Western India Match Co. Ltd.

Vs

The Third Industrial Tribunal, West Bengal and Others

Civil Appeal No. 2449 (Nl) of 1972

(V. R. Krishna Iyer, P. S. Kailasam JJ)

16.11.1977

JUDGMENT

KRISHNA IYER, J. -

1. This is an appeal, by special leave, from a judgment of the High Court in Writ Appeal by a Division Bench which confirmed the judgment of a learned Single Judge of that Court who, in turn refused to interfere with the award of the Industrial Tribunal.

2. The facts briefly are : that the second respondent was an employee under the appellant for a long number of years. There was no blemish in his service, and Shri Sachin Choudhury for the appellant has very fairly stated that there was no complaint against the services of the 2nd respondent while he was employed by it. But the second respondent fell ill and applied for leave. It so happened that his illness persisted for a long time and the management, quite, rightly, granted him leave from time to time. On 4th November, 1963 his leave expired and on November 5, 1963 the management, invoking a clause in the contract of employment, terminated his employment. It is that order of termination that was set aside by the Industrial Tribunal and affirmed from Court to Court up to now. The particular clause in the contract which was relied on by the management stated that

It was open to the employer to determine the employment at any time without any notice or payment in lieu of notice in the event of . . . .

Your becoming from any cause incapacitated by a longer period than two calendar months from properly discharging your duties.

The courts below held, and quite rightly in our view, that since the employee was all along on leave granted by the employer no question of incapacity or being incapacitated from properly discharging his duties arose. It is obvious that when an employee is on leave he is not called upon to discharge any duties and, therefore, the question of the capacity to discharge duties does not fall for consideration. The clause relied upon comes into play only when an employee who has to discharge his duties fails to do so and the employer makes a judgment of the situation and comes to the conclusion that it is on account of an incapacity which will last longer than two months that the failure to discharge his duties has arisen. We are, therefore, satisfied that the clauses could not have been invoked and the termination of service, was bad in law.

3. Even so, the further question arises as to whether the employee should be recompensated with full wages and other benefits until the date of reinstatement. We have to be realistic in this jurisdiction although in industrial law when termination of service is found to be illegal, the

ordinary rule is reinstatement. We direct reinstatement in affirmance of the order passed by the High Court and the Industrial Tribunal. But the High Court as well as the Industrial Tribunal have also awarded full wages and other benefits during the period the employee's services had stood terminated. It is right for us to remember and Shri Sen Gupta has reminded us of the proposition that sitting in appeal under Article 136 against an order of the High Court passed under Article 226 we should not lightly interfere with the direction made in the judgment of the High Court unless there is some substantial error, manifest injustice or exceptional circumstance. None having been pointed out, we affirm the finding of the High Court regarding payment of back wages and other benefits up to the date the High Court passed its final order in Division Bench, viz., November 30, 1971.

4. We are not fettered by this constraint in regard to the period since then. We must remember the general principle that the act of the Court should not injure any party. The length of the proceeding in this Court from 1971 to 1977 is the inevitable consequence of the back log in this Court and not blamable on either side. In such a situation we must so would the relied as not to prejudice either party bearing in mind the equities of the case. We think that it would be fair, having regard to overall circumstances of the case, that till the date of reinstatement, which we fix as December 1, 1971, the management will pay the employee 50% of the wages including the benefits that he may be eligible for had he continued in service from the date of High Court's judgment on November 30, 1971 with interest at 7% per annum. Pursuant to the interim order of this Court certain sums have been paid by the appellant to the second respondent and while computing the amount that is payable to the 2nd respondent credit shall be given for such payments.

5. In the result, the appeal is dismissed, but in the circumstances, we direct the appellant to pay the respondent's costs which we fix in a sum of Rs. 1500.

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