

(2011) 12 AHC CK 0081

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7682 of 2007

Senior Divisional Manager, National Insurance Co. Ltd

APPELLANT

Vs

Presiding Officer, Central Government Industrial Tribunal-
Cum-Labour Court and Another

RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2012) 2 ADJ 498 : (2012) 132 FLR 540

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon'ble Sunil Hali, J.—The main aim of the statute of Industrial Disputes Act as is evident from its preamble and various provisions contained therein is to regulate and harmonies relationship between employers and employees for maintaining industrial peace and social harmony. The provisions of the Act deserve interpretation keeping in view interests of both the employer, who has put his capital and expertise into the industry and the workers who by their labour equally contribute to the growth of the industry. The Act under consideration has a historical background of industrial revolution inspired by the philosophy of Karl Marx. It is a piece of social legislation. The Act aims at promoting social justice, interests both of employers, employees and in a democratic society, most importantly the interest of society i.e. people at large, who are the ultimate beneficiaries of the industrial activities, have to be kept in view. Aggrieved by the order dated 26.10.2006 passed by the Presiding Officer, Central Government Industrial Tribunal cum Labour Court, Sarvodaya Nagar, Kanpur, Uttar Pradesh in I.D. No. 101 of 1998 which was published on 2.12.2006 and communicated to the petitioner vide letter dated 18.12.2006, whereby the workman (respondent No. 2) has been reinstated with full back wages and other consequential benefit together with seniority, the present writ petition has been filed.

2. Contention of learned counsel for the petitioner is that respondent No. 2 (hereinafter referred to as the workman) was engaged on daily wages @ Rs. 20/- to carry water on 4.1.1991 till 15.3.1991. Again he was engaged at the rate of Rs. 13 per day for 149 days during the period 18.3.1991 to 1.10.1991 and was finally disengaged on 1.10.1991.

3. Applications were invited through employment exchange for filling of five posts of Class IV employees in the Company and in this respect name of the petitioner was also sponsored. After the selection process, interview was conducted and he was engaged as peon for 80 days only. He worked as temporary peon w.e.f. 1.2.1992 till 31.1.1993. It is stated that the workman worked only for 234 days and did not have 240 days continuous service during this period. After lapse of three years he raised dispute which was referred to the labour Court for adjudication. The said order was passed on 29.6.1998. The reference is as under:

Whether the action of the management of National Insurance Company in terminating the services of Shri Indresh Kumar, w.e.f. 1.2.1993 is justified or not and whether he is entitled for reinstatement with back wages and other consequential benefits If not, what relief he is entitled for?

4. Respondent workman filed his claim by stating that he has worked w.e.f. 1.2.1992 to 31.1.1993 and had completed 240 days of continuous service on the said post and while dispensing with his services Section 25 F of the Industrial Dispute Act was not complied with.

5. Stand of the petitioner was that he has not completed 240 days of continuous service which is necessary condition for invoking the provisions of Section 25-F of the Industrial Dispute Act. It is further contended that the appointment of the workman was made by the Officer-in-Charge of Divisional/Branch Office who was not at all authorized to engaged a person on daily wage basis. It is further contended that he was paid wages as per the work during the period he remained engaged with the company.

6. Labour Court in its order dated 26.10.2006 observed that the workman had completed 320 days of continuous service during the period 1.2.1992 to 31.1.1993. He had worked for more than 320 days in the relevant year. Services of the workman could not have been terminated without observing the provisions of Section 25 F of the Industrial Dispute Act which contemplates one month prior notice before any such order is passed. Labour Court has held that the case of the workman was covered within the ambit of term, retrenchment as defined u/s 2(oo) of the Industrial Dispute Act. Since no retrenchment compensation has been paid to the petitioner, the order of termination is liable to be quashed.

7. Heard learned counsel for the parties and perused the material on record.

8. Undisputed fact is that the workman was engaged in February 1992 till 31.1.1993. This fact has not been denied by the petitioner. It is also contended that the workman was appointed as peon after due process of selection in this

behalf held by the petitioner. What has been contended is that there was no authorization to re-engaged the petitioner in February 1992, however, it is not denied that the workman was working for the said period. Admittedly, the workman had worked for more than 240 days w.e.f. 1.2.1992 to 31.1.1993. His termination could not have been passed unless retrenchment compensation was paid to him.

9. Contention of learned counsel for the petitioner is that he had not spent more than 240 days of continuous service is ex-facie misconceived as the petitioner has admitted that the workman had remained in service from 1.2.1992 to 31.1.2993. Labour Court has rightly set aside the order of termination on the ground that no retrenchment compensation as contemplated u/s 25 F of the Industrial Dispute Act was paid to the respondent workman. By setting aside the termination order, labour Court had directed for his reinstatement and payment of back wages. I am not inclined to agree with the finding of the labour Court that the workman is entitled to full back wages.

10. The question that would arise for consideration is as to whether the back wages should be awarded fully or only partially.

11. So far as the question of back wages is concerned same depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back wages. Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income, then the burden will shift to the employer. But there is, however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may. But the case where back wages were awarded, related to termination/retrenchment which was held to be illegal and invalid for non-compliance with statutory requirements or related to cases where the Court found that the termination was motivated or amounted to victimization.

12. Hon''ble Apex Court has consistently held that quashing of termination order would not necessary lead to a ground of back wages. Workman in this behalf is required to satisfy the labour Court that he did not remain gainfully employed any where else. In General Manager, Haryana Roadways v. Rudhan Singh decided on 14.7.2005 Hon''ble Apex Court has observed as under:

There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, i.e., whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short-term, daily wage, temporary or

permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period, i.e., from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.

13. In the circumstances of the case, I direct that the claimant workman shall be entitled to only 50 % of the wages. The writ petition is accordingly allowed to this extent.