SUPREME COURT OF INDIA

Gauri Shanker

Vs.

State of Rajasthan

C.A.No.3701 of 2015

(V.Gopala Gowda and C.Nagappan JJ.)

16.04.2015

JUDGMENT

V. GOPALA GOWDA, J.

Delay condoned. Leave granted.

This appeal is directed against the impugned judgment and order dated 4.4.2014 passed by the High Court of Judicature of Rajasthan at Jodhpur in D.B. Civil Special Appeal (Writ) No. 54 of 2014, wherein the High Court declined to interfere with the order dated 18.11.2013 of the learned single Judge passed in S.B. Civil Writ Petition No. 4253 of 2002 wherein the learned single Judge proceeded to consider the writ petition filed by the respondent-Department against the award dated 28.6.2001 of the Labour Court, Bikaner in Labour Dispute Case NO. 94 of 1994 whereby the Labour Court after adjudication of the points of dispute held that the retrenchment of the appellant-workman (for short "the workman") from his services with effect from 1.4.1992 is improper and invalid and directed the employer for the reinstatement of the workman in his post.

Brief resume of facts are stated hereunder for the purpose of appreciating the rival legal contentions to examine whether the impugned judgment and orders passed by the Division Bench of the High Court and the learned single Judge warrant interference by this Court in exercise of its appellate jurisdiction.

The workman was working in the respondent-Forest Department, Chattargarh, District Bikaner at Rajasthan State (for short 'the respondent- Department'). It is the case of the workman that he was appointed against the permanent and

sanctioned post with effect from 1.1.1987 till his services came to be retrenched, i.e. on 1.4.1992 and has rendered service of more than 240 days in every calendar year and has received salary from the respondent-Department each month. The workman aggrieved by the order of retrenchment passed by the respondent-Department has raised an industrial dispute questioning the correctness of the order in removing him from his service inter alia contending that the same is in violation of Sections 25F Clauses (a) and (b), 25G and 25H of the Industrial Disputes Act, (for short "the Act"), therefore, the retrenchment of the workman from his service is void ab initio in law and prayed for setting aside the same. The State Government in exercise of its power referred the industrial dispute between the workman and the respondent-department to the Labour Court, Bikaner vide Notification No. P.1(1) [2234]Shrm Ni/93 dated 28.1.1994 for adjudication of the following points of dispute:-

> "Whether removal of workman Gauri Shankar son of Bhairuan (who has been represented by the General Secretary, Forest Labour Union, Tyagi Vatika Jailwell, Bikaner) by the Employer, Deputy Conservator of Forest, Chhattargarh, Bikaner is just and legal? If no, to what relief and amount the workman is entitled to?"

On receipt of the reference, both the parties filed their respective claim statements in justification of their respective cases. It is the case of the workman before the Labour Court that he has been appointed as a permanent workman in the permanent post of the respondent-Department and that he has worked from 1.1.1987 till his termination from 1.4.1992 and he has been paid his salary on daily wage basis every month mentioning his name as a daily wage earner in the muster roll. The service of the workman was retrenched by the respondent-Department allegedly because he did not agree to join the new Union as per the recommendation of the respondent- Department. It is contended on behalf of the workman that his removal from service by the respondent-Department is otherwise misconduct on the part of the respondent-Department and therefore, it amounts to retrenchment as defined under Section 2(oo) of the Act. Before removing the workman from his services the respondent-Department neither published any seniority list nor followed the rule of first come last go and thereby there is a blatant violation of Rules 77-78 of Rajasthan Industrial Disputes Rules, 1958. It is also further stated that before removing him from the services, the respondent neither issued one month's notice nor paid one month's wages nor obtained permission from the State Government to retrench him from the services and also did not pay retrenchment compensation as per Section 25F(b) of the Act to the workman. Further, it is contended that the act of the employer amounts to unfair

labour practice as defined under Section 2(ra) and prohibited under Section 25T of the Act for which the respondent- Department is liable for penal action as provided under Section 25U of the Act. Therefore, the retrenchment of the workman is bad in law, as the same is in blatant violation of Sections 25F, 25G, 25H, 25T and 25U of the Act and therefore, the order of retrenchment is rendered void ab initio in law.

The respondent-Department filed its reply statement denying the claim made by the workman and stated that he was not appointed on any post, the work place as stated by him is at Dandi site of Sattasar Range and that during the period of last one year before the alleged retrenchment he has not worked even for a day. Further, it is contended that the respondent- Department has not constituted any Union and that the workman was neither retrenched nor any provision of the Act and Rules have been contravened as stated by him in his claim petition. Further, it is stated by the respondent-Department that from the perusal of the Government record, it has been found that the workman has not worked even for a day during the year 1991, and that he worked on casual basis in November, 1988 for 26 days, in October, 1989 for 26 days, in September, 1989 for 26 days, in June, 1989 for 26 days and in March, 1989 for 24 days and that in between these periods the workman was absent from work on his own volition. It is further contended by the respondent-Department that after November, 1989 up to the date of retrenchment he has never been engaged for work and did not attend for work without giving any prior notice/information that he has left the job on his own. It is therefore contended by the respondent- Department that it is neither an industrial dispute nor is the appellant a workman and moreover, the respondent-Department is not an industry and therefore, the dispute raised by the workman is not an industrial dispute and the Labour Court has no jurisdiction to entertain the same. It is further contended by the respondent-Department that there has been an extraordinary delay in raising the dispute, without assigning proper and satisfactory explanation and the same is referred by the State Government to the Labour Court for its adjudication. Therefore, the respondent- Department prayed for rejection of the order of reference made to the Labour Court.

Both the parties have adduced evidence before the Labour Court in support of their respective claim and counter claim. The Labour Court has examined the evidence of the workman and the evidence of Munnalal, the witness of the respondent-Department wherein, in his affidavit evidence he has stated that the workman was posted as the Area Forest Officer in Sattasar Forest Division-Chattargarh from July, 1989 to May, 1991 and further stated that the contention of the workman that he was removed from the service on 1.1.1991 is incorrect. It is further elicited in

his evidence by cross examination that there were many places of work and different muster rolls were being used and maintained for each site and he has further admitted that muster rolls of Dandi road site and Nursery (Dandi) both are separate and muster rolls of Dandi road site were not produced. From the submissions made by the parties and perusal of the record, the Labour Court observed that it has been submitted by the respondent-Department that in the reference of the industrial dispute there is no mention of the date on which the workman's services were dispensed with by the respondent- Department and the one year prior to the date of alleged removal, the workman has not worked for a single day with the respondent-Department. The said contention of the respondent-Department was disbelieved by the Labour Court and it has held that he has been removed from service on 1.4.1992. The Labour Court after referring to the judgments of this Court examined the plea in the claim statements with regard to the date of removal and referred to the judgments of this Court in the cases of Madan Pal Singh v. State of U.P. & Ors.[1], Samishta Dube v. City Board, Etawah & Anr.[2] and H.D. Singh v. Reserve Bank of India & Ors.[3] and on examining the muster rolls of Dandi Nursery marked as Ext. M-1 to 25 it was held to be not proper. Further, it has held that the respondent-Department has deliberately concealed the period of work of the workman in the respondent- Department though he has continuously worked in the respondent-Department from 1.1.1987 to March, 1992 i.e. for more than 240 days in a calendar year. The Labour Court after hearing the parties and perusal of the record, adjudicated the points of dispute referred to it by answering the same in favour of the workman and holding that the respondent-Department failed to comply with the mandatory requirements as provided under Section 25F clauses (a) and (b) and Sections 25G and 25H of the Act, therefore, it was held by the Labour Court that the action of the respondent-Department was in contravention of the aforesaid statutory provisions of the Act and Rules 77 and 78 of the Central Industrial Dispute Rules, 1957. Thus it was held by the Labour Court that the termination order passed against the workman is illegal and void ab initio in law and therefore, it has passed the award of reinstatement on 28.06.2001, but denied back-wages for the reason that he has not worked from 1.4.1992 till passing of the award. Further, on account of the hardship and difficulties undergone by the workman during the said period it has observed that he is entitled for compensation of Rs.2,500/- and he is also entitled for receiving salary from the date of the award till the date of reinstatement.

The correctness of the award was challenged by the respondent-Department by filing a writ petition before the single Judge of the High Court urging certain legal grounds and questioned the correctness of the finding and reasons recorded by the Labour Court on the contentious points in the award holding that the workman has

rendered 240 days of work in a calendar year and he has continuously worked from 1987 to 1992 and prayed for setting aside the same as it is erroneous in law by placing strong reliance upon the Circular instructions dated 28.9.2012 and 23.10.2013 in relation to the industrial dispute cases for awarding compensation of Rs.2,500/- for the hardship and difficulties suffered by the workman. The learned single Judge in his judgment observed that the Labour Court arrived at the conclusion that the workman was discontinued from service from 1.4.1992, and further the said finding is based on the conduct of the employer in not producing the relevant muster rolls maintained by them either before the Labour Court or before the learned single Judge of the High Court or without assigning any reason for non-production of the relevant records which must be in possession and custody of the respondent-Department.

It was further observed by the single Judge that the workman in definite terms has stated in his affidavit that he remained in service of the respondent-Department till March 1992. In this factual background, the learned single Judge held that he did not find any fault with the finding rendered by the Labour Court that the workman remained in service till March 1992 and that he was retrenched thereafter from his service. The order of termination was held to be void ab intio in law due to the non- compliance of the provisions of Sections 25F clauses (a) and (b), 25G and 25H of the Act and in normal course, its natural corollary is reinstatement in service. However, looking into the fact that the workman was retrenched from his services back in March 1992 and that he was working just on casual basis, the learned single Judge held that the equities shall be balanced by awarding compensation of Rs.1,50,000/- in lieu of reinstatement and accordingly, disposed of the case vide judgment and order dated 18.11.2013. The correctness of the same is questioned by the workman in appeal before the Division Bench of the High Court. The Division Bench affirmed the said view of the learned single Judge of the High Court vide impugned order dated 04.04.2014. The correctness of the same is challenged before this Court urging various legal contentions.

The learned counsel for the workman submits that once the Labour Court which is the fact finding court recorded the finding of fact on the basis of pleadings and evidence on record and answered the points of dispute after adjudication of the same and held that the termination order passed against the workman is in violation of Sections 25F clauses (a) and (b), 25G and 25H of the Act, the High Court has exceeded its jurisdiction in exercise of its Judicial Review power under Articles 226 and 227 of Constitution of India in holding that the workman is a casual workman as he was intermittently working as a daily wage worker and therefore, he is not entitled for reinstatement as awarded by the Labour Court by following

the principle of normal rule and further erroneously has awarded reinstatement of the workman and compensation of Rs.2,500/- for the hardship and difficulties suffered by him which is contrary to the judgments of this Court in a catena of cases.

It is further contended by the learned counsel that the High Court has exceeded its jurisdiction in interfering with the finding of fact recorded by the Labour Court on the points of dispute in exercise of its original jurisdiction. The same is contrary to the judgment of this Court in Harjinder Singh v. Punjab State Warehousing Corporation[4] wherein this Court has referred to Syed Yakoob v. K.S. Radhakrishnan and Ors.[5].

The learned counsel for the respondent-Department has sought to justify the impugned judgment contending that the High Court in exercise of its extraordinary and supervisory jurisdiction has held that he was a casual employee intermittently working with the respondent-Department. Therefore, the compensation was awarded in lieu of reinstatement of workman in his post by applying the Circular instructions issued by the State Government; the same need not be interfered with by this Court in exercise of its Jurisdiction as there is no mis-carriage of justice in the case on hand.

With reference to the aforesaid rival legal contentions urged on behalf of the parties, we have to answer the following contentious issues that would arise for our consideration :-

Whether the Labour Court was justified in not awarding backwages and granting Rs.2,500/- as compensation in lieu of backwages though it has awarded reinstatement in the absence of gainful employment of workman?

Whether the High Court in exercise of its supervisory jurisdiction under Articles 226 and 227, is justified in interfering with the finding of facts recorded on the points of dispute recorded by the Labour Court in the award passed by it?

What award?

The aforesaid contentious points are required to be answered in favour of the workman for the following reasons:

It is not in dispute that the workman was employed with the respondent-Department in the year 1987 and on the basis of material evidence adduced by both the parties and in the absence of the non-production of muster rolls on the ground

that they are not available, which contention of the respondent-Department is rightly not accepted by the Labour Court and it has recorded the finding of fact holding that the workman has worked from 1.1.1987 to 1.4.1992. The Labour Court has drawn adverse inference with regard to non-production of muster rolls maintained by them, in this regard, it would be useful to refer to the judgment of this Court in the case of Gopal Krishnaji Ketkar v. Mohd. Haji Latif & Ors.[6] wherein it was held thus:

> "5. .....Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. In Murugesam Pillai v. Gnana Sambandha Pandara Sannadhi, Lord Shaw observed as follows:
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> "A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to, the, Courts the best material for its decision. With regard to third parties, this may be right enough-they have no responsibility for the conduct of the suit but with regard to the parties to the suit it is, in their Lordships' opinion an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition."

This passage was cited with approval by this Court in a recent decision-- Biltu Ram & Ors. v. Jainandan Prasad & Ors. In that case, reliance was placed on behalf of the defendants upon the following passage from the decision of the Judicial Committee in Mt. Bilas Kunwar v. Desraj Ranjit Singh :-

> "But it is open to a litigant to refrain from producing any documents that he considers irrelevant; if the other litigant is dissatisfied it is for him to apply for an affidavit of documents and he can obtain inspection and production of all that appears to him in such affidavit to be relevant and proper. If he fails so to do, neither he nor the Court at his suggestion is entitled to draw any inference as to the contents of any such documents."

The said finding of the Labour Court is re-affirmed by the learned single Judge which also affirmed the finding that the action of the respondent- Department in terminating the services of the workman w.e.f. 1.4.1992 is a case of retrenchment as defined under Section 2(oo) of the Act as the termination of the services of the workman is otherwise for misconduct by the respondent-Department. Further, undisputedly the non-compliance of the mandatory requirements as provided under the provisions of Sections 25F clauses (a) and (b), 25G and 25H of the Act read with Rules 77 and 78 of the relevant Rajasthan Industrial Dispute Rules, 1958 has rendered the order of termination passed against the workman void ab initio in law. The Labour Court in the absence of any material evidence on record in justification of the case of the respondent-Department has rightly recorded the finding of fact and held that the order of termination passed against the workman is bad in law, the same being void ab initio in law it has passed an award for reinstatement of the workman in his post in exercise of its original jurisdiction under provision of Section 11 of the Act. The Labour Court has rightly followed the normal rule of reinstatement of the workman in his original post as it has found that the order of termination is void ab-initio in law for non compliance with the mandatory provisions of the Act referred to supra. However, the Labour Court is not correct in denying backwages without assigning any proper and valid reasons though the employer did not prove either its stringent financial conditions for denial of back wages or that workman has been gainfully employed during the period from the date of order of termination till the award was passed in favour of the workman except granting Rs.2,500/- as compensation for the suffering caused to the workman. The same is erroneously modified by the learned single Judge who recorded the finding of fact for the first time by holding that the workman is a casual employee intermittently working in the respondent-Department. The learned single Judge of the High Court has exceeded his jurisdiction under Articles 226 and 227 of the Constitution of India as per the legal principles laid down by this Court in the case of Harjinder Singh (supra) wherein this Court has held thus:- "17. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to sub-serve the common good and also

ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J, opined that "the concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State"

- State of Mysore v. Workers of Gold Mines AIR 1958 SC 923."

The said principle has been reiterated by this Court in Jasmer Singh v. State Of Haryana & Anr. (Civil Appeal NO. 346 of 2015 decided on 13.1.2015).

Therefore, in view of the above said case, the learned single Judge in exercise of its powers under Articles 226 and 227 of the Constitution of India erroneously interfered with the award of reinstatement and future salary from the date of award till date of reinstatement as rightly passed by the Labour Court recording valid and cogent reasons in answer to the points of dispute holding that the workman has worked from 1.1.1987 to 1.4.1992 and that non-compliance of the mandatory requirements under Sections 25F, 25G and 25H of the Act by the respondent-Department rendered its action of termination of the services of the workman as void ab initio in law and instead the High Court erroneously awarded a compensation of Rs.1,50,000/- in lieu of reinstatement. The learned single Judge and the Division Bench under their supervisory jurisdiction should not have modified the award by awarding compensation in lieu of reinstatement which is contrary to the well settled principles of law laid down in catena of cases by this Court.

In view of the foregoing reasons, the modified award passed by the learned single Judge of the High Court which was affirmed by the Division Bench of the High Court has rendered the impugned judgment and order bad in law as it suffers from not only erroneous reasoning but also an error in law. Therefore, the same are liable to be set aside. Hence, we pass the following order:-

The appeal of the workman is allowed. The judgment and orders of the learned single Judge and the Division Bench of the High Court are hereby set aside and the award of the Labour Court is restored in so far as the order of reinstatement is concerned;

The respondent-Department is further directed to reinstate the workman in his post and pay 25% back-wages from the date of termination till the date of award passed by the Labour Court and full salary from date of award passed by the Labour Court till the date of his reinstatement by calculating his wages/salary on the basis of

periodical revision of the same within six weeks from the date of the receipt of the copy of this judgment.

[1] (2000) 1 SCC 683
[2] (1999) 3 SCC 14
[3] 1985 (4) SCC 201
[4] (2010) 3 SCC 192
[5] AIR 1964 SC 477
[6] AIR 1968 SC 1413

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