to be added while awarding lump sum amount of compensation in lieu of reinstatement. Indisputably, the respondent has worked for more than three years and his application under Sec. 17-B of the Act of 1947 was filed at the earliest in the year 2003, which remained pending for almost a decade. For doing substantial justice, the respondent-workman is liable to be granted lump sum amount of compensation in lieu of reinstatement for a sum of Rs. 2,35,000/-, which is Inclusive of the amount, which he would have received in compliance of Section 17-B of the Act of 1947.

16. The award is accordingly modified and the respondent-workman is declared entitled for lump sum amount of compensation in lieu of reinstatement to the tune of Rs. 2,35,000/- only.

17. Resultantly, this petition is allowed in part and the award impugned to the extent it has granted relief of reinstatement to the respondent-workman is set aside and the same is substituted by awarding of lump sum amount of compensation to the tune of Rs. 2,35,000/- only. The petitioner-employer is directed to ensure payment of lump sum amount of compensation as expeditiously as possible preferably within a period of three months from the date of passing of this order. Costs are made easy.