SUPREME COURT OF INDIA

Niranjan Cinema

Vs.

Prakash Chandra Dubey

C.A.No.3960 of 2006

(Dr. Arijit Pasayat and P. Sathasivam JJ.)

05.12.2007

JUDGMENT:

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a learned Single Judge of the Allahabad High Court dismissing the writ petition filed by the appellant. By the said impugned judgment learned Single Judge affirmed the view of Presiding Officer, Industrial Tribunal No.1, U.P., Allahabad.

2. Background facts in a nutshell are as follows: Respondent was working as a gate keeper in the appellant Cinema Hall. On 6.10.1993 it was noticed that counterfoils of the tickets were missing and, therefore, First Information Report was lodged with police. According to the appellant the respondent absented himself from work but it is a matter of record that he was running a betel shop next to the Cinema Hall. Respondent raised an industrial dispute before the Conciliation Officer alleging termination of services. Appellant filed its reply statement stating that there was no termination and in fact it was open to the respondent to resume duties whenever he wanted. Reference was made to the Industrial Tribunal under Section 4K of the U.P. Industrial Disputes Act, 1947 (in short the 'Act'), on the question as to whether there was absence from work and no termination. In the claim statement before the Tribunal, respondent alleged that his services had been terminated and the manager has illegally dismissed him from service. Preliminary objections were filed by the appellant taking the stand that the reference was not maintainable since Government could not have come to the conclusion that there has been termination of service. It was reiterated that there was no termination of service and it was still open to the respondent to resume work. This preliminary objection was filed on 7.11.1994. On 21.2.1995 respondent filed a reply therein refusing to resume work. On 25.4.1995 the appellant filed rejoinder against the claim statement and again offered that the respondent could rejoin. Evidence was led to show that there was no termination of service and the respondent could join at any time. The Tribunal in its award held that the termination was illegal and reinstatement with back wages was directed on the ground that even if respondent had started a betel shop, he could not be said to be gainfully employed. Subsequent to the award the appellant again offered respondent the option to resume duty pending challenge to the award in the writ petition. Respondent refused to resume duty. On 8.5.1999 as noted above writ petition was filed before the High Court challenging the Award. On 26.5.1999 High Court directed the appellant to deposit the wages with the Tribunal and the respondent to report for duty. On 13.7.1999 appellant asked the respondent to join duty. Respondent again refused to join duty. Subsequently also the appellant asked the respondent to resume duty and on 29.7.1999

deposited 50% of the back wages with the Tribunal. Appellant requested the Deputy Labour Commissioner to depute an Inspector with a direction to direct the respondent to resume duty. On 6.7.2000 the Assistant Labour Commissioner persuaded the respondent to join duty. The High Court dismissed the writ petition holding that the termination was illegal and that the respondent had not been gainfully employed after termination of service because self-employment cannot be treated as gainful employment.

3. In support of the appeal learned counsel for the appellant submitted that contrary to this Court's view the Labour Court and the High Court have held that self employment is not gainful employment. It is also pointed out that there was no indication in the claim petition that he was not gainfully employed.

4. Learned counsel for the respondent on the other hand submitted that after termination the respondent was running a small Betel Shop that cannot be said to be gainful employment.

5. In North East Karnataka Road Transport Corporation v. M. Nagangouda [AIR 2007 SC 973] it was held as follows:

"On the said question, we are unable to accept the reasoning of the Labour Court that the income received by the respondent from agricultural pursuits could not be equated with income from gainful employment in any establishment. In our view, "gainful employment" would also include self-employment wherefrom income is generated. Income either from employment in an establishment or from self-employment merely differentiates the sources from which income is generated, the end use being the same. Since the respondent was earning some amount from his agricultural pursuits to maintain himself, the Labour Court was not justified in holding that merely because the respondent was receiving agricultural income, he could not be treated to be engaged in "gainful employment".

6. It is also relevant that there was no averment in the claim petition that the earnings from the betel shop were not sufficient to make both ends meet. Therefore, the view expressed by the High Court in that regard is not legally sustainable. But it has not been shown as to how much the respondent earned from the betel shop. In view of this factual position, we direct that 50% of the back wages which has been deposited with the Tribunal, be released to the respondent. His entitlement is accordingly determined. It needs to be noted that the issues in the present appeal were restricted to the question of back wages. The appeal is allowed to the aforesaid extent with no order to costs.