Laxman

Vs

State Industrial Court and Others

Civil Appeals Nos. 1188 and 1189 of 1969

(P. Jagmohan Reddy, S. N. Dwivedi JJ)

11.03.1974

JUDGMENT

JAGANMOHAN REDDY, J. -

1. The appellant was appointed as a motor driver in the Milk Scheme at Nagpur by the Regional Dairy Development Officer on December 10, 1959 and on February 28, 1962 his services were terminated by the orders of the Dairy Development Commissioner, Bombay respondent No. 5. After the appointment the appellant was on probation for a period of six months and since that period was not extended it is his contention that he is a permanent employee inasmuch as the standing orders which came into force on September 30, 1961 made an employee on probation permanent after completion of one year's probationary period. On March 20, 1962, the appellant filed an application before the Assistant Labour Commissioner, Nagpur, under Section 16 of the C.P. and Berar Industrial Disputes Settlement Act, 1947 - hereinafter referred to as `the Act' praying for reinstatement with back wages and continuity of employment. In that application the appellant stated that if the order of termination amounted to dismissal that order was void as it was made without any inquiry and if it was an order of retrenchment it was equally bad as no notice of change was given under Section 31 of the Act. The termination was also said to be illegal as it was brought about by an authority which had not appointed him. The Assistant Labour Commissioner who heard the petition set aside the order of termination and directed respondents Nos. 3 to 5 to reinstate the appellant with back wages and continuity of service inasmuch as it was held that the appellant having completed the probationary period of one year became a permanent employee. In this view, the other contentions raised by the appellant were not decided.

2. Respondents Nos. 3 to 5 filed a revision before the State Industrial Court under Section 16(5) of the Act. That Court set aside the order on August 12, 1963, and remanded the case for a fresh decision as to whether the appellant was a permanent employee and whether he was illegally retrenched. After remand the Deputy Commissioner of Labour at Nagpur after considering the evidence came to the conclusion that the appellant was not a permanent employee under the provisions of the Standing Orders. He, however, held that as the appellant was in continuous service, he has been retrenched illegally without following the provisions of Section 25-F of the Industrial Disputes Act - hereinafter called `the Central Act'. In the result respondents Nos. 3 to 5 were directed to reinstate the appellant with back wages and continuity of service. Against this order respondents Nos. 3 to 5 filed a revision application under Section 16(5) of the Act before the State Industrial Court at Nagpur. In that revision, an application was made by the respondents for amendment of the revision petition raising plea for the first time that the appellant being a retrenched employee was not an "employee" under the provisions of the Act. The State Industrial Court did not accept this plea and while setting aside the reinstatement order held that the appellant

was entitled to retrenchment compensation and consequently remanded the case for determination of what that compensation should be. Against this order respondents Nos. 3 to 5 filed a petition under Articles 226 and 227 of the Constitution of India. The appellant also filed a petition under Art. 226 of the Constitution of India. The appellant also field a petition under Article 226 of the Constitution in the High Court for modification of the order of the Industrial Court and for reinstatement with back wages and continuity of service along with all its privileges. Both these petitions were heard together by the Division Bench of Bombay High Court at Nagpur. By a common judgment, the High Court allowed the application of respondents Nos. 3 to 5 holding that the appellant was not an "employee" within the meaning of Section 2(10) of the Act as his dismissal, discharge or removal was not on account of an industrial dispute. In this view, the appellant's petition was dismissed. These two appeals are with certificate against that judgment.

3. The question which falls for consideration is whether under the Act a dismissed, discharged or retrenched employee can invoke the jurisdiction of the authority under the Act for obtaining redress, namely, whether an application for reinstatement and compensation by a dismissed employee is maintainable under Section 16 of the Act. The determination of this question would depend upon the interpretation of who the employee is for the purposes of the Act and what is meant by "on account of any industrial dispute" in Section 2(10) read with Section 2(12) and (13). These provisions, as also Section 16, in so far as material, are given below :

Section 2(10) -

> "employee" means any person employed by an employer to do any skilled or unskilled manual or clerical work for contract or hire or reward in any industrial and includes an employee dismissed, discharged or removed on account of any industrial dispute;

Section 2(12) -

> "industrial dispute" means any dispute or difference connected with an industrial matter arising between employer and employee, or between employers or employees;

Section 2(13) -

> "industrial matter" means any matter relating to work, pay, wages, reward, hours, privileges, rights or duties of employers or employees, or the mode, terms and conditions of employment or refusal to employ and includes questions pertaining to -
>
> (a) the relationship between employer and employees, or to the dismissal or non-employees, of any person.
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> Section 16 -
>
> (1) Where the State Government by notification so directs, the Labour Commissioner shall have power to decide an industrial dispute, touching the dismissal, discharge, removal or suspension of an employee working in any industry in general or in any local area as may be specified in the notification.
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> (2) Any employee, working in an industry to which the notification under sub-section (1) applied, may within six months from the date of such dismissal, discharge,

removal or suspension, apply to the Labour Commissioner for reinstatement and payment of compensation for loss of wages.

Both Sections 2(10) and 16 were amended by Act 21 of 1966. The former before its amendment was as follows :

Section 2(10) -

"employee" means any person employed by an employer to do any skilled or unskilled manual or clerical work for contract or hire or reward in any industry and includes an employee discharged on account of any dispute relating to a change in respect of which a notice is given under Section 31 or 32 whether before or after the discharge;

It may be observed that Section 2(10) before its amendment includes an employee discharged on account of any dispute relation to a change in respect of which a notice was given under Section 31 or 32 of the Act. It will be seen that Section 31 dealt with the procedure to be followed by an employer desiring change in the standing orders or in respect of any industrial matter mentioned in Sch. II. Section 32 dealt with the procedure to be followed by a representative of employees desiring change in the standing orders or in respect of any other industrial matter. One of the industrial matter referred to in item 3 of Sch. II is "dismissal of any employee except in accordance with law or as provided for in the standing orders settled under Section 30 of this Act". This definition of "employee" in Section 2(10) appears to have been enlarged by the amendment by including an employee dismissed, discharged or removed on account of any industrial dispute and not necessarily confined only to any dispute relating to a change in respect of which notice is given under Section 31 or 32 of the Act. The High Court appears to have read the definition of "employee" in Section 2(10) as contemplating two categories of persons - (1) consisting of persons who are actually in the employment of the employer at the date of the application; and (2) of those who have ceased to be in the employment prior to the date of the application, the reason for ceasing to be an employee being "dismissal, discharge or removal on account of any industrial dispute." In its view, the words of the definition did not include all ex-employees but only specified categories which have to be correlated to any industrial dispute, and as there was no industrial dispute between Laxman and the employer prior to the termination of his service, Laxman cannot be considered to be an "employee" within the meaning of Section 2(10) of the Act. A decision of this Court in Central Provinces Transport Services Ltd., Nagpur v. Raghunath Gopal Patwardhan, (1956 SCR 956 : AIR 1957 SC 104 : (1957) I LLJ 27) was referred to, but the High Court sought to distinguish it on the ground that in that case the employee had been dismissed after an inquiry which involved an industrial dispute. It then proceeded to state :

As we have already pointed out, the definition has since been amended and the reference to Sections 31 and 32 has been dropped. As it now stands, the requirement of the definition is that if the applicant is not in service at the date of application he must have been dismissed, discharged or removed "on account of any industrial dispute". We do not think that the ratio of the decision of the Supreme Court in that case is that every dismissed employee, irrespective of the reason for his dismissal, continues to be an "employee" within the meaning of the definition in Section 2(10) of the Act so as to entitle him to approach the Labour Commissioner under Section 16(2) of the Act.

In the view of the High Court, therefore, a plain reading of the definition of the term "employee" in Section 2(10) shows that the only category of persons who, though not in actual employment at the

date of the application included within that term is of persons who are ex-employees and were dismissed, discharged or removed on account of any industrial dispute, which dispute must precede the dismissal, discharge or removal, and that their dismissal, discharge or removal must be the result of such dispute.

4. It is contended that an "employee" having been defined as a person employed, the Legislature intended that the provisions of the Act should be availed of only by persons who were still in the employment at the time when an application was filed under the Act, and even if the employee who invokes the provisions of the Act can be considered to be a person who is dismissed, discharged or retrenched, it is not every such employee who has that right, but only those employees have the right to invoke the provisions of the Act who have been dismissed, discharged or retrenched and in respect of whom an industrial dispute is pending. In our view both these contentions are untenable. A combined reading of the definition of an "employee" in Section 2(10) with Section 2(12) and (13) would negative the submission that those who has ceased to be in service were not intended to be included within the definition of an "employee". When the Legislature in defining a word or term refers to certain matters as being included therein it does so because either that word or term does not generically include what is sought to be included or that it is anxious to dispel any doubt as to what is included therein is not so included an by abundanti cautela it is specifically shown as having been included in order to repeal any such contention to the contra. Under Section 16(2) an employee working in an industry to which a notification under sub-Section (1) is applied can within six months of his dismissal, discharge, removal or suspension apply to the Labour Commissioner for reinstatement and payment of compensation for loss of wages. A person who applies within six months from the date of his dismissal, discharge, removal or suspension is certainly not employed on that date and yet if the argument of the respondent is accepted him is not an employee within the meaning of Section 2(10) and hence has no right to apply under sub-Section (2) of Section 16. An employee dismissed, discharged or removed on account of any industrial dispute is certainly an employee under Section 2(10). But what is meant by an "industrial dispute" in this definition can be ascertained by reference to Section 2(12) under which any dispute or difference connected with an industrial matter arising between employer and employee or between employers and employee is an industrial dispute. No doubt it was contended in the Central Provinces Transport Services Ltd.'s case (supra) that where a person is dismissed, discharged or retrenched, the relationship of an employer and employee is terminated and there is no longer an industrial dispute. This very contention was negatived in that case for the obvious reason that the dispute or difference referred to in Section 2(12) should be connected with an industrial matter arising between an employer and an employee, which industrial matter as defined in Section 2(13) covers any matter relating to refusal to employ and includes questions pertaining to the dismissal or non-employment of any person. If so considered, since a question of reinstatement is an industrial dispute, the appellant would be an employee within the meaning of Section 2(10) of the Act for the purposes of availing himself of the right under sub-Section (2) of Section 16. Even under a restricted definition of the word "employee" under Section 2(10) before the amendment, this Court in the Central Provinces Transport Services Ltd.'s case (supra) had held that a workman whose services had been terminated could have resort to sub-Section (2) of Section 16 of the Act. The High Court thought that the decision is inapplicable as in that case an enquiry had been held before the employee's services were terminated which amounted to an industrial dispute, but in the instant case no such industrial dispute arose as it was a retrenchment simpliciter. We are unable to appreciate this distinction as in our view it is a distinction without a difference. The ratio in the Central Provinces Transport Services Ltd.'s case is clearly applicable nothwithstanding the amendment of Section 2(10) and Section 16 of the Act. After pointing out that Section 2(k) of the Central Act and Sections 2(12) and 2(13) of the Act are

substantially in Automobile Association v. Industrial Tribunal, Bombay, (1949 FCR 321 : AIR 1949 FC 111) will be as much applicable to the one enactment as to the other. This Court pointed out in the Central Provinces Transport Services Ltd.'s case at pp. 961-962 :

> "We are also unable to accede to the contention of the appellant that the inclusive clause in Section 2(10) of the Act is an indication that the Legislature did not intend to include with in that definition those who had ceased to be in service. In Court opinion, that clause was inserted ex-abundant cautela to repel a possible contention that employees discharging under Sections 31 and 32 of the Act would not fall within Section 2(10), and cannot be real as importing an intention generally to exclude dismissed employees from that definition. On the other hand, Section 16 of the Act expressly provides for relief being granted to dismissed employees by way of reinstatement and compensation, and that provision must become useless and inoperative, if we are to adopt the construction which the appellant seeks to put on the definition of employee in Section 2(10). We must accordingly hold agreeing with the decision in Western India Automobile Association v. Industrial Tribunal, Bombay that the definition of `employee' in the Act would include one who has been dismissed and the respondent cannot be denied relief only by reason of the fact that he was not in employment on the date of the application".

This case was referred to and considered in Benett Coleman & Co. (Private) Ltd. v. Punya Priya Das Gupta. ((1969) 2 LLJ 554 : (1969) 2 SCC 1) The case was under the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955, where a newspaper employee was defined in a language similar to that used in defining an "employee" under the Act and the Central Act. This Court took note of the amendment in this Act and even so held that both the decisions in the Western India Automobile Association's case and the Central Provinces Transport Services Ltd.'s case (supra) were authorities for the view that an ex-employee would, for the purposes of the controversy before them, be a working journalist. The contention that Dhrangadhra Chemical Works Ltd. v. State of Saurashtra and others, ((1957) 1 LLJ 477 : 1957 SCR 152 : AIR 1957 SC 264) and Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate, ((1958) 1 LLJ 500 : 1958 SCR 1156 : AIR 1958 SC 353) took a contrary view was examined and distinguished. It was however, observed that even assuming that there is such a conflict as contended, it was not necessary to resolve it for the purposes of the problem before the Court, because the Act which was being considered there and the Central Act, the Minimum Wages Act, 1948, the Central Provinces Act with which we are concerned disclose a similar scheme under which an employee is permitted to avail of the benefits of these provisions, the only requirement being that the claim dispute must be one which has arisen or accrued whilst the claimant was in employment of the person against whom it is made.

5. In view of what has been stated, we think the High Court was in error in holding that the application of the appellant could not be entertained by the Labour Commissioner. As this was the only question decided, we allow these appeals, set aside the judgment and decree of the High Court and remand the case to the High Court for disposal according to law. The appellant will have his costs in this Court, one set.

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