SUPREME COURT OF INDIA

The Management of Sri Ramnarayan Mills Ltd.

Vs.

Secretary Coimbatore District Textile Workers Union(Hms)

C.A.No.1977 of 2010

(Abhay Manohar Sapre and Indu Malhotra,JJ.,)

02.11.2018

JUDGMENT

Abhay Manohar Sapre,J.,

1. This appeal is filed against the final judgment and order dated 13.08.2007 passed by the High Court of Judicature at Madras in W.A. No. 2675 of 2002 whereby the Division Bench of the High Court dismissed the Writ Appeal and affirmed the order of the Labour Court and Single Judge.

2. Facts of the case lie in a narrow compass. They, however, need mention in brief infra to appreciate the short controversy.

3. The appellant is a limited company having its mill in Coimbatore. The appellant being an employer applied to the Joint Commissioner of Labour (Respondent No.3) praying in their application that they be allowed to add one more new ground namely "break in service" in Clause 16 of the Chapter of Punishment in Certified Standing Orders in addition to the existing grounds specified therein.

4. In other words, the appellant's prayer was that if any employee commits "break in service" in any year, then it should be regarded as one of the ground for punishment enabling the employer (appellant) to take action against such employee under their certified standing order. They, therefore, prayed that they may be allowed to add this new ground in Clause 16 of the Chapter of Punishment in Certified Standing Orders.

5. On 02.04.1992 the third respondent (Joint Commissioner of Labour) allowed the said application of appellant and permitted them to amend their certified standing orders by adding "brake in service" as one new ground in Clause 16 of the Chapter of Punishment in Certified Standing Orders.

6. The Workers' Union (Respondent No.1) felt aggrieved by the order dated 02.04.1992 filed appeal in the Labour Court. By order dated 06.02.1995, the Labour Court allowing the appeal

and setting aside the order dated 02.04.1992 held that if the proposed amendment is allowed, it would cause immense prejudice to the rights of the workmen and further the employer would likely to misuse this new ground of punishment mostly for their benefit. It was also held that apart from these two reasons, it would also defeat the object of the Payment of Gratuity Act while calculating the employee's continuous service as defined under the Payment of Gratuity Act which provides for different modes of calculation.

7.The appellant felt aggrieved of the order of the Labour Court and filed the writ petition in the High Court at Madras questioning therein the legality and correctness of the order of the Labour Court. By order dated 19.07.2002, the learned Single Judge dismissed the appellant's writ petition which gave rise to filing of the intra court appeal by the appellant (employer) before the Division Bench of the High Court.

8. By impugned order, the Division Bench dismissed the appeal and affirmed the order of the Labour Court and Single Judge. It is against this order; the appellant (employer) has felt aggrieved and filed the present special leave to appeal in this Court.

9. So the short question which arises for consideration in this appeal is whether the Courts below (Labour Court, Single Judge and the Division Bench) were justified in rejecting the application filed by the appellant (employer) to the Joint Commissioner of Labour (certifying officer) seeking therein a permission to add one more new ground i.e. “break in service” in Clause 16 of the Chapter of Punishment in Certified Standing Orders.

10. Having heard the learned counsel for the parties and on perusal of the record of the case and the written submissions, we find no merit in this appeal.

11.The Division Bench dealt with this issue in Para 6 of the impugned order which reads as under:

> “We have considered the above submission of the learned counsel for the appellant. In fact, what is sought for is to include ‘break in service’ as one of the punishment under Clause 16 of the Standing Orders. To say in other words, if the workman does not come for duty, for any reason, break in service will be effected for such period of absent. By permitting the appellant to modify the Standing Order so as to include the break in service as one of the punishment, in fact, will enable the appellant to exercise the power to impose the punishment in an arbitrary manner i.e., if an employee is punished for the absence in accordance with the existing Standing Order, continuity of service of the employee is not disrupted whereas, if the appellant is permitted to modify the Standing Order so as to include the break in service as also one of the punishment, even a half day absent from duty in a year of 12 months, will give an opportunity to the appellant to take disciplinary action against an employee concerned at the end of the year and to impose a punishment of break in service, which will have a consequence of depriving the employee’s right to get gratuity for that particular year. When so many other punishments have been enumerated under Clause 16 of the said Standing Order, there is no need to include the punishment of break in service as

one of the punishments. In fact, permitting the appellant to include 'break in service' as one of the punishment, defects the object of the Payment of Gratuity, that is to say, as per Gratuity Act, on completion of every continuous service of 5 years, an employee is eligible to get the gratuity. As referred above, if for a particular period of absents, to say for a day also, this proposed modification enables an employer to impose a punishment of break in service. Consequently, for that particular year, an employee will not get gratuity inspite of the fact that he had worked for 12 calendar months. Now, only 240 days shall be taken into account and not 240 days attendance shall be taken into account. As such, if the modification is allowed, the future right of the employee to get a gratuity for a particular year will get affected. Apart from this, if an employee, for certain reasons beyond his control, was forced to be absent even for a day, he can be imposed with the punishment of break in service which will have consequence on his gratuity. That apart, if an employee has to be punished for the absent as referred above. The punishment of either censure, reduction in rank or payment cut etc. may be imposed and continuity of service of that employee is not disrupted. If the appellant is permitted to include break in service also as one of the punishment, even for one day or half a day absent from duty in a year of 12 months, will give power to the appellant to impose the punishment of break in continuity of service in order to deprive the employee's right to get the gratuity for that particular year. In fact, this proposed amendment is against the welfare of the employee and as rightly held by the learned Single Judge, besides, this can be exercised in an arbitrary manner, consequently, the employees will be penalized. That apart, as rightly held by the learned Single Judge, on the appreciation of the entire materials, the Labour Court has arrived at a factual conclusion that the amendment sought for, namely, inclusion of break in service in Clause 16 is unreasonable and it would be possible for the Management to act arbitrarily. That apart, by including the break in service as one of the punishment, in fact, what the appellant intends to do is only to get an opportunity to impose punishment which will have an impact in the gratuity of the employee of the concerned year."

12. The Division Bench, in our considered opinion, rightly concluded that a "break in service" cannot be allowed as a ground by way of punishment in Clause 16 of the Chapter of Punishment in Certified Standing Orders for the following reasons:

13. Firstly, the existing grounds enumerated in Clause 16 by way of punishment are sufficient to take care of any misconduct committed by any employee and there appears no reason to introduce one more new ground in the existing grounds specified in Clause 16 for imposing a new punishment.

14. Secondly, the proposed ground, if allowed, would likely to be misused by the employer against its employees for their own benefit and detrimental to the employees' interest.

15. Thirdly, it would enable the employer to take action against its employees even in a situation where an employee is found absent even for a day and such absence will be treated as "break in service" under the Certified Standing Orders and also under the Payment of

Gratuity Act. It will, therefore, be in conflict with the definition of the expression "continuous service" defined under the Payment of Gratuity Act which gives different modes of calculation for determining the continuous service for payment of gratuity amount.

16. Fourthly, such ground will, therefore, defeat the very object of the Payment of Gratuity Act which is a beneficial legislation enacted for the benefit of the employees and lastly, it is neither bona fide nor reasonable and nor required and hence it cannot be allowed.

17. In our opinion, we find no good ground to differ with the reasoning assigned by the Division Bench mentioned above for rejecting the application made by the appellant (employer) for adding, "break in service" as a new ground for punishment in the Certified Standing Orders. The reasons given by the Division Bench, in our view, deserve to be upheld.

18. In the light of the foregoing discussion, we find no merit in this appeal. The appeal thus fails and is accordingly dismissed.