
(1989) 01 BOM CK 0021
In the Bombay High Court
Case No : Writ Petition No. 2694 of 1988

Union of India (UOI)

APPELLANT

Vs

M.Z. Quazi

RESPONDENT

Date of Decision : 13-01-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 25H, 38

Citation : (1990) 2 BomCR 162

Hon'ble Judges : H.D. Patel, J

Bench : Single Bench

Advocate : S.V. Natu, for the Appellant; M.Q. Qazi, for the Respondent

Final Decision : Dismissed

Judgement

H.D. Patel, J.—The petitioner union of India, through the Superintendent of Post Offices, Wardha, challenges by this petition only a part of the award dated 27-6-1988 passed by the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, in Case No. CGIT/LC(R)(92) of 1986 to the extent of the relief of reinstatement awarded to the respondent workman.

2. The undisputed facts in the case as under :

The respondent was employed as a Driver with effect from 5th February, 1982. He was engaged to drive the staff jeep which came to be allotted for the first time by the Government and the said vehicle was kept in the administrative control of the Superintendent of Post Officers. The said employment was on daily wages in minimum pay scale of Rs. 250-400. The services of the respondent were terminated with effect from 13th February, 1985 without giving any notice or pay in lieu of the notice. No retrenchment compensation was also paid to the respondent. Upon termination of the employment of the respondent, one Shri Yete was employed from 14-2-1985 on regular basis. An application bearing No. 2 of 1985 is filed by the respondent workman seeking computation of the benefits arising from the employment u/s 33-C(2) of the Industrial Disputes Act

and that application is still pending. The petitioner vide their reply dated 28th May 1985 to the notice served by the respondent expressed their inability to reinstate him in service as they had engaged another driver on regular basis.

3. The case as pleaded by the respondent was that the termination of his services was by way of victimisation because he had claimed the benefits of a regular employee like wages, for weekly off days, earned leave, overtime wages, daily travelling allowance, bonus, increment etc. He also pleaded that the termination of his services was against the principles of natural justice and also contrary to the provisions as contained in Chapter V-A of the Industrial Disputes Act, 1947. Hence he claimed the relief of reinstatement with all consequential reliefs.

4. The petitioner resisted the reference by contending amongst other pleas that the respondent was only a daily wage worker not sponsored by the Employment Exchange and was over aged for employment on the date when he was engaged by the petitioner. His services were hence terminated after employment of Shri Yete on regular basis. The petitioner hence emphasised that the respondent was not entitled to any of the reliefs.

5. The learned Presiding Officer of the Tribunal on the basis of evidence before him has found as follows :

(i) The services of the respondent were terminated because he dated to claim the benefits of a regular employee by moving an application u/s 33-C(2) of the Industrial Disputes Act, 1947 and such an action on the part of the petitioner was not only an unfair labour practice, but it also amounted to victimisation.

(ii) That the termination by the employer of the services of the respondent would constitute his retrenchment since the said termination was for the reasons other than excepted or excluded categories which are enumerated in the definition section 2(oo) of the Industrial Disputes Act, 1947.

(iii) Since the pre-requisite of valid retrenchment as laid down in section 25-F has not been complied with, the retrenchment of the respondent bringing about the termination of services is ab-initio-void.

(iv) A finding is also given that the Recruitment Rules, 1975 conferred power on the Government to relax the rules with respect to any class or category of persons and it was possible for the petitioner to condone the age and more so because it was recommended by the Superintendent of Post Offices, Wardha. In this context it was further observed that in view of the circular (Exh. W/11) the condition of age ought to have been relaxed, but it was not done and instead another person Shri Yete was appointed.

In keeping with these findings the learned Presiding Officer of the Tribunal answered the reference as under :

"That the action of the Management of Superintendent of Post Offices, Wardha

Division, Wardha in terminating the services of Shri M.A. Qazi, Driver with effect from 13-2-1985 is not justified. He is entitled to be reinstated with effect from 13-2-1985 with full back wages and other ancillary reliefs, i.e. seniority, increment etc. No order as to costs."

Worked by the relief of reinstatement awarded to the respondent the petitioner has filed this petition.

6. It is well settled that where termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination, nor cessation of services and the declaration follows that the workman concerned continues to be in service with all consequential benefits like back wages and other benefits, if any. It was, however, urged on behalf of the petitioner that the relief of reinstatement should not be granted in the instant case firstly because the respondent workman was not qualified inasmuch as he had crossed the prescribed age at the time he was recruited and secondly because the petitioner had engaged another driver Shri Yete, who drives the only vehicle, and there is no need for a second driver. According to the submissions, these factors are sufficient to exercise the discretion against granting the relief of reinstatement. Reliance was also placed on some of the decisions of which I shall advert later on.

7. The first contention that the respondent is not qualified to be appointed since he has crossed the age of 30 years is totally devoid of any substance. On this point the learned Presiding Officer of the Tribunal was emphatic that the qualification prescribed for recruitment was capable of being relaxed, but instead of relaxing the qualification the petitioner chose to appoint another driver Shri Yete and it is not difficult to imagine why such a course was adopted. The petitioner could not digest the claim put forth by the respondent seeking benefits that are available to a regular employee after putting in three years' service and therefore he was victimised. The best course to do away with the respondent was not to relax the age so that on such a pretext the services of the respondent could be discontinued. Suffice it to say that the respondent was engaged and also continued in service despite the knowledge that he was age barred and it would be certainly unjust to hold that he cannot be continued in service, particularly when the Government is endowed with a power to relax the rules to avoid unjust results. The bar of age, therefore, cannot come in the way of the petitioner to reinstate the respondent.

8. The other ground on behalf of the petitioner that they have already engaged another driver on regular basis and the reinstatement of the respondent would create unnecessary complications because it is not possible to engage two drivers on the vehicle, is equally frivolous and baseless. If at all the petitioner feels that the reinstatement would create complications, then they themselves are to be blamed. It is their own creation, which they must face. They cannot be expected to escape the rigours of law merely because a particular situation is created in any eventuality, these are not the circumstances, which would compel the Tribunal to deny the relief of reinstatement in service. No doubt the Tribunal

is empowered to weigh all the factors and then exercise the discretion whether to grant or not to grant the reinstatement, but such cases are extremely rare as will be apparent from the various decision discussed hereinafter.

9. A direct case with more or less identical facts is of The Punjab National Bank Ltd. Vs. Its Workmen, in which it was observed in para 63 as follows:

".....Besides, if the Bank has failed to establish its specific case against any of the 136 employees, there is no reason why the normal rule, should not prevail and the employees should not get the relief of reinstatement. The mere fact that the Bank may have employed some other persons in the meanwhile would not necessarily defeat such a claim for reinstatement. As has been held by this Court in the National Transport and General Co. Ltd. v. The Workman, Civil Appeal No. 312 of 1956 D/22-1-1957 S.C., however such the Court may sympathise with the employer's difficulty caused by the fact that after the wrongful dismissals in question he had engaged fresh hands, the Court cannot "overlook the claims of the employee who, on the findings of the tribunals, below, had been wrongly dismissed". In the case of such wrongful dismissal the normal rule would be that the employees thus wrongfully dismissed must be reinstated."

This decision, therefore, lays down that the difficulties faced by the employer cannot prevent the Court from awarding the relief of reinstatement.

10. Reliance was placed on behalf of the petitioner on the reported decision in Mohan Lal Vs. Management of Bharat Electronics Ltd., . In that case it was observed in para 17 that the Court before granting the reinstatement must weigh all the facts and exercise the discretion properly whether to grant the reinstatement or to award compensation. In this context the reference was made to the decision of the Supreme Court in Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, and the relevant portion of paras 14 and 16 are extracted below:

"The question, however, still is whether the Tribunal was, in the circumstances of the case justified in directing reinstatement. It is true that some of the decisions of this Court have laid down that where the discharge or dismissal of a workman is not legal or justified, the relief which would ordinarily follow would be reinstatement. The Tribunal, however, has the discretion to award compensation instead of reinstatement if the circumstances of a particular case are unusual or exceptional so as to make reinstatement inexpedient or improper. The Tribunal has therefore to exercise its discretion judicially and in accordance with well recognized principles in that regard and has to examine carefully the circumstances of each case and decide whether such a case is one of those exceptions to the general rule."

".....This course does not mean that in every case where the employer says that he has lost confidence in the workman, and therefore, has terminated his service that reinstatement cannot be granted and the Tribunal has to award compensation. On the other hand, if on an examination of all the circumstances of the case, the Tribunal comes to the conclusion that the apprehensions of the

employer were genuine and the employer truly felt that, it was hazardous or Prejudicial to the interests of the industry to retain the workman in his service on grounds of security the case would be properly one where compensation would meet the ends of justice."

It is only in extreme cases that reinstatement in service should be denied and those cases are of the type when the reinstatement would be hazardous or prejudicial to the interests of the industry, may be on the ground of security. The principles enunciated can never apply to the facts in the present case.

11. The assistance was also sought to be taken by the petitioner from the decision of Full Bench of Kerala High Court Director of Postal Services (South) Kerala Circle, Trivandrum and another v. K.R.B. Kaimal and another 1984 LIC 628 in which it was held that the special rules under Article 309 of the Constitution in respect of temporary employee in Posts and Telegraphs Department exclude the provisions in Chapter V-A of the Industrial Disputes Act. In what manner these observations would help the petitioner is difficult to imagine. The petitioner is not disputing the award on merits. They are only challenging the relief of reinstatement granted to the respondent workman. It would be too much to expect that had the petitioner raised the defence of the type decided by the Full Bench of Kerala High Court, he would have also succeeded in which event the relief of reinstatement would have been denied to the respondent workman and therefore, he should be denied that relief.

12. With advantage reliance can also be placed on another decision of the Supreme Court in Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, in which certain exceptions are carved out to the normal relief of reinstatement. The relevant portion of para 6 of the judgment reads as follows:

".....Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and workmen to direct reinstatement with full back wages. for instance the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment else where and so on. In such situations, there is a vestige of discretion left in the Court to make appropriate consequential orders. The Court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The Court may deny the relief of award or full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the Court may mould the relief but ordinarily, the relief to be awarded must be reinstatement with full back wages."

13. What emerges from the discussions aforesaid is that the exceptional

circumstances are those which make it impossible or wholly equitable vis-a-vis the employer and workmen to direct reinstatement with full back wages. Such instances could be that the industry may close down or the industry may be facing serious financial problem, or it is hazardous or prejudicial to the interest of the industry may be on the grounds of security or the workman concerned has secured better alternative employment or such other analogous exceptional circumstances. The case of the petitioner does not fall in any of the exceptional circumstances so as to deny the respondent the normal relief of reinstatement.

14. In the result, the petition is devoid of any merit and is accordingly dismissed. The petitioner shall, however, bear their own costs and also that of the respondent.