

Sudhoo

Vs

Hajilal Mohd. Biri Works and Others

Civil Appeal No. 4861 of 1989

(Smt. M. S. Fathima Beevi, Kuldip Singh JJ)

06.08.1990

JUDGMENT

KULDIP SINGH, J. -

1. Sudhoo filed an appeal under Section 31(2) of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (hereinafter called 'the Act') before the Prescribed Authority seeking his reinstatement in the service of M/s. Haji Lal Mohd. Biri Works, Allahabad (hereinafter called 'the establishment'). He stated before the Prescribed Authority that he was a permanent employee of the transport section of the establishment and after working continuously for 30 years his services were terminated on January 8, 1977 without any prior notice.

2. The establishment in its written statement before the competent authority took the stand that Sudhoo was never in their employment and as such the question of terminating his services did not arise.

3. Sudhoo produced Shaukat Ali and Shiv Murat two witnesses before the Prescribed Authority. On the other hand the establishment produced Saeed Mohd. Yunus Naqvi as their sole witness. The attendance and wage register was also produced before the authority.

4. On appreciation of evidence before it, the Prescribed Authority held as under :

"I have heard the arguments of the representatives of both the parties, their statements, documents and evidence available in this appeal and after considering the various aspects of the case, I have come to the conclusion that the appellant Shri Sudhoo has been working for many years in the firm of the respondent, because the witness for the respondent has accepted in his evidence that Shri Sudhoo used to work on the vehicles of Firm Haji Lal and that he also used to work on the vehicles being run in the name of Shri Phiroj also. Besides these two, no third person's vehicles ever stood in the garage of the firm. The witness in his evidence has also stated that Firm Haji Lal has no partner. Shri Firoj who is the son of the owner of the firm, used to work for the firm in regard to the bank and the vehicles run in his name also used to work for the firm in regard to the bank and the vehicles run in his name also used to carry goods of the firm. For all these reasons it is proved that Shri Sudhoo is the employee of the firm Haji Lal. The contention of the respondent that because Shri Sudhoo has himself not given evidence hence he is not an employee, is baseless. Shri Sudhoo is in no condition to give evidence because due to his weak eyesight and deaf hearing he is able to see or hear with great difficulty. In my opinion

if Shri Sudhoo had not been on such a condition he could have given evidence and would have been able to explain the reality in greater detail than his witnesses."

5. The Prescribed Authority directed the establishment to pay Sudhoo Rs. 6840 as arrears of pay from the date of termination of his services. The Authority further ordered that since Sudhoo was not physically fit to work he be paid Rs. 2500 as compensation in lieu of reinstatement.

6. The establishment filed writ petition before the High Court challenging the order of the Competent Authority. The High Court allowed the writ petition and set aside the order of the Prescribed Authority dated January 18, 1980. This is Sudhoo's appeal through special leave petition against the judgment of the High Court.

7. The High Court allowed the writ petition on the following two grounds :

(1) The finding recorded by the Prescribed Authority was based on no evidence.

(2) That no appeal was maintainable before the Prescribed Authority under Section 31(2)(a) of the Act.

8. We have gone through the statements of the two witnesses produced by the appellant before the authority. The findings of the authority are based on the appreciation of evidence produced by the parties before the Authority. We do not agree with the High Court that the findings recorded by the Authority are based on no evidence. The High Court should not have interfered with the findings of fact reached by the Prescribed Authority on appreciation of evidence.

9. To appreciate the second ground on which the High Court set aside the order of the Competent Authority, we may examine the provisions of Section 31 of the Act which are as under :

"31. Notice of dismissal. - (1) No employer shall dispense with the services of an employee who has been employed for a period of six months or more, except for a reasonable cause, and without giving such employee at least one month's notice or wages in lieu of such notice :

Provided that such notice shall not be necessary if the services of such employee are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held by the employer for the purpose.

(2)(a) The employee discharged, dismissed or retrenched may appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer or on the ground that such punishment of discharge or dismissal was severe.

(b) The appellate authority may, after giving notice in the prescribed manner to the employer and the employee, dismiss the appeal or direct the reinstatement of the employee with or without wages for the period during which he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case.

(3) The decision of the appellate authority shall be final and binding on both the

parties and be given effect to within such time as may be specified in the order of the appellate authority."

10. The High Court on the interpretation of above quoted section came to the conclusion that appellant Sudhoo was prevented from doing the work by the establishment and since no order of retrenchment, discharge or dismissal was passed the provisions of Section 31 were not attracted. The High Court was patently in error. The Act is a measure of social legislation to give protection to the workmen employed in the beedi and cigar industry. The provisions of the Act are to be liberally construed. Whenever a workman approaches the Prescribed Authority under Section 31(2) of the Act with a complaint that his employment has been brought to an end by 'the employer without any reasonable cause, the Prescribed Authority is bound to adjudicate the same. It hardly matters whether the employment was terminated by written order, oral direction or by stopping the workman from entering the place of work. The Prescribed Authority in this case found as a fact that the appellant was employee of respondent-establishment and his services were arbitrarily terminated. We are, therefore, of the view that High Court was wrong in holding that the appeal of Sudhoo was not maintainable under Section 31(2) of the Act.

11. From the reasons given above we allow the appeal set aside the judgment of the High Court and restore the order of the Prescribed Authority dated January 18, 1980. We direct the respondent, establishment to pay Rs. 6840 as back wages and Rs. 2500 as compensation. The respondent-establishment shall pay interest from January 18, 1980 till the date of payment at the rate of 12 per cent per annum. The respondents are further directed to pay the amount to the appellant within three months from today. The appeal is allowed with costs. We quantify the costs as Rs. 3000.

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