Oswal Pressure Die Casting Industry, Fariadabad

Vs

Presiding officer

(G. T. Nnanvti, Syed Shah Mohammad Quari JJ)

20.02.1998

JUDGMENT

1. Leave granted.

2. The only point that arises for consideration in this appeal is whether services of the respondent, who can be said to have been appointed or probation, could not have been terminated without holding an inquiry. The High Court held that it was necessary to hold inquiry before coming to the conclusion that he was not suitable or fit for being continued in service and as so such inquiry was held termination of his services was bad.

3. The respondent was appointed as a helper on probation. The appointment letter dated 14.3. 1992 stated thus:-

> "You are appointed for a period of a 4 months on probation. If you continue in the service, this period will automatically increase for 4 months. This period will further increase for 3 months if the Management does not give you in writing a letter of your confirmation and during this period or at the end, your services can be terminated without assigning any reason or giving any notice."

4. On 13.2. 1993 his services were terminated by an order which reads as under:-

> "You were appointed on probation in the service on 14.3.1992 and you are not found fit to confirm. Therefore, your services are terminated from today.""

5. The termination order was challenge by the respondent before the Labour Court. Agreeing with the contention of the appellant the Labour Court held that "there is not dispute regarding the proposition of law that termination of probationer of his services by the employer after making over-all assessment was legal and justified". But it held that the impugned order was not an order of discharge simplicitor as it was stated in the order that the work of the respondent was not found satisfied and, therefore, it was necessary to hold a domestic inquiry before passing that order. It therefore, held that the termination order was bad and ordered reinstatement with full back wages.

6. The appellant challenged that order before the High Court. It was contended before the High Court that as the respondent was appointed on probation it was not necessary for it to hold in quit before termination his services as he was not found fit for being continued in service. The High Court also proceeded on the basis that the respondent was appointed on probation. But it held that his services could not have been terminated unless his work was found to be unsatisfactory. It

further held that in order to sustain the order it was necessary for the appellant to adduce evidence to show that the work of the respondent was not satisfactory. A such evidence was not led before the Labour Court or before the High Court it held that the action of the Management was arbitrary and not sustainable in law. The writ petition was, therefore, dismissed.

7. From the letter of appointment it is quite clear that the respondent was appointed on probation. The High Court was also inclined to take that view and for that reason it did not uphold that part of the award of the Labour Court whereby it was held that Section 25-F of the Industrial Disputes Act applies to the facts of the case. The High Court did not agree with the finding of the Labour Court that the order of termination was not an order of discharge simplicitor as it was stated in it that "you are not found fit to confirm" and, therefore, it was necessary to hold a departmental inquiry. It however, held that it was necessary for the appellant to produce material to show that respondent's performance was not satisfactory and as no such material was produced the order of termination was bad. We find, as disclosed by the award of the Labour Court, that the appellant had examined two witnesses, Satish Dedeja and Om Parkash to prove that his work was not satisfactory. It was, therefore, not correct to say that no evidence was led by the appellant to prove that the work of the respondent was not satisfactory. Both the witnesses had clearly stated that he was found negligent in his work and because of his negligence he had met with an accident in the factory premises. It was not the case of the respondent that the action of the employer was malafide. The Labour Court had also not held that the satisfaction of the Management was vitiated by malafides. It had struck down the order of termination on the ground that it was astigmatic and, therefore, it could not have been passed without holding a domestic inquiry. The High Court rightly did not accept that finding. What the High Court failed to appreciate was that it was not open to it to sit in appeal over the assessment made by the employer of the performance of the employee. Once it was found that the assessment made by the employer was supported by some material and was not malafide it was not proper for the High Court to interfere and substitute its satisfaction with the satisfaction of the employer. The High Court was also wrong in holding that in order to support its satisfaction it was necessary for the appellant to produce some reports or communication or other evidence to show that performance of the respondent was below the expected norms. We find that the whole approach of the High Court was wrong and, therefore, the order passed by it will have to be set aside. We, therefore, allow this appeal, set aside the judgment and order passed by the High Court and also the award passed by the Labour Court and hold that the impugned termination order was validly passed by the appellant.