
(2012) 135 FLR 827 : (2012) 4 JLJR 241

Jharkhand High Court

Case No: CWJC No. 11045 of 1998

The Management of
TISCO Jamshedpur

APPELLANT

Vs

The Presiding Officer,
Labour Court, Patna
and Others

RESPONDENT

Date of Decision: Aug. 28, 2012

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2(oo), 2(oo)(bb), 2(op), 25(F), 25F

Citation: (2012) 135 FLR 827 : (2012) 4 JLJR 241

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Rajiv Ranjan, for the Appellant; Prabhash Kumar for the Respondent No. 2, for the Respondent

Final Decision: Allowed

Judgement

Aparesh Kumar Singh, J.

Heard the learned counsel for the parties. The management-petitioner seeks quashing of the award dated 14.5.1998 pronounced on 21.9.1998 by the Presiding Officer, Labour Court, Bailey Road, Patna in reference case nos. 1/1994/181/1994 whereby the Labour Court while answering the reference proceeded to hold that the termination of the Mr, R.P. Verma, workman-respondent No. 2, herein, Accounts Trainee is not legal and valid rather discriminatory and consequently the termination order dated 22.12.1988 has been set aside directing the management to reinstate the workman with full back wages with all admissible consequential benefits.

2. It is the case of the petitioner-management that the respondent No. 2-workman was appointed as Accounts Trainee by the General Manager of the M/s. Indian Tube Company Ltd., Jamshedpur vide letter dated 15.9.1983 wherein after he joined on

1.10.1983. The said company M/s. Indian Tube Company Ltd. merged with TISCO and became its tube division, thereafter. It is further submitted by referring to Annexure-3 dated 21.5.1983 that the notice was issued inviting application from eligible dependents of permanent employees of the company for consideration for training under the "Accountant Training Scheme". It is stated that in Annexure-3 it was categorically indicated that the selected candidates will be required to undertake on the job training under the Accounts Department in Jamshedpur and obtain I.C.W.A. qualification within a period of 5 years, failing which training will be terminated. It was further indicated that the training will be confirmed as soon as they possess qualification of I.C.W.A. within 5 years from the commencement of the training but in no case before the 11/2 years commencement of training, which is the minimum stipulated time of training.

3. It is further stated that this respondent no, 2 was appointed vide order contained in Annexure-4 dated 15.9.1983 wherein it was categorically stated that Trainee has to complete I.C.W.A. qualification within a period of 5 years from the commencement of the training, failing which his training will be terminated. It is submitted that the petitioner failed to complete the aforesaid I.C.W.A. qualification by passing the final examination within the stipulated period of 5 years by 1.10.1998 and, therefore, by the order contained at Annexure-9 dated 27.12.1988 his training was terminated w.e.f. 1.10.1998, clearly stating therein that the he has failed to complete the I.C.W.A. within a period of 5 years by 30.9.1998. It is further submitted that the petitioner had been a regular absentee even during the training period and as a matter of fact, since 1.6.1988 he never attended duty and completely absented from his work till he was terminated vide Annexure-9, The petitioner, thereafter, raised an industrial dispute and on failure of conciliation proceedings the reference was made originally before the Presiding Officer, Labour Court, Jamshedpur in the following terms:--

Whether the termination of services of Sri R.P. Verma, Accounts Trainee, M/s. TISCO (Tube Division), Jamshedpur is proper? If not, whether he should be reinstated on work or/and should get compensation?

4. The parties, thereafter, appeared and filed their written statement and evidences where adduced on behalf of the workman as also the management and documents were also adduced, wherein after the matter was transferred in June 1994 before the learned Presiding Officer, Labour Court, Patna, who rendered the impugned award dated 14.5.1998 by holding that the termination of the workman was not legal and valid and his termination was set aside directing the management to reinstate him with full back wages and all admissible consequential benefits.

5. The grounds for assailing the impugned award on the part of the management-petitioner is that the respondent No. 2 was admittedly a Trainee as per the notice inviting application and in terms of the appointment letter dated 15.9.1983, further in the terms and conditions of the agreement entered between the workman and the management, it was specifically mentioned that the workman had to complete 5 years

training in the Accounts Department at Jamshedpur and also obtain I.C.W.A. qualification within 5 years from the date of his appointment, failing which the training will be terminated. The Trainee, admittedly cleared only the intermediate examination of ICWA in 1987, but did not complete the final examination successfully before the completion of 5 years i.e. by 30.9.1988.

6. Learned counsel for the management-petitioner, therefore, submitted that in view of the specific terms of the appointment, which stipulates a condition in the contract of service between the parties, in case any workman fails to complete the training of I.C.W.A. within a period of 5 years from the date of his appointment, the management was only required to invoke the terms of the appointment and terminate the workman, which is fully in consonance with the provisions of Section 2(oo)(bb) of the Industrial Disputes Act and does not fall within the meaning of retrenchment under the said Act. Apart from this the workman was only a trainee and was never confirmed while in service and from the facts brought on record by way of written statement, he had been a regular absentee from time to time and finally from 1.6.1988 had completely left the job without notice or sanction of any leave in his favour. It is submitted on behalf of the petitioner-management-merit that in the circumstance, learned Labour Court completely failed to take into account the terms and conditions of the appointment and the contract of service between the respondent-workman and the management and misdirected itself by holding that the provisions of Section 25(F) of the Industrial Disputes Act has not been applied without giving one month notice or that persons similarly situated like the petitioner have been confirmed in service even though they have only completed intermediate examination of ICWA, but the petitioner had been refused confirmation. It is submitted that the terms of reference clearly indicated that the learned Labour Court had to consider whether the termination of the service of the workman was proper or not, which could only be considered in relation to the terms and conditions of the contract of service between the workman and the management as stated hereinabove, which clearly stipulates that if the Trainee has failed to complete the mandatory I.C.W.A. qualification within 5 years from the date of his appointment, he would be terminated. It is further submitted that workman-respondent was not confirmed employee, therefore, the management did not choose to proceed against him by initiating departmental inquiry by issuing charge-sheet for other lapses like regular absence from duty on his part, but simply chose to invoke the terms and conditions of the appointment and contract of service whereunder the order contained in Annexure-9 being the order of termination was issued. It is further submitted that the learned Labour Court had taken into account the relevant facts and introduced the concept of discrimination viz-a-viz other persons, whose case is not before the learned Labour Court nor the facts were adequately pleaded and brought on record as evidence. In matters of industrial adjudication, in the case of workman has to be considered strictly within the purview of Principles of Industrial Jurisprudence wherein the concept of public law cannot be incorporated as that of a State and its employee.

7. Learned counsel for the petitioner, in support of his contention has relied upon various judgments of the Hon"ble Supreme Court in the case of [Bhogpur Co-op Sugar Mills Ltd. Vs. Harmesh Kumar](#), , [Municipal Council, Samrala Vs. Sukhwinder Kaur](#), , Karnataka Handloom Development Corporation Ltd. vs. Sri Mahadevia Laxman Reval reported in (2006)13 SCC 15, [Gangadhar Pillai Vs. Siemens Ltd.](#), and Arindam Chatterjee vs. Coal India Ltd. & Others reported in 1996 LIC 416.

8. On the other hand, learned counsel for the workman has submitted that the workman, as per the terms of agreement contained at Annexure-8 was entitled for leave of the concerned period such as festival leave and medical leave of 4 days and 7 days and vacation leave of 1 month per year of training. It is further submitted on the part of respondent-workman by referring to clause K of the agreement (contained at Annexure-8) between the parties that in case the service of the Trainee was to be terminated by the employer-management, 1 month prior notice in writing was to be given to him or instead salary or the other dues payable to the trainee in lieu of such notice. It is further submitted that failure to apply the aforesaid conditions, the provision of Section 25(F) of the Industrial Disputes Act, 1947 was attracted. Learned Labour Court also took into account that other persons, who were also appointed as Accounts Trainee were give confirmation even after passing of intermediate examination and the management had discriminated with the workman in the matter of confirmation by passing an order of termination against him. It is further contended that the learned Labour Court has rightly refused to take not account the allegations of absenteeism against the workman as raised by the management during the proceeding of the reference as it was beyond the terms of the reference by arriving at a finding that the management had discriminated against the workman viz-a-viz other similarly situated persons, while terminating him. It is also submitted on the part of the respondent-workman that order of termination was not passed by any competent authority and the termination order dated 27.12.1988 could not have been retrospectively applicable w.e.f. 1.10.1988 as it is contrary to the settled principles of service jurisprudence. Based upon the aforesaid submissions, learned counsel for the workman has justified the impugned award directing the management to reinstate the workman with full back wages and consequential benefits.

9. I have heard learned counsel for the parties at length and carefully gone through the record including the impugned award. The admitted facts are that the respondent-workman had been appointed as Accounts Trainee on the basis of the notice dated 21.5.1983 issued by the management whereinafter he was allowed to join on 1.10.1983 vide letter of appointment dated 15.9.1983. It is also not in dispute that the notice dated 21.5.1983 and appointment letter dated 15.9.1983 contained the specific stipulation that the workman being Accounts Trainee was required to complete the ICWA qualification within a period of 5 years, failing which the training will be terminated. The relevant portion of the notice dated 21.5.1983 and his appointment letter dated 15.9.1983 are quoted hereinbelow:--

Notice dated 21.5.1983;--Training.--The selected candidates will be required to undergo on the job training in the Accounts Department at Jamshedpur and obtain ICWA qualification within a period of 5 years failing which the training will be terminated. If at any point of time during the training period; it is brought to the notice of the management that the candidate has discontinued appearing in examinations, his/her training will be terminated with immediate effect. Trainees will be confirmed as soon as they obtain ICWA qualification within the above period of 5 years from the commencement of the training, but in no case before 1/2 years of commencement of training which is the minimum stipulated period of training".

Appointment letter dated 15.9.1983:--Your stipend during the training period will be Rs. 1,000/- per month with an annual increment of Rs. 50/-

You will be on training for a minimum period of 1 1/2 years after which your services will be confirmed as per rules as soon as you pass the ICWA Final Examination. In case you pass your ICWA Final Examination within the period of 1/2 years you would be confirmed immediately on completion of the minimum stipulated training period of 1 1/2 years. You are expected to complete your ICWA within a period of five years from the commencement of your training, failing which your training will be terminated".

10. It is also admitted fact that the workman did not complete the ICWA qualification within a period of 5 years from the date of his appointment i.e. by 1.10.1988. The relevant provisions of Industrial Disputes Act in relation to the retrenchment and matters which are excepted from the definition of retrenchment are contained in Section 2(oo), which are quoted herein below:--

Section 2(op):--Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include--

(a) Voluntary retirement of the workman; or

(b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) Termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;"

11. As per the provisions of Section 2(oo)(bb) of the Industrial Disputes Act, an Employer under the contract of service is entitled to terminate the service of the workman upon

completion of the terms of the service under contract and that termination of service cannot fall within the meaning of retrenchment.

However, it is contented by the counsel for the workman that as per the terms and conditions of the agreement between the workman and the management, specifically clause K thereof, it requires 1 month prior notice or salary in lieu thereof before terminating the services of a Trainee concerned which is applicable to the case where a Trainee is sought to be terminated during the course of his employment within a period of 5 years. But the present case is not one where the trainee's services have been terminated within 5 years on that account when the mandatory 1 month prior notice is required to be served upon the workman as per the provisions u/s 25F of the Industrial Disputes Act. On the contrary the services of the Trainee has been terminated on account of failing to complete the IOWA qualification within 5 years of his appointment by 1.10.1988. The management has, therefore, invoked the said provision to terminate the employee. It is another matter that the workman had also been absent continuously from 1.6.1988 and had not joined till his termination order was issued on 27.12.1988. The management, however, did not chose to proceed against the workman for any misconduct by issuing charge-sheet for disciplinary proceeding against him. It rather chose to invoke the provision of appointment letter stipulating the specific terms of contract for the workman. The learned Labour Court without taking into account the specific terms of contract between the parties for considering the issue referred to it proceeded by taking into account the factors which were irrelevant for the purpose of consideration of the question relating to the termination of the workman. It entertained the pleadings and documents which were not connected with the termination order of the workman, but in relation to confirmation of other employees and applied the principle of discrimination, which was wholly beyond the terms of reference under which the Tribunal or Labour Court derives its jurisdiction being the creature of statute. It further misdirected itself by relying upon the provision of 25F of the Industrial Disputes Act, which, in the present case is clearly inapplicable. The respondent was not terminated by invoking clause K of the terms of the agreement between the parties, wherein services sought to be terminated will be done by giving 1 month prior notice or giving salary in lieu thereof, rather the workman was terminated as per the terms and conditions of the services guided by the appointment letter wherein he was required to complete I.C.W.A. qualification within 5 years, which he failed to do. Since, the workman had absent himself from much earlier date i.e. 1.6.1988 itself, the issue of termination order after 1.10.1988 also cannot be found faulty, as the workman himself was not on active duty and the notice could have been served upon him had he been in regular attendance. Since, the contract of service could have been terminated on failure of the respondent-workman to complete the I.C.W.A. qualification within 5 years i.e. 1.10.1988, the management was fully justified in invoking the said terms and conditions by issuing the termination order which cannot be held to be illegal, arbitrary or being contrary to any of the provisions of the Industrial Disputes Act. The employer deliberately had chosen not to issue any termination order in the nature of a punishment on acts of absenteeism by the

respondent-workman, instead of that the management chose to invoke the terms and conditions of the appointment order while terminating the services of the workman taking into account the fact that workman was a Trainee and unconfirmed employee and whose service was itself on probation during which period he failed to get the requisite qualification. Therefore, the contention of the respondent-workman are wholly out of place. Reference has been made to the judgment of the Hon"ble Supreme Court of India in the case of [Bhogpur Co-op Sugar Mills Ltd. Vs. Harmesh Kumar](#), , para 11 thereof is relevant, which is quoted hereinbelow:--

Para 11:--Termination of services of a workman as a result of non-renewal of the contract of employment on its expiry or termination of such contract of appointment under a stipulation in that behalf contained therein would, thus, not attract the definition of the term "retrenchment".

12. The learned Labour Court has committed an error of law while taking into account materials, which were not germane for the determination of the issues raised in the reference before it. Therefore, the impugned award suffers from serious error of law and facts. The learned Labour Court has gone beyond the terms of the reference, which can be termed to be the act beyond jurisdiction, which is unsustainable in law as well as facts. In the aforesaid facts and circumstance and the reason recorded hereinabove, the impugned award requires interference in exercise of power of judicial review under certiorari jurisdiction of this court. Accordingly, the impugned award is set aside and the writ petition is allowed. However, parties are left to bear their own cost.