SUPREME COURT OF INDIA

Rajasthan Lalit Kala academy

Vs.

Radhey Shyam

C.A.No.4331 of 2008

(C. K. Thakker and D.K. Jain JJ.)

11.07.2008

JUDGMENT

D.K. Jain, J.

1. Leave granted.

2. The appellant-management has challenged in this appeal the judgment and order dated 1st December, 2005, passed by the High Court of Judicature for Rajasthan at Jaipur in D.B. Special Appeal (Writ) No. 279 of 2001, dismissing the intra- court appeal against the order of a learned Single Judge in S.B. Civil Writ Petition No.1895 of 1998. The learned Single Judge had affirmed the award of the Labour Court in L.C.R. No. 348 of 1985, directing reinstatement of the respondent- workman with continuity of service and 25% back-wages from the date of termination of his services to the date of award.

3. A few material facts leading to these proceedings are as follows:

> "The respondent was appointed on 7th June, 1980 on a monthly salary of Rs.300/- to do the work of a Junior Clerk. On 4th April, 1981 his services were terminated. On an industrial dispute being raised, the Industrial Tribunal, Jaipur, by an award dated 24th September, 1983, set aside the order of termination and directed reinstatement of the respondent with effect from 24th September, 1983 with 50% back-wages. The respondent claims to have submitted his joining report on the very next date of award. The award was published under Section 17 of the *Industrial Disputes Act, 1947* (for short `the Act') on 17th April, 1984. The respondent again submitted his joining report to the Secretary of the appellant but was not taken back on duty."

4. The validity of the award was questioned by preferring a Civil Writ Petition No.1317 of 1984. During the pendency of the writ petition, the High Court granted stay of the direction in regard to payment of back-wages. However, direction regarding reinstatement of the respondent was not stayed. Yet the respondent was not taken back on duty. Ultimately, the writ petition was dismissed.

5. Since the appellant did not permit the respondent to join duty, the respondent took recourse to proceedings under Section 29 of the Act against the appellant. According to the respondent, he again reported for duty on 17th November, 1984, but the appellant did not permit him to join. Instead, vide order dated 31st January 1985, the appellant terminated the services of the respondent, treating him to be in service with effect from 17th November, 1984.

6. The respondent raised an industrial dispute. The dispute was referred to the Labour Court for adjudication, and was registered as L.C.R. No.348 of 1985. The respondent also filed an application under Section 33C (2) of the Act for computation of wages for the period from 24th September, 1983 to 17th November, 1984 the same was registered as L.C.R. No. 438 of 1986.

7. Before the Labour Court, the stand of the appellant was that the respondent was temporarily appointed on 7th June, 1980 for a period of three months to do the work of gallery attendant; he had himself abandoned the work but rejoined service pursuant to order in the writ petition and that his services were terminated due to non-requirement of his services, after complying with the provisions of Section 25-F of the Act by paying an amount of Rs.1800/- by means of a demand draft. The plea of the respondent, on the other hand, was that his services were not terminated without service of any notice, disclosing reasons for his retrenchment nor any amount was paid to him in lieu of such notice.

8. On appraisal of evidence led by both the sides, the Labour Court, by award dated 26th April, 1997, came to the conclusion that the management had failed to adduce any evidence in support of its plea that a demand draft in the of Rs.1800/- was given to the respondent in lieu of notice in terms of Section 25-F of the Act. Thus, the Labour Court found that in terminating the services of the respondent, the appellant had failed to comply with the statutory requirements and, therefore, order dated 31st January, 1985 was arbitrary and illegal and had been passed in a mala fide manner in order to victimize the respondent. Accordingly, the Labour Court directed reinstatement of the respondent with continuity in service and payment of 25% back-wages from the date of termination of services to the date of award. In the other application for computation of wages (L.C.R. No. 438 of 1986), the Labour Court held that the respondent was entitled to wages for the period from 4th September, 1983 to 17th November, 1984.

9. The award (in L.C.R. No. 348 of 1985) was challenged bythe appellant by preferring a writ petition in the Rajasthan High Court. However, Labour Court's award in L.C.R.No.438 of 1986 was not challenged.

10. The learned single Judge as well as the Division Bench has dismissed the writ petition and the appeal filed by the appellant against the award of the Labour Court. That is how the appellant is before us.

11. We have heard learned counsel for the parties.

12. Learned counsel appearing on behalf of the appellant submitted that in the light of the evidence on record, the Labour Court as well as the High Court have committed an error in arriving at a finding that in terminating the services of the respondent, the appellant has contravened the provision of Section 25-F of the Act. It was contended that the courts below ignored cogent and credible evidence which suggested that a demand draft in the sum of Rs.1800/- was issued to the respondent and, therefore, the finding regarding non compliance with the provision of Section 25-F is erroneous and perverse. Learned counsel also urged that since the respondent had not rendered any services, the courts below erred in awarding back-wages to the respondent and that too on the basis of salary equivalent to that of junior employee. Lastly, it was urged that assuming that the appellant had failed to comply with the provision of Section 25-F of the Act but having regard to the fact that the services of the respondent had been terminated over two decades ago, it would not be proper to reinstate the respondent with back-wages and instead some reasonable amount of compensation could be awarded to him in lieu of his reinstatement. In support of the proposition that award of back-wages is not necessary in every case where the termination of service is held to be violative of Section 25-F of the Act, reliance is placed on a decision of this Court in *General Manager, Haryana Roadways Vs. Rudhan Singh*[1]*. Reference is also made to the decisions of this Court in Central P&D Inst. Ltd. Vs. Union of India & Anr.*[2]*; Haryana State Electronics Development Corpn. Ltd. Vs. Mamni*[3] *and Madhya Pradesh Administration Vs. Tribhuban*[4], where lump sum amounts had been awarded in lieu of reinstatement.

13. Per contra, Mr. S.K. Keshote, learned senior counsel appearing on behalf of the respondent, submitted that on the basis of the material on record, all the courts have returned a finding that the appellant had not only failed to pay to the respondent any amount in lieu of notice in terms of clause (a) of Section 25-F and compensation in terms of clause (b) thereof, they had also committed unfair labour practice by victimizing the respondent. The submission was that these being pure findings of fact, this Court should decline to interfere with the award of the Labour Court, affirmed by the High Court. Learned counsel asserted that having regard to the conduct of the appellant, where they deliberately did not comply with the first award despite the fact that the High Court had declined to stay the direction with regard to reinstatement, no fault could be found with the direction of the Labour Court regarding reinstatement of the respondent with only 25% back-wages.

14. It is trite that in the event of retrenchment of a workman, employed in any industry, continuously for not less than one year under an employer, compliance with the provisions of Section 25-F of the Act, in particular clauses (a) and (b) thereof is mandatory. A bare reading of Section 25-F of the Act shows that retrenchment within the meaning of Section 2 (oo) of the Act, which admittedly is the case here, must satisfy the following conditions:

> "(i) The workman is given one month's notice - (a) in writing (b) indicating the reasons for retrenchment;

(ii) The retrenchment must take effect after the expiry of the period of notice. i.e., one month or else, the workman should be paid in lieu of such notice, wages for the period of the notice:

(iii) At the time of retrenchment, the workman has been paid compensation, equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(iv) The notice in the prescribed manner is served on the appropriate government or such authority as may be specified."

15. As noted above, the specific plea of the appellant- management before the Labour Court was that services of the respondent were terminated on 31st January, 1985 after payment of Rs.1800/- by demand draft, in compliance with the provision of Section 25-F of the Act. However, in the award, the Labour Court has observed that the management has not adduced any such evidence wherefrom a conclusion could be drawn that the workman had received the said amount of Rs.1800/-. It is pointed out that neither any receipt, acknowledging receipt of draft was produced nor the workman was cross-examined on this aspect. Even the computation of compensation allegedly paid was not correct.The labour court, thus, held that payment of compensation in accordance with Section 25-F of the Act was not proved. In the light of the pleadings and undisputed documents available on record, we are convinced that the finding of the Labour Court to the effect that the appellant has failed to adduce any evidence in support of their plea that an amount of Rs.1800/- had been paid to the respondent, does not suffer from any perversity pleaded by learned counsel for the appellant. Thus, it cannot be said that the Labour Court or the High Court has committed any illegality, warranting interference with the said concurrent finding of fact. In that view of the matter, we deem it unnecessary to examine the issue whether termination of respondent's services was by way of victimisation and thus, the appellant was guilty of unfair labour practice, as held by the Labour Court.

16. The question which now survives for consideration is whether on facts in hand, relief of reinstatement with continuity of service and 25% back-wages should have been granted to the respondent?

17. Once the termination of service of an employee is held to be illegal, the relief of reinstatement is ordinarily available to the employee. But the relief of reinstatement with full back-wages need not be granted automatically in every case where the Labour Court/Industrial Tribunal records the finding that the termination of services of a workman was in violation of the provisions of the Act. For this purpose, several factors, like the manner and method of selection; nature of appointment--ad hoc, daily-wage, temporary or permanent etc., period for which the workman had worked and the delay in raising industrial dispute, are required to be taken into consideration.

18. On this aspect, in General Manager, Haryana Roadways case (supra), a three-Judge Bench of this Court has observed thus:

> "There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, i.e., whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period, i.e., from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration, is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

19. It appears to us that in the present case there has not been due application of mind either by the Labour Court or the High Court on the question of reinstatement and payment of 25% back-wages. The only ground on which reinstatement and continuity of service has been ordered is because the order of termination has been held to be unlawful. Similarly, 25% back-wages have been awarded for the reason that the services of the petitioner were terminated with immediate effect but no specific reason as such has been assigned for the award of the said back- wages. In our opinion, though, illegality of the order of termination is one of the prime considerations for determining the question and quantum of back-wages, but it cannot be the sole criterion therefor. A host of other factors, a few enumerated above, are required to be taken into consideration before issuing directions in that behalf. Therefore, the award of the Labour Court to that extent cannot be sustained. However, we feel that at this distant time, it would not be fair to the respondent-workman to remit the matter back to the Labour Court or the High Court for fresh consideration of the issue. In the light of the observations referred to supra and having regard to the nature and the period of services rendered by the respondent and the fact that his services were terminated initially on 4th April, 1981 and then on 31st January, 1985 and the vicissitudes of long-drawn litigation, the respondent has undergone for over 27 years, interest of justice would be met if instead and in place of direction for reinstatement and back-wages--a sum Rs.3 lakhs is directed to be paid to the respondent by way of compensation.We direct accordingly. The payment shall be made within eight weeks from today, failing which it shall carry interest @ 9% per annum from the date of this judgment till the date of actual payment. We may note that in the affidavit, filed in response to the query raised by the Court on 29th April, 2008, it is stated that if the present appeal is dismissed, the appellant would be liable to pay to the respondent

more than Rs.8 lakhs. It goes without saying that the said amount of compensation is over and above the amount, the respondent is entitled to receive in terms of award dated 24th September, 1983, which has attained finality.

20. Resultantly, the appeal is allowed to the extent indicated above. However, in the facts and circumstances of the case, there shall be no order as to costs.

[1]*(2005) 5 SCC 591*
[2]*(2005) 9 SCC 171*
[3]*(2006) 9 SCC 434*
[4]*(2007) 9 SCC 748*