
(1987) 08 RAJ CK 0058
In the Rajasthan High Court

Principal, Mayo College

APPELLANT

Vs

Labour Court

RESPONDENT

Date of Decision : 21-08-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 11A, 17B, 2, 25F

Citation : (1988) 2 LLJ 351 : (1988) 1 RLW 120

Hon'ble Judges : S.C. Agarwal, J;P.C. Jain, J

Bench : Division Bench

Judgement

P.C. Jain, J.—By this writ petition, the petitioner seeks to quash the award dated 21st October 1986, annexure 17, passed by the learned Labour Court, whereby the order of termination terminating the services of Bhanwar Singh, respondent No. 2, dated 13th August 1983, annexure 10, was set aside and he was reinstated with back wages.

2. Put briefly, the facts of the case are that respondent No. 2, Bhanwar Singh, was employed as a probationer in the Mayo College, Ajmer, as class IV employee to fill the post of Chowkidar, vide order No. 1049 dated 11th December 1981, for a period of two years with effect from 1st January, 1982. Prior to this, Bhanwar Singh was kept on trial for a period of six months in place of his father. The case of the petitioner is that as Bhanwar Singh was not found suitable to be kept in the employment on permanent basis, due to his unsatisfactory work, his services were terminated, vide office order dated 13th August 1983, with effect from 30th September 1983, i.e., his services were terminated before the expiry of the probationary period. Aggrieved by the order of termination, Bhanwar Singh raised an industrial dispute before the Conciliation Officer, Ajmer. As no settlement could be arrived at, the Conciliation Officer submitted his failure report to the Government. The Government referred the case for adjudication to the Labour Court. Before the Labour Court, Bhanwar Singh filed his statement of claim contending that his services were illegally terminated. He further submitted that his work was satisfactory and that his services were terminated without any

inquiry. Bhanwar Singh also contended that he was not given any notice and compensation in terms of Section 25F of the Industrial Disputes Act, 1947 (for short "the Act"). The case before the Labour Court was resisted on behalf of the petitioner and it has averred that the reference was bad in law as services of Bhanwar Singh were terminated as per the service conditions of probationers and in terminating the services no illegality was committed which could give rise to an industrial dispute between Bhanwar Singh and the petitioner. It was also reiterated that the services of Bhanwar Singh were terminated because his work during the probationary period was not satisfactory. Before the Labour Court, Bhanwar Singh examined himself and on behalf of Mayo College, Ajmer, besides the Principal, who is the petitioner in this writ petition, three more witnesses were examined. The Labour Court, after considering the entire matter by its award dated 21st October 1986, annexure 17, held that the termination of the services of Bhanwar Singh was illegal and unjust and he was directed to be reinstated with full back wages. Aggrieved by the award dated 21st October 1986, passed by the Labour Court, the petitioner has challenged the award and the order of reference, annexure 1, through this writ petition.

3. The main ground urged by Shri Manoj Sharma, learned Counsel for the petitioner, is that the case of Bhanwar Singh is covered by the exception to Clause (bb) of Section 2(00) of the Industrial Disputes Act, 1947, in as much as there was a stipulation in the service rules for classes III and IV staff of the Mayo College that the services of such employees could be terminated during the probationary period without assigning any reason, with one month's notice. The petitioner, in the instant case, had served a notice, annexure 10, which was for more than one month, by which the services of the petitioner were terminated with effect from 30th September, 1983.

4. It was contended that the reference was made on 14th December 1984, and the amendment in the definition of retrenchment in Section 2(00) was made by the Amending Act No. 49 of 1984, with effect from 18th August, 1984.

5. Thus, reference having been made after the amendment in the law, the reference was incompetent and the termination order was unjustified. Shri Manoj Sharma, learned Counsel for the petitioner, has also urged that the circumstances as disclosed by the petitioner in the evidence were such that the petitioner has lost faith and confidence in Bhanwar Singh. The petitioner in his affidavit enumerated a number of circumstances indicating that the work of Bhanwar Singh was not satisfactory. He was warned and advised to work sincerely. Number of teachers had complained in writing about Bhanwar Singh's bad behaviour with them and their families. It was also disclosed in the affidavit that Bhanwar Singh was a non-serious and quarrelsome person, and on number of occasions Bhanwar Singh was found sleeping while on duty when he was posted as Chowdidar.

6. Shri B.L. Samdaria, learned Counsel for respondent No. 2, submitted that the services of Bhanwar Singh were illegally terminated without following the

mandatory procedure laid down in Section 25F of the Act. The submission of Shri Sharma is that annexure 10 by itself proves that compensation in terms of Section 25F of the Act was not offered for payment to the petitioner while terminating his services. Shri Prem Krishan Sharma, learned Counsel for respondent No. 2, has further submitted that the termination order became effective on 30th September 1983, as per annexure 10, dated 13th August 1983. The said amendment made by the Amending Act No. 49 of 1984, by which a new Clause (bb) was added to Section 2(00) is not at all attracted in the facts and circumstances of the case. Shri Prem Krishan Sharma has further urged that the order of termination is not an order of discharge simpliciter, but it is merely a camouflage for an order of dismissal from service on the ground of misconduct. He further submitted that, in the facts and circumstances of the case, the order of discharge is stigmatic and it cannot be sustained. The attendant circumstances, as disclosed in the affidavit of the Principal, show the ulterior purpose for passing a colourable order in order to get rid of respondent No. 2.

7. We have given our thoughtful consideration to the respective submissions made by learned Counsel for the parties. The learned Labour Court recorded a finding that the termination order was violative of Section 25F of the Industrial Disputes Act, 1947, in as much as the workman, Bhanwar Singh, was not offered payment of retrenchment compensation at the time of terminating his services. From the impugned award, it is evident that before the Labour Court the representative of the management admitted that, while terminating the services of the petitioner, compliance of Section 25F of the Act was not made. However, the order of termination was supported on two grounds: Firstly, on the ground that his behaviour with the college authorities was very bad and that his work was not satisfactory and that there were number of complaints against him. It was stated before the Labour Court that he proved a headache for the management and the services of Bhanwar Singh were terminated as the management lost faith and confidence in him. Secondly, the order was sustained on the ground that his services were terminated in terms of Clause (bb) of Section 2(00) of the Act.

8. As regards the first ground, the finding of the Labour Court is that no charge-sheet was given to the petitioner and that there are no circumstances which could prove that the management had lost faith in Bhanwar Singh. Since it is a finding of fact we would not like to disturb the same in the extraordinary jurisdiction under Article 226 of the Constitution. In *Kamal Kishore Lakshman v. Pan American World Airways* (1987) 70 FJR 65, the Supreme Court had the occasion to consider as to whether the termination of the services of an employee on the ground that the management had lost faith in the employee amounts to stigma or not and, after considering the law on this point, the Supreme Court observed that loss of confidence by the employer in the employee is a feature which certainly affects the character or reputation of the employee and, therefore, the allegation of loss of confidence amounted to stigma. The Labour Court has found that the order of separation grounded upon loss of

confidence has not been justified by the petitioner and we confirm the finding. The termination order is thus, unjustified. In view of such finding, the employee is irretrievably entitled to reinstatement.

9. Now, coming to the second aspect of the matter, we may observe that when the termination order is stigmatic it cannot be supported on the ground of retrenchment. However, our view is that even the termination order as retrenchment is bad in law. Admittedly, the formalities as are envisaged u/s 25F of the Industrial Disputes Act, 1947, were not complied with. Consequently, the order of termination is void and illegal and it is not an order of termination in the eye of law. Shri Manoj Sharma, learned Counsel for the petitioner, has submitted that termination of services of respondent No. 2 is justified on account of Clause (bb), which has been added to Section 2(00) of the Act by reason of the amendment made by Act No. 49 of 1984. The contention of Shri Manoj Sharma is that the amendment made in Section 2(00) is retrospective in its nature and since there was a clause in the rules and regulations governing the service conditions of the employee, the services of a probationer could be terminated during the probationary period at any time without assigning any reason with one month's notice or one month's pay in lieu thereof.

10. In view of the submission made by Shri Manoj Sharma, learned Counsel for the petitioner, we are, therefore, required to decide as to whether Clause (bb) added to Section 2(00) by the Amending Act No. 49 of 1984, has retrospective effect or not.

11. In *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, the Supreme Court considered Section 11A, which was introduced in the year 1971, and observed that Section 11A has no retrospective effect. It was observed by the Supreme Court that Section 11A does not apply to the disputes which had been referred prior to 15th December 1971, and the Section applied only to the disputes which are referred for adjudication on or after 15th December 1971. In *Bharat Singh Vs. Management of New Delhi Tuberculosis center, New Delhi and Others*, the Supreme Court considered the effect of Section 17B inserted in the Industrial Disputes Act by the Industrial Disputes (Amendment) Act, 1982, and which received the assent of the President on 21st August, 1984, and observed that the Section was intended to benefit the workman in certain cases and, therefore, it would be doing injustice to the Section to say it would not apply to awards passed just a day or two before the Section came into force. In *Ruston and Hornsby (I) Ltd. Vs. T.B. Kadam*, , the Supreme Court observed that Section 2A has no retrospective effect and while doing so, held asunder (at p.355):

When the Section uses the words "where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman" it does not deal with the question as to when that was done. It refers to a situation or a state of affairs. In other words, where there is a discharge, dismissal, retrenchment or termination of service otherwise, the dispute relating to such

discharge, dismissal, retrenchment or termination of service becomes an industrial dispute. It is no objection to this to say that this interpretation would lead to a situation where the disputes would be reopened after the lapse of many years and referred for adjudication u/s 10. The question of creation of new rights by Section 2A is also not very relevant. Even before the introduction of Section 2A, a dispute relating to an individual workman could become an industrial dispute by its being sponsored by a labour union or a group of workmen. Any reference u/s 10 would be made only sometime after the dispute itself has arisen. The only relevant factor for consideration in making a reference u/s 10 is whether an industrial dispute exists or is apprehended. There cannot be any doubt that on the day the reference was made in the present case an industrial dispute as defined u/s 2A did exist.

12. Thus, there are aforesaid three judgments of the Supreme Court in which the question arose for giving effect to certain provisions of the Industrial Disputes Act and the Supreme Court laid down certain principles when a particular provision of the Act, which has been introduced by an amendment, should be given prospective or retrospective effect. The principles may be enumerated as follows:

(a) If the amendment has the effect of altering the law abridging the rights of the employer in as much as it gives power to the Tribunal in this regard for the first time, then the new section would not have the retrospective effect. It was on account of this principle that the Supreme Court in *Workmen v. Firestone Tyre and Rubber (Co.)* (supra) held that Section 11A does not apply to the disputes which had been referred prior to 15th December, 1971, and it was held that Section applies to the disputes which are referred for adjudication on or after 15th December, 1971. Every legislation is prima facie prospective.

(b) It is well-settled principle that retrospective operation is not to be given to a statute so as to impair an existing right. Undoubtedly, the Legislature is competent to pass a statute so as to give retrospective effect either clearly expressing such intention or by a necessary and distinct intendment.

(c) It may be taken as a general rule that the procedural law has always been held to operate retrospectively as no party has a vested right in procedure.

(d) A definition section is generally held to be prospective. In *Huston and Hornsby (I) Ltd. v. T.B. Kadam* (supra), the Supreme Court has had the occasion to consider this aspect. It was argued that the order of dismissal was made on 7th January 1984, and as Section 2A of the Act came into force on 1st December, 1985, the reference was bad. It was argued that it will amount to giving retrospective effect to the provisions of Section 2A, but the Supreme Court did not accept this contention, as Section 2A is a definition section. Further, it was held that the test for the validity of a reference u/s 10 is whether there was in existence a dispute on the day the reference was made and it was observed that in the circumstances there was no question of giving retrospective effect to the

section, through in Bharat Singh's case (supra), the Supreme Court observed that it gave Section 2A a retrospective construction.

(e) For considering whether introduction of a new section or amendment made in the statute shall have retrospective effect or not, the background in which the amended section has been introduced is to be viewed and its effect should be considered. If the objects and reasons spell out that the purpose of amendment is to remove the hardship caused to the workmen on account of existing state of law, then keeping in view the object and consistent progressive social philosophy of laws, the benefit of the section should not be denied to the workmen as it was done in the case of Bharat Singh (supra).

13. In the light of the principles laid down by the Supreme Court in the above referred cases if we consider the new Clause (bb) as added to Section 2(00) by the Amending Act No. 49 of 1984, we will discover that no retrospective effect can be given to the new Clause (bb) as it is part of the definition clause.

14. Further, it is not with respect to procedural law, but it is a provision whereby some powers are conferred on the employer which is destructive of the protection so far available to the employee prior to 18th August 1984, the date when the new Clause (bb) was inserted in the matter of terminating the contract of employment. Prior to the amendment made in the definition of retrenchment by the Amending Act No. 49 of 1984, retrenchment has been understood to mean termination of services for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action, unless it falls within the exceptions provided in the definition Section 2(00). As a result of this amendment, contractual termination will not constitute retrenchment because now by virtue of new Clause (bb) one more exception has been provided in the definition of retrenchment. The new clause provides as follows:

(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

Thus, in our opinion, no retrospective effect can be given to the new Clause (bb) which was added to Section 2(00) by the Amending Act No. 49 of 1984.

15. So far as the facts of the case are concerned, the services of Bhanwar Sing were terminated on 30th September, 1983. Admittedly, at the time when the services of the employee were terminated, the said amendment did not see the light of the day. Thus, we are of the considered opinion that no retrospective effect can be given to Clause (bb) added to Section 2(00) of the Amending Act No. 49 of 1984.

16. In the premises aforesaid, there is no merit in the writ petition and the same is dismissed with no order as to costs.