

(2013) 01 CAL CK 0011
In the Calcutta High Court
Case No : F.M.A. No. 948 of 2011

Sabyasachi Ghosh

APPELLANT

Vs

Bata India Limited and Others

RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2013) 138 FLR 221 : (2013) LLR 932

Hon'ble Judges : Tarun Kumar Das, J; Girish Chandra Gupta, J

Bench : Division Bench

Advocate : Subir Sanyal and Ratul Biswas, for the Appellant; Dipak Kumar Ghosh and Ranjan De, for the Respondent

Final Decision : Dismissed

Judgement

Girish Chandra Gupta and Tarun Kumar Das, JJ.—Admittedly the appellant worked as a salesman at the Lindsay outlet of Bata India Limited with effect from 24th January, 1997 on a daily wages of Rs. 58.85 paise. His service was terminated on 22nd February, 1998 without any notice. He raised an industrial dispute, which was referred to the Tribunal. The learned Tribunal held in favour of the appellant and directed the employer-company to reinstate him as also to pay full back wages and other consequential benefits.

Challenging the aforesaid award, the employer invoked the writ jurisdiction of this Court. The writ petition was disposed of by brother J.K. Biswas, J., by a judgment and order dated 18th June, 2010 by which the writ petitioner was directed to pay to the workman a sum of Rs. 50,000/- by way of compensation in lieu of the award for reinstatement and back wages.

Challenging the aforesaid order, the workman has come up in appeal.

2. Mr. Sanyal, learned Advocate, appearing for the appellant, submitted that the mandate of section 25-F of the Industrial Disputes Act is reinstatement in case the retrenchment is found to have been made in violation of the mandatory

requirements laid down therein. The second submission was that Court may have some discretion in the matter of awarding the back wages either in full or in part. In support of his submission he relied on the judgment in the case of General Manager, Haryana Roadways Vs. Rudhan Singh, . He, however, submitted that as regards the relief of reinstatement there is no discretion.

3. The submission of Mr. Sanyal that Court may have some discretion in the matter of awarding back wages either in full or in part but has no discretion in the matter of reinstatement, is not inconformity with the views expressed by the Supreme Court in a series of matters. These were taken into consideration by the learned Trial Court and we need not reiterate that. In the case of Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, Their Lordships expressed the following opinion:

15. It would be, thus, seen that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination particularly daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee. Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and circumstances of the present case cannot be said to suffer from any legal flaw. However, in our view, the High Court erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages. As a matter of fact, in all the judgments of this Court referred to and relied upon by the High Court while upsetting the award of reinstatement and back wages, this Court has awarded compensation.

The submission of Mr. Sanyal is, therefore, without any merit.

4. There is yet another angle from which the matter can be looked into. Section 25-F of the Industrial Disputes Act, 1947 provides as follows:

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 the appropriate Government by notification in the official Gazette).

5. It would appear that the employer is under an obligation under Clause (a) of section 25-F quoted above, to give a month's notice in writing indicating the reasons for retrenchment and the period of notice must have expired before the service of the workman can be dispensed with. Alternatively, the employer has the choice to pay to the workman wages for the period of notice in lieu of the notice itself. If the wages for a month in lieu of notice is permissible, it is difficult to follow that the employer must also assign reasons for such retrenchment.

6. Admittedly, the appellant was employed at the rate of 58.85 paise per day. His wages for a month will be less than Rs. 1800/-. The learned Judge has awarded compensation amounting to Rs. 50,000/-. This sum of Rs. 1800/- should have been paid in the year 1988, to be precise, on 12th February, 1998. Because the aforesaid sum of Rs. 1800/- was not paid on 12th February, 1998, the learned Trial Court directed payment of a sum of Rs. 50,000/- by the order dated 18th June, 2010. For a delay of 12 years, the compensation was made 25 fold or more than 25 fold. If a contention is raised that equity was not done or the grievance of the workman still is there, then we are bound to say that the workman in that case is not insisting upon a friendly environment for commerce and industry. The socio-economic condition of the country as of date cannot be ignored either in interpreting the law or in applying the law.

7. We are of the opinion that this appeal is without any merit and is, therefore, dismissed.

8. After the judgment was delivered, Mr. Ratul Biswas, learned Advocate, appearing for the appellant, submitted that the compensation, awarded by the learned Trial Court, has not till date been paid. Mr. Ghosh, learned Advocate, appearing for the employer-respondent, submitted that twice it was tendered but the workman refused to accept. He also produced the returned envelopes containing the Cheque. Mr. Biswas has not disputed the fact that his client refused to accept the Cheque. Therefore, there is no fault on the part of the employer-respondent.

9. Mr. Ghosh, submitted, on instruction, that payment shall be made by a Bank Draft within a week from date. The workman should call at the office of the employer and collect it upon granting acquittance.

Let urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties upon compliance of all usual formalities.