SUPREME COURT OF INDIA

H.D.Sharma

Vs.

Northern India Textile Research Association

C.A.No.3168 of 2010

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

03.12.2018

JUDGMENT

SQN. LDR. (Retd.) Navtej Singh

Abhay Manohar Sapre,J.,

1. This appeal is directed against the final judgment and order dated 06.02.2009 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No.2311/2009 whereby the High Court allowed the writ petition filed by the respondent herein and set aside the order of the Industrial Tribunal.

2. In order to appreciate the issues involved in this appeal, which lie in a narrow compass, few facts need mention hereinbelow.

3. The appellant (workman) was appointed on 26.05.1978 as Duplicating Machine Operator-cum- Clerk by the respondent- Northern India Textile Research Association, Ghaziabad (UP). On 24.04.1987, the appellant was dismissed from service on five charges of misconduct after holding a Departmental Enquiry.

4. The respondent (employer) on 27.04.1987 moved an application before the Presiding Officer, Industrial Tribunal at Meerut under Section 6E (2) of the UP Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") read with Rule 31 (2) of the Rules (Adj case No. 53/1986) and sought approval of the dismissal of the appellant. The respondent contended that they have complied with all necessary pre-requisites for seeking approval as provided in proviso to sub-Section (2) of Section 6E of the Act.

5. During the pendency of approval proceedings, the State Government, on 03.08.1988, also made an Industrial Reference (31/1988) to the Industrial Tribunal under Section 4K of the Act for deciding the legality and correctness of the appellant's dismissal order dated 24.04.1987.

6. In the meantime, the appellant (workman) filed his reply to approval proceedings (53/1986) filed by the respondent in the Industrial Tribunal. The appellant opposed the respondent's prayer for grant of approval essentially on the ground that the respondent (employer) did not ensure full compliance with the pre-requisites, which were necessary for grant of approval to the dismissal order in terms of proviso to sub-Section (2) of Section 6E of the Act. The appellant contended that in terms of proviso to sub-Section (2) of Section 6E of the Act his services could not have been discharged/dismissed unless he had been paid "wages for one month". It was contended that the respondent though paid the wages for one month, but did not pay "full wages of one month" to the appellant.

7. In other words, the grievance of the appellant was that the respondent was under legal obligation to pay to the appellant full wages for one month so as to enable them to obtain approval for his dismissal as provided in sub-Section (2) of Section 6E of the Act but since there was a short payment of Rs.110/- in total monthly wages, the respondent could not be said to have ensured full compliance with the proviso to sub-Section (2) of Section 6E of the Act. It was contended that it is only after the full compliance with Section 6E is done which is held mandatory by this Court, the respondent becomes entitled to claim its benefit else not. It was, therefore, contended that since the respondent failed to ensure full compliance with Section 6E of the Act, no approval could be accorded to the dismissal order as provided under Section 6E of the Act.

8. The respondent filed rejoinder stating therein the break up of the appellant's monthly wages with a view to show that they had paid full monthly wages to the appellant as per the terms of employment along with the dismissal order and, therefore, there was a full compliance with proviso to sub-Section (2) of Section 6E of the Act entitling them to seek approval to the appellant's dismissal order.

9. In the meantime, the respondent filed an application and sought permission of the Industrial Tribunal to allow them to withdraw their application which they had filed for obtaining approval to the dismissal order. According to the respondent, in view of the Industrial Reference No.31/1988 having already made by the State to the Industrial Tribunal wherein the legality and correctness of the dismissal order was being examined, it was not necessary for them to seek any approval to such dismissal order, as required under Section 6E of the Act, from the Industrial Tribunal.

10. By order dated 29.06.1990, the Industrial Tribunal dismissed the respondent's aforementioned application. The respondent felt aggrieved and filed a writ petition (W.P. No.18679/1990) in the High Court. By order dated 11.02.1998, the High Court allowed the writ petition and set aside the order dated 29.06.1990. It was held that two parallel proceedings in relation to the same matter cannot be allowed to be continued. Felt aggrieved, the appellant (workman) filed SLP(c) No. 8465/1998 in this Court.

11. By order dated 28.03.2000, this Court allowed the appeal, set aside the order of the High Court and remanded the case to the High Court. This Court held that firstly, the scope of

proceedings under the two provisions was entirely different; and secondly, since the Act provided separate rights, protection and remedies to the parties for prosecuting these proceedings, the disposal of one proceedings would not bring to an end the other. The High Court was, therefore, requested to decide the writ petition afresh on merits keeping in view the observations made.

12. On remand, when the High Court took up the writ petition for its disposal, the respondent did not press their withdrawal application in view of the decision of the Constitution Bench in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma & Ors*[1]. wherein it was laid down that proviso to Section 33(2)(b) of the Industrial Disputes Act, 1947, which is akin to Section 6E of the Act, is unambiguous, clear and equally mandatory in nature for ensuring its compliance. It was held that if the employer has failed to ensure compliance with the provisions and the conditions stated therein, the discharge or dismissal order passed by the employer would be void and inoperative.

13. Since Section 6E of the Act is in pari materia with Section 33(2)(b) of the Industrial Disputes Act, the interpretation of Section 33 (2)(b) made by this Court in Jaipur Zila Sahakari Bhoomi Vikas Bank (supra) will have its full application to Section 6E of the Act. The writ petition was accordingly dismissed as having rendered infructuous.

14. The Industrial Tribunal thereafter proceeded to try the reference on merits. An issue on the question of compliance with Section 6E (2)(b) of the Act, as directed by the High Court in the order dated 02.03.2005 passed in W.P.No.13094/2005, was accordingly framed. Parties adduced their evidence.

15. So far as the appellant is concerned, he adduced the evidence to prove that he was paid total sum of Rs.1103.30 by way of his monthly wages in terms of proviso to sub-Section (2) of Section 6E of the Act along with the dismissal order whereas his actual monthly wages payable was Rs.1214.40 thereby leaving a deficit of Rs.110/-. The respondent on their part produced the wages register to prove the appellant’s actual monthly wages, its nature and also gave its break up.

16. By order dated 24.07.2008, the Industrial Tribunal answered the reference in appellant's favour. It was held that the respondent did not ensure full compliance with proviso to Section 6E (2) inasmuch as the respondent failed to pay full wages of one month to the appellant. In other words, it was held that there was a deficit of Rs.110/- in paying monthly wages by the respondent to the appellant along with the dismissal order and hence the appellant was held deemed to be in service as if no dismissal order had been passed.

17. The respondent felt aggrieved by the order of the Industrial Tribunal and filed a writ petition in the High Court out of which this appeal arises. By impugned order, the High Court allowed the writ petition and set aside the order of the Industrial Tribunal. It was held that assuming that there was a short payment of Rs.110/- while paying monthly wages to the appellant, yet since the respondent had also paid a sum of Rs.1618.30 to him towards leave encashment in his monthly wages, a sum of Rs.110/- could always be adjusted out of

Rs.1618.30. It was accordingly held that in this way, it can be held that the respondent has ensured full compliance with Section 6E(2) of the Act while paying monthly wages to the appellant along with his dismissal order. The High Court, therefore, accorded sanction to the respondent as required under Section 6E(2) of the Act and upheld the dismissal order as being legal.

18. The workman (appellant herein) felt aggrieved and has filed the present appeal by way of special leave in this Court.

19. Three questions arise for consideration in this appeal. First, whether the High Court was justified in allowing the respondent's writ petition and thereby was justified in setting aside the order of the Industrial Tribunal; Second, whether an isolated payment of Rs.110/- made by the employer (respondent) to the employee (appellant) by way of interim relief (ex gratia) in August 1986 in monthly wages can be regarded as wages under Section 2(y) read with Section 6E(2) of the Act or in other words, whether such payment is a part of the appellant's monthly wages; and third whether the respondent can be held to have paid wages for one month to the appellant in compliance with the requirements of Section 6E (2) of the Act so as to enable them to claim sanction to the appellant's dismissal order.

20. Heard Mr. Sanjay Parikh, learned counsel for the appellant and Mr. Jitendra Mohan Sharma, learned senior counsel for the respondent.

21. Having heard the learned counsel for the parties at length and on perusal of the record of the case, we are inclined to uphold the conclusion arrived at by the High Court but we do so on our reasoning given hereinbelow. In other words, though we uphold the conclusion arrived at by the High Court, but not the reasoning of the High Court. This we say for the following reasons.

22. In our view, the respondent's application made under Section 6E(2) of the Act deserves to be allowed by granting them approval to the appellant's dismissal.

23. Section 2 (y) and Section 6E (2) of the Act are relevant. They are quoted below:

> "Section 2(y)
> 'Wages' means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes:-
>
> (i) such allowances (including dearness allowance) as the workman is for the time being entitled to;
>
> (ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any traveling concession, but does not include-

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c)any gratuity payable on the termination of his service.
Section 6E

Conditions of service, etc. to remain unchanged in certain circumstances during the pendency of proceedings -

(1)

(2)During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute-

(a)

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise; Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

(emphasis supplied)

24. Section 2(y) defines the term 'wages' whereas Section 6E provides that condition of service of a workman has to remain unchanged in certain circumstances. Proviso to Section 6E(2) says that no workman can be discharged or dismissed from the services unless he has been paid wages for one month and an application is made by an employee to an authority before whom the proceedings are pending for approval of the action taken by the employer against the workman.

25. Coming to the facts of this case, to answer these three questions posed above, we find that the appellant has relied on the break up of his monthly wages. It is this amount which, according to the appellant, should have been paid to him by the respondent as a pre-condition to give effect to his dismissal order. The break up reads as under:

26. So far as the respondent is concerned, they relied on the details of the appellant's monthly wages payable/paid to him at the time of his dismissal in full and final satisfaction. It reads as under:

Basic Salary	**Rs. 334.00**
F.D.A	**Rs. 108.00**
F.D.A	**Rs. 62.00**
A.D.A	**Rs. 494.35**
Interim Relief	**Rs. 110.00**
H.R.A.	**Rs. 75.60**
C.C.A.	**Rs. 30.45**
	Rs.1214. 40

27. According to the appellant, there was a short payment of Rs.110/- because he was paid Rs.1103.40 whereas his monthly wages was Rs.1214.40.

28. The stand of the respondent was that there was no short payment because a sum of Rs.110/- was paid to the appellant only once in August 1986 by way of ex gratia in the form of "interim relief". This sum, i.e., (Rs110/-), according to the respondent, was thereafter never paid to the appellant after August, 1986 till 24.04.1987 (date of dismissal order). It is for this reason, the respondent contended that a sum of Rs.110/- is neither a wage and nor its component and nor the appellant has any right in law to claim such amount under the terms of his employment from the respondent.

29. What types of payment would constitute a wage or its component within the meaning of the word "wages" as defined under Section 2 (rr) of the Industrial Disputes Act has been the subject matter of several decisions of this Court. The word "wages" defined in Section 2(y) of the Act is in peri materia with the definition of word "wages" defined in Section 2(rr) of the Industrial Disputes Act.

30. A question arose before the Three Judge Bench in the case of Bharat Electronics Limited vs. Industrial Tribunal, Karnataka, Bangalore & Anr. (1990) 2 SCC 314 as to whether "night

shift allowance" would form part of "wages" in the context of Section 33 (2) (b) of the Industrial Disputes Act, 1947.

31. Justice M.M. Punchhi (as His Lordship then was and later CJI) speaking for the Bench examined the object of Section 33(2)(b) of the Industrial Disputes Act. After referring to earlier decision of this Court in Syndicate Bank Limited vs. Ramanath (1968) 1 SCR 327, it was held that the intention of the legislature in providing for such a contingency is not far to seek. It was held that the section was enacted "to soften the rigour of unemployment that will face the workman against whom an order of discharge or dismissal has been passed". This Court held that one month's wages as thought and provided to be given are conceptually for the month to follow, the month of unemployment and in the context wages for the month following the date of dismissal and not a repetitive wage of the month previous to the date of dismissal. This Court further held that if the converse is read in the context of the proviso to Section 33(2)(b), it inevitable would have to be read as double the wages as earned in the month previous to the date of dismissal and that would, in our view, be reading in the provision something which is not there, either expressly or impliedly. This Court held that we have to blend the contextual interpretation with the conceptual interpretation to come to the view that night shift allowance could never be part of wages, and those would be due only in the event of working. It was held that the conclusion is inescapable that the workman had to earn night shift allowance by actually working in the night shift and his claim to that allowance was contingent upon his reporting to duty and being put to that shift. It was held that the night shift allowance automatically did not form part of his wages and it was not such an allowance which flowed to him as his entitlement not restricted to his service.

32. Now coming to the facts of this case, we find that it has come in evidence that the respondent had paid Rs.110/- to the appellant in August 1986 by way of "interim relief" as an ex gratia payment. It is not in dispute that a sum of Rs.110/- was paid only once in August 1986 and not thereafter.

33. In our opinion, such payment cannot be termed either as wages or its component within the meaning of Section 2 (y) read with Section 6E (2) of the Act.

34. The reason is that any isolated one time ex gratia payment made by way of an interim relief neither satisfies the requirement of Section 2 (y) and nor it satisfies the requirement of clauses (i) to (iii) of Section 2 (y) of the Act.

35. If such amount had been paid regularly by the respondent to the appellant in compliance with his terms of employment, it would have been regarded as wages or its component within the meaning of Section 2(y) of the Act. In order that any payment is regarded as "wages", it must be proved that it was being paid by the employer to his employee pursuant to the terms of his employment. It is only then a right is created in employee's favour to claim such amount from the employer provided the employee proves that he has fulfilled the terms of his employment.

36. A question arose before the Two Judge Bench in Ghaziabad *Zila Sahkari Bank Ltd. vs. Additional Labour Commissioner & Ors*[2]. as to whether any ex gratia payment made to the employee by the Bank would be regarded as Bonus (production, incentive or customary). This Court held that it was not. It was held that it is not possible to employ a term of service on the basis of employment contract. It was held that the payment made as ex gratia was neither in the nature of production bonus nor incentive bonus nor customary bonus and nor any statutory bonus. It cannot be regarded as part of the contract "employment". It was accordingly held that the ex gratia payment made by the Bank cannot be regarded as remuneration paid or payable to the employees in fulfillment of the terms of the contract of employment within the meaning of definition of wage under Section 2 (rr) of the ID Act.

37. We are, therefore, of the considered opinion that the respondent rightly paid Rs.1103.40 to the appellant by way of his wages for one month along with his dismissal order. Such payment, in our view, was made strictly in accordance with the requirements of Section 2(y) read with Section 6E (2) of the Act. On the other hand, we find that the appellant failed to adduce any evidence to prove that Rs.110/- was being paid to him every month by the respondent as a part of his term of the employment and, if so, under which head.

38. In view of the foregoing discussion, we are of the view that the High Court was not justified in holding that such amount, even if, held to be the wages, the same could be adjustable against the payments made by the respondent under other head in the appellant's monthly wages. The High Court, in our view, failed to examine the main question as to whether a payment of Rs.110/- was in the nature of "wages" or its component within the meaning of Section 2(y) of the Act. Without deciding this question, the High Court held that such amount could be adjusted against the payment made by the employer (respondent) to the appellant under "leave encashment". In our opinion, it was not the correct approach.

39. In the light of afore-mentioned reasons, though we uphold the conclusion of the High Court but do not agree to the reasoning on which such conclusion is based.

40. In view of the foregoing discussion, we find no merit in this appeal. It thus fails and is accordingly dismissed.

Judgment Referred.

[1]*(2002) 2 SCC 0244*
[2]*(2007) 11 SCC 0756*