
(1978) 01 KL CK 0008
In the High Court Of Kerala
Case No : O.P. 3806 of 1977-C

Premier Tyres Ltd.

APPELLANT

Vs

The Premier Tyres Workers Union

RESPONDENT

Date of Decision : 20-01-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2(DD), 25F

Citation : (1978) 01 KL CK 0008

Hon'ble Judges : Subramonian Poti, J

Bench : Single Bench

Advocate : Menon and Pai, for the Appellant; M.P. Menon and M. Ramachandran, for the Respondent

Final Decision : Dismissed

Judgement

Subramonian Poti, J.—The Industrial Tribunal, Calicut, which passed Ext. P-1 award found that a workman of the Petitioner-company represented by the 1st Respondent union ought to be reinstated since he has been denied employment without any enquiry whatsoever and such reinstatement was to be with backwages and continuity of service. The workman concerned was appointed as a trainee driver with effect from 4th February 1974 for a period of six months. Though Ext. P-3 order of appointment on probation did not indicate this period, reference is made to the standing orders, which limits this period to six months or other extended period. The case of the management is that on the expiry of the period of six months an extension order was served on the workman and the workman continued for another six months on the expiry of which period his services were terminated. The fact of such extension is not admitted. But the argument note, Ext. P-10, submitted by the union before the Industrial Tribunal, Calicut, would show that the union took the stand that the question whether probation was extended or not was immaterial for the purpose of the case, for, the contention taken was that irrespective of the question whether probation was extended or not, since the termination was retrenchment and such retrenchment

was not effected in accordance with the requirements of the Industrial Disputes Act, it was invalid. It would appear that what was argued before the Industrial Tribunal was that the only question the Tribunal was called upon to consider was whether in the circumstances the termination was retrenchment and if so whether that was consistent with the provisions of the Industrial Disputes Act. The Tribunal has found that there was no acceptable evidence to show that the order extending the period of probation for another six months had been served on the workman and for that reason the Industrial Tribunal has come to the conclusion that since the workman was not shown to have continued as a probationer the termination of service was not proper.

2. It is true that the Industrial Tribunal went wrong in thinking that if the order extending the period of probation was not served, the workman would cease to be a probationer. The decisions in. *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, and *Premajam v. University of Kerala 1965 (I) L.L.J. 77* are cases which support the Petitioner's contention to the contrary. If after the expiry of the period of probation the workman continues to work he would be continuing as a probationer unless it is shown that his character has changed. If that be the case the Petitioner is right in contending that, notwithstanding the absence of service of an order, extending the period of probation, the workman should be deemed to be a probationer. Learned Counsel for the Petitioner contends that since the decision of the Industrial Tribunal is based on an erroneous approach it must be quashed. To be fair to counsel I must say that he himself called my attention to the case of the union at the hearing before the Industrial Tribunal. Ext. P-10 notes to which I have already adverted categorically stated in paragraph 4:

It is really unnecessary to decide whether George's probation had been extended or whether he was discharged as a probationer for poor performance, because the employee will be entitled to relief on another ground set forth hereunder.

The ground set forth is that the requirements of retrenchment were not complied with. Sri M.P. Menon learned Counsel appearing for the 1st Respondent union takes the position that it is well established now that any termination of service except in the cases specifically excluded in the definition of the term "retrenchment" in Section 2DD of the Industrial Disputes Act would be retrenchment. Therefore even in a case where probation is terminated whether during the period of the term or on the expiry of the term it would be retrenchment. Consequently that can be effected only in accordance with the provisions of the Industrial Disputes Act. The position is well settled by the decisions of this Court as well as the Supreme Court. As early as in 1972 this Court considered this question and in the decision of a Division Bench of this Court reported in *L. Krishnan v. Southern Railway 1972 (XI) L.L.J. 568* it was held that the term "retrenchment" takes within its scope cases of termination of employment for any reason whatsoever otherwise than in the specific cases

referred to in the definition. That was a case where certain persons were found to be surplus and therefore their services were terminated under statutory rules. Even such a case was found to be not one of simple termination of service, but one to which the term "retrenchment" would apply. The Supreme Court has spoken on this question in the decision in *The State Bank of India Vs. Shri N. Sundara Money*, and in the *Hindustan Steel Case AIR 1977 S.C. 31*. I need not deal with this question any further, for, this part of the case of the first Respondent is not disputed by the Petitioner's counsel.

3. The real question in controversy in this case is whether this Court exercising jurisdiction under Article 226 of the Constitution could support an award of the Industrial Tribunal on a ground different from that on which the award is based. No doubt, the ground on which termination has been found to be improper in the award under challenge cannot stand. But even if on the facts admitted or proved in the case the court could hold that there was no valid termination of service, could it be said nevertheless that this Court should not embark upon such an examination? As I have indicated, the fact that the termination of a probationer's service is also "retrenchment" cannot be a matter in controversy. Even if it be controverted the answer is easy since the question is well settled by the decisions adverted to. That in the instant case Section 25F of the Industrial Disputes Act has not been complied with is not in dispute. If that be the case the order of termination cannot stand. The question then is, whether, nevertheless, this Court should quash the award of the Industrial Tribunal since the ground on which it has been passed is unsustainable or whether the award could be sustained for the reasons indicated.

4. The Supreme Court in the decision in *Management of Northern Railway Co-operative Society Ltd. Vs. Industrial Tribunal, Rajasthan, Jaipur and Another*, supported a decision of the Labour Court on a ground different from that on which such decision was based. In that case the Supreme Court said at page 1187:

In these circumstances, we consider that learned Counsel for the Respondents is justified in urging before us that the Respondents are entitled to support the decision of the Tribunal setting aside the order of Kanraj even on grounds which were not accepted by the Tribunal or on other grounds which may not have been taken notice of by the Tribunal while they were patent on the face of the record.

It may be said that the Supreme Court expressed this view while considering the propriety of an award in its appellate jurisdiction and as appellate authority the court was competent to rely upon a ground different from that relied on by the Labour Court in support of its decision. That could be so said even in regard to the decision in *Ramanbhai Ashabhai Patel Vs. Dabhi Ajitkumar Fulsinji and Others*, . That case was an appeal taken to the Supreme Court against a decision of the Election Tribunal. In *Management of Northern Railway Co-operative Society Ltd. Vs. Industrial Tribunal, Rajasthan, Jaipur and Another*, at paragraph 11 the decision in *Powari Tea Estate v. Bharkataki (M.K.) (1965) II L.L.J. (S.C.)*

102 was referred to by the Supreme Court and that decision was approved by the Supreme Court. The ratio of that decision will have direct application to the case before me. Against the decision of the Labour Court the High Court was approached under Article 226 of the Constitution. The High Court dismissed the petition. It was in the appeal against such decision before the Supreme Court that the court had occasion to consider the propriety of supporting the decision reached by the Labour Court on grounds other than that on which the Labour Courts decision was based. In fact the ground on which the Supreme Court relied was not a ground referred to in the award of the Labour Court. In this context Gajendragadkar, C.J. speaking for the court said thus at page 104 *Powari Tea Estate v. Bharkataki* (1965)II L.L.J. (S.C.) 102:

Prima facie there is substance in the contention raised by Sri Setalvad. The true legal position about the jurisdiction and powers of the industrial tribunal or the labour court dealing with disputes arising from dismissal of industrial employees, is no longer in doubt; and if the decision reached by the labour court could not have been sustained on the ground to which we will presently refer, the criticism made by Sri Setalvad would have justified our interference with the order passed by the labour court. But it appears from the record that the decision reached by the labour court can be justified on another ground to which the labour court has not referred, but which is patent on the record.

I consider this as a categorical statement of the law. I do not think it can no longer be in doubt, in the face of the pronouncement of the Supreme Court, that the decision reached by the labour court can be upheld on a ground different from that relied on by the labour court if such ground is patent on the face of the records. That is exactly the case here. The decision of the Labour Court was not based on the ground relied on and urged by the Union. The ground urged by the Union was plainly sustainable. It was patent on the record. Therefore the order of the Industrial Tribunal is supportable.

5. Even otherwise I do not think there is any purpose in setting aside the award and sending the case back to the Industrial Tribunal, so long as there is reason to hold that the ultimate decision, in the light of what has been stated here cannot give any relief to the Petitioner in this case. In the discretionary exercise of its jurisdiction this Court will not indulge in such futile exercise.

In the circumstances I dismiss the Original Petition. No costs, in the circumstances.