
(2013) 01 RAJ CK 0128

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 871 of 2012 in Civil Writ Petition No. 13697 of 2009

Satya Narayan Bhatnagar

APPELLANT

Vs

The Labour Court, Ajmer and Others

RESPONDENT

Date of Decision : 30-01-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 142

Industrial Disputes Act, 1947 — Section 10, 11A, 25G, 25H

Citation : (2013) LabIC 1299 : (2013) 2 LLJ 524

Hon'ble Judges : Narendra Kumar Jain, J; Jainendra Kumar Ranka, J

Bench : Division Bench

Advocate : B.K. Sharma, for the Appellant; Pradeep Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard finally. Since common question of fact and law is involved in these three special appeals, therefore, they were heard together and are being disposed of by this common order.

2. These three intra-court appeals are directed against common order of Single Bench dated 24th April, 2012, whereby writ petitions filed by petitioners/appellants against award dated 9th September, 2009 passed by Labour & Industrial Tribunal, Ajmer were dismissed.

3. Briefly stated, the facts of the case are that appellants namely Satya Narayan Bhatnagar S/o Narayan Bhatnagar, Satya Narayan S/o Laxmi Narayan Vaishnav and Amar Singh were appointed as daily wagers on 27th July, 1993, 18th March, 1993 and in May 1995 respectively with respondent University. They continued as daily wager at the rate of Rs. 22/- per day. However, their services were retrenched on 19th June, 2004. The workmen/appellants approached the appropriate authority under the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") against their so called illegal retrenchment. The State Government made a reference u/s 10 of the Act, to Labour & Industrial

Tribunal, Ajmer, vide notification dated 11th August, 2006.

4. Learned Tribunal vide its award dated 9th September, 2009 recorded a finding that workmen were appointed by employer and their termination on 19th June, 2004 was illegal. However, the Tribunal instead of passing order of their reinstatement, directed to pay a lump sum amount of compensation of Rs. 2 Lacs to each workman in lieu of their reinstatement with back wages.

5. Being aggrieved with the award passed by Tribunal, the workmen as well as employer, both preferred writ petitions before this Court. The workmen Satya Narayan Bhatnagar, Satya Narayan Vaishnav and Amar Singh preferred S.B. Civil Writ Petition No. 13697/2009, 13390/2009 and 13388/2009 for their reinstatement in service. The employer preferred S.B. Civil Writ Petition Nos. 3132/2011, 3133/2011 & 3134/2011 for setting aside or reducing the amount of compensation.

6. Learned Single Judge vide its common order dated 24th April, 2012 dismissed the writ petitions of the appellants. Similarly, on the same day, vide common, but separate order, also dismissed the writ petitions filed by the employer. Being aggrieved with the order of Single Bench, the workmen/appellants have preferred these intra-court appeals.

7. It is relevant to mention that the employer has not preferred any intra-court appeal against order of Single Bench dated 24th April, 2012, dismissing their writ petitions, as stated by learned counsel for the respondents, thus, in so far as that matter is concerned, it has become final. It is also relevant to mention that one of the workman namely Jagdish Prasad Sharma, in whose favour the similar award was passed and a writ petition was preferred against him by employer, was also dismissed by common order dated 24th April, 2012. He did not prefer any writ petition before Single Bench also for his reinstatement in service.

8. Submission of learned counsel for the appellants is that petitioners worked from 1993/1995 to 19th June, 2004. Therefore, they worked for about 10 years. In these circumstances, they should have been reinstated in place of awarding lump sum amount of compensation by Tribunal. He has submitted that learned Single Judge also committed an illegality in dismissing their writ petitions. He also submitted that from the award of the Tribunal, it is clear that other workmen namely Navin Chand Ranga, Dharmendra Singh Shekhawat and Gulab Singh Shekhawat, who were working with petitioners were confirmed, whereas petitioners were not confirmed. He, therefore, submitted that looking to the facts and circumstances of the present case, the reinstatement of workmen was automatic and they should have been reinstated in place of awarding lump sum amount of compensation. In support of his submission, he referred to the judgment of Aaram Saini vs. The Presiding Officer, Central Government Industrial Tribunal & Labour Court (D.B. Civil Special Appeal (Writ) No. 87/2003, decided on 26th March, 2012, Ramesh Kumar Vs. State of Haryana, General Manager, Haryana Roadways Vs. Rudhan Singh, , New Delhi Municipal Council Vs. Parveen

Chand Sharma, (Delhi High Court) and Sunni Muslim Wakf Committee vs. Abdulgani Ishabhai Kachhot (2011 LAB.I.C. 2968) (Gujarat High Court).

9. We have considered all the above judgments, referred to by the learned counsel for the appellants and we find that each case has been decided on the basis of the facts and circumstances of that particular case. So far as the present cases are concerned, it is noticed that workmen were appointed on daily wages way back in year 1993/1995. They were not regularised against any vacant post. Their appointments were not in accordance with rules also. In these circumstances, we find that none of the case referred to by the learned counsel for the appellants is applicable in the present case.

10. Learned counsel for the respondents supported the impugned order of learned Single Judge and submitted that appellants were only daily wagers engaged on daily wage of Rs. 22/- per day. He submitted that they were not appointed on regular basis or by following the provisions of statutory rule. He also submitted that looking to the nature of their employment and the amount of wages and further that it was a case relating to year 1993-2004, it was just and proper on the part of the Tribunal to award lump sum amount of compensation in lieu of their reinstatement. He submitted that although the amount of compensation was also higher and they had also preferred writ petitions for reducing the same, but after rejection of their writ petitions, they have accepted the award relating to payment of lump sum amount of compensation of Rs. 2 Lacs each by not preferring any intra-court appeal. He has submitted that looking to all the facts and circumstances of the case, the amount of compensation awarded and the order regarding award of lump sum amount of compensation in place of reinstatement is just and proper and calls for no interference by this Court.

11. We have considered the submissions of learned counsel for the parties and examined the impugned order/judgment of Single Bench as well as award passed by Labour Court.

12. There is no dispute that two appellants namely Satya Narayan Bhatnagar and Satya Narayan Vaishnav were appointed in the year 1993 and appellant Amar Singh was appointed in May, 1995 on daily wage at the rate of Rs. 22/- per day. There is no dispute between the parties that the appellants were not appointed in accordance with rules. It is also not in dispute that they were not confirmed on their post. Learned Labour Court considered the judgment of Apex Court reported in 2006 (4) SCC page 1, wherein it was observed by Hon''ble Apex Court that a workman, who enters in service from back door should not be reinstated, but it will be appropriate to award a lump sum amount of compensation in lieu of his reinstatement.

13. Similarly, we further find that learned Single Judge has relied upon the latest judgment of Hon''ble Apex Court in Incharge Officer and Another Vs. Shankar Shetty, wherein the Hon''ble Apex Court considered the circumstance that

appointment was not as per rules and held that compensation has rightly been awarded instead of reinstatement of workman.

14. 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 25G and 25H 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 25G and 25H 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 u/s 11A 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 perennial 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 V. Ghyan Chand, [2006] 7 SCC 755.)

15. 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 25G or 25H 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 25G or 25H occurred (although there is no factual basis therefor), 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.

16. 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.

17. In Jaipur Development Authority Vs. Ramsahai and Another (Surpa), State of Rajasthan Vs. Sarjeet Singh and Another (supra) and Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another (Supra), the Hon'ble Apex Court observed that even if there is violation of provisions of Sections 25G and 25H 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. In Jagbir Singh's Case (supra), the Hon'ble Apex Court observed that 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. Compensation instead of reinstatement has been held to meet the ends of justice.

18. In view of above discussion, we are of the view that reasons assigned by learned Tribunal as well as learned Single Judge for awarding lump sum amount of compensation of Rs. 2 Lacs each in favour of each appellant in lieu of their reinstatement in service with back wages are absolutely legal and justified and no interference in the same is called for by this Court.

19. In these circumstances, we find no force in these appeals and the same are, accordingly, dismissed with no order as to cost.

20. Registry is directed to place a copy of this order on record in each connected file.

21. Learned counsel for the respondents submitted that the amount of compensation was offered to appellants, but they refused to accept it, therefore, they may be granted further two months time to pay the amount of compensation. As prayed, two months further time is granted to the learned counsel for the respondents to make payment of the amount of compensation to the appellants, failing which the condition of interest imposed by Industrial Tribunal will follow.