

SUPREME COURT OF INDIA

Sr.Suptd.Telegraph(Traffic)Bhopal

Vs.

Santosh Kumar Seal

C.A.No.3815 of 2010

(R.V.Raveendran and R.M.Lodha JJ.)

26.04.2010

JUDGEMENT

R.M.Lodha, J.

1. Leave granted.

2. The main question is whether relief of reinstatement and back wages granted to respondent nos. 1 to 14 (for short, 'the workmen') is justified. The facts leading up to this appeal by special leave are few and simple. The workmen were enrolled with the District Employment Exchange, Bhopal. On a requisition made by the Sr. Superintendent of Telegraph (Traffic) to the District Employment Exchange, the names of the workmen were sponsored and they were engaged as casual labourers in 1985 in Central Telegraph Office / District Telegraph Office, Bhopal. They continued as such upto February 10, 1987. During this period, the workmen had completed 240 days in each year. Vide order dated February 10, 1987, the services of the workmen were discontinued in the Central Telegraph Office / District Telegraph Office and they were asked to report in the office of A.E. (Cables) CTX, Bhopal.

“The case of the workmen is that they reported in the office of A.E. (Cables) CTX, Bhopal but they were not taken on duty on the pretext that there were no vacancies. On the other hand, the appellant claims that the workmen did not report for duty in the office of the A.E. (Cables) CTX, Bhopal and abandoned their job. The workmen initially approached Central Administrative Tribunal and then High Court for redressal of their grievance but no relief was granted to them as the controversy related to industrial dispute. The workmen, consequently, raised industrial dispute which was referred by the appropriate government for adjudication to the Central Government Industrial Tribunal (for short, 'Tribunal'). The 2 Tribunal on the basis of the case set up by the parties and the evidence on record held that the workmen had worked for more than 240 days in a year for nearly 3 years and that their services were retrenched by an order dated February 10, 1987 without following the mandatory provisions of Section 25 F of the Industrial Disputes Act, 1947 (for short,

`ID Act'). The Tribunal did not accept the plea of the appellant that on their redeployment, the workmen abandoned their service. The Tribunal, accordingly, by its award dated August 8, 2003 directed the appellant to reinstate the workmen and pay them back wages from the date of termination until the date of reinstatement within 3 months of the publication of the award and upon appellant's failure to comply with the award within stipulated period, it was directed that interest at the rate of 8 per cent per annum shall be payable. The appellant challenged the said award before the High Court by filing writ petition which was dismissed on November 9, 2005.”

3. Mr. R. D. Agrawala, learned senior counsel submitted that the erstwhile Central Telegraph Office / District Telegraph Office, Bhopal where the workmen were engaged was an establishment of the Post and Telegraph Department, Government of India and, therefore, it was not an 'industry' under the ID Act. He, however, did not dispute that this plea was not raised by the appellant in reply before the Tribunal. No such point was argued before the Tribunal. As a matter of fact, even before the High Court, no such plea was raised in the writ petition nor argued on behalf of the appellant. In the circumstances, we do not deem it appropriate to permit the appellant to raise this plea for the first time in this appeal.

4. Learned senior counsel for the appellant then submitted that vide order dated February 10, 1987, the services of the workmen were not terminated but they were redeployed in the office of A.E. (Cables) CTX, Bhopal; the workmen, however, did not join their duty there and they abandoned their service. The Tribunal referred to the cross-examination of the appellant's witness Shri A.K. Saxena in this regard and did not find any merit in this submission. The High Court found no justification to interfere with the said finding of the Tribunal. We have no justifiable reason to take a different view on facts found by the Tribunal.

5. Lastly, learned senior counsel submitted that even if the order dated February 10, 1987 amounts to illegal termination for want of compliance of Section 25 F of ID Act, in the facts and circumstances of the case, reinstatement and back wages was not justified and at best monetary compensation to the workmen could have been awarded.

6. In last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate, (See *U.P. State Brassware Corpn. Ltd. & Anr. v. Uday Narain Pandey*¹; *Uttaranchal Forest Development Corpn. v. M.C. Joshi*²; *State of M.P. & Ors. v. Lalit Kumar Verma*³; *Madhya Pradesh Administration v. Tribhuban*⁴; *Sita Ram & Ors. v. Moti Lal Nehru Farmers Training Institute*⁵; *Jaipur Development Authority v. Ramsahai & Anr.*⁶; *Ghaziabad Development Authority & Anr. v. Ashok Kumar & Anr.*⁷ and *Mahboob Deepak v. Nagar Panchayat, Gajraula & Anr.*⁸).

7. In a recent judgment authored by one of us (R.M. Lodha, J.) in the case of *Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr.*⁹, the aforesaid decisions were noticed and it was stated:

“7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

* * * * *

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 2406 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee”.

8. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice. In our considered view, the compensation of Rs. 40,000/- to each of the workmen (respondent nos. 1 to 14) shall meet the ends of justice. We order accordingly. Such payment shall be made within 6 weeks from today failing which the same shall carry interest at the rate of 9 per cent per annum.

9. The appeal is allowed to aforementioned extent with no order as to costs.

¹(2006) 1 SCC 479

²(2007) 9 SCC 353

³(2007) 1 SCC 575

⁴(2007) 9 SCC 748

⁵(2008) 5 SCC 75

⁶(2006) 11 SCC 684

⁷(2008) 4 SCC 261

⁸(2008) 1 SCC 575

⁹(2009) 15 SCC 327