SUPREME COURT OF INDIA

Vikramaditya Pandey

Vs.

Industrial Tribunal, Lucknow

C.A.No.5360 of 1997

(S.R.Babu and S.V.Patil JJ.)

15.01.2001

JUDGMENT

Shivaraj V. Patil, J.

1. This appeal is directed against the order dated 9.5.1996 made by the Allahabad High Court in Civil Miscellaneous Writ Petition No. 14 of 1989.

2. The appellant was employed on 4.12.1981 as a clerk on ad hoc basis by respondent No. 2 U.P. Rajya Sahkari Bhumi Vikas Bank Ltd. (for short the Bank). He was serving as such till 19.7.1985 continuously with small motivated breaks in between to ensure that the appellant did not have continuous service of more than 89 days. His services were terminated by an oral order dated 19.7.1985. He raised an industrial dispute challenging termination of his services. Respondent No. 1 Industrial Tribunal after holding inquiry and on the basis of the evidence held that termination of the services of the appellant was clearly retrenchment as defined in Section 2(S) of the *U.P. Industrial Disputes Act, 1947* and was also contrary to Section 6(N) of the said Act (hereinafter referred to as the State Act). The Tribunal refused to grant relief of reinstatement on the ground that the regular appointment to the post held by the appellant could only be made by the U.P. Cooperative Institutional Service Board as per *U.P. Cooperative Societies Employees Service Regulations, 1975* (for short the Regulations) and as such he could not be reinstated in service as a regular employee. However, the Tribunal granted benefits of retrenchment with 12% interest for the relevant period. Since the Tribunal denied the relief of reinstatement and full back wages the appellant filed the writ petition aggrieved by that part of the order of the Tribunal. It may be stated here itself that the respondent No. 2 did not challenge the Award of the Tribunal.

3. The High Court concurred with the finding recorded by the Tribunal that it was a case of retrenchment but was of the opinion that no interference was called for with the Award passed by the Tribunal having regard to Regulations 5 and 103. In the view it took the High Court dismissed the writ petition. Hence the aggrieved appellant is before us in this appeal.

4. The learned counsel for the appellant strongly contended that the Tribunal as well as the High Court were not right and committed a manifest error in not granting relief of

reinstatement with back wages to the appellant having held that the termination of the services of the appellant was illegal; the Tribunal was right in taking the view that provisions of the Regulations to the extent inconsistent with Industrial Disputes Act, 1947 or other labour laws will not be operative but proceeded to deny the relief of reinstatement and back wages on the ground that provisions regarding the manner of making regular or permanent appointment are statutory and could not be violated; hence the appellant could not be reinstated on a regular vacancy as a regular appointment could be made only under the Regulations; but the High Court dismissed the writ petition on a misreading of Regulation 103 holding that in case there is any inconsistency between the Regulations and the Industrial Disputes Act, 1947 and any other labour laws for the time being force, the Regulations shall be operative. Thus the misreading of Regulation 103 lead to the wrong conclusion by the High Court although the High Court rejected the argument advanced on behalf of respondent No. 2 that it was not a case of retrenchment.

5. The learned counsel for the respondent No. 2 argued supporting the impugned order. He contended that the appellant was appointed on ad hoc basis for not more than 90 days at a time and at the expiry of the period mentioned in ad hoc appointment he ceased to be an employee of the Bank. According to him it was not a case of retrenchment; the Tribunal and the High Court were right in denying the reinstatement and back wages to the appellant in the facts and circumstances of the case; in case the appellant is to be reinstated with full back wages when he was not at all regular employee, it will result in great hardship to the Bank as back wages have to be paid for more than 15 years. He lastly submitted that the appellant could not be reinstated as a regular employee when he was not a regular employee and any reinstatement of appellant in service will be contrary to the Regulations.

6. We have carefully considered the respective contentions made on behalf of the parties. It is not in dispute that the Award passed by the Tribunal was not challenged by the Bank. The Tribunal as well as the High Court have concurrently found that the case of the appellant was one of retrenchment and that the appellant was working between the period 4.12.1981 to 19.7.1985 with small motivated breaks and that in any case he worked for more than 240 days in a year before termination of services. The Tribunal in para 5 of its Award has stated thus: -

> "It is however evident that he worked for much more than 240 days in an year before his service ceased. It is also clear that breaks were given and ad hoc appointment made every time for 90 days or less. This was evidently done to stick to the letter of the law regarding the authority of the bank in regard to making appointments only for limited periods in ad hoc or temporary arrangement, as specified in the service Regulations 1975. It is however, clear that services of the workman were needed as the work was available but a continuing temporary appointment was not made even though under Regulation 5(iii) of the Service Regulations such longer term stop-gap appointment (and not only for 90 days) can be made with prior approval of the competent authority (the Board). It would thus, appear that attempt was made confirm to the letter of law and not its spirit in so far as provisions regarding retrenchment under the Industrial Disputes Act go."

7. The only issue before the High Court was whether the appellant was entitled to reinstatement in service with back wages, once the termination of his services had been held to be illegal and more so when the same was not challenged. Ordinarily, once the termination of service of an employee is held to be wrongful or illegal the normal relief of reinstatement with full back wages shall be available to an employee; it is open to the employer to specifically plead and establish that there were special circumstances which warranted either non-reinstatement or non-payment of back wages. In this case we do not find any such pleading of special circumstances either before the Tribunal or before the High Court. Since Regulation 103 of the Regulations is referred to in the order of the Tribunal as well as in the High Court and it has bearing in deciding the controversy, the focus is needed on it. It reads:-

> "103. The provisions of these regulations to the extent of their inconsistency with any of the provisions of the *Industrial Disputes Act, 1947*, U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962, Workmen Compensation Act, 1923 and any other Labour Laws for the time being in force, if applicable to any cooperative society or class of cooperative societies, shall be deemed to be inoperative."

8. By plain reading of the said Regulation it is clear that in case of inconsistency between the Regulations and the provisions of the *Industrial Disputes Act, 1947*, the State Act, the *Workmen Compensation Act, 1923* and any other labour laws for the time being in force, if applicable to any any cooperative society or class of cooperative societies, to that extent Regulations shall be deemed to be inoperative. In other words, the inconsistent provisions contained in the Regulations shall be inoperative, not the provisions of the other statutes mentioned in the Regulation 103. The Tribunal in this regard correctly understood the Regulation but wrongly refused the relief on the ground that no reinstatement can be ordered on a regular employment in view of the provisions contained in the said Regulation. But the High Court read the Regulation otherwise and plainly misunderstood it in saying that if there is any inconsistency between the Regulations and the Industrial Disputes Act, 1947 and other labour laws for the time being in force the Regulations will prevail and the Industrial Disputes Act, 1947 and other labour laws shall be deemed to be inoperative. This misreading and wrong approach of the High Court resulted in wrong conclusion. In the view it took as to Regulation 103 the High Court proceeded to state that even if there was retrenchment in view of Regulation 5 of the Regulations the Labour Court was not competent to direct reinstatement of the appellant who was not recruited in terms of Regulation 5 because the Labour Court had to act within the ambit of law having regard to the Regulations by which the workman was governed. In this view the High Court declined relief to the appellant which in our view cannot be sustained. The Tribunal felt difficulty in ordering reinstatement as the appellant was not a regular employee. The appellant ought to have been ordered to be reinstated in service once it was found that his services were illegally terminated in the post he was holding including its nature. Thus in our opinion both the Tribunal as well as the High Court were not right and justified on facts and in law in refusing the relief of reinstatement of the appellant in service with back wages. But, however, having regard to the facts and circumstances of the case and taking note of the fact that the order of termination

dates back to 19.7.1985 we think it just and appropriate in the interest of justice to grant back wages only to the extent of 50%.

9. In the result for what is stated above, we set aside the Award of the Tribunal and order of the High Court in regard to denial of relief of reinstatement of the appellant with back wages and direct his reinstatement in service as he then was on the date of termination of his services, with 50% back wages. This appeal is allowed accordingly in the terms stated above. The parties to bear their own costs.