

Chandu Lal

Vs

Management of M/S Pan American World Airways Inc.

Civil Appeal No. 10667 of 1983

(Ranganath Misra, D. A. Desai JJ)

19.04.1985

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal by special leave seeks to assail the Award of the Presiding Officer of the Labour Court III, Delhi, dated November 24, 1981. The Delhi Administration referred the following dispute between respondent 1 - Management and the appellant-workman for adjudication :

Whether the termination of services of Shri Chandu Lal is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect ?

2. The appellant-workman maintained that he was in permanent employment of respondent 1 having been first appointed on September 20, 1971. While he was continuing in service in February-March 1974, certain baseless allegations were levelled against him and by letter dated March 13, 1974, his services were terminated. He claimed reinstatement with full back wages.

3. Respondent 1 alleged that on February 19, 1974, two aluminium foot lockers with BKK (Bangkok) destination tag had been received at the Palam airport with its flight. It was the appellant who had got the tags changed by substituting the New Delhi tags and the two items had been delivered to one Lakshman by Williams, an employee of the respondent. The Management pleaded that the entire basis of its business operation was of confidence and once the customs authorities lost or doubted the same, operational hazards were apprehended as respondent's aircrafts as also pilots were liable to be detained by customs authorities now and then. Like all other employees of the respondent, the appellant was also required to behave in a manner keeping with maintenance of such confidence.

4. Parties led evidence before the Labour Court and it held that the management had reasonable grounds to be satisfied that the appellant was involved in an act of smuggling and, therefore, instead of exposing him to prosecution, the respondent was justified in terminating his services for lack of confidence.

5. The order of termination which was communicated to the appellant in a letter, as far as relevant, read thus :

Having regard to recent happenings, we regret that we have lost confidence in you and cannot retain you in service any more.

Admittedly there was no domestic enquiry and the appellant's services were terminated by relying upon the provisions covered by a settlement regulating the terms of service.

6. On November 21, 1984, this Court gave the following directions :

Mr Anand Prakash, learned counsel for the respondent agreed to pay retrenchment compensation as if the appellant was in service and retrenched today i.e. November 21, 1984.

The matter is adjourned for six weeks.

The Labour Court is directed to proceed to decide the question whether termination of service of the appellant constituted retrenchment in law. If any additional affidavit is filed by the respondent the same may be taken appellant wants to file a rejoinder liberty is reserved for the same.

This order is made without prejudice to the contentions of both the parties.

7. The Labour Court received affidavit from the parties and returned a finding dated January 9, 1985, the effect that the termination of the service of the appellant amount to retrenchment in law.

8. It is difficult to agree with the finding of the Labour Court that when service is terminated on the basis of loss of confidence the order does not amount to one with and does not warrant a proceeding contemplated by law preceding want of confidence in an employee does point out to an adverse facet in his character as the true meaning of the allegation is that the employee has failed to behave up to the expected standard of conduct which has given rise to a situation involving loss of confidence. In any view of the matter this amounts to a dereliction on the part of the workman and, therefore, the stand taken by the Management that termination for loss of confidence does not amount to a stigma has to be repelled. In our opinion it is not necessary to support our conclusion by reference to precedents or textual opinion as a commonsense assessment of the matter is sufficient to dispose of this aspect. 'Retrenchment' is defined in Section 2(oo) of the Industrial Disputes Act and excludes termination of service by the employer as a punishment inflicted by way of disciplinary action. If the termination in the instant case is held to be grounded upon conduct attaching stigma to the appellant, disciplinary proceedings were necessary as a condition precedent to infliction of termination as a measure of punishment. Admittedly this has not been done. Therefore, the order of termination is vitiated in law and cannot be sustained.

9. Ordinarily, when the order of termination is quashed a declaration follows that the workman continues to be in employment and is, therefore, reinstated in service with full back wages as was held by this Court in *Hindustan Tin Works (Private) Ltd. v. Employees* ((1979) 1 SCR 563 : (1979) 2 SCC 80 : 1979 SCC (L&S) 53). This Court held in *Jitendra Singh Rathor v. Shri Baidyanath Ayurved Bhawan Ltd.* ((1984) 3 SCR 223 : (1984) 3 SCC 5 : 1984 SCC (L&S) 333), that under Section 11-A of the Act advisedly wide discretion has been vested in the Tribunal in the matter of awarding relief according to circumstances of the case. In *Hindustan Steels Ltd., Rourkela v. A. K. Roy* ((1970) 3 SCR 343 : (1969) 3 SCC 513), this Court has held that the Labour Court has discretion to award compensation instead of reinstatement if the circumstances of a particular case make reinstatement inexpedient or improper. In this case it has been the stand of the respondent that the Management had lost confidence in the appellant and there has been some pleading about the importance of the role of confidence in the business set-up of the respondent. Without examining the tenability of the stand on loss of confidence as a defence to reinstatement and accepting the

allegations advanced by the respondent that there has been loss of confidence, we are of the view that while the termination of service of the appellant is held to be bad, he may not be reinstated in service. On the other hand he should be adequately compensated.

10. The quantum of compensation has now to be ascertained. Ordinarily, the appellant would have gone back into service with full back wages. Admittedly he has been out of employment from March 1974. If he had gone back into service he would have been entitled to back wages of a little more than 11 years. In computing compensation this aspect has to be kept in view. If he was restored to service he would have been assured of employment for a further term of years. Keeping this as also other relevant aspects in views, we quantify the compensation payable to the appellant at Rs. 2 lacs. In almost similar circumstances in respect of two employees working under the Lufthansa German Airlines, compensation of Rs. 2 lacs for each workers was fixed by this Court in Civil Appeal No. 650 of 1982 disposed of by us on April 9, 1985. Counsel for the appellant has undertaken to file a statement showing the spread-over the compensation from the date of the order of termination of service till the end of the present financial year, within a week from today. After the statement is filed the same be placed for further directions.

11. In the course of arguments Dr Anand Prakash wanted us to adjourn the hearing of this appeal on the ground that the correctness of some of the judgments of this Court relating to the true meaning of 'retrenchment' has been referred to a larger Bench for reconsideration. In the view we have taken of a matter and the conclusion which we have reached being that it was not a case of retrenchment, there is no necessity of considering the request of Dr Anand Prakash for the respondent. Even if a case of retrenchment was made out, we are of the definite view that the question can be taken to have been settled by a series of authorities of this Court and until there is reversal of the view taken, if at all, there is no warrant for doubting the correctness of the legal position.

12. The appeal is partly allowed and the Award upholding the termination of service is set aside and the appellant is directed to be paid a net amount of Rs. 2 lacs as and by way of back wages as also in lieu of relief of reinstatement by respondent 1. There will be no order for costs.

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