SUPREME COURT OF INDIA

Management of the Barara Cooperative Marketing-cum- Processing Society Ltd. ...

Vs.

Workman Pratap Singh

C.A.No.7 of 2019

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

02.01.2019

JUDGMENT

Abhay Manohar Sapre,J.,

SLP(C)No.17975 of 2014

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 21.02.2014 passed by the High Court of Punjab & Haryana at Chandigarh in L.P.A. No. 317 of 2010 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant herein and affirmed the judgment dated 26.11.2009 passed by the Single Judge of the High Court in CWP No.15066 of 2006 by which the respondent herein was ordered to be reinstated into service with back wages.

3. Few relevant facts need mention hereinbelow to appreciate the short controversy involved in this appeal.

4. The appellant is the Co-operative Marketing Society. The respondent was working with the appellant as a Peon from 01.07.1973. The appellant terminated the services of the respondent on 01.07.1985. The respondent, therefore, got the reference made through the State to the Labour Court to decide the legality and correctness of his termination order.

5. By award dated 03.02.1988, the Labour Court Held the respondent's termination as bad in law and accordingly awarded lump sum compensation of Rs.12,500/- to the respondent in lieu of reinstatement in service.

6. The appellant and respondent both were aggrieved by the award and filed writ petitions before the High Court to challenge the legality and correctness of the award passed by the Labour Court. The High Court, however, dismissed both the writ petitions. The respondent then accepted the compensation, which was awarded by the Labour Court.

7. In the year 1993, the respondent filed a representation to the appellant praying therein that since the appellant has recently regularized the services of two peons on 01.01.1992 vide their resolution dated 02.08.1993, therefore, he has become entitled to claim re-employment in the appellant's services in terms of Section 25 (H) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act"). The appellant, however, did not accept the prayer made by the respondent.

8. This led to making of an industrial reference to the Labour Court by the State at the instance of the respondent for deciding the question as to whether the respondent is entitled to claim re-employment in the appellant's services in terms of Section 25 (H) of the ID Act.

9. The Labour Court answered the reference against the respondent and in appellant's favour. In other words, the Labour Court held that the respondent was not entitled to claim any benefit of Section 25 (H) of the ID Act to claim re-employment in the appellant's services on the facts stated by the respondent in his statement of claim.

10. The respondent felt aggrieved and filed writ petition in the High Court. The Single Judge by order dated 26.11.2009 allowed the writ petition and set aside the award of the Labour Court. The High Court directed re-employment of the respondent on the post of Peon in the appellant's services. The appellant- employer felt aggrieved and filed appeal before the Division Bench.

11. By impugned order, the Division Bench dismissed the appeal and upheld the order of the Single Judge, which has given rise to filing of the present appeal by way of special leave in this Court by the employer-the appellant.

12. Heard Mr. Ajay Kumar, learned counsel for the appellant and Mr. Shish Pal Laler, learned counsel for the respondent.

13. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the orders of the High Court (Single Judge and the Division Bench) restore the award of the Labour Court.

14. In our considered opinion, there was no case made out by the respondent (workman) seeking re-employment in the appellant's services on the basis of Section 25 (H) of the ID Act.

15. In the first place, the respondent having accepted the compensation awarded to him in lieu of his right of reinstatement in service, the said issue had finally come to an end; and Second, Section 25 (H) of the ID Act had no application to the case at hand.

16. Section 25(H) of the ID Act applies to the cases where employer has proposed to take into their employment any persons to fill up the vacancies. It is at that time, the employer is required to give an opportunity to the "retrenched workman" and offer him re-employment

and if such retrenched workman offers himself for re-employment, he shall have preference over other persons, who have applied for employment against the vacancy advertised.

17. The object behind enacting Section 25(H) of the ID Act is to give preference to retrenched employee over other persons by offering them re-employment in the services when the employer takes a decision to fill up the new vacancies.

18. Section 25(H) of the ID Act is required to be implemented as per the procedure prescribed in Rule 78 of the Industrial Disputes (Central) Rules, 1957 (hereinafter referred to as "the ID Rules") which, in clear terms, provides that Section 25(H) of the ID Act is applicable only when the employer decides to fill up the vacancies in their set up by recruiting persons. It provides for issuance of notice to retrenched employee prescribed therein in that behalf.

19. So, in order to attract the provisions of Section 25(H) of the ID Act, it must be proved by the workman that firstly, he was the "retrenched employee" and secondly, his ex-employer has decided to fill up the vacancies in their set up and, therefore, he is entitled to claim preference over those persons, who have applied against such vacancies for a job while seeking re-employment in the services.

20. The case at hand is a case where the respondent's termination was held illegal and, in consequence thereof, he was awarded lump sum compensation of Rs.12,500/- in full and final satisfaction. It is not in dispute that the respondent also accepted the compensation. This was, therefore, not a case of a retrenchment of the respondent from service as contemplated under Section 25(H) of the ID Act.

21. That apart and more importantly, the respondent was not entitled to invoke the provisions of Section 25 (H) of the ID Act and seek re-employment by citing the case of another employee (Peon) who was already in employment and whose services were only regularized by the appellant on the basis of his service record in terms of the Rules.

22. In our view, the regularization of an employee already in service does not give any right to retrenched employee so as to enable him to invoke Section 25 (H) of the ID Act for claiming re- employment in the services. The reason is that by such act the employer do not offer any fresh employment to any person to fill any vacancy in their set up but they simply regularize the services of an employee already in service. Such act does not amount to filling any vacancy.

23. In our view, there lies a distinction between the expression 'employment' and 'regularization of the service". The expression 'employment' signifies a fresh employment to fill the vacancies whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

24. In our view, the Labour Court was, therefore, justified in answering the reference in appellant's favour and against the respondent by rightly holding that Section 25(H) of the ID

Act had no application to the facts of this case whereas the High Court (Single Judge and Division Bench) was not right in allowing the respondent's prayer by directing the appellant to give him re-employment on the post of Peon.

25. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. Impugned order is set aside and the award of the Labour Court is restored.