
(1987) 08 BOM CK 0032
In the Bombay High Court
Case No : Writ Petition 2056 of 1983

Sharad Hari Deshpande

APPELLANT

Vs

India Security Press and others

RESPONDENT

Date of Decision : 26-08-1987

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1987) 3 BomCR 498 : (1988) 1 LLJ 297 : (1987) MhLj 810

Hon'ble Judges : S.C. Pratap, J;H.N. Kantharia, J

Bench : Division Bench

Judgement

H.H. Kantharia, J.—The petitioner was appointed as an Office Peon in an existing vacancy, by the first respondent, vide appointment letter dated 24th October 1975, on probation for two years in the first instance, on usual scale of pay admissible under the rules as would be in force from time to time, with effect from 20th October, 1975 F.N. The probation period came to an end on 28th October, 1977 but the petitioner was continued in the employment. However, he received an order dated 18th September, 1978 informing him that his services were terminated and that he shall be paid a sum equivalent to the sum of pay and allowances for the period of one month (in lieu of the period of notice) calculated at the same rate at which he was drawing the salary immediately before the date on which the said order was served on him. Being aggrieved, the petitioner raised an industrial dispute before the Commissioner of Labour (Central). Conciliation proceeding were commenced but since no settlement could be arrived at a failure report was submitted by the Conciliation Officer on 27th November, 1979. On consideration of the failure report, the Government of India referred the said dispute for adjudication to the second respondent (Industrial Tribunal, Central Government Industrial Tribunal, Court No. 2 Bombay) in the following terms :

"Whether the action of the management of India Security Press, Nasik Road, Nasik, Maharashtra, in terminating the services of Shri Sharad Hari Deshpande,

Office Peon, vide Office Order No. Admn. 89/M dated the 18th September, 1978 is justified and legal ? If not to what relief the workman is entitled ?"

2. The second respondent by his Award dated 22nd October, 1982 held that the termination of services of the petitioner was invalid and illegal and that it amounted to retrenchment. He further held that the retrenchment itself was not valid and legal because the procedure contemplated u/s 25F of the Industrial Disputes Act (hereinafter referred to as "the Act") was not followed. He however, refused the relief of reinstatement to the petitioner firstly because the petitioner orally informed him (the Tribunal) that he was gainfully employed from May 1980 and secondly because the petitioner had succeeded only on technical point. The second respondent, therefore, granted to the petitioner the retrenchment compensation and wages for 20 months.

3. When this Award was brought to the notice of the learned Advocate for the petitioner, a review application dated 26th October, 1982 made to the second respondent that the petitioner was not given a reasonable opportunity of being heard with regard to his employment during the intervening period and that an oral statement made in that behalf should not have been accepted by the second respondent to refuse relief of reinstatement. The second respondent heard the said review application and by his order dated 4th November, 1982 held that he had no power to hear a review application especially when he had disposed of the reference on merits. However, according to him, he committed a procedural error in not recording the evidence of the petitioner about the particulars of his employment during the intervening period and relying upon an oral statement of the petitioner that he was at the relevant time gainfully employed. He therefore, allowed the review application to that extent and permitted the petitioner to adduce evidence with regard to his employment and quantum of income therefrom subsequent to the order of termination of his services.

4. Thus, after receiving further evidence with regard to the particulars of the employment of the petitioner during the intervening period, the second respondent by his Award dated 7th December, 1982 directed that so much of the amount that was earned by the petitioner during the intervening period should be deducted while making payment to him of arrears of wages and retrenchment compensation awarded as per the first Award dated 22nd October, 1982.

5. The petitioner has in this petition impugned all the three above mentioned Awards passed by the second respondent to the extent of denying reinstatement with full back wages and continuity of service.

6. Now, once the second respondent held that the services of the petitioner were illegally terminated and that his termination amounted to retrenchment which was also illegal as the procedure envisaged u/s 25F of the Act was not followed, he should have granted the relief of reinstatement with full back wages and continuity of service to the petitioner. It is well settled law that whenever the retrenchment is held to be illegal, a workman is entitled to the relief of

reinstatement with full back wages and continuity of service as in law he continues to be in service which never came to an end, unless there are compelling and good grounds to reject such a relief in which case the alternative relief of payment of compensation can be given. The reasons given by the second respondent for not granting the relief of reinstatement to the petitioner in this case are, to say the least, no reasons at all. They can certainly be not called compelling and good ground for refusing the normal relief of reinstatement to any workman once the retrenchment is held to be invalid. When evidence was adduced before the second respondent that after the service of the petitioner were terminated he was gainfully employed for same time, on some occasions, all that the second respondent could do was to deduct the amount of money that the petitioner had earned during the intervening period, from the back wages, and not deny him the usual relief of reinstatement with full back wages. It is also important to note here that along with the petitioner two more workman, similarly situated as the petitioner and whose service were terminated along with him, by name, U. D. Gosavi and Punidkumar Singh had raised similar industrial disputes which were heard by two other Industrial Tribunals and were granted relief of reinstatement with full back wages. We see no good reason why the case of the petitioner should have been differently treated and decided by the second respondent. Thus, considering all the facts and circumstances, we are of the opinion that the impugned Awards passed by the second respondent refusing relief of reinstatement to the petitioner were not in accordance with law and suffer from errors apparent on the face of the record. The same will have to be set aside to the extent of denying reinstatement with full back wages and continuity of service to the petitioner.

7. In the result, we set aside the impugned Awards and substitute the same by directing the first respondent to reinstate the petitioner with effect from 1st September, 1987 with all the attendant service benefits and continuity of service and pay to him all the back wages from 18th September, 1978 till the day of his reinstatement. We direct the first respondent to calculate the arrears of wages of the petitioner from 18th September, 1978 on which day his services were terminated till 31st August, 1987 and while doing so, the first respondent shall not deduct Rs. 195/- and Rs. 680/- towards the insurance premium because the petitioner had not availed of any benefits under the insurance scheme during the period of his forced unemployment with the first respondent. However, the first respondent shall be entitled to deduct the amount which the petitioner had earned during the intervening period about which the petitioner shall give true and faithful account to the first respondent at the time of calculating the amount of back wages. The first respondent is also directed to pay the amount of bonus and productivity bonus to the petitioner due to him from 18th September, 1978 upto 31st August, 1987 which he would have been entitled to receive had he remained in continuous employment of the first respondent.

8. The first respondent is directed to pay to the petitioner the total amount due to him on the aforesaid basis less such amount as may be considered by the first

respondent to be reasonably due thereon towards Income Tax. However, as the payment to be made to the petitioner is in reality payment of arrears of back wages and other monetary benefits, the petitioner would be entitled to have the same spread over the entire relevant period of the financial/assessment years for which the said payments relates. The petitioner will be at liberty to make an application accordingly to the Income Tax Officer having jurisdiction in the matter for relief u/s 89 of the Income Tax Act. The concerned Income Tax Officer shall grant to the petitioner relief accordingly within thirty days of receipt of the said application. On such relief being granted, the first respondent shall then pay over to the petitioner the amount earlier retained by it towards Income Tax. We direct the first respondent to pay to the petitioner initially the total amount (less income tax) latest in the month of October, 1987 along with the petitioner's salary for the month of September, 1987. In default, the first respondent shall then pay the said amount to the petitioner with interest thereon at 15 per cent. annum from 1st November, 1987 till payment. We further direct the first respondent to pay to the petitioner the retained amount towards Income Tax within two weeks of the petitioner intimating to the first respondent the relief granted to him u/s 89 of the Income Tax Act. In default of such payment the first respondent shall then pay the said retained amount with interest thereon at 15 per cent. per annum from the expiry of the aforesaid period of 15 days till payment.

9. Rule is made absolute in the above terms but, in the circumstances of the case, with no order as to costs.