SUPREME COURT OF INDIA

THE MANAGEMENT OF M/S. INDIAN IRON & STEEL CO. LTD.

Vs.

PRAHLAD SINGH

03/11/2000

(S. Rajendra Babu, & Shivaraj V. Patil.)

JUDGMENT

Shivaraj V. Patil,J.

Leave granted.

In this appeal the appellant is assailing the order made on 29.5.1999 by the learned single Judge of the High Court in CWJC No. 1458 of 1997(R) as well as the order of the Division Bench of the High Court confirming the same.

At the instance of sponsoring union a dispute was referred for adjudication to the Central Government Industrial Tribunal, No. 1, Dhanbad (for short 'Tribunal'). The dispute was "whether the management of M/s. IISCO Ltd., Chasnalla Colliery, P.O. Chasnalla, Distt. Dhanbad was justified in terminating the services of Shri Prahlad Singh, Magazine Clerk vide their letter No. 28 (IV)/2008 dated 8.10.1974. If not, to what relief the workman concerned is entitled."

The Tribunal, after considering the material placed before it and taking into consideration the submissions made, recorded findings that the respondent-workman lost his lien on the appointment in view of the orders 10(f) and (h) of the Standing Orders having regard to the facts of the case either admitted or found established. The Tribunal based on records also took note of the fact that the claim of the respondent-workman in raising the dispute after a period of about 13 years from the date of termination was too stale to grant any relief. In this view the Tribunal held that order of termination of services of the respondent was justified and he was not entitled to any relief. It is this award which was assailed by the respondent before the learned single Judge of the High Court in the writ petition. The writ petition was allowed quashing the award of the Tribunal, directing the appellant to reinstate the respondent in service with full back wages from the date when the dispute was referred by the appropriate Government to the Tribunal for adjudication. The appellant unsuccessfully challenged this order of the learned single Judge before the Division Bench of the High Court. In these circumstances appellant has approached this Court.

Learned counsel for the appellant contended that the impugned orders could not be sustained at all; the learned single Judge was not right in quashing the award passed by the Tribunal without even stating as to how the findings of fact recorded by the Tribunal were wrong; the learned single Judge did not also find that the findings of facts recorded by the Tribunal were either perverse or unreasonable. Similarly the Division Bench of the High Court committed an error in dismissing the appeal without examining the questions raised in the appeal.

Learned counsel for the respondent argued in support and justification of the impugned orders stating that even if the claim had become stale the relief could be moulded appropriately. We have carefully examined the submissions made by the learned counsel for the parties. The respondent was granted leave from 1.7.1974 to 20.9.1974. He did not resume duty after expiry of the said period of leave. After waiting for more than two weeks the appellant issued notice dated 8.10.1974 terminating the services of the respondent with effect from 21.9.1974. On the basis of material placed on record the Tribunal found that after receiving the letter dated 8.10.1974 terminating his services the respondent slept over for a period of about 13 years. It is only in April, 1987 the respondent wrote letters to the appellant that too without making any reference to his alleged illness. Orders 10(f) and (h) of the Standing Orders read as follows: -

"10(f) If a workman remains absent beyond the period of leave originally granted subsequently extended, he shall lose lien on his appointment unless he:

(a) returns within ten days of expiry of his leave and

(b) explains to the satisfaction of the manager his inability to return on the expiry of his leave."

xxx xxx xxx

"(h) Notwithstanding anything mentioned above, any workmen who over-stays his sanctioned leave or remains absent without reasonable cause will render himself liable for disciplinary action."

Referring to these Standing Orders and applying them to the admitted facts of the case the Tribunal in paragraph 25 of the order has held thus: -

"25. There is nothing on the record to show that after the year 1974, when the workman was informed of the loss of lien on his appointment through Ext.-4 anything was done in this regard by or on behalf of the workman till October, 1986. From Ext.-2 it will appear that it was in December 1987 that the management had received letter from the Asstt. Labour Commissioner (Central), Dhanbad about raising of this dispute to which the management replied by its letter dated 12.4.88. Thus the dispute appears to have been raised in the year 1987, about 13 years after the intimation was sent to the workman through Ext.-4. This would make the claim to be too stale to grant any relief to the workman at this stage.

Even without it, I have already held that the workman had lost his lien on his appointment on his inability to return on the expiry of the leave. That loss of lien being automatic, the workman thereafter did not remain in service and there was nothing illegal about that. The automatic termination was in accordance with the provisions contained in the Standing Orders which was binding both on the management, as well on the workman."

The learned single Judge without discussing the material on record and the findings recorded by the Tribunal proceeded to hold that the order dated 8.10.1974 issued by the appellant terminating the services of the respondent was illegal, arbitrary and violative of the principles of natural justice saying that it was issued without holding a domestic inquiry. The learned single Judge referred to the cases of Uptron India Ltd. vs. Shamim Bhan (AIR 1998 SC 1681) and Delhi Transport Corporation vs. D.T.C. Mazdoor Congress and another (AIR 1991 SC 101) and took a view that it helped the cause of the respondent. In the first case the Tribunal itself in the award held that the termination of services of the workman amounted to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act and since the other legal requirements had not been followed

the order of termination was bad. In the second case the condition of appointment of service regulations of the Delhi Transport Corporation empowering the management for removal of the workmen from service without assigning any reason was considered. It is stated that "Regulation 9(b) does not expressly exclude the application of the audi alteram partem rule and as such the order of termination of service of a permanent employee cannot be passed by simply issuing a month's notice under Regulation 9(b) or pay in lieu thereof without recording any reason in the order and without giving any hearing to the employee to controvert the allegation on the basis of which the purported order is made".

In our view on the facts of the case in hand the aforementioned two decisions were of no avail to support the case of the respondent. The learned single Judge also found fault with the Tribunal as to the finding that the claim of the respondent was too stale to grant any relief when parties had not raised such a plea. When the Tribunal on proper and objective appreciation of the material on record found that the claim was made by the respondent after 13 years, it was open to it to refuse relief to the respondent. Moreover, the Tribunal did not refuse relief merely on the ground of delay and laches as is evident from paragraph 25 of the order extracted above inasmuch as the Tribunal has recorded that even without considering the question of delay the respondent had lost his lien on his appointment.

The learned single Judge has acted as a court of appeal in exercising jurisdiction under Articles 226 and 227 of the Constitution of India, that too without finding that the findings of fact recorded by the Tribunal were either perverse or unreasonable. The Division Bench of the High Court simply dismissed the appeal saying that no reason was found to interfere with the order of the learned single Judge.

Whether relief can be declined on the ground of delay and laches, depends on the facts and circumstances of each case. In this case claim was made almost after a period of 13 years without any reasonable or justifying ground and there was nothing on record to explain this delay as held by the Tribunal. When the respondent did not make claim for 13 years without any justification and on merits also he had no case, the Tribunal did not rightly grant him any relief. Even otherwise the findings of facts recorded by the Tribunal in the light of the Standing Orders aforementioned cannot be said to be untenable or perverse.

Thus we find merit in the appeal. Hence it is allowed for the reasons stated above. The order of the learned single Judge and that of the Division Bench affirming the same impugned in this appeal are set aside and the award of the Tribunal is restored. Parties to bear their own costs in this appeal.