
(2015) 07 RAJ CK 0091
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1499 of 2003

State of Raj. and Others

APPELLANT

Vs

Bhagwan Das and Others

RESPONDENT

Date of Decision : 09-07-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12(5), 17-B, 25F, 25-F

Citation : (2015) 07 RAJ CK 0091

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : Sanjeev Singhal, Dy. G.C., for the Appellant

Final Decision : Partly Allowed

Judgement

Veerender Singh Siradhana, J—The petitioner-State (for short, the employer), aggrieved of the award dated 19th September, 2001, passed by the Labour Court, Bharatpur, has approached this Court praying for the following relief(s):

"(i) to issue writ, order or direction calling for entire record of the case and after examining the same be further pleased to quash and set aside the award dated 19.9.2001 passed in L.C.R. No. 117/1997;

(ii) to issue writ, order or direction to declare that the workman is not entitled to be given the benefit of the provisions of Section 25-F of I.D. Act, 1947.

(iii) to issue writ, order or direction to declare that the workman is not entitled in any manner to be given the benefit of reinstatement with continuity and for payment of wages from the date of passing of the award.

(iv) Any other order which this Hon'ble Court deemed just and proper in the facts and circumstances of the case also be passed in favor of the petitioner."

2. Briefly, the skeletal material facts necessary for appreciation of the legality, validity and correctness of the impugned award needs to be first noticed. The respondent-workman - Bhagwan Das, raised an industrial dispute stating that he

was engaged as Beldar by the petitioner-employer on 1st July, 1981, and continuously worked upto 31st December, 1993, while his services were terminated without any notice, notice pay and retrenchment compensation. As a consequence of failure report submitted by the Conciliation Officer, the State of Rajasthan made a reference vide notification dated 1st May, 1997 in exercise of powers under Section 10 read with Section 12(5) of the Industrial Disputes Act, 1947 (for short, "the Act of 1947"). The Labour Court taking into consideration the pleadings of the statement of claim, response filed on behalf of the employer, evidence adduced by the parties and material available on record, passed the impugned award in affirmative and favor of the respondent-workman, holding the termination of employment of the petitioner on 31st December, 1993, as illegal and invalid. The Labour Court vide the impugned award directed reinstatement of the respondent-workman with continuity of service but without any back-wages. In case, the employer failed to comply with the award within three months from the date of the award; in that event, the respondent-workman would be entitled to full back-wages and all consequential benefits with effect from the date of the award.

3. Learned counsel for the petitioner-State, reiterating the pleaded facts and grounds of the writ application, asserted that the impugned award is illegal, arbitrary and contrary to the facts, evidence and material available on record. Learned counsel would further submit that the respondent-workman himself abandoned the services on his own and did not report for duty. After an inordinate and unexplained delay of about 4-5 years, the respondent-workman raised an industrial dispute. Furthermore, the respondent-workman failed to prove the facts pleaded in the statement of claim for any cogent and convincing evidence brought on record, and therefore, the impugned award is bad in the eye of law on that count as well.

4. It is further emphasized that the finding arrived at by the Labour Court to the effect that the respondent-workman had completed 240 days of employment in the preceding calendar year, is based on no evidence. Moreover, the respondent-workman himself abandoned the services. Referring to the opinion of a Coordinate Bench of this Court in the case of Divisional Forest Officer Vs. Raghuvar and Another, (2002) 93 FLR 82 : (2002) 1 WLC 501, it was stressed that the respondent-workman, as a daily wager worked for a short period and did not raise any grievance with reference to his alleged termination of employment for almost 4-5 years, and therefore, the statement of claim ought to have been dismissed on that count alone.

5. I have heard the learned counsel for the petitioner-State and with his assistance perused the materials available on record as well as gave my thoughtful consideration to the submissions advanced.

6. While considering the pleadings of the parties, evidence adduced and material available on record, the Labour Court restricted the scrutiny of the dispute only in the backdrop of Section 25-F of the Industrial Disputes Act, 1947, as the claim

was not pressed for any violation of Section 25-G and H of the Act of 1947.

7. The statement made in the claim with reference to the employment of the respondent-workman w.e.f. 1st July, 1991 to 31st December, 1993, supported by an affidavit in evidence on which the respondent-workman was also cross-examined. The evidence was found to be cogent and convincing. The employer did not produce any evidence oral or documentary, in support of the reply to the statement of claim. The respondent-workman was neither called upon nor any enquiry was conducted for his abandonment, and therefore, an adverse inference was drawn recording a finding that the respondent-workman did not abandon the employment.

8. While recording finding on the issue of the respondent-workman having completed 240 days in the employment of the employer, in preceding 12 calendar months; the Labour Court observed that no evidence i.e. relevant documents, muster roll, attendance register or any other material, was brought on record in support of the response to the statement claim, made to the contrary, on behalf of the employer. However, from the material available on record, it surfaced that the industrial dispute raised by the respondent-workman before the Conciliation Officer, which was forwarded to the State Government on 23rd May, 1996, on failure of the Conciliation proceedings, therefore, there was a delay in raising the industrial dispute.

9. The respondent-workman, in statement of claim, made an attempt to explain the delay by stating that when he insisted for grant of status of "semi-permanent", he found that his attendance in the record maintained by the employer was recorded up to 31st December, 1989, and for rest of the period, his attendance was recorded by recording name of some other person while, in fact, he worked up to 31st December, 1993. The explanation was not sustained and the Labour Court did record a finding of delay on the part of the respondent-workman in raising the industrial dispute, and therefore, while making the award molding the relief, declined the back-wages.

10. By now, it is well settled that when the termination of the employment, of a daily wager, is found to be illegal for procedural defects i.e. in violation of Section 25-F of the Act of 1947, the view of the Hon"ble Supreme Court is that reinstatement with back-wages is not automatic. Detailing out the reasons, in certain cases the workman should be given monetary compensation, which will meet the ends of justice. The rationale and reasons for the approach are not far to seek. In the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 , the Hon"ble Supreme Court held that the termination of the employment if found to be illegal because of non-compliance of Section 25-F of the Act of 1947, for non-payment of retrenchment compensation and notice pay, even thereafter, the workman would be entitled for reinstatement to the same status, and the services of such an employee could be

terminated ensuring compliance of the mandatory provisions of Section 25-F of the Act of 1947.

11. In the instant case at hand, the respondent-workman was engaged w.e.f. 1st July, 1981 to 31st December, 1989. Though, the respondent-workman raised an industrial dispute stating the termination of his employment on 31st December, 1993, but from the facts and material available on record, it is evident that the explanation furnished for the delay, no evidence is available on record. It is admitted by the respondent-workman that his attendance for the period after 31st December, 1989 to 31st December, 1993, was in the name of someone else; an explanation which did not find favor with the Labour Court.

12. From the record, it is evident that the petitioner-State instituted the present writ application on 7th January, 2003, and an interim order staying the operation of the impugned award was made on 18th February, 2003, which was later on modified vide order dated 7th November, 2005 in view of the application under Section 17-B of the Act of 1947. This Court on 7th November, 2005, while allowing the application of the respondent-workman, under Section 17-B of the Act of 1947, directed the petitioner-State to make the payment of salary last drawn w.e.f. 1st February, 2003, and to further continue to pay the salary on or before of the 15th on each month. The arrears were also ordered to be paid within thirty days from the date of receipt of a certified copy of the order. Learned counsel submits that sanction for payment of the salary and the arrears, in compliance of the order dated 7th November, 2005, was accorded by the competent authority on 6th January, 2006, and thereafter, the petitioner-State, in compliance of the order has been making the payment under Section 17-B of the Act of 1947.

13. From the facts, circumstances and material available on record, it is evident that the period of engagement of the respondent-workman was only for a period w.e.f. 1st July, 1981 to 31st December, 1989, though no documentary evidence has been brought on record by either side. The fact that the Industrial Dispute was raised by the respondent-workman after a delay of about 4 years, is also not in dispute. Once the stand of the petitioner-State was found to be false with reference to the statement made to the effect that the respondent-workman abandoned the employment, on a proper analysis of pleaded facts and evidence, there is no reason to interfere with the findings of the Labour Court.

14. In the instant case at hand, the impugned award passed is based on the finding that the respondent-workman worked for 240 days in preceding 12 calendar months, the finding could not be assailed for any reason sustainable in law, and therefore, the termination of employment was found to be violative of the mandate of Section 25-F of the Act, 1947. Thus, the termination has been rightly held to be illegal.

15. The issue for determination now remains is whether the relief of reinstatement, in the facts and circumstances of the case is justified or not. The

Hon"ble Apex Court of the land in the case of B.S.N.L. Vs. Bhurumal, (2014) 2 ABR 235 : (2014) 1 AD 467 : AIR 2014 SC 1188 : (2014) 140 FLR 901 : (2013) 15 JT 611 : (2014) LabIC 1093 : (2014) 1 LLJ 260 : (2013) 15 SCALE 131 : (2014) 3 SCJ 195 : (2014) 3 SCT 49 : (2014) 1 SLJ 293 , held thus:

"20. The learned Counsel for the Appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In the case of Bharat Sanchar Nigam Ltd. Vs. Man Singh, (2012) 132 FLR 500 : (2012) 1 SCC 558 : (2012) 1 SLJ 199 , this Court has held that when the termination is set aside because of violation of Section 25F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right. In the case of Incharge Officer and Another Vs. Shankar Shetty, (2010) 9 JT 262 : (2010) 4 LLJ 617 : (2010) 9 SCC 126 : (2010) 10 SCR 773 : (2010) 6 SLR 530 , it was held that those cases where the workman had worked on daily wage basis, and worked merely for a period of 240 days or 2-3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement. In this judgment of Shankar Shetty (supra), this trend was reiterated by referring to various judgments, as is clear from the following discussion.

Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25F of the Industrial Disputes Act, 1947 (for short "the ID Act")? The course of the decisions of this Court in recent years has been uniform on the above question.

In Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, AIR 2009 SC 3004 : (2009) 122 FLR 665 : (2009) 9 JT 396 : (2009) 15 SCC 327 : (2010) 1 SCC(L&S) 545 : (2009) 10 SCR 908 : (2009) 5 SLR 606 : (2009) 8 UJ 3727 : (2009) AIRSCW 4824 : (2009) 5 Supreme 629 , delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, AIR 2006 SC 586 : (2006) 108 FLR 201 : (2005) 10 JT 344 : (2006) 1 LLJ 496 : (2006) 1 SCC 479 : (2006) SCC(L&S) 250 : (2006) 2 SLJ 327 : (2005) AIRSCW 6314 : (2005) 8 Supreme 815 , Uttaranchal Forest Development Corporation Vs. M.C. Joshi, (2007) 113 FLR 191 : (2007) 2 LLJ 390 : (2007) 3 SCALE 545 : (2007) 9 SCC 353 : (2007) 4 SCR 114 : (2008) 3 SLJ 155 : (2007) AIRSCW 3345 : (2007) 4 Supreme 712 , State of M.P. and Others Vs. Lalit Kumar Verma, AIR 2007 SC 528 : (2007) 112 FLR 345 : (2006) 12 SCALE 642 : (2007) 1 SCC 575 : (2007) 1 SCC(L&S) 405 : (2006) 9 SCR 591 Supp , Madhya Pradesh Administration Vs. Tribhuban, (2007) 113 FLR 886 : (2007) 2 LLJ 577 : (2007) 5 SCALE 397 : (2007) 9 SCC 748 : (2008) 1 SCC(L&S) 264 : (2007) 4 SCR 378 : (2007) 1 UJ 640 , Sita Ram and Others Vs. Moti Lal Nehru Farmers Training Institute, AIR 2008 SC 1955 : (2008) 1 CLT 318 : (2008) 117 FLR 1191 : (2008) 3 JT 622 : (2008) 2 LLJ 688 : (2008) 4 SCALE 77 : (2008) 5 SCC 75 : (2008) 2 SCC(L&S) 71 : (2008) AIRSCW 2256 : (2008) 2 Supreme 375 , Jaipur Development Authority Vs. Ram Sahai and Another, (2006) 111 FLR 1178 :

(2006) 9 JT 520 : (2006) 11 SCALE 95 : (2006) 11 SCC 684 : (2006) 8 SCR 95 Supp , Ghaziabad Development Authority and Another Vs. Ashok Kumar and Another, (2008) 2 CLT 526 : (2008) 117 FLR 1198 : (2008) 2 JT 494 : (2008) 1 LLJ 1013 : (2008) 2 SCALE 593 : (2008) 4 SCC 261 : (2008) 1 SCC(L&S) 1016 : (2008) AIRSCW 4738 : (2008) AIRSCW 1474 : (2008) 2 Supreme 282 and Mahboob Deepak Vs. Nagar Panchayat Gajraula and Another, (2008) 2 CLT 230 : (2008) 116 FLR 379 : (2008) 1 JT 150 : (2008) 1 LLJ 855 : (2007) 14 SCALE 504 : (2008) 1 SCC 575 : (2008) 1 SCC(L&S) 239 and stated as follows : (Jagbir Singh case, SCC pp. 330 & 335 paras 7 & 14).

It is true that the earlier view of this Court articulated in many decision 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.

It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

Jagbir Singh has been applied very recently in Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others, (2010) 3 LLJ 600 : (2010) 4 SCALE 333 : (2010) 6 SCC 773 , wherein this Court stated : (SCC p. 777, para 11)

In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.

21. In the case of Telecom District Manager and Others Vs. Keshab Deb, (2008) 118 FLR 376 : (2008) 7 JT 257 : (2009) 1 LLJ 733 : (2008) 8 SCC 402 : (2008) 2 SCC(L&S) 709 : (2009) 1 SLJ 382 the Court emphasized that automatic direction for reinstatement of the workman with full back wages is not contemplated. He was at best entitled to one months" pay in lieu of one month"s notice and wages of 15 days of each completed year of service as envisaged under Section 25F of the Industrial Disputes Act. He could not have been

directed to be regularized in service or granted/given a temporary status. Such a scheme has been held to be unconstitutional by this Court in *A. Umarani Vs. Registrar, Cooperative Societies and Others*, (2004) 6 JT 110 : (2004) 3 LLJ 780 : (2004) 6 SCALE 350 : (2004) 7 SCC 112 : (2004) SCC(L&S) 918 : (2004) AIRSCW 4462 : (2004) 6 Supreme 143 and *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 .

22. It was further submitted by the learned Counsel for the Appellant that likewise, even when reinstatement was ordered, it does not automatically follow full back wages should be directed to be paid to the workman. He drew our attention of this Court in the case of *Chairman-Cum-M.D., Coal India Ltd. and Others Vs. Ananta Saha and Others*, (2011) 4 JT 252 : (2011) 3 LLJ 165 : (2011) LLR 673 : (2011) 4 SCALE 398 : (2011) 5 SCC 142 : (2011) 1 SCC(L&S) 750 : (2011) 2 UJ 1514 and *Metropolitan Transport Corporation Vs. V. Venkatesan*, AIR 2010 SC 206 : (2009) 122 FLR 939 : (2009) 11 JT 96 : (2009) 4 LLJ 305 : (2009) 11 SCALE 50 : (2009) 9 SCC 601 : (2009) 2 SCC(L&S) 719 : (2009) 12 SCR 583 : (2010) 3 SLJ 207 : (2009) 5 SLR 775 : (2009) 8 UJ 3975 .

23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

24. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (See: *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 . Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after

reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose."

16. In the backdrop of the aforesaid principles, this Court finds that the respondent-workman was working in the capacity of daily wager. Furthermore, the termination of respondent-workman dates back to 31st December, 1989. Thus, the termination of the employment took place about 20 years ago. It is also a fact that there was no documentary evidence brought on record, by either side, for the respondent-workman had been in continuous employment of the petitioner-State. The fact that the respondent-workman was a daily wager and was employed without following any procedure of appointment as contemplated in the statutory rules, and was not holding any permanent post becomes relevant.

17. For the reasons and discussions hereinabove, this Court is of the view that ends of justice will meet by granting compensation in lieu of reinstatement. Accordingly, the respondent-workman should be paid compensation of Rs. 2,00,000/- (Rs. two lacs). It is made clear that this compensation would be apart from the amount which has been paid to the respondent-workman under Section 17-B of the Act of 1947, in compliance of the order passed by this Court on 7th November, 2005. If the amount of compensation of Rs. 2,00,000/- (Rs. Two Lacs), is not released and paid to the petitioner, within two months of the receipt of a certified copy of this order, the amount of compensation shall carry an interest @ 12% per annum, from the date of the award till the payment is made.

18. The writ petition is partly allowed as indicated above.

19. The stay application stands closed.