SUPREME COURT OF INDIA

Lal Singh Ram Singh Rajput

Vs.

Assistant Executive Engineer

C.A.No.3874 of 2003

(N.Santosh Hedge and B.P.Singh JJ.)

17.03.2005

JUDGMENT

N.Santosh Hegde, J.

1. The termination of the appellant herein from the post of watchman without following the provisions of Section 25 (F) of the *Industrial Disputes Act, 1940* (The Act) came to be referred to the Labour Court, Bijapur. The Labour Court was pleased to allow the reference in part and directed the respondent to reinstate the appellant at the existing rate of wages. However, the other benefits like backwages, continuity of service and consequential benefits were not allowed. This award gave rise to two writ petitions. One by the first respondent herein challenging the award of the Labour Court directing reinstatement, this was done in writ petition No. 8794 of 1998 and another by the appellant workman in Writ Petition No. 12089 of 1998 seeking the benefits of continuity of service and backwages.

2. The High Court by its order dated 24.3.1998 dismissed the writ petition of the respondent herein even without issuing notice, at the stage of admission itself. The writ petition filed by the workman came to be allowed and the learned Single Judge directed the first respondent not only to reinstate the appellant-workman as directed in the award of the Labour Court but also granted the benefit of continuity of service but without backwages. The order of the learned Single Judge in that writ petition was dated 30th June, 1999.

3. Thus, it is seen the writ petition filed by the management challenging the award came to be dismissed and the writ petition filed by the workman seeking enhanced relief came to be allowed granting continuity of service.

4. The management in this case first filed a writ appeal No. 4974 of 1998 before the Division Bench of the High Court in which it challenged the dismissal of its writ petition challenging the award of the Labour Court by the learned Single Judge. This writ appeal came to be dismissed by the appellate bench at the stage of admission itself without notice to the appellant. Thus the award of the Labour Court became final there being no further appeal by

the management. This order of the appellate court dismissing the said writ appeal ex-parte came to be made on 2nd of December, 1998.

5. The appellant-management filed another writ appeal against the order of the learned Single Judge in the writ petition filed by the workman seeking enhanced relief. This was done by way of a writ appeal No. 8318 of 1999, very much after its earlier writ appeal had been dismissed. Obviously in the second writ appeal the management did not disclose the fact that its earlier writ appeal challenging the award had already been dismissed. This writ appeal which could have been only against the order of the Single Judge granting continuity of service came to be entertained by another Division Bench of the High Court, notice of which was issued to the workman who had no knowledge of the earlier writ appeal being dismissed. In that background, obviously the second Division Bench hearing the second writ appeal of the management was unaware of the judgment of another Division Bench made in writ appeal No. 4974 of 1998.

6. In the absence of any such information the Division Bench in the second writ appeal noted that the challenge in the said writ appeal was against the direction of the learned Single Judge granting reinstatement of the appellant-workman as also against the benefit of continuity of service and other consequential benefits granted. This, as stated above, is factually incorrect because the question of any challenge by the management against the reinstatement order made by the labour court as affirmed by the learned Single Judge and by the Division Bench by dismissal of appeal, could not have been the subject matter of a second appeal before the High Court.

7. Proceeding on that erroneous basis the Division Bench of the High Court considering the grounds raised by the appellant afresh and contrary to the view taken by the Division Bench in the earlier writ appeal reversed the findings of the Labour Court and came to the conclusion that the evidence produced by the appellant-workman in regard to his continuous work for 240 days in the management establishment was unacceptable. On the said basis it set aside the award of the Labour Court as well as the order of the learned Single Judge with a direction that the wages, if any, already paid to the workman should not be recovered. It is against this order of the Division Bench of the High Court the appellant is before us in this appeal. We do not think it is necessary for us to consider the grounds on which the High Court in the impugned order came to the conclusion that the appellant is not entitled to the benefit of Section 25(F) of the Act because the challenge, if any, on this ground by the respondent to the order of reinstatement made by the Labour Court is hit by the principle of res judicata.

8. As noticed hereinabove that issue stood concluded by the judgment of the Division Bench made in writ appeal 8794 of 1998 holding that there was no compliance of Section 25(F) of the Act by the respondent- management when the appellant's services were terminated, and there being no further challenge to the said order, that order being inter parties, the management was precluded from questioning the said reinstatement in the second writ appeal. It is because of the fault committed by the management in not bringing to the notice of the second Division Bench the factum of its earlier appeal being dismissed that misled the

High Court in the Second writ appeal into going to the question of validity of the order of termination, which question as stated above already stood concluded in favour of the workman. Hence, the question whether the workman had established that he had put in 240 days of continuous work immediately prior to his dismissal, was not a question available for the second Division Bench to be considered afresh. On that ground alone impugned order of the High Court is liable to be set aside.

9. This leaves us to consider the question whether the reliefs granted by the learned Single Judge in the writ petition of the workman granting him continuity of service should be interfered with in this appeal or not. Having perused the order of the learned Single Judge and the contents of the claim petition, we think at this distance of time it is not in the interest of justice to modify or interfere with the additional benefit granted by the learned Single Judge. Hence, we allow this appeal and set aside the impugned judgment and affirm the order of the learned Single Judge made in Writ Petition No. 12089 of 1998 dated 30th June, 1999 granting continuity of service which in effect would mean that the appellant-workman herein is entitled to the benefit of reinstatement as awarded by the Labour Court and continuity of service as granted by the learned Single Judge in the writ petition No. 12089 of 1998.

10. For the reasons stated above this appeal is allowed with costs of Rs. 5000/-.