SUPREME COURT OF INDIA

Afaq Husain

Vs.

U.P.S.R.T.C

C.A.No.2958 of 2008

(S.B. Sinha and V.S. Sirpurkar JJ.)

24.04.2008

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Appellant was appointed as a Conductor on an ad hoc basis as a daily wager. He used to be appointed on a need basis. On or about 1.1.1976, he was appointed for a period of three months, i.e., up to 31.3.1976, inter alia, on the premise that if his services were no longer required, the same could be terminated. Allegedly, he was paid one month's notice pay before his services were terminated. An industrial dispute was raised by him in the year 1982 questioning the validity of the said order of termination. The said industrial dispute was referred to by the State for adjudication by the Labour Court, Allahabad. Respondent herein in its written statement contended:

> "That Shri Afaq Hussain has been appointed temporarily in the U.P. State Road Transport Corporation on 2.1.1976. It was among the terms of his appointment that his service may be terminated without assigning any reasons by giving one month's notice. Shri Afaq Hussain has started working in the U.P. State Road Transport Corporation by binding himself with the terms of his appointment.That shri Afaq Hussain has worked contrary to the rules of the department and the employers have lost their confidence in Shri Afaq Hussain. Therefore, by order dated 24.2.76, his services have been terminated by giving him one month's salary in lieu of one month's notice. He has no right to raise any dispute."

3. Before the Labour Court, the respondent examined one witness, Shri K. Bal, who admitted that no amount towards compensation for retrenchment as required under the provisions of Section 6N of the *U.P. Industrial Disputes Act, 1947* (the Act) had been paid.

4. Appellant also examined himself as a witness. He, however, accepted that he had been given one month's notice pay. According to him, no offer of appointment was issued. He

furthermore admitted that he had been given duty on a need basis only. The learned Labour Court, however, on the premise that the appellant had worked continuously from July 1972 to 24.2.1976, held that the provision of Section 6N of the Act had not been complied with and consequently directed his reinstatement with back wages. His services were directed to be treated as uninterrupted. Appellant was reinstated in service pursuant to the said award.

5. Respondent, however, filed a writ petition before the Allahabad High Court questioning the validity of the said award. By reason of the impugned judgment, the writ petition of the respondent was allowed by the High Court, opining:

> "As already stated above, since the termination have taken place in the year 1976, the matter has been referred to the Labour Court in the year 1982 and the Labour Court has given the award in the year 1984, I do not think it expedient in the interest of justice that the matter now should be remanded back to the Labour Court.
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> It is not disputed as held by the labour court, that the workman concerned was a temporary hand. It is also not disputed, nor a finding has held, been recorded to the contrary by the Labour Court that the workman concerned has become a workman on whose employers have lost their confidence. In this view of the matter, the award of the labour Court requires to be upheld except after modification that the workman concerned shall not be entitled for any back wages, particularly in view of the recent pronouncement by the apex Court, wherein the apex Court tries to make the distinction between the regular employees and the daily wagers, which says that the daily wagers were entitled to minimum wages but not the full wages, like the regular staff, as the daily wagers could not be held to hold the post. In this view of the matter, except for what has already been paid under the modified interim order by this Court, the workman concerned shall not be entitled for any back wages and so far as the reinstatement is concerned, since the employers have lost their confidence against the workman concerned, the employers are hereby directed to pay a sum of Rs.50,000/- (Rupees fifty thousand) only, apart from as already been paid under the interim order as compensation in lieu of the reinstatement."

6. Mr. Dinesh Dwivedi, learned senior counsel appearing on behalf of the appellant, would submit that the High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration that except raising the said plea in the written statement, the respondent could not establish its plea of purported loss of confidence. It was furthermore urged that the appellant, having been reinstated in service pursuant to the award, the High Court committed a serious error insofar as it failed to take into consideration the fact that he had been working for a period of 18 years and only after the impugned judgment the services of the appellant had been terminated. In any event, the High Court should not have quantified the amount of compensation at Rs.50,000/- only in termining the question as the principles for grant of compensation had not been taken into consideration.

7. Ms. Garima Prashad, learned counsel appearing on behalf of the respondent-Corporation, on the other hand, would submit:

"(i) Labour Court has committed a serious error in proceeding on the basis that the appellant has been working for a long time as he was appointed only for a limited period in January 1976.

(ii) As one month's salary has been paid to him, the requirements of Section 6N of the Act stood satisfied.

(iii) In view of the delay in raising the industrial dispute on the part of the appellant, the respondent was not in a position to produce the relevant documents and, thus, was gravely prejudiced.

(iv) In any event, the award of reinstatement in service was wholly unwarranted."

8. Appellant was appointed as a Conductor from time to time. The Labour Court, in its award, proceeded on the basis that he had been working continuously from 1972 to 1976. It failed to notice the admission of the appellant that his appointment used to be a need based one. The Labour Court did not arrive at a finding of fact that periodical appointment and termination of the services of the appellant was either mala fide or the same was being resorted to by way of unfair labour practice so as to deprive the workman from obtaining his legal dues.

9. If the contention of the respondent that the appellant was appointed on 2.1.1976 for a period of three months only and he had been given one month's notice before terminating his services, in our opinion, the labour court was wholly incorrect in awarding his reinstatement with back wages and continuity of service. Section 6N of the Act reads thus:

"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 notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for 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."

The pre-condition for applicability of the said provision is working for a continuous period of not less than one year.

10. It was contended by the respondent in its written statement that there was a specified date for termination of service. The question as to whether the appellant had been continuing to work for a period of one year has not been determined by the Labour Court.

> Only when the services of an employee continues for a period of more than one year, apart from the notice pay, he becomes entitled to be paid compensation equivalent to 15 days' wage for every completed year of service or any part thereof in excess of six months.

11. The award of the Labour Court that he should be reinstated in service cannot, therefore, be upheld, particularly in view of the fact that the respondent-Corporation, being a 'State' within the meaning Article 12 of the Constitution of India, was obligated to follow the constitutional requirements of Articles 14 and 16 of the Constitution of India as also the recruitment rules, if any, framed by it. The appointment of the appellant did not satisfy the constitutional requirements. He was not and could not have been appointed on substantive basis

12. The jurisdiction of the Labour Court to pass an award of reinstatement is not disputed but the same would not mean that a workman would be directed to be reinstated in service without taking all relevant factors into consideration. This Court, times without number, has laid down that some factors as indicated play significant role.

13. It is true that the High Court was not correct in relying upon an unproved statement made in the written statement. Pleadings are not proof. The witness examined on behalf of the respondent did not disclose as to which rule was violated by the appellant or why he had lost the confidence of his the Management. Such a contention was required to be established by adduction of proper evidence.

13. Mr. Dwivedi, however, is not correct in contending that the respondent cannot raise before us any point other than the loss of confidence. Respondent, in our opinion, having regard to the principles akin to the provisions of Order 41 Rule 33 of the Code of Civil Procedure, is entitled to support the judgment on the basis of the materials on record. {See *Swedish Match AB and Anr. v. Securities and Exchange Board, India & Anr.*[1] *and UCO Bank & Anr. v. Rajinder Lal Capoor*[2].}Before the High Court, it had raised a large number of contentions. The High Court, however, thought that only if a few contentions were determined, the same would subserve the ends of justice. Respondent need not question the judgment of the High Court that the appellant is entitled to payment of compensation for a sum of Rs.50,000/- but it can certainly contend that having regard to the materials on record, he would be entitled only thereto and not an order of reinstatement of service and/or continuity of service only on the ground that the award of the Labour Court was implemented.

> "Reliance has been placed by *Mr. Dwivedi on Workmen of Bharat Fritz Werner (P) Ltd. v. Bharat Fritz Werner (P) Ltd. & Anr.*[3]. Therein six months' wages for loss of

future employment had been awarded keeping in view the fact that the workmen were skilled and they might not find it difficult to get alternate employment.

Appellant has not disclosed as to what was his salary and a sum of Rs.50, 00/-, in our opinion, would be more than his six months' wages."

14. In *Ram Piari v. Bhagwant & Ors.*[4], this Court, having regard to the fact that the workman was entitled to back wages from 1975 to 1985, was of the opinion that a portion of the back wages should be paid to the employee by way of compensation which was assessed at Rs.2, 50,000/-.

15. In this case, Appellant was appointed for a limited period, namely, three months. We will assume that the requirements of Section 6N of the Act had not been complied with. Even then, in our opinion, the appellant has been awarded a just compensation, particularly, in view of the fact that he, without any right, worked in the Corporation for a period of 18 years.

16. The question that he had been put back in service in terms of the award by itself was not a ground which stood in the way of the High Court in declining a relief to him to which he was not otherwise entitled to.

17. In the facts of this case, we are of the opinion that the appellant was not even entitled to any compensation as envisaged under Section 6N of the Act, particularly, as he was appointed for a period three months only. His services had been terminated on the expiry of the fixed period. Furthermore he has raised the industrial dispute after a long time.

19. For the reasons aforementioned, there is no merit in this appeal. It is dismissed accordingly. No costs.

[1]*[(2004) 11 SCC 641*
[2]*[(2007) 6 SCC 694]*
[3]*[AIR 1990 SC 1054]*
[4]*[AIR 1990 SC 1742]*