
(1980) 04 AHC CK 0031
In the Allahabad High Court

The Pioneer Limited

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-04-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 25
Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 3
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 25
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Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 25
Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 3

Citation : (1980) 2 LLJ 420

Hon'ble Judges : S.J. Hyder, J;K.N. Singh, J

Bench : Division Bench

Judgement

K.N. Singh, J.—This petition is directed against the award of Labour Court, Gorakhpur, dated December 9, 1976.

2. The petitioner is a public limited company, which publishes two daily newspapers from lucknow, one in English known "Pioneer" and the other in Hindi known as "Swatantra Bharat". Munna Lal Srivastava, respondent No. 3 was employed as correspondent of Pioneer at Gorakhpur. He was acting as correspondent for some other agencies also. On 18th August, 1973, the Managing Editor of Pioneer, terminated the services of Munna Lal Srivastava respondent-workman with immediate effect. On a dispute being raised on behalf of the workman, the State Government by its notification dated 8th June, 1974, referred the matter of dispute for adjudication to the Labour Court at Gorakhpur, u/s 10(1) of the Industrial Disputes Act (Central Act). The dispute referred was whether the termination of service of Munna Lal Srivastava by the employer was

justified and legal; if not, to what relief the workman was entitled. The employers as well as the respondent-workman contested the proceedings before the Labour Court.

3. The case set up by the employers was that the respondent-workman had been working with it as part time reporter for Gorakhpur and he was being paid Rs. 180 per mensem as fixed honorarium for the services rendered by him. In addition to that he was further paid certain amount for meeting local telephone and other charges. Munna Lal Srivastava was not devoting his full time to the employers as he had been working for some other newspapers and news agencies also. He was asked to devote his whole time to the petitioner-company as a full time correspondent. The workman expressed his inability to do so, whereupon his services were terminated with effect from 18-8-1973. The management's action in terminating the services of the respondent-workman was fully justified and he was not entitled to any relief. The management further raised a number of technical objections on the ground that the dispute referred was not an industrial dispute.

4. On behalf of the workman, it was pleaded that he had been working as a special correspondent for the employers at Gorakhpur ever-since October 13, 1937. He was a full fledged working journalist but the employers were not paying him his due wages. He asserted that he was entitled to higher basic wages in accordance with the recommendations of the second Wage Board's Award as applicable to journalists. The employers became annoyed with the workman as he was insisting for higher wages. The employers made an attempt to persuade the workman to sign unilateral agreement to his detriment and later on they asked him to tender resignation. When the workman refused to do so, he was abruptly removed from service on 18-8-1973 without assigning any reason whatsoever and without giving any notice or compensation. His termination was wrong, unjust and improper and he was entitled to reinstatement with full wages.

5. The Labour Court framed two preliminary issues. Issue No 2 related to the question as to whether the dispute referred to the Labour Court was an industrial dispute and further as to whether the workman was a "workman" or a working journalist. On appraisal of evidence produced by the parties the Labour Court decided both the issues in favour of the workman. The Labour Court held that the respondent-workman was a working journalist within the meaning of Working Journalist (Conditions of Service and Miscellaneous Provisions) Act, 1966, and the dispute referred to it was an industrial dispute. As regards the merits of the dispute, referred to it was an industrial dispute. As regards the merits of the dispute, the Labour Court recorded findings that the workman had claimed increased wages in pursuance of the Wage Board as accepted and enforced by the Government of Uttar Pradesh. The employers refused to grant wages in accordance with the Wage Board Award and they further refused to give increments to him. Munna Lal was called to see the Managing Editor at Lucknow and he was told that he could not be granted wages payable for a special

correspondent and if he was not agreeable to work he should resign, Munna Lal refused to resign. The Labour Court has further recorded findings that the workman met the managing editor on August 20, 1973, who persuaded the workman to sever his connection with the Press Trust of India but the workman refused to do the same thereupon his services were terminated. The Labour Court further held that the action of the employers was unjustified and the termination order was illegal as the respondent-workman was not given any notice or retrenchment compensation as contemplated by Section 3 of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act 1955. On these findings the Labour Court directed the reinstatement of the workman with continuity of service and back wages.

6. Learned Counsel for the petitioner-company made only one submission before us. He urged that the Labour Court committed a patent error in reinstating the workman, as he had attained the age of superannuation. He further urged that the Labour Court committed an error in granting the relief of reinstatement without considering the relevant matters.

7. There is no dispute that the respondent-workman had attained the age of 60 years before his services were terminated on 18-8-1973. Standing Order 12(b) as applicable to the petitioner-company lays down that the employment of a working journalist shall automatically terminate on his attaining the age of superannuation (55 years) or on completion of 30 years of service whichever is earlier and no notice of payment of wages in lieu thereof will be required in such cases. It further provides that the employer may, at his discretion, extend the period of service or re employ the workman on such terms and conditions as may be mutually agreed upon. In paragraph 4.3 of the Wage Board Report the age of retirement of a working journalist has been fixed at 58 years with a proviso that a working journalist may be continued in service up to the age of 60 years on production of fitness certificate from the District Medical Officer. These provisions show that a working journalist is superannuated at the age of 58 years but the employers could allow him to continue in service even after a workman attains the age of superannuation. There is no dispute that Munna Lal respondent-workman had already attained the age of 60 years, but he was not superannuated, instead the employers had allowed him to continue in service on the same terms and conditions.

8. The question then arises as to whether the service of respondent No. 3 could be terminated without giving any notice or retrenchment compensation as contemplated by Section 3 of the 1955 Act. Section 3 of 1955 Act lays down that the provisions of the Industrial Disputes Act will apply to a working journalist as they apply in relation to workmen within the meaning of that Act. Sub-section (2) of Section 3 further lays down that if the services of a working journalist are retrenched, he would be entitled to six months' notice in case of an editor and three months' notice in the case of any other working journalist. With these exceptions the provisions contained in Section 25(F), of the Industrial Disputes

Act have been made applicable. An employer has a right to terminate the service of a workman on his attaining the age of superannuation and in that event the workman will not be entitled to any notice or retrenchment compensation. Termination of service on attaining the age of superannuation does not amount to retrenchment as superannuation is an incidence of service, regulated by service contract or by standing orders. The workman in such a case is not entitled to any retrenchment compensation. But if the employer allows a workman to continue in service even after he attains the age of superannuation, his services would be governed by such terms and conditions mutually agreed upon between the parties. In the absence of any fresh agreement, the service conditions of the workman would be regulated by the same terms and conditions which were applicable to him, prior to his attaining the age of superannuation.

9. In *The Proprietors of Associated Publishers, Madras (P) Ltd. Vs. C. Theobald and Others*, the employers served a notice on a working journalist to superannuate him from service on attaining the age of superannuation as a result of which some correspondence between the parties ensued. The correspondence took about six months time. Meanwhile the date of superannuation expired and the workman was allowed to continue in service. A Division Bench of the Madras High Court held that since the workman had been allowed to continue in service, it had the effect of extension of his service, and as such the legal consequences of such extension ensued to the workman concerned and he had a statutory right of notice and pay from the date of such extension. His services could not be terminated without giving him notice or retrenchment compensation. In the instant case also, the employers had permitted Munna Lal Srivastava to continue in its employment even after he had attained the age of superannuation. There is further no dispute that no fresh contract of service was entered into between the parties. In the circumstances Munna Lal Srivastava's conditions of service remained the same which were applicable to him prior to his attaining the age of superannuation. Since the service of a working journalist could not be terminated without giving him notice or retrenchment compensation in accordance with Section 3 of the 1955 Act, the action of the management of the petitioner-company in terminating the services of Munna Lal were illegal and improper. The view taken by the Labour Court is sound in law.

10. There is yet another reason to reject the petitioner's contention. In their written statement before the Labour Court the employers did not set up any plea that the services of respondent-workman had been terminated on the ground of his having attained the age of superannuation. Even the order of termination dated 18-8-1963 Annexure 1 to the petition, does not contain any such indication. We have perused the pleadings filed before the Labour Court on behalf of the employers. We find that the employers did not at any stage raise the question that the respondent-workman had attained the age of superannuation and for that reason his services were terminated or that he had no right to continue in service or that he was not entitled to any notice or

retrenchment compensation on that ground. This question was for the first time raised during the course of argument. The Labour Court held that in the absence of any pleadings the employers were not entitled to raise this question at the time of arguments. No doubt strict rules of pleadings are not applicable to the proceedings before the Labour Court nonetheless a party cannot take the other party by surprise by raising a new plea at the stage of arguments. In our opinion, the Labour Court rightly rejected the petitioner's contention on the ground of absence of pleadings.

11. The second question raised on behalf of the petitioner is also devoid of any merit. Whenever an Industrial Court finds that the order of termination of service of a workman is unjustified and improper the normal rule is to grant relief of reinstatement but this cannot be applied universally as in certain cases circumstances may be available to justify refusal of relief of reinstatement. Such a case may be where the workman may have been found to have been guilty of theft or serious dereliction of duty resulting into loss of confidence of the employers. Every case is to be judged on its special facts while deciding proper relief which should be granted to the workman whose dismissal is found to be wrongful and illegal. In *The Punjab National Bank Ltd. Vs. Its Workmen*, the Supreme Court emphasised that no hard and fast rule can be laid down in dealing with the problem. Each case must be considered on its merits and not merely on the pleadings and claims made by the employers and employee. The Labour Court has to examine the facts of each case to decide whether the grant of relief of reinstatement would be proper. In the instant case the employers had not placed any material before the Labour Court to show that the reinstatement of the respondent-workman was not desirable or expedient. The respondent workman was not found to have committed any misconduct on the basis of which the employers would have lost confidence in him. The Labour Court, in our opinion, was fully justified in granting relief of reinstatement to the workman.

12. For the reasons stated above, we are of the opinion that the impugned award of the Labour Court does not suffer from any manifest error of law warranting interference by this Court, under Article 226 of the Constitution. In the result the petition fails and is accordingly dismissed with costs.