
(2006) 07 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4298 of 1993

State of Rajasthan and Others

APPELLANT

Vs

Harish Chandra Sharma and Others

RESPONDENT

Date of Decision : 20-07-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 25F, 2A, 2K, 33(C)(2)

Citation : (2007) 112 FLR 968 : (2006) 4 RLW 3028

Hon'ble Judges : P.S. Asopa, J

Bench : Single Bench

Advocate : Harshvardhan Nandwana, Dy. GA, for the Appellant; R.P. Singh, for Workman, for the Respondent

Judgement

P.S. Asopa, J.—In writ petition No. 4298/1993, the award of Industrial Tribunal, Jaipur dated 3.12.1992 (Ann. 6) is under challenge whereas in another writ petition i.e. 2396/1996, the workman raised the grievance of non-compliance of the award, more particularly, proceeding u/s 33(C)(2) of the Industrial Disputes Act, 1947 (for short "the Act") before Labour Court, Jaipur for computation of back-wages and other benefits as awarded by Industrial Tribunal, Jaipur. The subsequent writ petition is arising out of execution proceeding of award which is under challenge in earlier writ filed by State, therefore, both the writ petitions are connected and being decided by this common order.

2. Briefly stated, the facts of the case are that the workman was appointed as patwari in the regular pay-scale vide order dated 2.3.1973 against the leave reserve vacancy. The workman submitted the joining report on 5.3.1973 and he continuously worked from 5.3.1973 to May, 1974, but when the wages of the said period were not paid, the workman approached the payment of Wages Authority (for short "the Authority") for getting wages from June, 1973 to May, 1974 by filing an application before the Authority and the Authority awarded the wages claimed by the workman. In the month of June, 1974, his services were terminated by an oral order. On 4.5.1982, the workman was taken back in

service. He kept writing to the department to regularize the period of his service from May 1974 to 30.5.1982. The workman raised the industrial dispute regarding regularization of his service before the conciliation officer, but no settlement was arrived at and the failure report was submitted. On 27.8.1987 (Ann. 3), the State refused to make reference. Against the said order, the workman filed the writ petition which was registered as DBCWP No. 3213/1987 Harish Chandra Sharma v. State wherein on 13.3.1989, the State was directed to make reference. The State Government, in compliance of the said order, made reference on 10.4.1989 to Industrial Tribunal, Jaipur as under:

D;k fUk;ksTkd la- 1 eq[; vfHk;ark] flapkbZ foHkx] jktLFkku t;iqj ,oa fu;kstd ua- 2 vf/k?klh vfHk;ark flapkbZ [k.M vyoj }kjk Jfed Jh gjh? pUnz ?ekZ iq= Jh y{ehukjk;.k ?ekZ] nsgh njokts ckgj] xkS?kkyk ds lkeus vyoj dks Isok Is i`Fkd djuk ,oa okil Isok esa ysdj mldh Isok dh yxkrkj u ekuuk mfpr ,oa oS/k ;fn ugha rks Jfed fdl jkgr dks izkIr djus dk vf/kdkjh gSA

3. The workman filed claim petition and reply to the same, was filed by the State. After taking evidence and hearing both the parties, the Industrial Tribunal passed the award in favour of the workman declaring that the oral termination of the workman amounts to retrenchment which has been passed in violation of Section 25F of the Act, therefore, the same was void and the workman was awarded continuity of service with backwages and in case, he is not paid the same within a period of three months, he will be entitled to 12% interest.

4. Against the said award, the first writ petition i.e. SBCWP No. 4298/1993 has been filed by State wherein the said award was challenged mainly on the ground that there was no dispute before the conciliation officer for oral termination of the workman in June, 1974, therefore, the Government has acted beyond the dispute raised before the Conciliation Officer and, therefore, the reference is bad in law. Otherwise also, the dispute is not an industrial dispute, instead it is an "individual dispute", which is not covered by Section 2K of the Act. The oral termination was of June, 1974 and the workman has claimed continuity of service from 1.6.1974 to 3.5.1982 which was raised at the belated stage on 13.12.1985. Therefore, he is not entitled to get the backwages.

5. Reply has been filed to the writ petition wherein it is submitted that the reference confer jurisdiction on the Industrial Tribunal and the same cannot be questioned before the Industrial Tribunal and further the respondents failed to challenge the said reference before the High Court at the initial stage and once they have submitted to the jurisdiction of the Labour Court now it is not open for them to challenge the same. The respondent-workman has further submitted that a bare perusal of the reference would reveal that there is a reference of the termination of the services, therefore, the Industrial Tribunal was bound to adjudicate upon the same and has been rightly adjudicated by answering in affirmative on the basis of evidence. Counsel for the respondent-workman also stated in the reply that at no point of time, the parties were prejudiced on account of adjudication of the oral termination as the petitioner has claimed

continuity of service from 1.6.1974 to 3.5.1982. The Industrial Tribunal has rightly held that the oral termination of May, 1974 is violative of mandatory Section 25F of the Act. His services were terminated orally despite the fact that he has completed more than 240 days i.e. from 5.3.1973 to 30.5.1974 and he has neither been given any notice nor has been paid one month's pay in lieu thereof; he has also not been paid compensation for retrenchment.

6. Before the Industrial Tribunal, the workman examined himself and was cross-examined on behalf of the petitioner. Shri B.S. Mathur, Executive Engineer filed affidavit on behalf of the petitioner who was cross-examined by the workman. As regards documentary evidence, the workman filed 14 documents and the petitioner-State filed 10 documents.

7. In Para 7 to 11, the evidence has been discussed by the Industrial Tribunal and the objection of the petitioner-State that the present dispute is not an industrial dispute, has been rejected by the Industrial Tribunal on the ground that the matter is of termination, therefore, covered by the definition given in the Act as envisaged u/s 2K. As regards jurisdiction and reference, the Industrial Tribunal has held that in Case any reference is sent to the Industrial Tribunal, then it becomes necessary for the Industrial Tribunal to adjudicate the same. In Para 15, the finding with regard to non-compliance of Section 25F has been given and ultimately, it was held by the Industrial Tribunal that the termination of the services of workman is not proper and legal. He was directed to be reinstated with continuity of service and payment of all arrears of back-wages and in case the same is not paid within a period of three months, then 12% interest is to be paid and cost of Rs. 100/- was also imposed. The relevant portion of the award dated 3.12.1992 is reproduced hereunder:

izkFkhZ gjh? pUnz ?ekZ dh vizkFkhZ }kjk dh xbZ IsokeqfDr mfpr ,oa oS/k ugha gS A mldks mlds in ij fu;ksftr ?kksf?r fd;k tkrk gSA mldh Isok dh fujUrjrk dk;e j[kh tkrh gSA mldks mldk leLr cdk;k osru fnyk;k tkrk gSA vxj fu;kstd vUnj rhu ekg mDr jde vnk ugha djsxk rks 12 izfr?r okf?Zd nj ls C;kt Hkh nsuk iM+sxkA 100@& :i;s [kpkZ eqdnek Hkh fnyk;k tkrk gSA

8. In the aforesaid writ petition No. 4298/1993, the first stay application was dismissed on 3.9.1993 and second stay application too was dismissed on 9.2.1994. The workman filed application u/s 33(C)(2) of the Act for computation of the backwages and raised a claim of Rs. 5,63,901/- which was partly accepted on 6.10.1995 by Labour Court to the extent of grant of Rs. 61,593/- against which workman filed SBCWP No. 2396/1996. The petitioner in the said application as well as in the aforesaid writ petition stated that he has been paid minimum of the scale taking the excuse of the pendency of the Court case and has not been given the revised pay scale which became due to him on 1.9.1976, 1.9.1981, 1.9.1986 and 1.9.1988.

9. I have gone through the record of the writ petitions and have also carefully considered the rival submissions of the parties.

10. The Supreme Court, in Para 7 of the case of Hochtief Gammon Vs. Industrial Tribunal, Bhubaneshwar, Orissa and Others, , held that Industrial Tribunal is a Tribunal of limited jurisdiction. Its jurisdiction is to try an industrial dispute referred to it for its adjudication by the appropriate Government by an order of reference passed u/s 10. It is not open to the Tribunal to travel materially beyond the terms of reference, for it is well settled that the terms of reference determine the scope of its power and jurisdiction from case to case. The relevant portion of para 10 is as follows:

(7) In dealing with this question, it is necessary to bear in mind one essential fact, and that is that the Industrial Tribunal is a Tribunal of limited jurisdiction. Its jurisdiction is to try an industrial dispute referred to it for its adjudication by the appropriate Government by an order of reference passed u/s 10. It is not open to the Tribunal to travel materially beyond the terms of reference, for it is well settled that the terms of reference determine the scope of its power and jurisdiction from case to case.

...

11. The Supreme Court, in Para 24 and 27 of case of National Engineering Industries Ltd. Vs. State of Rajasthan and Others, held that the Court competent to examine the validity of reference is the High Court and not the Industrial Tribunal. The relevant portion of Para Nos. 24 and 27 is as follows:

24. It will be thus seen that the High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute and none apprehended which could be the subject-matter of reference for adjudication to the Industrial Tribunal u/s 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the Industrial Tribunal (sic dispute) which would clothe the appropriate Government with power to make the reference and the industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended the appropriate Government lacks power to make any reference.

... 27. The Industrial Tribunal is the creation of a statute and it gets jurisdiction on the basis of reference. It cannot go into the question on validity of reference.

...

12. Here in the instant case, the reference order has not been challenged at the initial stage before this Court and the same has been challenged after the award passed by the Industrial Tribunal.

13. In view of the above, it is well-settled position of law that once the reference is made to the Industrial Tribunal/Labour Court, then the Court is bound to adjudicate the same. It is equally well-settled that the Labour Court or Industrial Tribunal cannot go beyond the term of reference. Thus, the jurisdiction of the Labour Court/Industrial Tribunal is limited to the term of reference. Here, in the facts and circumstances of the present case, Industrial Tribunal has acted within

its jurisdiction by limiting itself to the term of reference. As regards challenge to the reference is concerned, the same cannot be made before the Industrial Tribunal; the only remedy was to challenge It before the High Court by filing the writ petition at the initial stage, but no such writ petition was filed. Challenge to the term of reference before the Industrial Tribunal was thus a futile exercise done by another wing of the State i.e. the Irrigation Department.

14. I have also examine the term of reference which is based on the submission made by the Irrigation Department of the State before the Conciliation Officer that the dispute with regard to termination and regularization is pending before the Government. Therefore, the Government after considering the judgment passed by the Division Bench, rightly refereed the dispute. Counsel for the State has not been able to point out any irrelevant or foreign material consideration by the State Government while making the reference.

15. Apart from the above, it is also to be kept in mind that the reference was made as per directions of the Division Bench and for deciding the continuity and regularisation of service period from 1.6.1974 to 3.5.1982, for which the oral termination was necessary to be adjudicated. The State Government even could not have referred the regularisation of the service period from 1.6.1974 to 3.5.1982 without referring to the oral termination of June, 1974, more particularly, in the facts and circumstances, when the workman was taken back in service vide order dated 4.5.1982. The judgment of the Division Bench has not been challenged by the State, therefore, the State is now also estopped from raising the issue.

16. The definitions of "industrial dispute" and individual dispute" under Sections 2k and 2A of the Act are as follows:

2k. "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

2A. Dismissal, etc. of an individual workman to be deemed to be an industrial dispute,

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

17. Perusal of the both definitions would reveal that any dispute or difference, discharge, dismissal, retrenchment and termination are deemed to be an industrial dispute, therefore, all the aforesaid objections raised by the petitioner before the Industrial Tribunal as well as before this Court are liable to be rejected

and the same have rightly been rejected by the Industrial Tribunal.

18. On merit of the case, Industrial Tribunal has come to the conclusion that the workman has completed 240 days in the preceding calendar year and Section 25F of the Act has been violated on account of non-giving/non-payment of one month's notice or salary in lieu thereof and retrenchment compensation, therefore, the award of the court below declaring the oral termination of May, 1974 illegal, is proper.

19. The dispute of awarding the full backwages has also been raised. The workman who had continuously worked from 5.3.1973 to 30.5.1974 and was taken back in service on 3.5.1982, further started the correspondence for regularisation of his service from 1.6.1976 to 3.5.1982, on which the said issue was pending before the Government as stated by the officers of Irrigation Department before the Conciliation Officer who has after considering the pendency of the said issue came to the conclusion that "therefore no settlement is possible". In the aforesaid circumstances of inaction on part of State and when his termination was held to be illegal by Industrial Tribunal, the workman could not have approached Conciliation Officer at belated stage and has been rightly awarded full back wages. On this count also, the award of the Industrial Tribunal is justified, and no interference whatsoever is called for.

20. The Labour Court after considering the facts and circumstances, affidavits and the statements held that as regards payment of period after 1.4.1982, the petitioner if so wants, can file separate application and further awarded the back-wages to the tune of Rs. 61,593/- from June, 1974 to April, 1982.

21. The submission of the counsel for the workman is that he is entitled for the benefit of the revised pay scale which became due during the intervening period from 1.9.1976 and 1.9.1981 and further revision is of the subsequent period of the service w.e.f. 1.9.1986 and 1.9.1988. Counsel for the State has submitted that the petitioner is only entitled for arrears of back-wages to which he was entitled at the time of termination.

22. The relevant Section 33(C)(2) of the Act is as follows:

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate government (within a period not exceeding three months):

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

23. A bare perusal of the aforesaid section would reveal that the workman is not

only entitled to receive from the employer any money, but also any benefit which is capable of being computed in terms of money. The word "benefit" is of wide amplitude. Further directions given by the Labour Court of continuity in service with all back-wages would cover minimum of revised pay of intervening period. The term "benefit" has been interpreted by the Division Bench of Andhra Pradesh High Court in the case of Andhra Scientific Co. v. Labour Court reported in 1971 Lab. 1. C 513 Vol. 4 C.N. 119 in Para 13, 15 and 18 that the word "benefit" takes within its amplitude all relevant and incidental benefits and revision of pay scale during the intervening period is one of them. Para Nos. 13, 15 and 18 of the said judgment are as follows:

13. It is also contended by Mr. Srinivasamurty, that the benefit of awarding continuity of service only means that there should be no interruption in the service as if his services were never terminated and it will not ensure to his benefit so far as his revision of pay scale is concerned as no such implied contract can be inferred. Once it is held that the dismissal or termination is illegal, it will be difficult to hold that the employee will be only entitled to continuity of service as if his service had never been terminated but not to other benefits to compute the same in terms of money which he would have been derived had his services not been illegally terminated. It is by reason of the illegal action of the employer that an employee could not be in active employment and if there was no such illegal termination the employer could not have denied to him the benefit of the new scale of pay. Therefore, it follows that it makes no difference whether he was in active service or is deemed to have been in such service by reason of illegal dismissal. There is no question of any fresh employment or any new terms of employment governing the employer and employee. The revision of pay scale is only an incidental benefit accruing to a particular category or class of employees and when a dismissed employee is reinstated to the same post or in the same capacity with no cut in his emoluments, he cannot be denied the incidental or ancillary benefit. The term "benefit" as already pointed out is of wide amplitude as to take in all relevant and incidental benefits which a particular class of employees are entitled to. We are also unable to agree with Mr. Srinivasamurty that, unless the employee is fitted into new scales of pay, he would not be entitled to the benefit of the new scale. The employee was already fitted in a particular scale of pay and after reinstatement, he was appointed to the same post and there is nothing in the order refitting him in any other scale of pay. The scale of pay drawn by the class or category of Steno Typists to which class or category the employee belonged was revised and therefore, the benefit of such revision goes to the employee also so long as there is nothing in the award or in any subsequent order of the employer to indicate that he shall not be entitled to the new scale of pay unless he is refitted to make him entitled to the new scale of pay. If the employer had passed any order subsequent to the award fitting him again in a scale of pay affecting his rights contrary to the award, it would have been open to him to raise an industrial dispute; but in the absence of any such order and when the

order of reinstatement passed by the employer does not in the least indicate that he shall not be entitled to the benefits of the revision of the pay scale, it cannot now be contended that he shall not be entitled to the benefit of the new scale of pay unless the employer chooses to fit him in the new scale of pay which came into force during the period he was out of service as a result of the wrongful dismissal.

15. We are unable to agree with Mr. Srinivasamurty that the existing right of the employee did not include the right to receive higher emoluments so long as there was no bar to such benefit under the award. The result of the award is that it restores the employee and the employer to the original relationship maintaining status quo ante and the employee cannot be denied all the incidental benefits which accrued to the post which he is deemed to have held without a break by reason of the reinstatement.

18. We have no hesitation in holding that Section 33C(2) is wide enough to cover a case like this where the Labour Court merely gave the benefit of back wages without specifying the amount the employee had become entitled to receive from the employer.

24. I am of the view that since the continuity of service has been granted to the petitioner from June 1974 to March 1982 which is not only for the purpose of seniority but is also for the purpose of entitlement of minimum of the revised pay scale of intervening period. Therefore, the workman In this writ petition is entitled for fixation of pay at least at the minimum of revised pay scale as fixation became due from 1.9.1976 and 1.9.1981 during intervening period of the award. As regards the grant of annual Increments, further fixation and other consequential benefits, the same Is not part of the award and Is a separate dispute. Therefore, the Impugned order dated 6.10.1995 Is liable to be revised and the case is remanded back to the Labour Court, Bharatpur for recalculating the amount as directed above and Labour Court is further authorized to deduct the amount of Rs. 61,593/- from the fresh order u/s 33(C)(2) of the Act. Aforesaid exercise be completed within a period of three months.

25. It is stated at the bar that during pendency of the present writ petitions, services of the workman have been again terminated.

26. Since, the dispute in the present writ petitions is only regarding validity of the award of Industrial Tribunal and compliance thereof, therefore, the subsequent termination is of no avail and the same is a separate issue.

27. Accordingly, the writ petition No. 4298/1993 filed by the State against the award dated 3.12.1992 is dismissed and the writ petition No. 2396/1996 filed by the workman against the computation of the wages vide order dated 6.10.1995 u/s 33C(2) is partly allowed and the matter is remanded back to the Labour Court, Bharatpur as indicated above.