Ishwari Prasad Gupta Vs State of M.P. and others

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: May 12, 1986

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

Citation: (1986) MPLJ 698

Hon'ble Judges: T.N. Singh, J

Bench: Single Bench

Advocate: H.N. Upadhyaya and A.K. Upadhyaya, for the Appellant; M.M. Qureshi, Dy. Govt. Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Dr. T.N. Singh, J.

The common point of law involved in these two cases, which are heard together and are being disposed of by common judgment, vocalises a

single grievance based on infraction of the statutory right inscribed in Section 25F of the Industrial Disputes Act (for short "the Act").

State Counsel, Shri Qureshi, has laboured hard to convince me that the petitioners are not entitled to invoke this Court"s writ jurisdiction because

the alternative remedy available to them under the Act has not been exploited or exhausted. Counsel has placed reliance on a Bench decision of

this Court in Paras Kumar (1984 MPWN 436) wherein it was held that the petitioners having remedy of the Civil suit provided to them u/s 8 of the

Public Trust Act, exercise of writ jurisdiction could not be invoked by them. Because the Apex Court in its recent decision in Ram and Shyam

Company Vs. State of Haryana and Others, has stated the law authoritatively dealing with the same contention it behoves me to refer thereto

immediately as law stated by their Lordship, in virtue of the constitutional mandate of Article 141, is binding on me and all courts and authorities in

India, as the law of the land. Their Lordships held that ""the rule which requires the exhaustion of alternative remedies is a rule of convenience and

discretion rather than rule of law."" It was held that the rule does not oust the jurisdiction of the Court to entertain complaints of violation of any

constitutional right if the facts and circumstances of the case so warrant. Indeed, as has been pointed out by their Lordships, the rule does not

merely speak of an ""alternative remedy"", the remedy contemplated must as well be effective and adequate in all respects if the rule has to be

invoked in any case.

I have no doubt that in the instant case the petitioner, who served the State on daily wages, in one case for a period of over 3 1/2 years, and in

another case for over 1 1/2 years, and who came to suffer eventually total loss of service, do not deserve to be pushed to the corridors of Labour

Courts and Tribunals to come eventually to this Court after fighting longdrawn battles in those courts to claim eventually, if necessary, the same

relief by writs of certiorari though they can to day claim in this Court writs of mandamus by directly assailing the orders passed against them

terminating their services illegally in violation of Section 25-F aforesaid. Indeed, my attention is rightly drawn by Shri Upadhyaya, learned counsel

appearing for the petitioners, to the decision in L. Hobert D''Souza (AIR 1982 SC. 854) to submit that the Apex Court did consider the grievance

which the petitioners in those cases had made in the High Court on the writ side and granted them relief which the Court had refused to them

holding that noncompliance with the requirement of Section 25F was fatal and termination of their services was illegal.

I may now proceed to test the validity of the petitioners'' grievance in each case in the context of the factual set-up of the cases. In the first case, in

Misc. Petition No. 64/84, the petitioner Ishwari Prasad was given work on daily wages in the Irrigation Department, albeit in Survey and

Investigation section, of the Government of Madhya Pradesh. This appears clear from the Annexures P-1 to P-9. As per statement made in para 6

of the writ-petition he served for a total period of 580 days pursuant to the aforesaid orders, between 24-3-1980 and 2-9-1983. It is true that the

State has cleverly contrived to ensure a break in service in case of the petitioner by appointing him for short periods under the several orders

aforesaid so as to break the continuity in service of the petitioner. On 3-12-1983 the petitioner was told vide Annexure P-10 that the work in the

Shivpuri Division of the Irrigation Department in Survey and Investigation section was over and as such his services were retrospectively

terminated w.e.f. 29-11-1983. This, counsel submits, was not a mere violation of Section 25F of the Act but a direct effort to the statutory

mandate which not only prohibited a retrospective termination of services but required that in case of a ""retrenchment"" the workmen shall be given

one month''s notice in writing indicating the reasons of retrenchment and, in the alternative, in lieu of such notice he shall be paid wages for the

period of notice. It is true, that the proviso to clause (a) of Section 25F contemplates that such a notice shall not be necessary if the retrenchment

was under an agreement which specifies a date for termination of the service of the concerned workman. In the instant case, however, there is no

scope evidently for the application of the proviso and indeed rightly State has not tried to defend its Order there-under because no such

agreement"" has at all been pleaded or established.

The only point to be decided to give relief to the instant petitioner is whether the Irrigation Department can be considered to be an ""industry"" as

defined in Section 2(j) of the Act. But the recent decision of the Apex Court in M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another,

, which has upheld this Court''s decision reported in 1971 MPLJ 949, renders it unnecessary to examine the matter further. A Division Bench of

this court in the decision reported in M.P.L.J. took the view that Irrigation Department of the State of Madhya Pradesh constituted ""industry"" as

the activities of the department conformed to the test prescribed by the Apex Court in The State of Bombay and Others Vs. The Hospital

Mazdoor Sabha and Others, . In this connection my attention is also drawn to the celebrated decision of Banglore Water Supply (AIR 1978 S.C.

548) wherein the constitution Bench has up-held and buttressed the view which was expressed in Hospital Mazdoor Sabha (supra). Accordingly, I

have no hesitation at all to hold that the violation of the statutory mandate of Section 25F being writ large on Annexure P-10, the said order is not

sustainable in law and has to be struck down.

In so far as the case of the other petitioner Smt. Chandramukhi Agrawal, is concerned, the only difference is that she was employed in Public

Works Department in the office of Survey sub-Division of Lahar division in tile Building and Roads wing of the department. Shri Upadhyaya has

placed implicit reliance on the decision in the case of The Corporation of the City of Nagpur Vs. Its Employees, . Indeed, the view expressed

therein, which was upheld in Banglore Water Supply (supra), supports counsel''s submission that the activities undertaken by the Building and

Roads Wing of the Public Works Department of the State being akin to the activities undertaken by the Corporation, the petitioner is entitled to be

relieved against the injury caused to her by the State by terminating her services arbitrarily in violation of statutory mandate of Section 25F of the

Act. Counsel has drawn my attention to page 688 of the report, wherein the activities of Public Works Dept. of the Corporation are considered, to

submit that construction of roads, drains etc. for convenience of public must be deemed to be such activity as can be treated ""industry"" within the

definition of the term employed in the Act.

Indeed, I have no hesitation to say that counsel''s contention must prevail despite the serious efforts of Shri Qureshi to wriggle out of the difficult

situation relying mainly on the fact that the petitioner had been offered service as a ''Mali'' vide Annexure P-7 and she having refused to accept the

same, it was not open to her to make any grievance based on infraction of Section 25. What, however, cannot be ignored is the background of

petitioner''s service which is pictured vocally in annexure P-8. Indeed, against the order Annexure P-7, which merely states that for her failure to

join duties as a ''Mali'' (Gardener) her appointment was cancelled, she made representation vide annexure P-8 to submit that she had been

regularly and uninterruptedly working as a Lipik (Clerk), from September 1980 to 15th September 1983. At para 2 of the writ-petition also she

has made a categorical averment that she was given ""the duty of Receipt and Despatch and other writing work"" though she was paid daily wages

first at the rate of Rs. 5/- per day, which was later raised to Rs. 8.70 per day w.e.f. 1-4-1983. Because she made an application for regular

appointment to the post of Lower Division Clerk, the State, indeed considering her application, offered her the post of Mali, which she had refused

to accept. In return, neither in para 2 nor in para 3, to which my attention is drawn by Shri Qureshi, I could find even a single whisper that the facts

alleged by the petitioner were not true. The only legal and factual contention made in paras 2 and 3, are, assertion as ""incorrect"", the fact that the

petitioner worked as a clerk from 1-7-80 to 26-10-83 and of the fact that she had been appointed as ""Mazdoor"" on daily wages and she was not

governed by ""Rules and Regulations applicable to Government servants"". No factual basis is laid in the return to rebut or refute petitioner''s

grievance of her illegal ""retrenchment"" in violation of Section 25F.

Accordingly, I have no hesitation to hold that the petitioner, Chandramukhi Agarwal, is also entitled to the relief claimed because her services were

also terminated in gross violation of the provisions of section 25F as she was not served with any notice of ''retrenchment'' contemplated u/s 25F

and indeed no salary in lieu of the notice was paid to her as contemplated thereunder. Indeed, the fact that she suffered a ""retrenchment"" is self-

evident despite what is to be found in Annexure P-7 because of what appears in annexure P-8, as earlier alluded. Indeed, what appears in

paragraphs 2, 3, 4 and 5 of the writ petition having remained uncontroverted, the petitioner cannot be denied relief.

In the result, both petitions succeed and are allowed. The retrenchment of both petitioners are held illegal and void, being violative of the statutory

mandate of Section 25F. They are directed to be reinstated though I make no order as to payment of back wages to them in this petition. The

issue is kept open. Both the petitioners may make representations to the concerned authorities in that behalf and in the event of the same being

rejected it shall be open to them to approach this Court to pray for appropriate relief. There shall be no order as to costs in these petitions.

This order shall govern both Misc. Petition No. 64/84 and Misc. Petition No. 65/84.

Outstanding amount of security be refunded to the petitioners.