Suraj Prakash Bhandari

Vs

Union of India

Civil Appeal No. 3006(N) of 1982

(O. Chinnappa Reddy, V. Khalid JJ)

11.02.1986

JUDGMENT

KHALID, J. -

1. The plaintiff in Civil Suit No. 14-B/76, before the II Civil Judge, Jagdalpur is the appellant before us. He was appointed as a welder in Central Tractor Organisation in 1950 in which post he served for nine years. On October 30, 1971 he was served with an order dated October 14, 1971 by which he was re-designated as a Senior Welder in the pay scale of Rs 170-6-240 to be effective from March 1, 1968. Subsequently by an order dated January 1, 1973, he was declared as surplus from this post and was relieved of his duties on the forenoon of January 1, 1973. He was then told that he could be re-employed as a welder in the pay scale of Rs 110-155, in the workshop of military department of Jullundur Cantonment. The appellant declined the offer. Consequently he filed the suit from which the appeal arises, praying that since the order treating him as surplus was illegal, he should be declared to be still continuing in service. The Trial Court decreed the suit with costs and directed the defendant to appoint the plaintiff as a welder in the pay scale of Rs 175-6-205-7-240. The appeal before the Second Additional District Judge, Bastar, taken by the Union of India, against this Judgment was dismissed with costs. The Union of India took the matter before the High Court in second appeal. The High Court set aside the concurrent findings of the Trial Court and the Appellate Court, allowed the appeal and dismissed the suit of the plaintiff. Hence the appeal, by special leave.

2. The appellant's case before us as well as before the courts below is that his removal from service as surplus amounts to retrenchment, the new scale offered to him in effect amounts to demotion and that the removal was in violation of the accepted norms and principles of law. The respondent-Union of India contended that the appellant was employed as a welder in Dandakaranya Project against a temporary post in the scale of Rs 175-6-205-7-240, that there was no such scale in the project and that it was in order to accommodate him that he was designated as a Senior Welder. In 1972, this post was abolished whereby the appellant was declared surplus. However, he was re-deployed in Military Department at Jullundur Cantonment as welder, but he did not accept the post. He is, therefore, not entitled to any relief.

3. We have considered the rival contentions. In our opinion, a detailed discussion of the facts of the case is not necessary, in this case. We are surprised at the manner in which the High Court has set aside the concurrent findings of the courts of facts in a case like this where no substantial question of law was involved before it. The specious explanation given by the High Court to justify the declaration of surplusage of the appellant that the appellant was not the only person singled out - does not impress us because, the fact on the evidence available is, that the appellant was the only

Senior Welder who was singled out for this adverse treatment. The further justification discovered by the High Court that the appellant was re-deployed as a welder in Jullundur Cantonment also does not impress us since that post carried lesser pay, that it was a new appointment, denying him continuity of service and that it was cruel to send a poorly paid employee from Dandakaranya Project to far away Jullundur. The High Court was persuaded to dismiss the appellant's suit for the additional reason that he did not accept the job offered to him.

4. On his first appointment in 1950, the appellant was in the pay scale of Rs 125-185, in Central Tractor Organisation. Then he was transferred to Dandakaranya Development Authority on January 31, 1959. When he was redesignated as Senior Welder he was in the scale of Rs 175-240 and the pay he would get on such re-designation remained the same. On January 1, 1973, he was declared as surplus and was relieved from duties. If this action could be justified, then it would be to arm the employers with a new weapon to promote an employee after creating a new post, abolish it after some time and relieve him of his duties on the plea of surplusage. We cannot countenance this procedure. The easiest course for a reasonable management to adopt in such cases would have been to revert the employee to the place wherefrom he was promoted and give him the emoluments which he was drawing before such promotion. In this case, the appellant would have had no complaint at all if such a course was adopted, since, as indicated above, there was no change in the emoluments that he was receiving at the time he was promoted. In our view, the High Court was in error in dismissing the suit. The approach of the Trial Court and the Appellant Court was correct. We, accordingly, confirm their judgments, set aside the judgment of the High Court and allow this appeal with costs throughout, the costs of this court being quantified at Rs 2,000.

5. We are told that the appellant has retired and that he is seriously ill. We direct the respondent to pay the appellant all arrears of salary from the date he was relieved up to the date of his retirement and the retirement benefits to which he is entitled, within two weeks from today, deducting the amounts, if any, paid by it pursuant to the orders of this Court dated October 18, 1985 and January 6, 1986.

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