Workmen of English Electric Company of India Ltd., Madras

Vs

Presiding Officer and Another

Civil Appeals Nos. 596-597 (NL) of 1986

(Ranganath Misra, P.B. Sawant, K. Ramaswamy JJ)

11.01.1990

JUDGMENT

RANGANATH MISRA, J. -

1. These are two appeals by special leave at the instance of the Union representing the workmen and challenge is to the reversing decision of the Division Bench of the High Court in two writ appeals - one filed by the employer-company, and the other by the workmen through their Union.

2. The State Government of Tamil Nadu by order dated 11th May, 1981 made a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947, (hereafter 'Act' for short) to the Industrial Tribunal of the following dispute :

> "Whether the non-employment of the following workers is justified; if not to what relief are they entitled ? To compute the relief, if any awarded in terms of money, if it could be so computed."

A list of 186 workmen was appended to the reference. The Union itself had come into existence on 1st October, 1980. It has written to the Company on October 14, 1980 that despite several years of service rendered by casual employees they were not being confirmed and were deprived of benefit and facilities applicable to permanent workmen.

3. Before the Tribunal the employer and the workmen filed their respective statements. On 25th November, 1981, on behalf of the workmen an amendment was sought which the Tribunal allowed. The Company challenged the amendment by filing a writ petition before the High Court but the High Court was of the view that the propriety of the amendment could be assailed, if necessary, while challenging the award itself passed in due course. The Tribunal held that 181 casual employees should be re-employed with full back wages and 50 other casual employees should also be re-employed but without back wages. This direction was given on the ground that the requirement of S. 25-F of the Act had not been satisfied before termination which amounted to retrenchment.

4. The company assailed the award by filing a writ petition before the High Court. A learned Single Judge held that the relief of reinstatement with back wages should have been confined to 131 casual employees as they alone had worked for 240 days and set aside the award in respect of 50 others on the ground that they had not completed 240 days of service. Two writ appeals were filed before the Division Bench of the High Court - Writ Appeal No. 1235 of 1983 by the Company challenging the affirming part of the award and Writ Appeal No. 72 of 1984 by the Union of the workmen

challenging negativing relief to 50 workmen.

5. The Division Bench went into the matter at great length. It found that until the amendment had been made the workmen had a different claim from what was ultimately pressed before the Tribunal. The Division Bench further found that there was great variation in the number of workmen for whom relief was claimed. It took note of the fact that the Company's counter-statement was filed on 1st of August, 1981, and till that date, the respective stands of the Union and the Company were clearly different. The case of the Union until then was that there was non-employment of employees on and from 13th October, 1980 inasmuch as work to the casual employees was refused on that date; the company's case was that on 13th October, 1980, 130 casual employees out of the list attached to the reference had actually worked and most of them had also worked on 14th and 15th of October, 1980. On the 25th November, 1981, an amendment of the original claim statement was sought by saying :

> "There were certain omissions and clerical-cum-typographical mistakes with regard to the narration of events and circumstances leading to the raising of dispute relating to the non-employment of 186 workmen mentioned in the Annexure of the terms of reference and covered by this dispute."

The amended statement proceeded to state :

> "On October 15, 1980, the management told the workers who had worked on the day that their services were terminated and would not be permitted to work from 16th October, 1980. A number of these workers were prevented entry at the gate on 16th October, 1980. The Union had decided to raise a dispute in respect of all these cases along with the earlier cases of non-employment also."

6. The Division Bench found that an entirely new case was thus sought to be introduced changing the case of non-employment on and from 13th October, 1980, to non-employment in the months of July, August, September and October, 1980, and a specific case of non-employment on and from 16th October, 1980. After discussing at great length the oral and documentary evidence and the submissions advanced in the appeals, the Division Bench summarised the position thus :

> "This whole litigation gives us an impression that though there may be a legitimate grievance of non-confirmation of casual workers who have put in long terms of employment, the union seems to be wholly responsible for the situation in which the casual workers in dispute have found themselves in. A blatantly false case of non-employment and termination of 141 persons was out up. It was only at later stages that the Union found that such a case cannot be successfully proved and indeed was false to the knowledge of the Union and a case of termination on 16th October, 1980 was sought to be introduced by amending only a part of the claim statement. As a result of this amendment, an inconsistency crept in the claim statement itself. It is rather unfortunate that the Tribunal, by a very superficial approach, merely accepted the evidence that 131 persons were terminated when the evidence, as indicated above, not only runs counter to the initial statement, but is wholly insufficient and inadequate to prove that there was termination on the part of the company. Merely telling a casual worker that there is no work is consistent with the status of casual workers and the compelling circumstances of the removal of the cards or a positive statement that no work would be given at all to the casual workers, is lacking in the

> instant case. In our view, the award of the Tribunal is clearly vitiated because the Tribunal has not even considered the inconsistency in the stand taken by the union and the evidence has not been considered at all by the Tribunal. We are, therefore, constrained in this case to take the view that it is not proved that the company terminated the employment of any of the employees who were casual workers, and the finding to the contra recorded by the Tribunal and confirmed by the learned Single judge must be set aside."

Thereafter the Division Bench examined the tenability of the stand of the Union in its appeal and came to hold that the plea of retrenchment had not been established. Thus, the appeal by the Company was allowed and the appeal of the workmen was dismissed. That is how two appeals have been brought before this Court out of one and the same award.

7. We have heard counsel for the parties. Written submissions have also been filed in support of their respective stands.

8. We are inclined to take the view that the Division Bench has adopted too strict an approach in dealing with the matter. It is true that the stand taken by the Union that work had not been provided on 13th October, 1980 was wrong in view of the fact that a substantial number of casual workmen out of the 186 had really worked on the 13th and the two following days. The Union had mixed up its claim of confirmation with stoppage of work leading to retrenchment. The Union obviously realised its mistake when the Company filed its counter-statement making a definite assertion that bulk of the workmen had worked on 13th, 14th and 15th of October, 1980. The Tribunal did examine the question of confirmation on the basis of days of work put in by the workmen. It came to find that 131 persons out of the list of 186 appended to the reference had as a fact worked for 240 days. The number of 186 was reduced to 181 on account of duplication or death and the remaining 50, according to the Tribunal, had not completed 240 days of work and were, therefore, not entitled to confirmation. We are of the view that in the facts and circumstances appearing on the record it was not appropriate for the Division Bench to dismiss the claim of the workmen altogether. While it is a fact that the workmen had made tall claims which they had failed to substantiate, it was for the Tribunal and the High Court to appreciate the material on the record and decide as to which part of the claim was tenable. The finding of the Tribunal that 131 workmen had put in more than 140 days of work was arrived at on the basis of some evidence; it may be that better particulars and clear evidence should have been placed before the Tribunal. Quantum of evidence or appreciation thereof for recording findings of fact would not come within the purview of High Court's extraordinary jurisdiction under Art. 226 of the Constitution. The finding of fact that 131 workmen out of the list appended to the reference had completed 240 days of work should, therefore, not have been disturbed by the Division Bench of the High Court.

9. The Tribunal had given the relief on the basis that the statutory requirement of Section 25-F of the Act had not been complied with. As the Division Bench found, and we find no justification to take a different view, the case of termination of employment had indeed not been made out. On that footing a direction for reinstatement with full back wages ought not to have been given we are, therefore, inclined to mould the relief available to the workmen.

10. The claim of confirmation of 131 workmen as found by the Tribunal and upheld by the learned Single Judge of the High Court shall be restored. Relief of back wages in the facts and circumstances would, however, not be granted except to the extent it has been covered by two interim orders of this Court dated 14th February, 1986 and 5th May, 1988. Such payments as have

been made shall not be recovered.

11. Parties are directed to bear their respective costs throughout.

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