State Of Chhattisgarh And Ors Vs Radheshyam Yadav

Court: Chhattisgarh High Court

Date of Decision: June 28, 2018

Acts Referred: Industrial Disputes Act, 1947 â€" Section 25B, 25F, 25G

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Anand Dadariya, Vaibhav Shukla

Final Decision: Allowed

Judgement

Sanjay K. Agrawal, J

1. This writ petition is directed against the award passed by the Labour Court dated 03.07.2010 (Annexure - P/1) by which the said Court has directed

for reinstatement of respondent without backwages.

2. Mr. Anand Dadariya, Learned Deputy Government Advocate appearing for the petitioners/State, in this writ petition, would make a singular

contention that the Labour Court has not recorded a finding that respondent / workmen worked for continuous period of 240 days in one calendar year

preceding the date of termination and only the pleading and evidence has been set out in the order and thereafter conclusion has been reached and

thereafter the Labour Court has directed for re-instatement, therefore, the impugned order is liable to be set-aside.

3. Mr. Vaibhav Shukla, learned counsel appearing for the respondent would vehemently submit that Labour Court has clearly recorded a finding that

the workmen has worked 240 days in one calendar year and directed his reinstatement, and further recorded the specific finding that principle of ""last

come first go"" as incorporated in Section 25-G of the Industrial Disputes Act, 1947 (henceforth ""Act, 1947"") has also not been complied with and,

therefore, order passed by the Labour Court deserves to be maintained.

4. I have heard learned counsel appearing for the parties and considered their rival submissions made herein above and also gone through the record

with utmost circumspection.

5. At this stage, it would be appropriate to notice Section 25-B, 25-F & 25-G of the Industrial Disputes Act, 1947 (henceforth ""ID Act, 1947""), which

state as under:-

25-B. Definition of continuous service.- For the purpose of this chapter.-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be

interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not

due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in

continuous service under an employer-

(a) for a period of one year, if the workman, during a period or twelve calendar months preceding the date with reference to which calculation is to be

made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calender months preceding the date with reference to which calculation is to be

made, has actually worked under the employer for not less than-

(i) ninety-five years, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

25-F. Condition precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than

one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the

workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed

year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by

notification in the official Gazette].

25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to

a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the

employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the

employer retrenches any other workman.

6. Onus to prove 240 days' continuous service, lies on workman (See State of M.P. Vs. Arjunlal Rajak (2006) 2 SCC 711).

7. Burden to prove that workman worked for continuous period of 240 days in a year lies on the workman so as to entitle him to benefit of Section 25-

F of the ID Act, 1947 (See Krishna Bhagya Jal Nigam Ltd. v. Mohd. Rafi (2006) 9 SCC 697).

8. The Supreme Court in the matter of State of Punjab Vs. Bhag Singh (2004) 1 SCC 547 Ã, has held as under:-

6. Even in respect of administrative orders, Lord Denning, M.R. in Breen v. Amalgamated Engg. Union (1971) 1All ER 1148 Ã, observed: The giving

of reasons is one of the fundamentals of good administration."" In Alexander Machinery (Dudley Ltd. v. Crabtree 1974 ICR 120 (NIRC) it was

observed: ""Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision -taker to the controversy in

question and the decision or conclusion arrived at."" Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the

decision reveals the ""inscrutable face of the sphinx"", it can, by its silence, render it virtually impossible for the courts to perform their appellate function

or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system,

reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the

decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other word, a speaking-

out. The ""inscrutable fact of a sphinx"" is ordinarily incongruous with a judicial or quasi- judicial performance.

9. Very recently, the Supreme Court in the matter of Mohd. Ali v. State of H.P. and others 2018(5) SCALE 717 dealing the similar issue emphasized

the need for working 240 days in one calendar year preceding the date of termination held as under:-

9. It is a well known fact that the Industrial Disputes Act is a welfare legislation. The intention behind the enactment of this Act was to protect the

employees from arbitrary retrenchments. For this reason only, in a case of retrenchment of an employee who has worked for a year or more, Section

25F provides a safeguard in the form of giving one month's prior notice indicating the reasons for retrenchment to the employee and also provides for

wages for the period of notice. Section 25B of the Act provides that when a person can be said to have worked for one year and the very reading of

the said provisions makes it clear that if a person has worked for a period of 240 days in the last preceding year, he is deemed to have worked for a

year. The theory of 240 days for continuous service is that a workman is deemed to be in continuous service for a period of one year, if he, during the

period of twelve calendar months preceding the date of retrenchment has actually worked under the employer for not less than 240 days.

12. Further, it is an admitted position that though the appellant worked as such till 1991 under different work/schemes i.e. Rabi and Kharif and

completed 240 days in a calendar year only during the years 1980, 1981, 1982 and 1986 to 1989 but he worked only for 195 days in the year 1990 and

19.5 days in the immediate preceding year of his dismissal which is below the required 240 days of working in the period of 12 calendar months

preceding the date of dismissal, therefore, he is not entitled to take the benefits of the provisions of Section 25F of the Act and Division Bench of the

High Court was right in dismissing the appeal of the present appellant.

10. In view of findings recorded by the Labour Court, it is clear that no specific finding has been recorded that the employee concerned has in fact

completed 240 days in one calendar year preceding the date of termination. The Labour Court has simply recorded a finding that termination of the

workman comes under the definition of retrenchment and the mandatory provisions of retrenchment has not been followed, which is in violation of

principles of natural justice, the Labour Court ought to have recorded a specific finding that workman worked for continuous period of 240 days in a

year so as to entitle him to benefits of Section 25-F for the Act, 1947 as held by Their Lordships of the Supreme Court in the matter of Mohd. Ali

(supra). Thus, I deem it appropriate to remit back the matter to the Labour Court to consider the matter afresh and shall record a specific finding that

workman had worked for a continuous period of 240 days in a one calendar year preceding the date of termination and shall also record a specific

finding with regard to the principle of ""last come, first go"", such an exercise will be done by the Labour Court within a period of three months from the

date of receipt of certified copy of this order.

11. It is stated at the bar that the respondent / workmen has already been reinstated in service pursuant to the award passed by the Labour Court. If

he has been reinstated in service, he will be allowed to continue till the matter is decided by the Labour Court within the aforesaid period in

accordance with law.

12. The writ petition is allowed to the extent indicated hereinabove. No cost(s).