State Of Chhattisgarh Vs Sukanti Bai

Court: Chhattisgarh High Court

Date of Decision: Feb. 20, 2019

Acts Referred: Industrial Disputes Act, 1947 â€" Section 25F
Constitution Of India, 1950 â€" Article 226, 227

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Rahul Mishra, S.P. Kale

Final Decision: Dismissed

Judgement

P. Sam Koshy, J

1. The challenge in the present Writ Petition is to the award of the learned Labour Court dated 11/09/2006 passed in case No. 3/IDA/04/Ref.

2. The facts of the case in brief is that, the dispute was raised by the respondent No.1 before the State Government in respect of her removal from

service w.e.f. 29/04/2000. The said dispute was lateron referred to the learned Labour Court, Raigarh for adjudication. The Labour Court proceeded

to decide the matter and in the course, the worker examined himself so also the witness from the petitioner establishment was also examined. After

taking into consideration the evidences which have come on record, the learned Labour Court vide the impugned award dated 11/05/2006 answered

the reference in favour of the employee holding the discontinuance to be bad in law and ordered that the worker is entitled for reinstatement without

backwages.

3. The contention of the counsel for the petitioner/State is that, the impugned order is bad for the reason that, the learned Labour Court has failed to

appreciate the evidences which the petitioner has led before the Labour Court. According to the petitioner, before discontinuing the services of the

respondent No.1, the petitioner department had paid one month notice to the worker and was also paid compensation and thus the requirement of law

was duly complied with and as such there was no scope of any interference. He further contended that, the substantial engagement of the respondent

No.1 was as a Daily Wage Employee and that a Daily Wage Employee does not have any indefeasible right in their favour to seek continuity in

employment as they are normally engaged for a days work and on completion of the days work, the employment comes to an automatic end.

According to the petitioner, since the nature of the respondent No.1 employment was temporary in nature and that the State has taken care of

providing necessary compensation before discontinuing the respondent No.1 from service, the Labour Court ought not have granted the benefit of

reinstatement.

4. Shri Kale appearing for respondent - worker however opposing the petition submits that, it is a case where the petitioner infact has ignored the

seniority of the respondent No.1 while discontinuing her services. According to him, there was specific evidence led by the worker before the Labour

Court that the people junior to the respondent No.1 i.e. persons who were engaged by the petitioner department subsequent to the appointment of the

respondent No.1 have been retained in employment whereas the services of the respondent in spite of the fact that she being senior in the department

has been discontinued. According to him, this fact has also been proved and established before the Labour Court from the evidence of the

management witness itself. He further contended that, pursuant to the order of the Labour Court under challenge, the respondent No.1 - employee has

been reinstated in service as early as in November-2006 and since then till date the respondent No.1 is in employment and therefore at this juncture

the services of the respondent No.1 should not be discontinued.

5. Having heard the contentions put forth on either side and on perusal of record what is undisputed is that, the respondent No.1 was initially engaged

in the year 1991 and she continued to serve the department till 31/01/2000. Thereafter, a notice of discontinuance was issued by the State Government

which was challenged before the State Administrative Tribunal and pursuant to the interim protection given by the State Administrative Tribunal, the

services of the respondent No.1 got continued till 29/04/2000 when the services of the respondent No.1 was discontinued.

6. An Industrial Dispute was immediately raised and the matter stood referred to the learned Labour Court and the terms of reference was whether

the discontinuance of the employee w.e.f. 29/04/2000 was justified or not, if not to what relief she is entitled for.

7. Before the Labour Court, the worker herself has examined and she has categorically stated that she was engaged continuously between 1991 to

2001 and that she has been abruptly discontinued without any reason after giving notice of one month.

8. From the record it appears that, the witness examined on behalf of the petitioner management has clearly admitted the fact that the juniors to the

respondent No.1 were retained in the department and no specific reason has been given as to why the services of the respondent No.1 though being

senior had to be discontinued. The witness on behalf of the State Government also has given statement that the respondent No.1 was working against

sanctioned vacant post.

9. Moreover, the compensation part which is said to have been paid to the respondent was also paid much after the discontinuance of the worker

which again is in contravention to the provision of Section 25-F of the Industrial Distpue Act which says that the compensation also has to be

simultaneously paid at the time of discontinuance.

10. Taking all these facts into consideration, this Court is of the firm view that, the finding of the Labour Court is based upon the evidence which has

come on record and the same therefore does not warrant any interference.

11. Moreover, the petitioner/State has not been able to show any perversity on part of the Labour Court in reaching to the said conclusion, neither is

the ground of the finding being contrary to the evidence raised in the Writ Petition.

12. The plain reading of the deposition brought before the Labour Court and the contents of the award, it would clearly reflect that the findings arrived

at by the Labour Court was based on the evidences and the depositions, which have been adduced before the Court. The petitioner had not been able

to produce any substantial material to show that the findings of the Labour Court, in any manner, is either perverse or contrary to the evidence, which

have come on record.

13. It is settled position of law by now that the writ Court while testing the veracity of an award of the Labour Court would not sit as a first Appellate

Court over the finding of the Labour Court, neither would this Court in exercise of its writ jurisdiction conduct a threadbare inquiry or a roving inquiry

to determine the issues framed before the Labour Court.

14. The scope of interference challenging an award of the Labour Court is confined to the extent of the decision making process and not the decision

itself. Perusal of the decision making process would clearly reflect that the finding was based on the evidences, which have come on record, more

particularly is based on the evidence, which has been given by the department's witness himself.

15. Another aspect, which further compels this Court not to interfere with the findings of the Labour Court is the fact that the award dated 11.09.2006

was immediately complied with by the petitioner State and the worker- respondent No.1 has been reinstated in service in November-2006 and since

then, the respondent No.1 has put in almost about 13 years of service again in addition to the previous 10 years of service, which she had rendered

before being removed from service.

16. In para 17 of (2014) 7 Supreme Court Cases, 190 (Hari Nandan Prasad and Another vs. Employer I/R to Management of Food Corporation of

India & Another), it has been held as under:-

17. .....At the time of their disengagement even when they had continuous service for more than 240 days (in fact about 3 years) they were not

given any notice or pay in lieu of notice as well as retrenchment compensation. Thus, the mandatory precondition of retrenchment I paying the

aforesaid dues in accordance with Section 25-F of the ID Act was not complied with. That is sufficient to render the termination as illegal. Even the

High Court in the impugned judgment has accepted this position and there was no quarrel on this aspect before us as well.....

Applying the same analogy and again reiterating the same in the case of (2014) 7 Supreme Court Cases 177 (Bharat Sanchar Nigam Limited vs.

Bhurumal) , it has been held in paragraph- 27 as under:-

27.....In any case, the award is passed on the basis that the respondent had worked for 240 days in the preceding 12 months' period prior to his

termination and therefore it is a clear case of violation of Section 25-F of the Industrial Disputes Act. The termination is, thus, rightly held to be illegal.

We do not find any perversity in this outcome.

16. The Supreme Court in the case of ""Harjinder Singh v. Punjab State Warehousing Corpn. "" reported in (2010) 3 SCC 192, in paragraph 21 held as

under:-

21. 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 others similar legislative instruments

are social welfare 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 43-A 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 subserve the common good and also ensure that the workers get their dues. More than

41 years ago, Gajendragadkar, J. opined that:

10. .... 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.' (A.I.R 1958 SC 923 [State of Mysore v. Workers of Gold Mines, AIR p.928, para 10.]

17. This view has further been reiterated in the case of ""Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited "" reported in (2014) 11 SCC 85.

18. Given the aforesaid legal positions laid down by the Hon'ble Supreme Court, as also the finding of fact recorded by the Labour Court, this Court

does not find any strong case made out by the petitioner calling for an interference with the award of the Labour Court. The writ petition thus fails and

is accordingly dismissed.