SUPREME COURT OF INDIA

Nicks (India) Tools

Vs.

Ram Sarat

C.A.Nos.4146-4147 of 2001

(N. Santosh Hegde and S. B. Sinha JJ.)

25.08.2004

JUDGEMENT

Santosh Hegde, J.

1. The Government of Punjab referred the following industrial dispute between the workman and management of the appellant herein for adjudication under Section 10(1)(c) of the *Industrial Disputes Act, 1947* to adjudication by the Labour Court, Ludhiana in Reference No. 1145/1993:-

> "(1) Whether termination of services of Shri Ram Surat, workman, is justified and in order? If not, to what relief/exact amount of compensation is entitled."

2. The above dispute arose on a complaint made by the 1st respondent workman that he was working under the appellant management for a period of 12 years and his services were terminated on 12th May, 1993 without any notice, charge-sheet or inquiry. He also contended that he was drawing Rs. 2,750/- per month as his wages at the time of the termination of his services. He prayed for his reinstatement with full back wages and continuity of service.

3. The appellant management in the said reference filed a written statement contending that there was no relationship of employee and employer between the 1st respondent herein and the appellant from 12th of May, 1993. Since on the said date the workman voluntarily discontinued his services with the appellant after receiving all his dues in full and final settlement. Certain other preliminary objections, like maintainability of the reference on the ground that the 1st respondent was holding a supervisory post hence an industrial dispute was not maintainable, were also raised. The workman filed his rejoinder to the said written statement.

4. Based on the pleadings before it the Labour Court framed the following issues:-

"1) Whether relationship of master and servant existed between the parties on the alleged date of termination?

2) Whether the reference is not maintainable, as alleged?

3) Whether the claimant is not a 'Workman as defined under the Industrial Disputes Act?

4) Whether termination of the services of the workman is justified and in order?"

5. The Labour Court by its award dated 18th of May, 1998 held in regard to the first question that there existed a relationship of master and servant between the parties at the time of termination of services of the workman.

6. In regard to issues 2 and 3, the Labour Court held that the contention of the appellant management that the respondent No.1 was not a workman as defined under the Industrial Disputes Act cannot be sustained, hence the reference was valid.

7. In regard to issue No. 4 the Labour Court held that on the relevant date 1st respondent being in the service of the appellant management his services were wrongfully terminated. Hence, he was entitled for re-instatement, however, with regard to back wages it following a judgment of the Punjab and Haryana High Court reported in, in the case of *M. K. Kohli v. Afadeal Chemicals, Faridabad and another*[1] confined the same to 25% of the wages from the time his services were terminated till he was reinstated.

8. Being aggrieved by the said order of the Labour Court both the management as well as the appellant preferred writ petitions before the High Court of Punjab and Haryana at Chandigarh. So far as the management is concerned, it questioned the finding of the Labour Court that the services of the respondent workman were illegally terminated and the consequential awarding of back wages at the rate of 25% of the wages.

9. While the workman being aggrieved by the restricted back wages awarded by the Labour Court challenged that part of the award claiming the entire wages due to him for his wrongful termination of service since he was unemployed during the said period.

10. The High Court by the impugned judgment while dismissing the petition of the management agreed with the contention of the respondent workman and allowed his petition directing the payment of full back wages because of which the appellant has now become liable to not only to reinstate the respondent workman but also to pay the full back wages as claimed by the workman in his claim petition.

11. Shri U.U. Lalit, learned senior counsel appearing for the appellant in these appeals contended that the management had produced sufficient evidence to establish the fact that the workman had voluntarily left the services of the management after receiving his dues as a full and final settlement which can be seen from the receipt executed by the workman dated

22nd of April, 1993 marked by the Labour Court as M/X (M3). He also submitted that the said factum of his voluntary retirement and his receipt of dues in full and final settlement is established beyond reasonable doubt from the oral evidence led by the management, as also by documentary evidence produced by way of the payment receipt as well as the bonus register Ex. M/X.

12. He pointed out from the judgment of the Labour Court that the only ground on which the documentary evidence, especially, that of the receipt M/X (M3) was rejected by the courts below was on the ground that the same was not confronted to the workman when he was in the witness box, therefore, they held since the workman did not have an opportunity of either accepting or denying the contents and the signature of the said document, the courts below rejected the said evidence adduced on behalf of the appellant which according to the learned counsel is erroneous because strict rules of evidence are not applicable to a proceedings before the Labour Court. He endeavoured to submit that the workman had sufficient opportunity of cross examining the management witness and could have established the fact that the receipt relied upon by the appellant was not executed by him. He not having done the same when the management witness was in the witness box, the courts below should not have drawn an adverse inference.

13. Alternatively, he contended, at any rate the High Court was not justified in enhancing the back wages from 25% to 100% when the management has established that the workman was gainfully employed during the period when he was not in the service of the appellant.

14. Learned counsel appearing for the respondent understandably supported the finding of the Labour Court in regard to the evidentiary value of the receipt produced by the management. He further contended that the High Court was justified in enhancing the back wages to 100%, since the material produced by the appellant for the first time in the writ court showing that the respondent workman was gainfully employed could not have been accepted in evidence or relied upon for denying the workman his legitimate right to claim full back wages. He also submitted the said evidence was not reliable and in fact the workman was not gainfully employed.

15. Having heard the learned counsel for the parties and having perused the records we notice that the factum that the workman was in the service of the management till 22nd of April, 1993 is not disputed. While the workman contends that his services from that day were wrongfully terminated, the appellant contends that the workman voluntarily left the services of the appellant having taken all his dues. Since the respondent workman was in the service of the appellant management at least up to the 22nd of the April, 1993, the burden of proving that he voluntarily left the services then falls on appellant management. This the appellant contends is satisfied by the oral evidence adduced by the management and the documentary evidence produced in the form of the receipt M/X (M3) purportedly executed by the workman and the entries in the bonus register M/X. The Labour Court considering the said document, which is said to be a receipt executed by the respondent, noticed the fact that the original of this document was never produced by the appellant and what was produced was only a photocopy. Even this photocopy was not confronted to the workman when he was in

the witness box and the signature found in the said photocopy as also in the photocopy of the bonus register shows that though two documents came into existence simultaneously the ink with which the respondent workman is supposed to have signed the two documents was different. In such circumstances, it held that it was not safe to rely upon the said document to accept the case of the appellant. The High Court in this regard held though it may not be necessary to apply the strict rule of evidence in regard to production and proof of a document still the workman ought to have been provided with an opportunity to explain his version as to the alleged receipt having been executed by him and such opportunity not having been offered by confronting the document to the workman the appellant in effect has violated the principles of natural justice and hence by its act of default the workman's case cannot be prejudiced.

16. However, as stated above Shri U.U. Lalit, learned senior counsel contended that the workman was aware of the contents of the document because he had the photocopy of the document served on him, based on which he had cross examined the management witness. He further contended that since the workman had been unable to establish through his cross examination of the management witness that the receipt in question was not executed by him, it should be held that the document in question stands proved and the case of the management as to the voluntarily abandonment of service by the respondent after taking all his dues is also established.

17. We are unable to accept this argument because if we look into the overall proceedings before the Labour Court, we notice that though the management did take the stand that the workman had left the services of the appellant management voluntarily by receiving his total dues in full and final settlement it did not, at the stage of filing of its written statement, contend that the workman has executed a receipt which is now sought to be produced as Ex. M/X (M3). This coupled with the fact that the said document was not confronted to the respondent workman, in our opinion is sufficient to hold this document cannot be relied upon for establishing the fact that the management has proved its case that the workman had voluntarily left his services. The trial Court has further buttressed this finding by noticing the difference in the ink in the receipt as well as the bonus register as also the absence of revenue stamp in the receipt from which it drew an inference that the receipt in question may have been signed previously but was filled up subsequently. This finding of the Labour Court has been accepted by the High Court and this being a finding of fact and which cannot be said to be perverse, we are not inclined to interfere with the same in this appeal.

18. This leaves us to consider the next limb of the argument of Shri U.U. Lalit, learned senior counsel who contended that the Labour Court having come to the conclusion that in Ludhiana where the appellant's factory is situated, there are large number of other industries hence it was always possible for the respondent workman to have obtained a gainful employment on that basis, was justified in confining the back wages to only 25% of the full back wages, and the High Court in this regard erred in reversing that finding by not taking into consideration the additional material produced by the management in regard to this aspect of the case, i.e. of the respondent being gainfully employed during the relevant period. He also relied on two judgments of this Court in the case of *P.G.I. of Medical Education and*

Research, Chandigarh v. Raj Kumar[2] *and M.P. State Electricity Board v. Jarina Bee (Smt.)*[3].

19. In this regard, we notice that the Labour Court awarded only 25% of the back wages primarily relying on a judgment of the Punjab and Haryana High Court in the case of M.K. Kohli vs. Afadeal Chemicals, Faridabad and another 1997(2) LLN 299, the High Court in its judgment has noticed the fact that the said judgment was reversed by a Division Bench of the very same court in a subsequent judgment delivered in Civil Writ Petition No. 8665 of 2000, in the matter of State of Haryana vs. Ram Kumar and another, hence it found that the reliance placed by the Labour Court on the above said judgment of M.K. Kohli v. Afadeal Chemicals Faridabad and another was not sustainable.

20. Reliance placed by the learned counsel for the appellant in the case of P.G.I. of Medical Education and Research, Chandigarh (supra), in our opinion, does not take the case of the appellant any further. In that case, this Court held that the Labour Court being the final court of facts the superior courts do not normally interfere with such finding of facts unless the said finding of fact is perverse or erroneous or not in accordance with law. In the instant case, we have already noticed the basic ground on which the Labour Court reduced the back wages was based on a judgment of the High Court of Punjab and Haryana which, as further noticed by us, was overruled by a subsequent judgment of a Division Bench. Therefore, the very foundation of the conclusion of the Labour Court having been destroyed, the appellant could not derive any support from the above cited judgments of that Court. Similarly, in the case of M.P. State Electricity Board (supra), this Court only said that it is not an inevitable conclusion that every time a reinstatement is ordered, full back wages was the only consequence. This Court, in our opinion did not preclude that even in cases where full back wages are legally due, the superior courts are precluded from doing so merely because the Labour Court has on an erroneous ground has reduced such back wages. In the instant case, we have noticed that the trial court apart from generally observing that in Ludhiana, there must have been job opportunities available, on facts it did not rely upon any particular material to hold either such job was in fact available to the respondent and he refused to accept the same or he was otherwise gainfully employed during the period he was kept out of work. On the contrary, it is for the first time before the writ court the appellant tried to produce additional evidence which was rightly not considered by the High Court because the same was not brought on record in a manner known to law. Be that as it may, in the instant case we are satisfied that the High Court was justified in coming to the conclusion that the appellant is entitled to full back wages.

21. For the reasons stated above these appeals fail and the same are dismissed.

Appeals dismissed.

[1]*1997(2) LLN 299*
[2]*2001(2) SCC 54*
[3]*2003(6) SCC 141*