SUPREME COURT OF INDIA

State of Haryana

Vs.

Ramesh Kumar

C.A.No……of 2008

(Dr. arijit pasayat and P. Sathasivam JJ.)

11.07.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Punjab and Haryana High Court summarily dismissing the Civil Writ Petition filed by the State. Challenge in the writ petition was to the award passed by the Presiding Officer, Labour court, U.T. Chandigarh in a reference made under Section 10 of the *Industrial Disputes Act, 1947* (in short the `Act'). The respondent claimed that he was working in the office of the Public Works Department B&R since December 1991 and continued to work upto 31st March, 1993. He claimed to have completed 240 days of service and to have drawn the salary. The allegation was that without any justifiable reason his services were terminated w.e.f. 31.3.1993. A civil suit was filed for mandatory injunction against the department. The Department took the view that the Civil Court had no jurisdiction to entertain the suit. Subsequently, demand notice was issued and the matter was referred to the Labour Court. The Labour Court found that the alleged termination was not sustainable. The Labour Court took the view that since the workman was engaged in December, 1991 and worked upto 31.1.1993 he is presumed to have completed 240 days of service. Therefore, provision of Section 25 of the Act was not complied with.

3. Writ Petition was filed by the appellant questioning correctness of the award which was dismissed summarily as noted above.

4. Learned counsel for the appellant submitted that the Labour Court did not take note of the fact that the claim petition was made after about 5 years of the alleged termination. The High Court should not have dismissed the writ petition in a summary manner without indicating any reason. It was further submitted that the respondent had not completed 240 days of service within 12 calendar months preceding the alleged date of termination. The award of 50% back wages with a direction of re-instatement therefore cannot be sustained.

5. Learned counsel for the respondent on the other hand submitted that the burden is on the employer to show that the concerned employee had not completed 240 days of service.

6. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. Similar view was expressed in *State of U.P. v. Battan and Ors.*[1]. About two decades back in *State of Maharashtra v. Vithal Rao Pritirao Chawan*[2] the desirability of a speaking order while dealing with an application for grant of leave was highlighted. The requirement of indicating reasons in such cases has been judicially recognized as imperative. The view was re-iterated in *Jawahar Lal Singh v. Naresh Singh and Ors.*[3]. Judicial discipline to abide by declaration of law by this Court, cannot be forsaken, under any pretext by any authority or Court, be it even the Highest Court in a State, oblivious to Article 141 of the *Constitution of India, 1950* (in short the `Constitution').

7. Even in respect of administrative orders Lord Denning *M.R. in Breen v. Amalgamated Engineering Union*[4] observed "The giving ofreasons is one of the fundamentals of good administration". In *Alexander Machinery (Dudley) Ltd. v. Crabtree*[5] it was observed: "Failureto give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

8. These aspects were highlighted in *State of Punjab v. Bhag Singh*[6] *and Suga Ram @ Chhuga Ram v. State of Rajasthan and Ors.*[7]

9. In *Mohan Lal v. Bharat Electronics Ltd.*[8] , it is said by this Court that before a workman can claim retrenchment not being in consonance with Section 25-F of the Industrial Disputes Act, he has to show that he has been in continuous service for not less than one year with the employer who had retrenched him from service.

10. In *Range Forest Officer v. S.T. Hadimani*[9] this Court held that: (SCC p. 26, para 3)

> "In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had

worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

11. This Court again in *Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan*[10], *Municipal Corpn., Faridabad v. Siri Niwas*[11]*and M.P. Electricity Board v. Hariram*[12] , has reiterated the principle that the burden of proof lies on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment and it is for the workman to adduce evidence apart from examining himself to prove the factum of his being in employment of the employer.

12. The position was highlighted in *Surendrangar District Panchayat and Anr. vs. Jethabhai Pitamberbhai*[13].

13. In view of the position in law as highlighted by this Court as afore-noted we set aside the impugned order of the High Court and remit the matter for fresh consideration in accordance with law. Since the matter is pending since long, it would be desirable that the High Court should dispose of the writ petition as early as practicable preferably within 6 months from the date of receipt of this order.

14. The appeal is disposed of accordingly with no order as to costs.

[1]*(2001 (10) SCC 607)* [2]*(AIR 1982 SC 1215)* [3]*(1987 (2) SCC 222)* [4]*(1971 (1) All E.R. 1148)*
[5]*(1974 LCR 120)* [6]*(2004(1) SCC 547)* [7]*(2006 (8) SCC 641)* [8]*(1981 (3) SCC 225)*
[9]*(2002 (3) SCC 25)* [10]*(2004 (8) SCC 161)* [11]*(2004 (8) SCC 195)* [12]*(2004 (8) SCC 246)*
[13]*(2005 (8) SCC 450)*