
(2012) 11 RAJ CK 0054

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 1298 of 2012 in Civil Writ Petition No. 12470 of 2011

Shanti Bai

APPELLANT

Vs

Labour Court, Kota and Another

RESPONDENT

Date of Decision : 05-11-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2013) 2 LLN 266 : (2013) 1 RLW 362 : (2013) 1 SCT 407

Hon'ble Judges : Arun Mishra, C.J.;N.K. Jain, J

Bench : Division Bench

Advocate : Kailash Chandra Sharma, for the Appellant; S.N. Kumawat, for the Respondent

Judgement

N.K. Jain-I, J.—Heard finally with the consent of parties. These six intra-court appeals are directed against common order of Single Bench dated 26th March, 2012, whereby writ petitions filed by petitioners against award of Labour Court were disposed off and lump sum amount of compensation in lieu of reinstatement of workmen/appellants was enhanced. Since all the writ petitions were decided by common order, as question of law was similar in all the cases, therefore, these special appeals are also being disposed off by common order.

2. The State Government while exercising its powers, made a reference u/s 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") in cases of all the workmen/appellants on different dates to Labour Court, as to whether the retrenchment of workman was reasonable and valid ? If not, then to what relief the workman is entitled?

3. Labour Court after considering submissions of the parties and examining the record, came to a conclusion that retrenchment of workman was contrary to the provisions of the Act. However, looking to the facts and circumstances of each case, Labour Court came to a conclusion that instead of reinstatement of workmen with back wages, it will be appropriate to award a lump sum amount of

compensation.

4. Being aggrieved with the award passed by Labour Court, the workmen filed writ petitions before Single Bench with a prayer that they may be reinstated in service and in case the reinstatement is not possible then the lump sum amount of compensation awarded by the learned Labour Court be enhanced suitably. Learned Single Judge heard all the writ petitions together and by common order disposed off the same by enhancing lump sum amount of compensation. Being aggrieved with the order of learned Single Judge, the workmen have preferred these intra-court appeals.

5. Submission of learned counsel for the appellants is that when Labour Court recorded a finding that termination of workmen was illegal and in violation of the Act, then the workmen should have been reinstated in service instead of awarding lump sum amount of compensation in lieu of reinstatement with back wages. He further argued that looking to the length of service, the amount of compensation awarded in the cases is inadequate and the same be enhanced.

6. Learned counsel for the respondents supported the impugned order of Single Bench and submitted that looking to the length of service and the nature of appointment, the amount of compensation enhanced by Single Bench is just and reasonable and no further enhancement is required. He submitted that submission of petitioners before Single Bench, in all the cases, was to enhance the amount of compensation to Rs. 75,000/- in each case, whereas, the learned Single Judge has already enhanced the amount upto Rs. 60,000/- in all the cases. He has submitted that all workmen were daily wager and their appointments were not made according to the rules. The reference was made after a long period. Therefore, all the intra-court appeals are liable to be dismissed.

7. We have considered the submissions of learned counsel for the parties and examined the impugned order of Single Bench as well as award passed by Labour Court in each case.

8. The Labour Court awarded Rs. 50,000/- as lump sum amount of compensation in lieu of reinstatement with back wages in the cases of appellants Kanhaiya Lal, Prabhu Lal, Smt. Sumitra Sharma and Vijay Shankar. Learned Single Judge enhanced the amount of compensation from Rs. 50,000/- to Rs. 60,000/- in these four cases.

9. Appellant Kanhaiya Lai worked for about 2 years 5 months from 1991 to 1993 and his services were terminated on 1.9.1993. The reference was made in his matter on 17.9.2003 i.e. after 10 years. The award was passed by Labour Court on 8th April, 2011. It is now 21 years" old matter.

10. Appellant Prabhu Lal worked from 1991 to 1993 for about 2 years & 5 months and reference was made in his case on 14.6.2001 i.e. after 7 years & 9 months. The award was passed by Labour Court on 19.4.2011.

11. Appellant Smt. Sumitra Sharma worked for about one year from August 1998 to August 1999 and reference was made in her case in June 2001 i.e. after about 2 years. The award was passed on 11.5.2011.

12. Appellant Vijay Shankar worked from March 1991 to May 1993 for about 2 years & 2 months and reference was made in his case after 7 years on 29.12.2000. The award in his case was passed on 8th April, 2011.

13. So far as cases of four appellants Kanhaiya Lal, Prabhu Lal, Smt. Sumitra Sharma and Vijay Shankar are concerned, it is clear that they worked for a period for about one year to 2 years & 5 months and they challenged their retrenchment order with an inordinate delay i.e. 10 years, 7 years & 9 month, 1 year & 9 1/2 months and 7 years respectively. They all were daily wagers. Out of four cases, three cases relate to the year 1991 to 1993 and one case relates to the year 1998 to 1999. Therefore, looking to the nature of their appointment, the delay in challenging the retrenchment order, the amount of daily wages received at the time of their termination order, we are of the view that learned Single Judge was absolutely right in upholding the award passed by Labour Court and in not passing order of their reinstatement and in enhancing the lump sum amount of compensation from Rs. 50,000/- to Rs. 60,000/- in each case. The learned Single Judge has also referred the judgment of Hon''ble Apex Court in the case of Incharge Officer and Another Vs. Shankar Shetty, wherein Hon''ble Apex Court held that reinstatement is not automatic in all the cases of illegal termination. The amount of lump sum compensation was awarded to the employee.

14. After considering all the submissions of the parties, we are of the view that the order passed by learned Single Judge in these four appeals is absolutely just and reasonable and no interference in the same is called for in these intra-court appeals. Therefore, their appeals are liable to be dismissed.

15. So far as, the cases of appellants Shanti Bai and Jodh Raj are concerned, we find that appellant Shanti Bai worked for about 8 years & 5 months from 1985 to 1993 and a reference in her case was made in year 2000 after 7 years & 4 months. The learned Labour Court awarded Rs. 60,000/- as lump sum amount of compensation in her favour in lieu of reinstatement with back wages. Learned Single Judge upheld the award passed by Labour Court.

16. In the case of Jodh Raj, it reveals that he worked for about 6 years & 3 months from 1991 to 1997 and reference was made in his case after 2 years & 4 months in the year 2000. The award was passed by Labour Court on 3.11.2007. Labour Court awarded Rs. 25,000/- as lump sum amount of compensation in lieu of reinstatement with back wages. Learned Single Judge enhanced the amount of compensation from Rs. 25,000/- to Rs. 60,000/-.

17. From the above facts, it is clear that appellant Shanti Bai was appointed in the year 1985 and her services were retrenched in 1993. We are now in 2012. There is a gap of about 19 years and she was also a daily wager. Reference was filed after 7 years and 4 months. Labour Court awarded lump sum compensation

of Rs. 60,000/-. Similarly, appellant Jodh Raj was appointed in the year 1991 and his services were terminated in the year 1997. Reference in his case was made after 2 years & 4 months. The learned Labour Court awarded a lump sum amount of compensation of Rs. 25,000/-, which has been enhanced to Rs. 60,000/- by learned Single Judge. There is a gap of about 15 years also in his case. He was also daily wager. Therefore, looking to the year of appointment and their termination and the gap from their date of termination till now and further that they were daily wagers and their appointments are not in accordance with the rules, we find that learned Labour Court as well as learned Single Judge both were right in not passing the order of their reinstatement and in awarding a lump sum amount of compensation in lieu of their reinstatement with back wages. However, looking to the length of service i.e. 8 years & 5 months in the case of Shanti Bai and 6 years & 3 months in the case of Jodh Raj and further that Shanti Bai challenged her termination order after about 7 years and Jodh Raj challenged his termination order after more than 2 years, we are of the view that ends of justice will meet, in case, the amount of lump sum compensation in lieu of their reinstatement with back wages be enhanced from Rs. 60,000/- to Rs. 1,25,000/-.

18. Consequently, D.B. Special Appeals Nos. 1348/2012, 1302/2012, 1303/2012 and 1304/2012 filed by appellants Kanhaiya Lal, Prabhu Lal, Smt. Sumitra Sharma and Vijay Shankar respectively are dismissed. D.B. Special Appeals Nos. 1298/2012 and 1305/2012 filed by Shanti Bai and Jodh Raj respectively are partly allowed. The amount of lump sum compensation in lieu of their reinstatement is enhanced from Rs. 60,000/- to Rs. 1,25,000/- in both cases. The amount of lump sum compensation awarded by this Court be paid to appellants Shanti Bai and Jodh Raj within a period of two months, failing which the said amount will carry interest at the rate of 6% per annum from the date of this order. In case, any amount has already been paid earlier then the same will be adjusted. Parties are directed to bear their own costs. Registry is directed to place a copy of this order on record in each connected file.