SUPREME COURT OF INDIA

Krishi Utpadan Mandi Samity, Manglor

Vs

Pahal Singh

Appeal (Civil) 1871 of 2007

(S. B. Sinha and Markandeya Katju, JJ)

10.04.2007

JUDGMENT

S. B. SINHA, J.

Leave granted.

Respondent herein was appointed as Kamgar on or about 1.1.1970. He was allegedly appointed in excess of the sanctioned strength. The post was also not approved by the Director of the Mandi Samiti. Indisputably, he was not appointed in terms of the procedures laid down in U.P. Krishi Utpadan Mandi (Amendment and Validation) Act, 1970 (Act) or the regulations framed thereunder. He was again appointed on a temporary basis without approval of the Director as a Clerk Typist on 30.9.1972. One of the terms of the offer of appointment issued in his favour was that his services could be terminated at any time upon giving one month's notice or pay in lieu thereof. The Authority was informed that several such appointments have been made in excess of the staff and that too without following the provisions of the Act and rules and regulations therein and also without obtaining the approval of the Director. It was directed that the services of the persons concerned be terminated, by a letter dated 10.01.1974; pursuant to or in furtherance whereof, the services of six employees including the respondent herein was terminated on 21.1.1974. One month's notice allegedly was given therefor. It is stated that the relevant provisions of the U.P. Industrial Disputes Act were also complied with in relation thereto.

Respondent herein raised an industrial dispute on 2.5.1992. The State of Uttar Pradesh referred the following dispute for adjudication by the Labour Court, Meerut.

"Whether action of employers in terminating the services of their workman Sh. Pahal Singh, S/o Sh. Amrit Singh is illegal or invalid? If yes, then to what relief/compensation the concerned workman is entitled? and with what other details?"

The parties before the Labour Court submitted their respective written statements. Respondent adduced evidence. The Labour Court by an Award dated 24.10.1996 holding that the termination of the services of the respondent was illegal, directed him to be re-instated in service with continuity of service and awarded back wages for the entire period.

The said Award came to be questioned by the appellant herein in a Writ Petition filed before the High Court of Judicature at Allahabad. By reason of the impugned Judgment, the High Court modified the Award directing re-instatement of the respondent with 50% of back wages.

At the outset, we may notice that the judgment of the High Court is not a reasoned one. Why the Award was upheld with modification in the quantum of back wages has not been stated.

The High Court while exercising its jurisdiction under Articles 226 and 227 of the Constitution Of India, 1950 upon issuance of a rule nisi is expected to apply its mind to the contentions raised by the parties and arrive at findings thereupon.

We may notice that the learned Labour Court also committed the same error.

It, in its Award merely stated:-

"The workman has filed written statement with an affidavit which has not been controverted by the employers by filing rejoinder on affidavit. Therefore, in these circumstances the written statement of workman is liable to be accepted according to Rule 12(9) of U.P. Industrial Dispute Rule 1957. It has been clearly provided under Rule 12(9) of U.P. Industrial Disputes Rules 1957 that if the workman files his written statement alongwith an affidavit, then the employers have to file their rejoinder with the affidavit. If the employers do not file their rejoinder alongwith affidavit, then considering the facts of the written statement filed with affidavit as correct, award will be made in favour of workman.

In the present case employers have not controverted the written statement (affidavit) of workman by filing the rejoinder alongwith affidavit and the facts regarding termination of services pleaded by the workman were also not controverted by employers either in arguments or in evidence. In these circumstances the order terminating the services of workman will be held illegal and invalid."

The Labour Court, thus, also did not advert itself to the questions which were required to be gone into. The workman in the said proceedings was required to show that the termination was illegal. Only because it filed an affidavit and the respondent did not file any rejoinder affidavit thereto, the same by itself would not mean that an Award would automatically follow.

The Labour Court was also under an obligation to consider as to whether any relief, if at all could be granted in favour of the workman in view of the fact that the industrial dispute had been raised after 18 years. It was obligatory on the part of the Labour Court to consider that the respondent was in employment for very short period. It had also not arrived at a finding that the respondent was in continuous service within the meaning of Section 2(g) of the U.P. Industrial Disputes Act or for that matter in terminating the services of the respondent, the appellant did not comply with the requirements of law particularly Section 6-N thereof. In absence of such a finding, the High Court in our opinion should have interfered with the Award.

It is now well-settled principle of law that "delay defeats equity".

The Labour Court exercises its wide jurisdiction under Section 11A of the Industrial Disputes Act, but such jurisdiction must be exercised judiciously. A relief of re-instatement with all back wages is not to be given without considering the relevant factors therefor, only because it would be lawful to do so. As noticed hereinbefore, in this case, even the basic requirements for grant of any relief had not been found by the Labour Court.

In Haryana State Co-operative Land Development Bank v Neelam Â this Court opined:-

"18. It is trite that the courts and tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of his conduct a workman would automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of acceptance sub silentio. The respondent herein did not raise any industrial dispute questioning the termination of her services within a reasonable time. She even accepted an alternative employment and has been continuing therein from 10-8-1988. In her replication filed before the Presiding Officer of the Labour Court while traversing the plea raised by the appellant herein that she is gainfully employed in HUDA with effect from 10-8-1988 and her services had been regularised therein, it was averred:

"6. The applicant workman had already given replication to the ALC-cum-Conciliation Officer, stating therein that she was engaged by HUDA from 10-8-1988 as clerk-cum-typist on daily-wage basis. The applicant workman has the right to come to the service of the management and she is interested to join them."

19. She, therefore, did not deny or dispute that she had been regularly employed or her services had been regularised. She merely exercised her right to join the service of the appellant."

Yet again in U.P. State Electricity Board v. Rajesh Kumar, Â 2003 (12) SCC 548, this Court held that although a period of limitation is prescribed for making a reference, but facts and circumstances of each case is required to be considered in dealing with stale claims.

Recently in Assistant Engineer, C.A.D., Kota v. Dhan Kunwar Â 2006 AIR(SC) 2670, it was held;

"6. It may be noted that so far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case."

See also Uttranchal Forest Development Corporation v. M.C. Joshi Â 2007 (3) Scale 545.

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The Appeal is allowed.

However, in the facts and circumstances of this case, there shall be no order as to costs.