

Delhi Cloth and General Mills Ltd.

Vs

Shambhu Nath Mukherjee

Civil Miscellaneous Petition No. 6170 of 1980

(D.A. Desai, R.B. Misra JJ)

17.08.1981

ORDER

DESAI, J. –

1. Frustration generated by lengthening shadows of interminable court processes in the fall of one's life, has been the primary and root cause of our failure to end this unending proceeding. And it has introduced such cynicism in the respondent that even though the Court offered him Rs. 46151.60 deposited in this Court by the appellant pursuant to court's order dated January 27, 1981, keeping all his contentions open, the respondent declined to withdraw the amount and walked away from the Court. The sense of guilt is further accentuated by the fact that the respondent would not accept any legal assistance, presumably his faith in the legal profession has suffered total erosion. Add to this that he is completely hard of hearing so that any dialogue at the court hearing is and exercise in futility. To depict our agony in no uncertain terms, we requested Dr. Y.S. Chitale Senior Counsel of this Court to assist the respondent who brusquely turned down the same. We requested learned Advocates sitting in the Court to transmit our inquiry into the ears of the respondent but unless something is written down it is impossible to communicate with him. Out of sheer exasperation and faced with the blind alley yet in our total anxiety to avoid even a remote impression of injustice being done to a low paid employee of the appellant-mills, choice and option being curtailed, we are forced to the conclusion to which we were otherwise unwilling to reach.

2. As graphically described by this Court in its judgment dated October 3, 1977 [(1977) 4 SCC 415 : 1978 SCC (L&S) 1], namely, "it is a fight between the Goliath and a dwarf", and therefore, the path chalked out though far from legitimate satisfaction, we are left with no alternative and that is the *raison d'etre* for this Order.

3. Respondent Shambhu Nath Mukherjee was serving with the appellant till his name was struck off the rolls by the appellant by its order dated August 24, 1965. An industrial dispute was raised consequent upon the termination of service of the respondent which ultimately landed in this Court in Civil Appeal 1903 of 1970. This Court held that striking off the name of the workman from the rolls by the management is termination of his service and this termination constitutes retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act and as there was failure to comply with the mandatory pre-conditions for valid retrenchment, the termination was *ab initio* void and illegal. Accordingly this Court, affirming the award of the Labour Court, held that the respondent continues to be in service of the appellant. By the time the Court disposed of the appeal on October 3, 1977, according to the appellant, the respondent had retired in superannuation under the rules applicable to him, and therefore, it was not possible to reinstate him but he would be entitled to the wages and other retirement benefits. Adopting this stance, the appellant did not

permit the respondent to join service. The respondent thereupon filed this petition, inter alia, contending that this Court should enforce its order and judgment and direct the appellant to reinstate the respondent and to pay him all the back wages. On this civil miscellaneous petition being moved, a notice of motion was taken out in response to which the appellant appeared and filed its affidavit in reply.

4. The contention put in the forefront is that the age of superannuation in respect of the category of employees to which the respondent belonged was 58 years and this age was prescribed pursuant to a settlement dated June 16, 1969. According to the appellant the respondent had declared his age as 36 years on July 7, 1951, in his application seeking employment with Swatantra Bharat Mills and also in the declaration-nomination form provided under the Employees' Provident Fund Act, 1952. Taking cue from these two declarations of the respondent, the appellant worked out the completion of the age of 58 years for retirement on superannuation in July 1973, and, therefore, according to the appellant, physical reinstatement of the respondent in service is impermissible.

5. It would be necessary in view of the contention of the appellant to determine whether there are rules relevant to the age of the superannuation applicable to the category of employees to which the respondent belonged either by way of award, settlement, standing orders or legally enforceable conditions of service and if so, what is their effect on the direction for reinstatement given by Court. Unfortunately the lapse of the appellant is compounded by the fact that when the appeal was heard in 1977 it was not pointed out to the Court that by that time the respondent had retired on superannuation and if it was so stated appropriate direction could have been given.

6. In order to mitigate the hardship of the respondent arising out of this protracted litigation and to test the bona fides of the appellant, this Court directed by its Order dated January 27, 1981, that the appellant shall deposit in this Court within a fortnight from the date of order, all amounts due and payable to the respondent in pursuance of the Court's order of reinstatement with interest at 9 per cent from the date this Court disposed of the appeal till the date of the order. Learned counsel for the appellant informed us that the order has been complied with and that the amount is lying in deposit with the Registrar of this Court.

7. On April 6, 1981, Mr. S.C. Malik, learned counsel who appeared for the appellant made a statement to the Court which was recorded by the Court in its order of even date that the appellant had no objection to the respondent withdrawing the amount of Rs. 46151.60 without furnishing any security. This was also communicated to the respondent. When the petition was set down for hearing the respondent gave his submissions in writing and the same were read out to the Court.

8. The Court informed the respondent about the amount deposited in the Court and gave a further direction that the respondent should withdraw that amount and the withdrawal of the amount would not in any manner preclude him from raising any contention in this Court or before any other tribunal. The respondent, was, however, in no mood to listen to this suggestion.

9. Undoubtedly there is an award directing reinstatement of the respondent and further unquestionably that award has been upheld by this Court on October 3, 1977. If no other intervening circumstance had cropped up, this order should have been promptly complied with by the appellant or the same could be enforced against it on the pain of prosecution also. But the inevitable albeit undesirable consequence of a long, protracted, unending, interminable litigative process is that during the intervening period situations arise which have a bearing on the pending litigation itself. This case itself illustrates the point beyond controversy. The service of the appellant was terminated

in 1965. The appeal was finally disposed of by this Court in 1977. Within the span of 12 years the involuntary process of growing in age continues in an unceasing manner. The respondent has grown in age by 12 years. As alleged by the appellant, respondent was aged 36 years on July 7, 1951. On this reckoning he would attain the age of 58 years in July 1973. If there is valid rule of superannuation on reaching a certain age it has to be given effect despite the fact that that situation was not noticed by the Court while disposing of the appeal. Maybe, there may not be any such rule or may be, there may be such a rule. In view of the pleading we would be required to investigate the same and that necessitates production of evidence. It is open to us to examine the evidence and record a finding but that would encroach upon the very precious time of this Court when there is a tribunal set up for this very purpose and can conveniently undertake the assignment. It may as well be difficult for the respondent to produce all evidence before this Court. We are, therefore, of the opinion that while retaining the matter before us, we must remit the following two issues to the Labour Court before which the reference initially came up for hearing :

(i) Whether the appellant proves to the satisfaction of the Labour Court that there is a valid rule of retirement on superannuation at the age of 58 years for the employees of the category to which the respondent belonged :

(ii) If issue (i) is answered in the affirmative, what amount including wages, and all other benefits such as bonus, etc. as if he is in service, the appellant is liable to pay to the respondent from the date of termination of service of August 24, 1965, till the date of his superannuation.

10. The Labour Court should admit the matter and after giving an opportunity to both the sides, should certify the findings to this Court within a period of three months from the date of receipt of this Order.

11. The Labour Court may also try to persuade the respondent to withdraw the amount of Rs. 46151.60 deposited by the appellant in this Court keeping open all his contentions and objections and if the respondent is inclined to withdraw the amount, the Labour Court is at liberty to write to the Registrar of this Court for remitting the amount to the Labour Court.

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