SUPREME COURT OF INDIA

Asst.Engineer, Rajasthan Dev.Corp.

Vs.

Gitam Singh

C.A.No.8415 of 2009

(R.M. Lodha and Sudhansu Jyoti Mukhopadhaya JJ.)

31.01.2013

JUDGMENT

R.M. LODHA, J.

1. The short question that arises for consideration in this appeal, by special leave, is where the workman had worked for only eight months as daily wager and his termination has been held to be in contravention of Section 25-F of the Industrial Disputes Act, 1947 (for short, 'ID Act'), whether the direction to the employer for reinstatement with continuity of service and 25 per cent back wages is legally sustainable.

2. We were not disposed to undertake the detailed exercise but the same has become necessary in view of very vehement contention of Mr. Sushil Kumar Jain, learned counsel for the respondent (workman), that reinstatement must follow where termination of a workman has been found to be in breach of Section 25-F of ID Act. He heavily relied upon three decisions of this Court in L. Robert D'Souza v. Executive Engineer, Southern Railway and Another[1], Harjinder Singh v. Punjab State Warehousing Corporation[2] and Devinder Singh v. Municipal Council, Sanaur[3] .

3. On behalf of the appellant, Ms. Shobha, learned counsel, challenged the finding of the Labour Court that the respondent had worked for 240 days continuously in the year preceding the date of termination. Alternatively, she submitted that the award of reinstatement with continuity of service and 25 per cent back wages in the facts of the case was unjustified as the respondent was only a daily wager; he worked for a very short period from 01.03.1991 to 31.10.1991 and for last more

than 20 years he is not in the service due to interim orders. Relying upon the decisions of this Court in Haryana State Electronics Development Corporation Ltd. v. Mamni[4], Mahboob Deepak v. Nagar Panchayat, Gajraula and Another[5], Jagbir Singh v. Haryana State Agriculture Marketing Board and Another[6], Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal and Others[7] and In-charge Officer and Another v. Shankar Shetty[8], she submitted that respondent was at best entitled to some compensation for unlawful termination.

4. It is not in dispute that respondent was engaged as a daily wager. The Labour Court, Bharatpur, in its award dated 28.06.2001 has recorded the findings that the respondent had worked as technician (Mistri) under the appellant for 240 days for the period from 01.03.1991 to 31.10.1991 and the termination of his service by an oral order on 31.10.1991 was violative of Section 25-F of the ID Act. We are not inclined to disturb the findings recorded by the Labour Court; we take them to be correct. The question, as noted above, is whether direction for reinstatement of respondent with continuity in service along with 25 per cent of back wages in view of the above findings is just and proper.

5. More than five decades back, this Court in Assam Oil Company Limited, New Delhi v. Its Workmen[9] observed that the normal rule in cases of wrongful dismissal was reinstatement but there could be cases where it would not be expedient to follow this normal rule and to direct reinstatement. Having regard to the facts of that case, this Court set aside the order of reinstatement although dismissal of the employee was found to be wrongful and awarded compensation.

6. In M/s. Hindustan Steels Ltd., Rourkela v. A.K. Roy and Others[10], this Court noted that there have been cases where reinstatement has not been considered as either desirable or expedient.

7. In M/s. Ruby General Insurance Co. Ltd. v. Shri P.P. Chopra[11], this Court reiterated what was stated in Assam Oil Company Limited9. In paragraph 6 (pgs. 655-656) of the Report, this Court said : "6. The normal rule is that in cases of invalid orders of dismissal industrial adjudication would direct reinstatement of a dismissed employee. Nevertheless, there would be cases where it would not be expedient to adopt such a course. Where, for instance, the office of the employer was comparatively a small one and the dismissed employee held the position of the secretary, a position of confidence and trust, and the employer had lost confidence in the concerned employee, reinstatement was held to be not fair to either party……"

8. This Court in The Management of Panitole Tea Estate v. The Workmen[12], while dealing with the judicial discretion of the Labour Court or the Tribunal under ID Act in directing appropriate relief on setting aside the wrongful dismissal of a workman, stated in paragraph 5 (pgs. 746- 747) as follows:

> "…. The question whether on setting aside the wrongful dismissal of a workman he should be reinstated or directed to be paid compensation is a matter within the judicial discretion of the Labour Court or the Tribunal, dealing with the industrial dispute, the general rule in the absence of any special circumstances being of reinstatement. In exercising this discretion, fairplay towards the employee on the one hand and interest of the employer, including considerations of discipline in the establishment, on the other, require to be duly safeguarded. This is necessary in the interest both of security of tenure of the employee and of smooth and harmonious working of the establishment. Legitimate interests of both of them have to be kept in view if the order is expected to promote the desired objective of industrial peace and maximum possible production. The past record of the employer, the nature of the alleged conduct for which action was taken against him, the grounds on which the order of the employer is set aside, the nature of the duties performed by the employee concerned and the nature of the industrial establishment are some of the broad relevant factors which require to be taken into consideration. The factors just stated are merely illustrative and it is not possible to exhaustively enumerate them. Each case has to be decided on its own facts and no hard and fast rule can be laid down to cover generally all conceivable contingencies……"

9. In M/s. Tulsidas Paul v.The Second Labour Court, W.B. and Others[13], this Court relied upon M/s. Hindustan Steels Ltd.10 and held as under:

> "9. In Hindustan Steels Ltd. v. Roy [(1969) 3 SCC 513] we recently held, after considering the previous case-law, that though the normal rule, in cases where dismissal or removal from service is found to be unjustified, is reinstatement, Industrial Tribunals have the discretion to award compensation in unusual or exceptional circumstances where the tribunal considers, on consideration of the conflicting claims of the employer on the one hand and of the workmen on the other, reinstatement inexpedient or not desirable. We also held that no hard and fast rule as to which circumstances would constitute an exception to the general rule can be laid down as the tribunal in each case must, in a spirit of fairness and justice and in keeping

with the objectives of industrial adjudication, decide whether it should, in the interest of justice, depart from the general rule."

10. In L. Robert D'Souza1, this Court in paragraph 27 (pg. 664) held as under :

> "27. …….Therefore, assuming that he was a daily-rated worker, once he has rendered continuous uninterrupted service for a period of one year or more, within the meaning of Section 25-F of the Act and his service is terminated for any reason whatsoever and the case does not fall in any of the excepted categories, notwithstanding the fact that Rule 2505 would be attracted, it would have to be read subject to the provisions of the Act. Accordingly the termination of service in this case would constitute retrenchment and for not complying with pre- conditions to valid retrenchment, the order of termination would be illegal and invalid."

11. What has been held by this Court in L. Robert D'Souza1 is that Section 25-F of the ID Act is applicable to a daily-rated worker. We do not think that there is any dispute on this proposition.

12. In Manager, Reserve Bank of India, Bangalore v. S. Mani and Others[14], this Court in paragraph 54 (pg. 120) of the Report held as under:

> "54. Mr. Phadke, as noticed hereinbefore, has referred to a large number of decisions for demonstrating that this Court had directed reinstatement even if the workmen concerned were daily- wagers or were employed intermittently. No proposition of law was laid down in the aforementioned judgments. The said judgments of this Court, moreover, do not lay down any principle having universal application so that the Tribunals, or for that matter the High Court, or this Court, may feel compelled to direct reinstatement with continuity of service and back wages. The Tribunal has some discretion in this matter. Grant of relief must depend on the fact situation obtaining in a particular case. The industrial adjudicator cannot be held to be bound to grant some relief only because it will be lawful to do so."

13. In Nagar Mahapalika (Now Municipal Corpn.) v. State of U.P. and Others[15], this Court, while dealing with the non-compliance with the provisions of Section 6-N (which is pari materia to Section 25-F) of U.P. Industrial Disputes Act held that the grant of relief of reinstatement with full back wages and continuity of service in favour of retrenched workmen would not automatically follow or as a matter of

course. Instead, this Court modified the award of reinstatement with compensation of Rs. 30,000/- per workman.

14. In Municipal Council, Sujanpur v. Surinder Kumar[16], this Court after having accepted the finding that there was violation of Section 25-F of the ID Act, set aside the award of reinstatement with back wages and directed the workman to be paid monetary compensation in the sum of Rs. 50,000/-.

15. In Mamni4 , this Court modified the award of reinstatement passed by the Labour Court, though the termination of the workman was in violation of Section 25-F of the ID Act, by directing that the workman should be compensated by payment of a sum of Rs. 25,000/-.

16. In Regional Manager, SBI v. Mahatma Mishra[17], this Court observed that it was one thing to say that services of a workman were terminated in violation of mandatory provisions of law but it was another thing to say that relief of reinstatement in service with full back wages would be granted automatically.

17. In Haryana Urban Development Authority v. Om Pal[18], this Court in paragraphs 7 and 8 (pg. 745) of the Report held as under : "7. Moreover, it is also now well settled that despite a wide discretionary power conferred upon the Industrial Courts under Section 11-A of the 1947 Act, the relief of reinstatement with full back wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case. It will depend upon several factors, one of which would be as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any.

8. The respondent worked for a very short period. He only worked, as noticed hereinbefore, in 1994-95. The Industrial Tribunal-cum-Labour Court, therefore, in our opinion committed an illegality, while passing an award in the year 2003, directing the reinstatement of the respondent with full back wages. Although we are of the opinion that the respondent was not entitled to any relief, whatsoever, we direct the appellant to pay him a sum of Rs. 25,000."

18. In Uttaranchal Forest Development Corporation v. M.C.Joshi[19], the Court was concerned with a daily wager who had worked with Uttaranchal Forest Development Corporation from 01.08.1989 to 24.11.1991 and whose services were held to be terminated in violation of Section 6-N of the U.P. Industrial Disputes Act. The Labour Court had directed the reinstatement of the workman with 50 per

cent back wages from the date the industrial dispute was raised. Setting aside the order of reinstatement and back wages, this Court awarded compensation in a sum of Rs. 75,000/- in favour of the workman keeping in view the nature and period of service rendered by the workman and the fact that industrial dispute was raised after six years.

19. In Madhya Pradesh Administration v. Tribhuban [20] , this Court upheld the order of the Industrial Court passed in its jurisdiction under Section 11A of the ID Act awarding compensation and set aside the judgment of the Single Judge and the Division Bench that ordered the reinstatement of the workman with full back wages. The Court in paragraph 12 (pg. 755) of the Report held as under:

"12. In this case, the Industrial Court exercised its discretionary jurisdiction under Section 11-A of the Industrial Disputes Act. It merely directed the amount of compensation to which the respondent was entitled had the provisions of Section 25-F been complied with should be sufficient to meet the ends of justice. We are not suggesting that the High Court could not interfere with the said order, but the discretionary jurisdiction exercised by the Industrial Court, in our opinion, should have been taken into consideration for determination of the question as to what relief should be granted in the peculiar facts and circumstances of this case. Each case is required to be dealt with in the fact situation obtaining therein."

20. In Mahboob Deepak5 , this Court stated that an order of retrenchment passed in violation of Section 6-N of the U.P. Industrial Disputes Act may be set aside but an order of reinstatement should not however be automatically passed. The Court observed in paragraphs 11 and 12 (pg. 578) of the Report as follows:-

"11. The High Court, on the other hand, did not consider the effect of non-compliance with the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947. The appellant was entitled to compensation, notice and notice pay.

12. It is now well settled by a catena of decisions of this Court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workmen should be granted adequate monetary compensation. (See M.P. Admn. v. Tribhuban20)."

21. In Telecom District Manager and others v. Keshab Deb[21], this Court said that even if the provisions of Section 25-F of the I.D. Act had not been complied with, the workman was only entitled to just compensation.

22. In Talwara Co-operative Credit and Service Society Limited v. Sushil Kumar[22], this Court in paragraph 8 (pg. 489) of the Report held as under :

"8. Grant of a relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic. The Industrial Courts while exercising their power under Section 11- A of the Industrial Disputes Act, 1947 are required to strike a balance in a situation of this nature. For the said purpose, certain relevant factors, as for example, nature of service, the mode and manner of recruitment viz. whether the appointment had been made in accordance with the statutory rules so far as a public sector undertaking is concerned, etc., should be taken into consideration."

23. In Jagbir Singh6 , this Court, speaking through one of us (R.M. Lodha, J.) while dealing with the question of consequential relief arising from the facts quite similar to the present case, ordered compensation of Rs. 50,000/- to be paid by the employer to the workman instead of reinstatement. In paragraph 14 (pg.335) of the Report, this Court held as under :

"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 240 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."

24. In Uttar Pradesh State Electricity Board v. Laxmi Kant Gupta[23], this Court stated, "…. now there is no such principle that for an illegal termination of service the normal rule is reinstatement with back wages, and instead the Labour Court can award compensation".

25. In Santosh Kumar Seal7, while dealing with a case of workmen who were engaged as daily wagers about 25 years back and had hardly worked for two or three years, this Court speaking through one of us (R.M. Lodha, J.) held that reinstatement with back wages could not be said to be justified and instead monetary compensation would subserve the ends of justice. It was held that compensation of Rs. 40,000/- to each of the workmen would meet the ends of justice.

26. From the long line of cases indicated above, it can be said without any fear of contradiction that this Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled to reinstatement in all situations. It has always been the view of this Court that there could be circumstance(s) in a case which may make it inexpedient to order reinstatement. Therefore, the normal rule that dismissed employee is entitled to reinstatement in cases of wrongful dismissal has been held to be not without exception. Insofar as wrongful termination of daily-rated workers is concerned, this Court has laid down that consequential relief would depend on host of factors, namely, manner and method of appointment, nature of employment and length of service. Where the length of engagement as daily wager has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid. A distinction has been drawn between a daily wager and an employee holding the regular post for the purposes of consequential relief.

27. We shall now consider two decisions of this Court in Harjinder Singh2 and Devinder Singh3 upon which heavy reliance has been placed by the learned counsel for the respondent. In Harjinder Singh2 , this Court did interfere with the order of the High Court which awarded compensation to the workman by modifying the award of reinstatement passed by the Labour Court. However, on close scrutiny of facts it transpires that that was a case where a workman was initially employed by Punjab State Warehousing Corporation as work-charge motor mate but after few months he was appointed as work munshi in the regular pay-scale for three months. His service was extended from time to time and later on by one month's notice given by the Managing Director of the Corporation his service was brought to end on 05.07.1988. The workman challenged the implementation of the notice in a writ petition and by an interim order the High Court stayed the implementation of that notice but later on the writ petition was withdrawn with liberty to the workman to avail his remedy under the ID Act. After two months, the Managing Director of the Corporation issued notice dated 26.11.1992 for retrenchment of the workman along with few others by giving them one month's pay and allowances in lieu of notice as per the requirement of Section 25-F(a) of the ID Act. On industrial dispute being raised, the Labour Court found that there was compliance of Section 25-F but it was found that the termination was violative of Section 25-G of the ID Act and, accordingly, Labour Court passed an award for reinstatement of the workman with 50 per cent back wages. The Single Judge of that High Court did not approve the award of reinstatement on the premise that the initial appointment of the workman was not in consonance with the statutory regulations and Articles 14 and 16 of the Constitution and accordingly, substituted the award of reinstatement with 50 per cent back wages by

directing that the workman shall be paid a sum of Rs. 87,582/- by way of compensation. It is this order of the Single Judge that was set aside by this Court and order of the Labour Court restored. We are afraid the facts in Harjinder Singh2 are quite distinct. That was not a case of a daily- rated worker. It was held that Single Judge was wrong in entertaining an unfounded plea that workman was employed in violation of Articles 14 and

16. Harjinder Singh2 turned on its own facts and is not applicable to the facts of the present case at all.

28. In Devinder Singh3 , the workman was engaged by Municipal Council, Sanaur on 01.08.1994 for doing the work of clerical nature. He continued in service till 29.09.1996. His service was discontinued with effect from 30.09.1996 in violation of Section 25-F of ID Act. On industrial dispute being referred for adjudication, the Labour Court held that the workman had worked for more than 240 days in a calendar year preceding the termination of his service and his service was terminated without complying with the provisions of Section 25-F. Accordingly, Labour Court passed an award for reinstatement of the workman but without back wages. Upon challenge being laid to the award of the Labour Court, the Division Bench set aside the order of the Labour Court by holding that Labour Court should not have ordered reinstatement of the workman because his appointment was contrary to the Recruitment Rules and Articles 14 and 16 of the Constitution. In the appeal before this Court from the order of the Division Bench, this Court held that the High Court had neither found any jurisdictional infirmity in the award of the Labour Court nor it came to the conclusion that the award was vitiated by an error of law apparent on the face of the record and notwithstanding these the High Court set aside the direction given by the Labour Court for reinstatement of the workman by assuming that his initial appointment was contrary to law. The approach of the High Court was found to be erroneous by this Court. This Court, accordingly, set aside the order of the High Court and restored the award of the Labour Court. In Devinder Singh3 , the Court had not dealt with the question about the consequential relief to be granted to the workman whose termination was held to be illegal being in violation of Section 25-F.

29. In our view, Harjinder Singh2 and Devinder Singh3 do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This Court found in those cases that judicial discretion exercised by the Labour Court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this

Court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors, including the mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute before grant of relief in an industrial dispute. 30. We may also refer to a recent decision of this Court in Bharat Sanchar Nigam Limited v. Man Singh[24]. That was a case where the workmen, who were daily wagers during the year 1984-85, were terminated without following Section 25-F. The industrial dispute was raised after five years and although the Labour Court had awarded reinstatement of the workmen which was not interfered by the High Court, this Court set aside the award of reinstatement and ordered payment of compensation. In paragraphs 4 and 5 (pg.559) of the Report this Court held as under:

"4. This Court in a catena of decisions has clearly laid down that although an order of retrenchment passed in violation of Section 25-F of the Industrial Disputes Act may be set aside but an award of reinstatement should not be passed. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

5. In view of the aforementioned legal position and the fact that the respondent workmen were engaged as "daily wagers" and they had merely worked for more than 240 days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice."

31. In light of the above legal position and having regard to the facts of the present case, namely, the workman was engaged as daily wager on 01.03.1991 and he worked hardly for eight months from 01.03.1991 to 31.10.1991, in our view, the Labour Court failed to exercise its judicial discretion appropriately. The judicial discretion exercised by the Labour Court suffers from serious infirmity. The Single Judge as well as the Division Bench of the High Court also erred in not considering the above aspect at all. The award dated 28.06.2001 directing reinstatement of the respondent with continuity of service and 25% back wages in the facts and circumstances of the case cannot be sustained and has to be set aside and is set aside. In our view, compensation of Rs. 50,000/- by the appellant to the respondent shall meet the ends of justice. We order accordingly. Such payment shall be made to the respondent within six weeks from today failing which the same will carry interest @ 9 per cent per annum.

32. The appeal is partly allowed to the above extent with no order as to costs.

[1] (1982) 1 SCC 645
[2] (2010) 3 SCC 192
[3] (2011) 6 SCC 584
[4] (2006) 9 SCC 434
[5] (2008) 1 SCC 575
[6] (2009) 15 SCC 327
[7] (2010) 6 SCC 773
[8] (2010) 9 SCC 126
[9] AIR 1960 SC 1264
[10] (1969) 3 SCC 513
[11] (1969) 3 SCC 653
[12] (1971) 1 SCC 742
[13] (1972) 4 SCC 205
[14] (2005) 5 SCC 100
[15] (2006) 5 SCC 127
[16] (2006) 5 SCC 173
[17] (2006) 13 SCC 727
[18] (2007) 5 SCC 742
[19] (2007) 9 SCC 353
[20] (2007) 9 SCC 748
[21] (2008) 8 SCC 402
[22] (2008) 9 SCC 486
[23] (2009) 16 SCC 562
[24] (2012) 1 SCC 558