
(2012) 08 RAJ CK 0051

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 349 of 2012 in Civil Writ Petition No. 18517 of 2011 and 12 Other connected Appeals

Richpal Singh and Others

APPELLANT

Vs

The General Manager, I.O.C.L., Jaipur and Another

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 142, 227
Industrial Disputes Act, 1947 — Section 11A, 25F, 25G, 25H

Citation : (2012) 4 WLN 56

Hon'ble Judges : Narendra Kumar Jain, J;Bela M. Trivedi, J

Bench : Division Bench

Advocate : Kunal Rawat with Mr. Rajaram Choudhary, for the Appellant; A.K. Bhargava with Mr. Ravindra Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Narendra Kumar Jain-I, J.—Heard finally with the consent of learned counsel for the parties. Since, these special appeals are directed against common order of Single Bench dt. 03.01.2012, therefore, the same are being disposed off by this common judgment.

2. Briefly stated, the facts of these Special Appeals are that fourteen workmen, namely Ganesh, Richpal Singh, Vijay Singh Shekhawat, Ashok Kumar Vyas, Sunder Lal, Vinod Kumar, Shankar Lal Sharma, Ramswaroop, Suresh Saini, Rameshwar Prasad, Girdhari Lal, Prithvi Singh, Narender Singh and Devi Sahai, filed their statements of claim before the Central Government Industrial Tribunal-cum-Labour Court, Jaipur (for short "the Tribunal"). Reference of 6 workmen, namely Ganesh, Richpal Singh, Vijay Singh, Ashok Kumar Vyas, Girdhari Lal and Prithvi Singh, were decided by a common Award dt. 23.08.2011. Learned Tribunal recorded a finding that there is violation of provisions of Section 25-F of the Industrial Disputes Act (for short "the Act") in the cases of four workmen Ganesh, Richpal Singh, Vijay Singh and Ashok Kumar, however, instead of

passing order of their reinstatement in service with back wages, the Tribunal passed an order of lump sum amount of compensation of Rs. 40,000/- in each case, to be paid to the workmen by the Management. So far as workmen Girdhari and Prithvi Singh are concerned, the Tribunal recorded a finding that there is no violation of any provision of the Act including Sections 25-F, 25-G and 25-H, therefore, their reference applications were decided against them.

3. Similarly, the Tribunal by a separate common Award dt. 23.08.2011, disposed off the reference applications of 8 workmen. The Tribunal recorded a finding in favour of 6 workmen, namely Shankar Lal, Vinod Kumar, Sunder Lal, Ramswaroop, Suresh and Rameshwar to the effect that there is violation of provisions or Section 25-F of the Act and consequently, awarded a lump sum amount of compensation of Rs. 40,000/- each, in place of their reinstatement in service with back wages. So far as workmen Narender Singh and Devi Sahai are concerned, a finding was recorded by the Tribunal that there was no violation of Sections 25-F, 25-G and 25-H of the Act.

4. Being aggrieved with the Awards dt. 23.08.2011 passed by the Tribunal, 13 workmen, named above, except workman Ganesh, preferred separate 13 writ petitions before the Single Bench. 9 workmen preferred the writ petitions with a prayer that they should have been reinstated in service with back wages, instead of awarding lump sum amount of compensation of Rs. 40,000/- to each workman separately, whereas 4 workmen, namely Girdhari, Prithvi Singh, Narender Singh and Devi Sahai, preferred the writ petitions with a prayer that finding of Labour Court is not correct, in their cases also, there was violation of provision of Section 25-F of the Act and they should have also been reinstated in service or at least an award of lump sum amount of compensation, in lieu of reinstatement with back wages, should have been passed, as passed in other cases.

5. Learned Single Judge heard all the cases together and by a common order dt. 03.01.2012, came to a conclusion that finding of fact recorded by the Tribunal, cannot be said to be illegal or perverse. Single Bench was also satisfied that award of lump sum compensation of Rs. 40,000/- in each case, is also just and proper, looking to the nature of appointment and length of service, consequently, dismissed all the writ petitions, preferred on behalf of 13 workmen. Hence, these workmen have preferred the present intra Court appeals.

6. Submission of the learned counsel for appellants is that so far as workmen, in whose cases Tribunal has recorded a finding that there is violation of provisions of Section 25-F of the Act are concerned, they should have been reinstated in service with full back wages, instead of awarding lump sum amount of compensation, therefore, the learned Tribunal as well as the Single Bench, both, have committed an illegality in passing the impugned award and order. As regards 4 workmen, it is submitted by the learned counsel that they have also worked for more than 240 days in a preceding year soon before their date of termination, therefore, finding of the Tribunal to that extent, was not correct and the same should have been quashed and set aside by the learned Single Judge.

7. Per contra, learned counsel for the respondents supported the impugned order passed by the Single Bench as well as the Awards passed by the Central Government Industrial Tribunal-cum-Labour Court, Jaipur and submitted that what is the total period of service of workmen, is purely a question of fact and there is a finding of fact, recorded by the Tribunal, which could not have been interfered with by the Single Bench and the same has rightly not been interfered with by it, while exercising jurisdiction under Art. 227 of the Constitution of India. He also submitted that there was no illegality or perversity in the finding recorded by Tribunal.

8. So far as remaining 4 workmen, whose references were decided against them, are concerned, learned counsel for respondents submitted that they had not completed 240 days in a preceding year, soon before the date of their termination. He submitted that even if they completed 240 days earlier, but not in preceding year, then the same could not have been treated as violation of the provisions of Section 25-F of the Act. He, therefore, submitted that finding recorded by the Tribunal in this regard, is absolutely legal and justified and no interference in the same is called for.

9. We have considered the submissions of learned counsel for the parties and examined the impugned order passed by the Single Bench as well as both the Awards passed by the Central Government Industrial Tribunal-cum-Labour Court, Jaipur.

10. Learned Single Judge has considered the submissions of both the parties in the light of latest case law on the point and law laid down by the Hon''ble Apex Court and came to a conclusion that as per various judgments of Hon''ble Apex Court, it is a settled law that there cannot be automatic reinstatement in service with back wages even if there is violation of the provisions of the Industrial Disputes Act. Learned Single Judge has also considered the duration of period of work of workmen, nature of appointment and came to a conclusion that amount of compensation awarded in the present cases, does not appear to be lesser and it appears to be just and reasonable, in the facts and circumstances of the present cases.

11. Learned Single Judge has also considered the cases of 4 workmen, in whose favour, no violation of provisions of Industrial Disputes Act was found and amount of compensation was not awarded and after considering the submissions of the parties in the light of reasons assigned by the Tribunal, came to a conclusion that they had not completed 240 days in a preceding year before the date of termination, therefore, award passed in their cases, was perfectly legal and justified. Learned Single Judge has also considered number of judgments of Hon''ble Apex Court on both sides and did not interfere in the finding of fact recorded by the learned Tribunal and consequently, dismissed all the writ petitions.

12. We have again examined the matter in the light of submissions of learned

counsel for both the parties.

13. The Hon''ble Supreme Court in Jaipur Development Authority Vs. Ram Sahai and Another, observed that even if it is assumed that there is violation of provisions of Section 25-G and 25-H of the Act, but the same by itself would not mean that the Labour Court should have passed an award of reinstatement with entire back wages. The Hon''ble Apex Court set aside the order of reinstatement of workman in service and awarded Rs. 75,000/- as compensation in lieu of reinstatement of workman with back wages. Para 28 of the Judgment reads as under:

We would, therefore, proceed on the basis that there had been a violation of Sections 25-G and 25-H of the Act, but, the same by itself, in our opinion, would not mean that the Labour Court should have passed an award of reinstatement with entire back wages. This Court time and again had held that the jurisdiction under Sec. 11-A must be exercised judiciously. The workman must be employed by State within the meaning of Article 12 of the Constitution of India, having regard to the doctrine of public employment. It is also required to recruit employees in terms of the provisions of the rules for recruitment framed by it. The respondent had not regularly served the appellant. The job was not of perenial nature. There was nothing to show that he, when his services were terminated any person who was junior to him in the same category, had been retained. His services were dispensed with as early as in 1987. It would not be proper to direct his reinstatement with back wages. We, therefore, are of the opinion that interest of justice would be subserved if instead and in place of reinstatement of his services, a sum of Rs. 75,000 is awarded to the respondent by way of compensation as has been done by this Court in a number of its judgments. (See State of Rajasthan vs. Ghyan Chand, [2006] 7 SCC 755.)

14. In State of Rajasthan Vs. Sarjeet Singh and Another, the Hon''ble Supreme Court held that even if it is assumed that there is violation of Section 25-G or 25-H of the ID Act, but in any event, the same would not mean that the Labour Court should have automatically passed an award of reinstatement in service with back wages. The Hon''ble Supreme Court in the facts and circumstances of that case, awarded Rs. 30,000/- as compensation in lieu of reinstatement of workman with back wages. Para 16 of the judgment reads as under:

In terminating the services of Respondent 1, we would assume that violation of Section 25-G or 25-H occurred (although there is no factual basis therefore), but in any event, the same would not mean that the Labour Court should have automatically passed an award of reinstatement in service with back wages. We, however, although ordinarily would have set aside the impugned award and consequently the judgment of the High Court; in exercise of our jurisdiction under Article 142 of the Constitution of India, we direct the State to pay a sum of Rs. 30,000 to Respondent 1. Such payment should be made within eight weeks from date failing which the same shall carry an interest at the rate of 9% per annum. The appeal is allowed with the aforesaid directions. The parties shall pay

and bear their own costs.

15. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, the Hon"ble Apex Court considered its earlier judgments and observed that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. Para 7 of the judgment is reproduced as under:

It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

16. Principles of law on the subject have been laid down by the Hon"ble Apex Court, but the same are to be made applicable in the facts and circumstances of each case. In the present cases, workmen worked only for about one year during the period from 2000 to 2002. Period of 12 years have already passed. Looking to the period of service, nature of job and status of workmen, we are of the view that amount of compensation of Rs. 40,000/- in each case, has rightly been awarded by the learned Tribunal in 9 cases, referred above, and the learned Single Judge was absolutely right in not interfering in the impugned Award passed by the Tribunal, in the facts and circumstances of the present cases.

17. So far as cases of remaining 4 workmen, namely, Girdhari, Prithvi Singh, Narender Singh and Devi Sahai are concerned, the Tribunal has recorded a finding that there was no violation of provisions of Section 25-F of the Act, therefore, no order of reinstatement or award of compensation was passed and the learned Single Judge rightly did not interfere in the said finding of the Tribunal also.

18. In these circumstances, we do not find any merit in any of the special appeals and the same are, accordingly, dismissed with no order as to costs. Registry is directed to place on record a copy of this order in each connected file.