Binoy Kumar Chatterjee

Vs

M/S Jugantar Limited and Others

Special Leave Petition (Civil) No. 7299 of 1981

(A. P. Sen, R. S. Pathak JJ)

06.04.1983

ORDER

PATHAK, J.-

1. The petitioner, Shri Binory Kumar Chatterjee prays for special leave to appeal under Article 136 of the Constitution against the award dated April 27, 1981 of the Second Labour Court, West Bengal.

2. The petitioner was appointed to the post of Sub-Editor in the employment of M/s Jugantar Limited on April 18, 1960. In the following month he was transferred to Delhi as a Special Correspondent. In August 1976 he was transferred to Calcutta as an Assistant Editor. On completing 60 years of age he was served with a notice of retirement dated November 6, 1976 informing him that he stood retired with effect from December 1, 1976. He was paid and he willingly received his dues on account of gratuity and provident fund following such retirement. Thereafter, it seems that he was offered fresh employment as an Assistant Editor for a period of 12 months under a contract. He accepted the employment on that basis. On the expiry of the period of 12 months he raised a dispute alleging that his service had been wrongly terminated with effect from December 1, 1976 and that he was entitled to continue in service.

3. The Government of West Bengal referred the dispute to the Second Labour Court under Section 10 of the Industrial Disputes Act, 1947 for adjudication on the issue whether the termination of the service of the petitioner was justified, and to what relief, was he entitled. The Labour Court considered the preliminary objection of the employer that three was no industrial dispute because the service of the petitioner had come to an end automatically on the expiry of the period of contract. The objection, although described as a preliminary objection, involved the very question which the Labour Court was called upon to decide in the reference. Before the Labour Court the case of the employer was that the services of the petitioner stood terminated automatically with effect from December 1, 1976 on attaining the age of superannuation, that is to say the age of 60 years. Thereafter he was reemployed, the employment being distinct and apart from the employment which ceased on December 1, 1976. The fresh employment, according to the employer, was governed by the express condition that it would enure for a period of 12 months only. The case of the workman, however, was that the further employment given to him after December 1, 1976 was in reality a continuation of the previous employment and therefore the termination should be taken to be effective from December 1, 1977, and should be regarded as retrenchment. The Labour Court repelled the contention of the workman and held that he had actually retired from service with effect from December 1, 1976, on reaching the age of superannuation and had received his gratuity and provident fund. The Labour Court found that the workman had entered into a fresh agreement with

the employer under which he was given employment for 12 months, that the contract was duly signed by the petitioner with full knowledge of its contents and consequences and was binding on hi, and that on the expiry of the stipulated 12 months the petitioner had automatically ceased to be in service. Accordingly, the Labour Court refused the relief of reinstatement claimed by the petitioner and observed that the case could not be treated as one of retrenchment.

4. Two contentions have been raised before us by learned counsel for the petitioner. Learned counsel urged that there was no binding provision fixing the age of superannuation, and that the provision in the Standing Orders applied by the employer was not sanctioned by any entry in the Schedule to the Industrial Employment (Standing Orders) Act, 1946. It is contended that consequently the petitioner must be deemed to have continued in service throughout, and the cesser of his service with effect from December 1, 1977 must be regarded as a unilateral termination of service by the employer. We find no substance in the contention. The respondent-employer is a newspaper establishment, and Section 14 of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955 provides that the provisions of the Industrial Employment (Standing Orders) Act, 1946, as in force for the time being, will apply to every newspaper establishment. The Bengal Industrial Employment (Standing Orders) rules, 1946 were amended by the State Government by a notification dated October 14, 1946, and Rule 2-A directed that matters relating to superannuation would be additional matters included in the Schedule to the Industrial Employment (Standing Orders) Act, 1946. In the result the Standing Order drawn up and applied by the respondent providing for retirement on reaching the age of superannuation fell within the scope of its powers. The relevant Standing Order provided that a working journalist would retire at the age of 60 years. There can be no dispute that on attaining that age the petitioner's services ceased, and nothing more was required. In fact, in acceptance of that position he drew his gratuity and provident fund dues. His subsequent service arose on a fresh contract, and we are clearly of the view that it cannot be regarded as a continuation of the original service.

5. The other contention of learned counsel for the petitioner is that the petitioner's service on the expiry of 12 months, on December 1, 1977, did not come to an end in law, because the conditions of Section 25-F of the Industrial Disputes Act, 1947 had not been complied with by the respondent-employer. Section 25-F provides that no workman employed in any industry who has been in continuous service for not less than one year under the employer shall be retrenched by the employer until the workman has been given the requisite notice in writing and has been paid, at the time of retrenchment, compensation at the specified rate and also that notice in the prescribed manner is served on the appropriate government or authority. Section 25-F applies where a workman is retrenched. The petitioner contends that even though he was employed under a fresh contract after December 1, 1976 he was in continuous service thereafter for not less than one year and must regarded therefore as having been retrenched on December 1, 1977. Our attention is drawn to the definition of the expression "retrenchment" in Section 2 (00) of the Industrial Dispute Act. It reads :

> "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -
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> (a) voluntary retirement of the workman; or
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> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a

stipulation in that behalf; or

(c) termination of the service of a workman on the ground of continued ill-health;

6. It is urged that in view of the law laid down by this court in State Bank of India v. N. Sundara Money, Hindustan Steel Ltd. v. Presiding Officer, Labour Court, Orissa, Delhi Cloth & General Mills Ltd. v. Shambhu Nath Mukherjee and Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, New Delhi the words "termination by the employer of the service of a workman for any reason whatsoever" in the definition of the expression "retrenchment" covers every kind of termination of service except that expressly excluded by the definition. In our judgment none of those cases can be construed as authority governing the present case. In all those cases the question arose on a termination of the workman's services at a point of time when the age of superannuation had not yet been reached. The age of superannuation marks the end-point of the workman's service. If he is employed afresh thereafter for a term, such employment cannot be regarded as employment contemplated within the definition of the expression "retrenchment". We are of the view that the termination of the petitioner's service on the expiry of the period of his contract on December 1, 1977 does not fall within the expression "retrenchment" in Section 2 (oo) of the Industrial Disputes Act.

7. The special leave petition is dismissed.

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