
(2002) 06 MP CK 0027
In the Madhya Pradesh High Court
Case No : Writ Petition No. 691/99

State of M.P.	Vs	APPELLANT
Ku. Pratibha Badlani and Others		RESPONDENT

Date of Decision : 25-06-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 25F

Citation : (2002) 95 FLR 1161 : (2002) 4 MPHT 339

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : K.N. Gupta, for the Appellant; Vivek Jain, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—The respondent No. 1/employee was in employment in a project under the Water Resources Department on daily wages. It was alleged by the respondent/employee that her services were terminated illegally with effect from 5-2-1988 and therefore on a dispute being raised by her by order dated 14-1-1991, a reference was made u/s 10 of the Industrial Disputes Act, Labour Court, Gwalior for adjournment.

2. Initially, the Labour Court, Gwalior passed the ex-parte award on 20-8-91 vide Annexure P-3 directing for reinstatement of the respondent/ employee with 50% back wages.

3. On a petition being filed by the State Govt. in W.P. No. 483/92, this Court by order dated 10-4-92 (Annexure R-5) set aside the award passed by the Labour Court and remitted the matter back for fresh adjournment by the Labour Court. Accordingly evidence was recorded and by the impugned award dated 30-9-98 (Annexure P-4) reinstatement without back wages have been ordered. W.P. No. 691/89 is the petition filed by the State Govt. challenging the award granting relief of reinstatement and W.P. No. 82/99 is the petition filed by the respondent/

employee being aggrieved by the action of the Labour Court in refusing to award back wages to her.

4. Shri K.N. Gupta, learned Govt. Advocate appearing for the petitioner in W.P. No. 691/89 submits that there is no evidence to show that the employee had worked for 240 days and therefore no relief could be granted to her. It is further submitted by him that evidence was led before the Labour Court and from the records, it is clear that the employee on her own left work on 5-2-88 and was absent from 5-2-88 to 7-7-88 and it was only on 7-7-88 that she return on duties. It was stated that it was misconduct and the aforesaid misconduct was proved by leading evidence before the Labour Court and the Labour Court did not consider this aspect of the matter while holding that the respondents illegally retrenched from services.

5. The aforesaid argument by the learned Counsel for the State is refuted by Shri Vivek Jain, learned Counsel appearing for the respondent/ employee and it is submitted by him that the respondent/employee was in continuous employment from 20th April, 1987 and she had completed one year service as contemplated u/s 25B of the Industrial Disputes Act and the finding recorded by the Labour Court is permitted.

6. In support of his petition refusing back wages, it is argued by learned Counsel Shri Vivek Jain that once the Labour Court had come to the conclusion that the termination is illegal in view of non-compliance with the provisions of Section 25F, grant of back wages cannot be sustained. In this regard he invites attention of this Court to the judgment of the Supreme Court in the case of Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, , and various other judgments of this Court wherein it has been indicated that once the termination is held to be illegal, back wages is the normal rule and back wages can be denied only if the employer proves that the employee concerned is being actually employed.

7. Shri K.N. Gupta, learned Counsel appearing for the State submits that for reasons mentioned in the impugned award, the Labour Court has refused to grant back wages on the ground that respondent/employee was a daily wages employee. She had been absent from duties and therefore, it has refused back wages to the employee. That apart, it is also submitted by him that if the employee was terminated on 5-2-1988, the reference was made only on 14-1-91 and therefore, for this period atleast no back wages can be awarded to the employee concerned.

8. I have heard learned Counsel for the parties.

9. As far as the petition filed by the State Govt. is concerned, the finding recorded by the Labour Court is that the employee had been in continuous service for a period of one year and therefore, for non-compliance with the Section 25F, the termination has been held to be illegal. This finding is a finding of fact recorded by the Labour Court on the basis of evidence produced before it

and this Court cannot interfere in such a finding recorded by the Labour Court, in exercise of the limited jurisdiction while entertaining a petition under Article 227 of the Constitution.

10. The argument of the learned Counsel for the petitioner to the effect that the respondent/employee was unauthorisedly absent from 5-2-88 to 7-7-88 and therefore, for this misconduct she was terminated and this aspect has of the Labour Court cannot be accepted for the reasons that the Labour Court has considered this aspect of the matter and has denied wages to the employee concerned. Even otherwise, if the employee was absent from 5-2-88 to 7-7-88, for this account also termination would be too harsh punishment. I am therefore not inclined to allow the petition on this ground of finding that the respondent/employee is entitled to be reinstated is the correct and reasonable finding and does not warrant any interference in a petition under Article 227 of the Constitution. The petition filed by the State Govt. i.e., W.P. No. 691/99 is therefore dismissed.

11. As far as the question of granting back wages to the employee is concerned, the contention made by the learned Counsel for the petitioner is that right of back wages is the normal rule. In view of the judgment of the Supreme Court in the case of Hindustan Timbers Pvt. Ltd, (supra). This is a settled principle of law and there can be no dispute in accepting the aforesaid prepositions. However, in the present case from the material on record, it is established that the respondent/employee was a daily wages employee who was appointed in connection with a Project. She was absent from 5-2-88 to 7-7-88 and the Labour Court on due consideration of all these facts had come to the conclusion that the employee be reinstated but without back wages.

12. In the present case the distinguishable fact is that the employee was appointed as daily wages and her services were terminated with effect from 5-2-88 and a reference was made only on 4-9-91 after more than three and a half years. In view of this the general principle of awarding back wages will not be applicable in this case. Considering all these factors and taking into consideration the facts and circumstances as brought on record, no case for interference in the award passed by the Labour Court is made out. The Labour Court has given a reasoned award and it is not a fit case where exercise of jurisdiction under Article 226 is warranted.

13. In the facts and circumstances of the present case, no relief can be granted to the respondent/employee in the petition filed by him. W.P. No. 82/99 is also dismissed.

Accordingly both the petitions fails and are dismissed. Parties to bear their own costs.