

Sant Raj and Another

Vs

O. P. Singla and Another

Civil Appeal No. 650(NL) of 1982

(Ranganath Misra, D. A. Desai JJ)

09.04.1985

JUDGMENT

D. A. DESAI, J. -

1. Secretary (Labour) Delhi Administration referred the following industrial dispute between the management of M/s Lufthansa German Airlines and its workmen Shri Sant Raj and Shri Itwari Lal Sherya for adjudication to the Labour Court at Delhi. It reads as under :

Whether the termination of service of S/Shri Raj and Itwari Lal Sherya is illegal and/or unjustified and if so to what relief are they entitled ?

The Labour Court after an exhaustive and in-depth examination of rival contentions held that termination of services of the aforementioned two workmen constituted retrenchment within the meaning of Section 25-F read with Section 2(00) of the Industrial Disputes Act, 1947 ('Act' for short) and as the provisions of Section 25-F have not been complied with the termination of service would be bad and illegal. The Labour Court then proceeded to examine whether the relief of reinstatement should be granted or compensation in lieu of reinstatement should be given. The Labour Court held that 'even where Section 25-F of the Industrial Disputes Act is not complied with and therefore the termination of service is illegal and invalid, there is certainly a discretion with the Labour Court whether to order reinstatement of the workman or not'. We have our serious reservations about the statement of law but it is not necessary to deal with it in the present case because instead of granting reinstatement, we propose to award adequate compensation taking into account both the back wages as well as compensation in lieu of reinstatement.

2. The Labour Court while proceeding to quantify the compensation observed that 'the termination of services of the two workmen was bona fide and not a colorable exercise of power in accordance with the service rules' and then proceeded to award one year's wages as compensation for the failure of the employer to comply with the requirements of provisions contained in Section 25-F of the Act. The workmen have filed this appeal by special leave.

3. Ordinarily where the termination of services is found to be bad and illegal, in the field of industrial relation a declaration follows that the workman continues to be in service and has to be reinstated in service with full back wages. (See Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd. ((1979) 1 SCR 563 : (1979) 2 SCC 80 : 1979 SCC (L&S) 53 : AIR SC 75 : (1978) 2 LLJ 474 : (1979) 54 FJR 14 : 1978 Lab IC 1667)) The Labour Court has, however, the discretion to award compensation instead of reinstatement if the circumstances of a particular case are unusual or exceptional so as to make reinstatement inexpedient or improper. (See Hindustan

Steels Ltd., Rourkela v. A. K. Roy ((1970)3 SCR 343 : (1969) 3 SCC 513 : AIR 1970 SC 1401.)

4. In the present case, the Labour Court having held that the termination of services of the appellants would constitute retrenchment and as the pre-requisite for a valid retrenchment having not been satisfied, the termination of service was bad, yet in the facts of the case in his discretion declined to grant the relief of reinstatement. Whenever, it is said that something has to be done within the discretion of the authority then that something has to be done according to the rules of reason and justice and not according to private opinion, according to law and humour. It is to be not arbitrary, vague and fanciful but legal and regular and it must be exercised within the limit to which an honest man to the discharge of his office ought to find himself. (See *Sharpe v. Wakefield* (1891 AC 173 : 1886-90 ALL ER Rep 651 : 64 LT 180 : 39 WR 561 (HL)).) Discretion means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful. (See *S. G. Jaisinghani v. Union of India* ((1967) 2 SCR 703 : AIR 1967 SC 1427 : 65 ITR 34).)

5. The Labour Court while declining to grant the relief of reinstatement which should have ordinarily followed, consequent upon its finding that the termination of service was bad and illegal, in exercise of its discretion awarded one year's wages as compensation in lieu of reinstatement on the ground that 'the termination of service of each of the appellant was bona fide and not a colorable exercise of power in accordance with service rules'. There is thus an error apparent on the face of the record of the case inasmuch as if the termination of service was according to service rules and was bona fide it could not be simultaneously held to be illegal and invalid. Therefore, the discretion was exercised on irrelevant and extraneous considerations not germane to the determination. As a necessary corollary, we would have granted the normal relief of reinstatement.

6. Dr Chitale, learned counsel who appeared for the respondents attempted to take us through the evidence with a view to persuading us that the employer even if it acted contrary to law, should not be burdened with reinstatement because it had lost confidence in the appellants. The employer is a foreign air-transport company. The workmen were loaders posted at Delhi Airport. In this far-fetched hierarchical relationship, loss of confidence if it is to be considered a relevant factor would have hardly impresses us. However, as the workmen are out of job from August 30, 1973 i.e. roughly for a period of 12 years, it is in their own interest, that instead of reinstatement in service under an unwilling if not a hostile employer, adequate compensation would meet the ends of justice. Therefore, in the special facts and circumstances of this case, though disagreeing with the reasons given by the Labour Court for declining to grant the normal relief of reinstatement, we uphold the same but the meagre compensation awarded by the Labour Court namely one year's wages requires to be adequately and properly modified.

7. Dr Chitale gave us information about the last wages drawn by each of the workmen. That does not take care of overtime allowance or bonus or other benefits that they enjoy. Roughly, the monthly pay packet of each workman appears to be around Rs. 1000. Each one of them was a loader which means doing manual job. Each one of them is entitled to back wages in full for a period of 12 years. Each one was therefore entitled to get Rs. 1,50,000 towards back wages. Adding to it the compensation in lieu of reinstatement in the amount of Rs. 50,000, we are of the opinion that a total compensation in the amount of Rs. 2,00,000 to each appellant would meet the ends of justice.

8. Before we conclude this judgment, we would like to make it abundantly clear that the compensation of Rs. 2,00,000 awarded to each appellant includes back wages for a period of 12 years. Now that the amount is being paid in one lump sum, it is likely that the employer may take

recourse to Section 192 of the Income Tax Act, 1961 which provides that when any person responsible for paying any income chargeable under the head 'Salaries' shall, at the time of payment, deduct income tax on the amount payable at the average rate of income-tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year. If therefore the employer proceeds to deduct the income-tax as provided by Section 192, we would like to make it abundantly clear that each appellant would be entitled to the relief under Section 89 of the Income Tax Act which provides that where, by reason of any portion of assessee's salary being paid in arrears or in advance or by reason of his having received in any one financial year salary for more than 12 months or a payment which under the provisions of clause (3) of Section 17 is a profit in lieu of salary, his income is assessed at a rate higher than that it would otherwise have been assessed, the Income-tax Officer shall on an application made to him in this behalf grant such relief as may be prescribed. The prescribed relief is set out in Rule 21(A) of the Income-tax Rules. Both the appellants are entitled to the relief under Section 89 because compensation herein awarded includes salary which was in arrears for 12 years and it is being paid in one lump sum under the orders of this Court. Therefore, the salary has to be spread over for a period of 12 years as also the compensation in lieu of reinstatement and the relief should be given as provided by Section 89 of the Income-tax Act read with Rule 21(A) of the Income-tax Rules. Both the appellants are entitled to the same. If any application is necessary to be made, the same may be made to the competent authority and the respondent-employer shall assist the appellants in each case for obtaining the relief.

9. When the hearing concluded and we indicated that we were inclined to award compensation for back wages and in lieu of reinstatement, we requested Shri S. R. Srivastava, learned counsel for the appellants to give us in a tabulated form the compensation to which each appellant would be entitled with a spread over from the date of the order of termination of service till the end of the present year. The tabulations have been supplied in respect of each of the appellants. We have gone through the tabulations and we are satisfied that they represent the correct state of affairs and they are taken on record and are being treated as part of this judgment.

10. Accordingly, this appeal is partly allowed and the award giving one year's wages as compensation is modified to the effect that each appellant should be paid Rs. 2,00,000 as and by way of back wages and in lieu of relief of reinstatement. As we have awarded adequate compensation, it is not necessary to award costs. We order accordingly.

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