Employers in Relation to Digwadih Colliery

Vs

Their Workmen

Civil Appeal No. 43 of 1964

(CJI P. B. Gajendragadkar, V. Ramaswami – I, K. N. Wanchoo, M. Hidayatullayh JJ)

22.03.1965

JUDGMENT

HIDAYATULLAH, J.

This is an appeal by special leave against the Award dated August 3, 1962, of the Central Government Industrial Tribunal, Dhanbad, under the Industrial Disputes Act 1947. The appellants are the Employers in relation to Digwadih Colliery and the respondents their workmen. The workmen did not appear in this Court. The dispute was whether the management of the colliery was justified in terminating the services of Jaldhar Singh with back wages.

Jaldhar Singh was a 'badli' workman which means (as defined by the Standing Orders of the colliery) a person appointed in the post of a permanent employee or probationer who is temporarily absent. He worked as badli in the calendar years 1959 and 1960 in different capacities. His employment was, of course, not continuous and there were six breaks of one day to a week in 1959 and eight breaks of one day to a week in 1960. However, he worked for more than 240 days in each calendar year though with these interruptions. In January 1961 the colliery terminated Jaldhar Singh's services without notice to him or payment of wages in lieu of notice or compensation. A dispute arising, conciliation was attempted but failed and the reference followed.

Before the Tribunal the workmen claimed that Jaldhar Singh was a permanent workman while the Employers contended that he was temporary. The Employers stated that as some of the permanent staff had become surplus, there was no need of badli workmen and the termination of Jaldhar Singh's service was justified. The workmen attempted to prove that Jaldhar Singh was permanent from 1960 and produced some documents from which they asked that this inference be drawn but the Tribunal did not agree, The workmen relied in the alternative upon s. 25F of the Act because Jaldhar Singh had put in service of 240 days in each of the years and contended that as the Employers had failed to comply with the provisions of s. 25F the termination of service was illegal and unjustified. The Employers submitted that s. 25F could apply only if Jaldhar Singh had put in 240 days' continuous service in any of the years 1959 or 1960.

The service of Jaldhar Singh was admittedly terminated as there was no work for him and not on account of disciplinary action or voluntary retirement, superannuation or ill-health. This was thus a case of retrenchment as defined in s. 2(00) of the Act. Section 25F, which was inserted as part of Chapter VA, with effect from October 24, 1953 by the Industrial Disputes (Amendment) Act 1953 (43 of 1953) provides :

"25F. Conditions precedent to retrenchment of workmen.

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice :

Provided that no such notice shall be necessary if the retrenchment under an agreement which specifies a date for the termination of service;

(b) the workmen has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government."

The section, if it applied, had plainly not been complied with in respect of any of the conditions precedent. Jaldhar Singh, as seen already, had not been given any notice or wages in lieu of notice or paid compensation and no notice had been served on the appropriate Government. The termination of service would, in these circumstance be illegal. But the Employers pointed out that s. 25F required two conditions : (a) continuous service and (b) service for not less than one year, and contended that these conditions were not fulfilled as the service was not continuous but broken. They relied on the definition of "continuous service" in s. 2(eee) which introduced by the same amending Act :

"2(eee) continuous service means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;"

The workmen, on the other hand, relied upon the provisions of s. 25B which read :

"25B. Definition of one year of continuous service.

For the purposes of sections 25C and 25F, a workman who, during a period of 12 calendar months, has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry.

Explanation. - In computing the number of days on which workman has actually worked in any industry the days on which -

(a) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or under any other law applicable to the industrial establishment, the largest number of days during which he has been so laid-off being taken into account for the purposes of this clause,

(b) he has been on leave with full wages, earned in the previous year, and

(c) in the case of a female, she has been on maternity leave; so however that the total period of such maternity leave shall not exceed twelve weeks,

shall be included."

The definitions in s. 2 of the Act do not apply if there is anything repugnant in the subject or context and the question is whether the definition of "continuous service" can at all apply in considering s. 25F when what is meant by the expression "one year of continuous service" in s. 25F is, by s. 25B specially stated. If s. 25B had not been enacted, the contention of the Employers would have been unanswerable, for the words of s. 25F would then have plainly meant that the service should be for a period of 12 months without interruptions other than those stated in s. 2(eee) itself. But s. 25B says that for the purpose of s. 25F a workman who, in a period of twelve calendar months has actually worked for not less than 240 days, shall be deemed to have completed one year of continuous service. Service for 240 days in a period of twelve calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. Therefore, though s. 25F speaks of continuous service for not less than one year under the employer, both conditions are fulfilled if the workman has actually worked for 240 days during a period of twelve calendar months. It is not necessary to read the definition of continuous service into s.25B because the fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year.

Mr. B. Sen drew our attention to the Industrial Disputes (Amendment) Act 1964 which was passed last December. By s. 2(iii) of the amending Act of 1964 clause (eee) of the second section of the principal Act was omitted and by s. 13, for s. 25B in the principal Act the following was substituted :

"25B. For the purposes of this Chapter, -

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or on accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of cl. (1) for a period of one year . . . . , he shall be deemed to be in continuous service under an employer -

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

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The Explanation to s. 25B is the same, mutatis mutandis as before. Mr. Sen contend that the change in the law brought out his contention. We do not agree. The amended s. 25B only consolidates the

previous secions 25B and 2(eee) in one place, adding some other matters which are not relevant to the present purpose, but the purport of the new provisions is not different. In fact the amendment of s. 25F of the principal Act by substituting in cl. (b) the words "for every completed year of continuous service" for the words "for every completed year of service" now removes a discordance between the unamended section 25B and the unamended cl. (b) of s. 25B. Neither before these several changes nor after is uninterrupted service necessary if the total service is 240 days in a period of twelve calendar months. The only change in the new Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation is to be made. The last amendment now removes a vagueness which existed in the unamended s. 25B.

We accordingly hold that the decision under appeal is correct. The appeal fails and is dismissed.

Appeal dismissed.

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