Surendra Kumar Verma and Others

Vs

Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another

Civil Appeals Nos. 632-635 of 1980

(V. R. Krishna Iyer, R. S. Pathak, O Chinnappa Reddy JJ)

23.09.1980

JUDGMENT

CHINNAPPA REDDY, J. –

1. The facts of the four appeals before us (except the cases of Usha Kumari and Madhu Bala, two out of the seven appellants in Civil Appeal 633 of 1980) are almost identical with the facts in Santosh Gupta v. State Bank of Patiala ((1980) 2 LLJ 72 : (1980) 3 SCC 340 : 1980 SCC (L&S) 409) decided by this Court on April 29, 1980. Not unnaturally the appellants claim that they should be given the same reliefs as were given to the workman in that case, but which have been denied to them by the labour Court in the instant cases. The labour Court found, as a fact, that except in the cases of three workmen, S. C. Goyal, Usha Kumari and Madhu Bala, the termination of the services of the remaining appellants-workmen was in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 and therefore invalid and inoperative. But, as the termination of their services was a consequences of their failure to pass the tests prescribed for permanent absorption into the service of the bank and as it was thought their reinstatement would have the effect of equating them with workmen who had qualified for permanent absorption by passing the test, the labour Court refused to give the workmen the relief of reinstatement in service with full back wages, but, instead, directed payment of compensation of six months' salary to each of the workmen, in addition to the retrenchment compensation. The appellants claim that they should be awarded the relief of reinstatement with full back wages as was done in the case of Santosh Gupta v. State Bank of Patiala ((1980) 2 LLJ 72 : (1980) 3 SCC 340 : 1980 SCC (L&S) 409) and other earlier cases decided by this Court. On the other hand the learned counsel for the employer contended that non-compliance with the requirements of Section 25-F of the Industrial Disputes Act did not render the termination of the service of a workman ab initio void but only made it invalid and inoperative and that the court, when setting aside the termination of the services of a workman on the ground of failure to comply with the provisions of Section 25-F, had full discretion not to direct reinstatement with full back wages, but, instead, to direct the payment of suitable compensation. The learned counsel invited our attention to cases where such discretion had been exercised and to other cases arising under Section 33 and 33-A of the Industrial Disputes Act where it was held that discharge of workmen during the pendency of proceedings, without the previous permission in writing of the authority before which the proceeding was pending was not ab initio void and that the labour Court or the Tribunal was not bound to direct reinstatement merely because it was bound that there was a violation of Section 33.

2. In Santosh Gupta v. State Bank of Patiala ((1980) 2 LLJ 72 : (1980) 3 SCC 340 : 1980 SCC (L&S) 409), the facts of which case were identical with the facts of the cases before us, this Court found : [SCC p. 345 : SCC (L&S) p. 414, para 13]

That the discharge of the workman on the ground that she did not pass the test which would have enabled her to be confirmed, was retrenchment within the meaning of Section 2(oo) and, therefore, the requirements of Section 25-F had to be complied with.

On that finding, the relief which was awarded was : [SCC p. 345 : SCC (L&S) p. 414, para 13]

The order of the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, New Delhi, is set aside and the appellant is directed to be reinstated with full back wages.

3. Earlier, in Hindustan Steel Ltd. v. Presiding Officer, Labour Court, Orissa ((1977) 1 SCR 586 : (1976) 4 SCC 222 : 1976 SCC (L&S) 583), a Division Bench of this Court consisting of Chandrachud, Goswami and Gupta, JJ., on a finding that there was a contravention of the provisions of Section 25-F of the Industrial Disputes Act, affirmed the award of the labour court directing reinstatement with full back wages. In another case M/s. Avon Services Production Agencies (P) Ltd. v. Industrial Tribunal, Haryana ((1979) 1 SCC 1, 14 : 1979 SCC (L&S) 15, 28), Krishna Iyer and Desai, JJ., found that there was retrenchment without compliance with the prescribed conditions precedent. Therefore, they said : [SCC p. 14 : SCC (L&S) p. 28, para 23]

The retrenchment was invalid and the relief of reinstatement with full back wages was amply deserved.

4. In M/s. Swadesamitran Limited, Madras v. Workmen ((1960) 3 SCR 144, 156 : AIR 1960 SC 762 : (1960) 1 LLJ 504 : 19 FJR 46) dealing with a argument that even if the impugned retrenchment was justified, reinstatement should to have been ordered, Gajendragadkar, Subba Rao and Das Gupta, JJ., observed :

Once it is found that retrenchment is unjustified and improper it is for the tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily, if a workman has been improperly and illegally retrenched he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workmen would not necessarily defeat the claim for reinstatement of the retrenched workmen; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that the employer has engaged fresh hands (vide : The Punjab National Bank Ltd. v. The All India Punjab National Bank Employees' Federation ((1960) 1 SCR 806 : AIR 1960 SC 160 : (1959) 2 LLJ 666 : 17 FJR 199) and National Transport and General Co. Ltd. v. The Workmen (Civil Appeal No. 312 of 1956, decided on January 22, 1957)).

5. In State Bank of India v. N. Sundara Money ((1976) 3 SCR 160, 166 : (1976) 1 SCC 822, 828 : 1976 SCC (L&S) 132, 137), a Division Bench of this Court consisting of Chandrachud, Krishna Iyer and Gupta. JJ., held that a certain order of retrenchment was in violation of the provisions of Section 25-F and was, therefore, invalid and inoperative. After so holding, they proceeded to consider the question of the relief to be awarded. They observed : [SCC p. 828 : SCC (L&S) p. 137, para 10]

What follows ? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Reinstatement is the necessary relief that follows. At what point ? In the particular facts and circumstances of this case,

the respondent shall be put back where he left off, but his new salary will be what he would draw were he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be ranked below all permanent employees in that cadre and will be deemed to be a temporary hand up to now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.

6. We do not propose to refer to the cases arising under Sections 33 and 33-A of the Industrial Disputes Act or to cases arising out of references under Sections 10 and 10-A of the Industrial Disputes Act. Nor do we propose to engage ourselves in the unfruitful task of answering the question whether the termination of the services of a workman in violation of the provisions of Section 25-F is void ab initio or merely invalid and inoperative, even if it is possible to discover some razor's edge distinction between the Latin 'void ab initio' and the Anglo-Saxon 'invalid and inoperative'. Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions. 'Void ab initio', 'invalid and inoperative' or call it what you will, the workmen and the employer are primarily concerned with the consequence of striking down the order of termination of the services of the workmen. 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 elsewhere 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 of full back wages where that would place an impossible burden to the employer. In such and order exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.

7. In the cases before us we are unable to see any special impediment in the way of awarding the relief. The labour Court appears to have thought that the award of the relief of reinstatement with full back wages would put these workmen on a par with those who had qualified for permanent absorption by passing the prescribed test and that would create dissatisfaction amongst the latter. First, they can never be non par since reinstatement would not qualify them for permanent absorption. They would continue to be temporary, liable to be retrenched. Second, there is not a shred of evidence to suggest that their reinstatement would be a cause for dissatisfaction to anyone. There is no hint in the record that any undue burden would be placed on the employer if the same relief is granted as was done in Santosh Gupta v. State Bank of Patiala ((1980) 2 LLJ 72 : (1980) 3 SCC 340 : 1980 SCC (L&S) 409).

8. The cases of Usha Kumari and Madhu Bala were treated by the labour Court as distinct from the

cases of the other appellants on the ground that, though they had worked for more than two hundred and forty days in the preceding twelve months, they had not been in employment for one year. It appears that Usha Kumari and Madhu Bala were in the employment of the bank from May 4, 1974 to January 29, 1975 and had worked for 258 and 266 days respectively during that period. As the period from may 4, 1974 to January 29, 1975 was not one year, it was conceded before the labour Court that there was no violation of the provisions of Section 25-F of the Industrial Disputes Act. Before us, the concession was questioned and it was argued that there was non-compliance with the requirements of Section 25-F of the Act. Since the facts were not disputed, we entertained the argument and heard the counsel on the question. The concession was apparently based on the decision of this Court in Sur Enamel and Stamping Works (P) Ltd. v. Workmen ((1964) 3 SCR 616, 622-23 : AIR 1963 SC 1914 : (1963) 2 LLJ 367 : 25 FJR 88). That decision was rendered before Section 25-B, which defines 'continuous service' for the purposes of Chapter V-A of the Industrial Disputes Act was recast by Act 36 of 1964. The learned counsel for the employer submitted that the amendment made no substantial difference. Let us take a look at the statutory provisions. Section 25-F, then and now, provides that 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 certain conditions are fulfilled. Section 25-B's marginal title is 'Definition of continuous Service'. To the extent that it is relevant Section 25-B(2) as it now reads is as follows :

> Where a workman is not in continuous service ..... for a period of one year or six months, he shall be deemed to be in continuous service under an employer -
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> (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 -
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> (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
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> (ii) two hundred and forty days in any other case;
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> #(b) * * * *Explanation. - .....##

The provision appears to be plain enough. Section 25-F requires that a workman should be in continuous service for not less than one year under an employer before that provision applies. While so, present Section 25-B(2) steps in and says that even if a workman has not been in continuous service under an employer for a period of one year, he shall be deemed to have been in such continuous service for a period of one year, if he has actually worked under the employer for 240 days in the preceding period of twelve months. There is no stipulation that he should have been in employment or service under the employer for a whole period of twelve months. In fact, the thrust of the provision is that he need not be. That appears to be the plain meaning without gloss from any source.

9. Now, Section 25-B was not always so worded. Prior to Act 36 of 1964, it read as follows :

> For the purposes of Sections 25-C and 25-F, a workman who, during a period of twelve 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. - .....##

> The difference between old Section 25-B and present Section 25-B is patent. The clause "where a workman is not in continuous service ..... for a period of one year" with which present Section 25-B(2) so significantly begins, was equally significantly absent from old Section 25-B. Of the same degree of significance was the circumstance that prior to Act 36 of 1964 the expression "continuous service" was separately defined by Section 2(eee) as follows :
>
> (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 lock-out or a cessation of work which is not due to any fault on the part of the workman;

Section 2(eee) was omitted by the same Act 36 of 1964 which recast Section 25-B. Section 25-B as it read prior to Act 36 of 1964, in the light of the then existing Section 2(eee), certainly lent itself to the construction that a workman had to be in the service of the employer for a period of one year and should have worked for not less than 240 days before he could claim to have completed one year's completed service so as to attract the provisions of Section 25-F. That precisely was what was decided by this Court in Sur Enamel and Stamping Works Ltd. v. Their Workmen ((1964) 3 SCR 616, 622-23 : AIR 1963 SC 1914 : (1963) 2 LLJ 367 : 25 FJR 88). The court said :

> On the plain terms of the Section 25-F only a workman who has been in continuous service for not less than one year under an employer is entitled to its benefit. 'Continuous service' is defined in Section 2(eee) as meaning 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. What is meant by 'one year of continuous service' has been defined in Section 25-B. Under this section a workman who during a period of twelve calendar months has actually worked in an industry for not less 240 days shall be deemed to have completed service in the industry ..... The position (therefore) is that during a period of employment for less than 11 calendar months these two persons worked for more than 240 days. In our opinion that would not satisfy the requirement of Section 25-B. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a period of not less than 12 calendar months and, next that during those 12 calendar months had worked for not less that 240 days. Where, as in the present case the workmen have not at all been employed for a period of 12 calendar months it becomes unnecessary to examine whether the actual days of work numbered 240 days or more.

Act 36 of 1964 has drastically changed the position. Section 2(eee) has been repealed and Section 25-B(2) now begins with the clause "where a workman is not in continuous service ..... for a period of one year". These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months; it is not necessary that he should have been in the service of the employer for one whole year. So we hold that Usha Kumari and

Madhu Bala are in the same position as the other appellants.

10. In the result all the appeals are allowed and the workmen-appellants are directed to be reinstated with full back wages. We, however, superimpose the condition that the salary on reinstatement of the workmen will be the salary which they were drawing when they were retrenched (subject of course to any revision of scales that might have been made in the meanwhile) and the period from the date of retrenchment to the date of reinstatement will not be taken into account for the purpose of reckoning seniority of the workmen among temporary employees. The respondents is free to deal with its employees, who are temporary, according to the law. There will be no order regarding costs.

PATHAK, J. (concurring) –

I entirely agree with my learned brother Chinnappa Reddy in the order proposed by him.

12. The appeals raise strictly limited questions. The appeals by Usha Kumari and Madhu Bala involve the question whether they can be regarded as being in continuous service for a period of one year within the meaning of Section 25-B(2), Industrial Disputes Act, 1947 and if so, to what relief would they be entitled. The remaining appeals require the court to examine whether the appellants should have been awarded reinstatement with back wages instead of the curtailed relief granted by the Industrial Tribunal-cum-Labour Court. That is the entire scope of these appeals. No question arises before us whether the termination of the services of the appellants amounts to "retrenchment" within the meaning of Section 2(oo) of the Act. The respondent Bank of India has apparently accepted the finding of the Industrial Tribunal-cum-Labour Court that the termination amounts to retrenchment. It has not preferred any appeal. I mention this only because I should not be taken to have agreed with the interpretation of Section 2(oo) rendered in Santosh Gupta v. State Bank of Patiala ((1980) 2 LLJ 72 : (1980) 3 SCC 340 : 1980 SCC (L&S) 409).

13. Proceeding on the footing mentioned above, my learned brother Chinnappa Reddy has, I say with respect, rightly concluded that on the facts and circumstances before us the appellants should be reinstated with full back wages subject to the proviso that the salary on reinstatement will be the salary drawn by the respective appellants on the date of their retrenchment, qualified by the impact of any revisional scale meanwhile, and subject to the further proviso that the period intervening between the date of retrenchment and the date of reinstatement will be omitted from account in the determination of the seniority of these appellants among temporary employees. Ordinarily, a workman who has been retrenched in contravention of the law is entitled to reinstatement with full back wages and that principle yields only where the justice of the case in the light of the particular facts indicates the desirability of a different relief. It has not been shown to us on behalf of the respondent why the ordinary rule should not be applied.

14. On the other question decided by my learned brother I have no hesitation in agreeing that having regard to the simultaneous amendments introduced in the Industrial Disputes Act, 1947 Act No. 36 of 1964 - the deletion of Section 2(eee) and the substitution of the present Section 25-B for the original section - it is no longer necessary for a workman to show that he has been in employment during a preceding period of twelve calendar months in order to qualify within the terms of Section 25-B. It is sufficient for the purposes of Section 25-B(2)(a)(iii) that he has actually worked for not less than 240 days during the preceding period of 12 calendar months. The law declared by this Court in Sur Enamel and Stamping Works (P) Ltd. v. Their Workmen ((1964) 3 SCR 616, 622-23 : AIR 1963 SC 1914 : (1963) 2 LLJ 367 : 25 FJR 88) does not apply to situations governed by the subsequently substituted Section 25-B of the Act.

15. With these observations, I concur with the order proposed by my learned Brother.

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