SUPREME COURT OF INDIA

U. P. Drugs and Pharmaceuticals Co. Ltd.

Vs.

Ramanuj Yadav

C.A.No.2537 of 2001

(Y. K. Sabharwal and B. N. Agrawal, JJ.)

23.09.2003

JUDGEMENT

Y. K. SABHARWAL, J.:-

1. The appellant directed the respondents and few other workmen to cease work w.e.f. 31st March, 1987. According to the appellant, they were casual workers and had worked for a short time and since there was no work, they were asked to cease work and their services were, thus, terminated. The workmen approached the State Government of Uttar Pradesh against their termination and pursuant thereto, the State Government, in exercise of power under S. 4(k) of Uttar Pradesh Industrial Disputes Act, 1947 (for short, 'the U. P. Act') referred the matter to the Labour Court of Lucknow to decide the dispute. It was not disputed before the Labour Court that none of the workmen had worked for 240 days in the year preceding the date of termination. In this view, the Labour Court, in the award dated 31st May, 1991, concluded that the workmen/respondents were not entitled to protection of S. 6-N of the UP Act. According to Labour Court, the workmen ought to have completed 240 days in a calendar year preceding the date of termination/retrenchment so as to claim benefit of S. 6-N of the U. P. Act. Considering the evidence, the Labour Court also held that all the 29 workmen had worked for more than 240 days in each year during the past years prior to 1986. The effect of the finding recorded by the Labour Court is that the workmen have worked

for more than 240 days from the year 1983 to 1986 but they having not worked for 240 days from 1st April, 1986 to 31st March, 1987, they were not entitled to protection and benefit of the continuous service under the UP Act. On appreciation of evidence, the finding recorded by the Labour Court is as follows :

"In these circumstances, I arrive to the conclusion that the employer have failed to dispute the evidence of the workmen that all the 29 workmen had worked for more than 240 days in each year during the past years prior to 1986. In other words, I reached to the conclusion that although these workman have not completed 240 days of service in a year preceding the date of their termination but have worked for more than 240 days in each year prior to that after joining the service."

2. Out of 29 workmen before the Labour Court, the award was challenged by 18 workmen in a writ petition filed in the High Court. The said workmen are respondents in this appeal. By the impugned judgment, the High Court, setting aside the award, has held that under S. 6-N read with S. 2(g) of the UP Act, it is not necessary for the workmen to complete 240 days in the preceding year and since workmen had completed 240 days in earlier calendar years preceding to 12 months on the date of retrenchment, they were deemed to be in a continuous service and hence their termination in violation of S. 6-N of the UP Act was illegal. The respondents have been held to be in continuous service. The High Court has directed that they shall be given consequential service benefits including reinstatement except the backwages. The appellant has been directed to pay the wages to the respondents from the date of reinstatement.

3. Assailing the impugned judgment, it has been contended that for applicability of S. 6-N read with S. 2(g) of the UP Act, it is essential for a workman to complete 240 days in preceding 12 calendar months. Learned counsel for the appellant argues that the respondents having worked for 240 days or more during the period earlier to 12 calendar months is inconsequential. The undisputed fact is that the respondents whose services were terminated w.e.f. 31st March, 1987, did not actually work for 240 days for the period from 1st April, 1986 to 31st March, 1987. The finding of the Labour Court, however, is that for earlier years, they did work for more than 240 days. What is the consequence of this finding is the question. The correctness of the impugned judgment is required to be examined on these facts. We may note that the respondents have also challenged the impugned judgment in so far as it declines payment of back wages to them. Mr. Jitender Sharma, learned advocate appearing for the respondents, supporting the impugned judgment on the aspect of interpretation of Ss. 6-N and 2(g), contends that if the contention propounded by the management is accepted, it will provide a handle of abuse in the hands of the management.

4. Section 6-N was inserted in the UP Act by S. 8 of the UP Act No. 1 of 1957. It reads as under :

6-N. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched

by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice :

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specified a date of the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months, and

(c) notice in the prescribed manner is served on the State Government."

5. The expression 'continuous service' is defined in S. 2(g) of the UP Act which reads as under :

2.(g) 'Continuous service' means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman, and a workman, who during a period of twelve calendar months has actually worked in an industry or not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry.

Explanation.- In computing the number of days on which a workman has actually worked in an industry, the days on which-

(i) he has been laid off under the agreement or as permitted by standing order made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or under any other law applicable to the industrial establishment, the largest number of days during which he has been so laid off being taken into account for the purposes of this clause,

(ii) he has been on leave with full wages, earned in the previous year, and

(iii) in the case of a female, she has been on maternity leave; so however that the total period of such maternity leave shall not exceed twelve weeks, shall be included."

6. Let us also examine the central legislation. In the Industrial Disputes Act, 1947 (for short, the 'ID Act'), Chapter V-A containing Ss. 25-A to 25-J was inserted by the Industrial Disputes (Amendment) Act, 1953 (43 of 1953) w.e.f. 24th October, 1953. Section 25-B as it stood then was as under:

"25-B. Definition of one year of continuous service.

For the purposes of Ss. 25-C and 25-F, a workman who, during a period of 12 calendar months, has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry.

Explanation.- In computing the number of days on which a workman has actually worked in any industry, the days on which-

(a) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or under any other law applicable to the industrial establishment, the largest number of days during which he has been so laid off being taken into account for the purposes of this clause.

(b) he has been on leave with full wages, earned in the previous year, and

(c) in the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave shall not exceed twelve weeks.

Shall be included."

7. The same Amending Act introduced the definition of 'continuous service' in S. 2(eee) as under :

"2.(eee) 'continuous service' means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock out or a cessation of work which is not due to any fault on the part of the workman;"

8. Section 25-B was, however, substituted by Industrial Disputes (Amendment) Act, 1964 (36 of 1964) w.e.f. 19th December, 1964 and the same reads as under :

"25-B. DEFINITION OF CONTINUOUS SERVICE.- For the purposes of this Chapter.-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of Cl. (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation : For the purpose of Cl. (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid off under an agreement or as permitted by Standing Orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks."

9. The Amending Act of 1964 deleted S. 2(eee), having incorporated in S. 25-B itself the definition of 'continuous service.' It also brought in the concept of preceding 12 calendar months. The earlier definition did not mention 'preceding' with reference to period of 12 calendar months. It appears that the decision of this Court in Sur Enamel and Stamping Works Ltd. v. Workmen ((1964) 3 SCR 616) interpreting Ss. 2(eee) and 25-B led to the amendments made by Amending Act of 1964. In Sur Enamel, interpreting Ss. 2(eee) and 25-B, it was held that twin conditions were required to be fulfilled before a workman can be considered to have completed one year of continuous service in an industry. It must be shown first that the workman was employed for a period of not less than 12 calendar months and next that during those 12 calendar months, he had worked for not less than 240 days. In that case, the workman had not been employed for a period of 12 calendar months. Therefore, the Court held that it was unnecessary to examine whether actual days of work were 240 or more for in any case the requirements of S. 25-B would not be satisfied by mere fact of number of working days being not less than 240 days. The effect was that if a workman completes AIR 1963 SC 1914 actual 240 or more days of work in less than 12 calendar months, he would not be entitled to the benefit of beneficial legislation. This anomaly led to the amendment of the ID Act in the manner abovestated.

10. Under the aforesaid legislative background, the question involved is required to be considered. Section 2(g) of the UP Act does not require a workman, to avail the benefit of the deeming

provision of completion of one year of continuous service in the industry, to have worked for 240 days during 'preceding' period of 12 calendar months. The word 'preceding' has been used in S. 25-B of the ID Act as incorporated in the year 1964. Section 2(g) does not use the word 'preceding.' The concept of 'preceding' was introduced in the ID Act so as to give complete and meaningful benefit of welfare legislation to the working class. The approach to be borne in mind while interpreting the welfare legislation is illustrated in Surendra Kumar Verma etc. v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi and another ((1981) 1 SCR 789) where this Court has observed that semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions. AIR 1981 SC 422 : 1980 Lab IC 1292

11. Learned counsel for the appellant, however, relies upon Mohan Lal v. Management of M/s. Bharat Electronics Ltd. ((1981) 3 SCC 225). In that case, the Court was considering the scope of S. 25-B of the ID Act. It was observed that in order to invoke the fiction enacted in Cl. (2)(a) of S. 25-B, it is necessary to determine first the relevant date, i.e., the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within a period of 12 months, the workman has rendered service for a period of 240 days. It was held that if these three factors are affirmatively answered in favour of the workman pursuant to the deeming fiction enacted in Cl. (2)(a), it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in S. 25-F. In Mohan Lal's case, the appellant was employed with the respondent from 8th December, 1973. His services were abruptly terminated by letter dated 12th October, 1974 w.e.f. October 19, 1974. This Court said that it is not necessary for the purpose of Cl. (2)(a) of S. 25-B that workman should be in service for a period of one year. It was held that if he is in service for a period of one year and that service is continuous service within the meaning of Cl. (1), his services would be governed by Cl. (1) and his case need not be covered by Cl. (2). Clause (2) envisages the situation not governed by Cl. (1). Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of 12 calendar months counting backward and just preceding the relevant date the date of retrenchment. These were the facts under which it was held as to how the period of 240 days was to be calculated. The decision in the case of Mohan Lal does not lay down that if a workman had worked for more than 240 days in any number of years and if during the year of his termination, he had not worked for the said number of days, he would not be entitled to the benefit of S. 25-B. The question with which we are concerned was not under consideration in Mohan Lal's case. If the view point propounded by the management is accepted, then in every year the workman would be required to complete more than 240 days. If in any one year the employer gives him actual work for less than 240 days, the service of the workman can be terminated without compliance of S. 6-N of the UP Act, despite his having worked for number of years and for more than 240 days in each year AIR 1981 SC 1253 : 1981 Lab IC 806, 1973 Lab IC 87 except the last. Such an intention cannot be attributed to the UP Act. In the present case, as already noticed, the finding of the Labour Court is that the respondents worked for more than 240 days in each year from 1983 to 1986 but not having worked for 240 days in the year of termination, the termination was held by the Labour Court not to be violative of S. 6-N. Reference may also be made to the decision in Ramakrishna Ramnath v. Presiding Officer, Labour Court, Nagpur and another ((1970) 3 SCC 67) where this Court observed that the provision requiring an enquiry to be

made to find out whether the workman has actually worked for not less than 240 days during a period of 12 calendar months immediately preceding the retrenchment does not show that a workman, after satisfying the test, has further to show that he has worked during all the period he has been in service of the employer for 240 days in the year. The interpretation propounded for the appellant is wholly untenable. The decision in U. P. State Co-operative Land Development Bank Ltd. v. Taz Mulk Ansari and others (1994 Supp (2) SCC 745) relied upon by learned counsel for the appellant has no applicability since that was a case of Cl. (a) of S. 6-N and, therefore, S. 2(g) had no relevance.

12. The High Court has rightly concluded that the termination of the respondents was in violation of S. 6-N read with S. 2(g) of the UP Act.

13. Regarding denial of back wages to the respondents, in our view, no interference is called for having regard to the facts and circumstances of the case including the circumstance of the financial position of the appellant and the proceedings before the Board for Industrial and Financial Reconstruction.

14. For the foregoing reasons, we find no merit in the appeal. The same is accordingly dismissed. The Special Leave Petition No. 18267 of 2003 (CC-3847/2000) is also dismissed. The respondents are directed to be reinstated from November, 2003. They shall be paid wages from the month of November, 2003. There shall be no order as to costs.

Appeal dismissed.