(2004) 12 SC CK 0047

Supreme Court of India

Case No: Civil Appeal No. 2502 of 2002

Employers, Management of Central P and D Inst. Ltd.		APPELLANT
	Vs	
Union of India (UOI) and Another		RESPONDENT

Date of Decision: Dec. 17, 2004

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10(1), 25F

Citation: AIR 2005 SC 633 : (2005) 5 ALLMR 287 : (2005) 1 AWC 618 Supp : (2005) 1 BLJR 130 : (2005) 2 CALLT 89 : (2005) 104 FLR 373 : (2005) 1 JCR 129 : (2005) 1 JT 148 : (2005) 1 LLJ 552 : (2005) 2 PLJR 131 : (2004) 10 SCALE 521 : (2005) 9 SCC 171 : (2005) 1 UPLBE

Hon'ble Judges: S. B. Sinha, J; N. Santosh Hedge, J; B. P. Singh, J

Bench: Full Bench

Advocate: Ajit Kumar Sinha, for the Appellant;

Final Decision: dismissed

Judgement

N. Santosh Hegde, J.

On a reference made u/s 10(1)(d) of the Industrial Disputes Act, 1947 (the Act) with reference to the discharge from service of Miss Aleyamma Samuel a typist in the appellant''s organisation, the Industrial Tribunal held that the employee had established that she had worked for 240 days continuously in the relevant year, hence her discharge was illegal and therefore directed her reinstatement with 50% back wages.

2. The case pleaded on behalf of the discharged employee was that she was employed as a typist from 21.1.1987 on a consolidated wage of Rs.15 per day and continued to work as such till 14.4.1998 hence she had put in more than 240 days of work in 12 months preceding the date of her discharge. It is alleged that the said discharge or retrenchment was without complying with the procedure prescribed under the Standing

Orders of the Company.

3. On behalf of the Management it was pleaded that she was employed only on a day to day basis depending upon the requirement of the day and was not in a continuous employment. It was also pleaded that there was no post available to employ the said work person on a continuous basis. The tribunal by its award dated 24.4.1992 accepted the case of the work-person and held that discharging the services of said Miss Samuel as typist was not justified. Hence it directed her reinstatement in service w.e.f. 15.4.1988 and to pay her 50% of back wages according to the scale. There was also a direction to the said work-person to report for duty within the time stipulated in the said order.

4. Being aggrieved by the said order of the tribunal the appellant herein preferred a writ petition before the learned Single Judge of the High Court of Judicature at Patna in Ranchi which concurred with the finding of the tribunal and dismissed the writ petition. However while confirming the order of reinstatement it set aside the direction to pay back wages @ 50% of the salary last drawn. The Management filed a Letters Patent Appeal before the Appellate Bench of the said court. However, the same was dismissed and now the Management is in appeal before us.

5. From the previous orders of this Court it is seen that the respondent Union which represented the work-person was not served in the normal course hence an application for substituted service by publication in two daily newspapers i.e. Hindustan Times (for circulation in New Delhi and Ranchi) and a vernacular newspaper Prabhat (which also has circulation in Ranchi) was permitted and the appellants having shown proof of such publication the service to the respondent Union was held to be sufficient. This appeal is therefore being heard without the concerned work person being represented by herself or by the Union which represented her in the forums below.

6. The finding arrived at by the tribunal, Single Judge and the Division Bench is that the work person has put in 240 days during the relevant period hence her services could not have been terminated without taking recourse to the procedure laid down in Chapter 5A of the Standing Orders. This question being purely a question of fact we do not think that in a petition under Article 136 we would go into this issue unless of course we come to the conclusion that such finding of fact is totally perverse which ground is not available in this case.

7. But it is to be noticed that it is not always mandatory for the courts to order reinstatement in cases where there has been violation of section 25F of the Act (5A of the Standing Orders) which can be substituted for good reasons by awarding compensation. In the normal course we would not have interfered with the order of reinstatement directed by the Industrial Court. In this case we think the concerned work- person is not interested in going back to her duty on terms and conditions as were applicable to her on the date of her discharge which according to the record was as a daily wager. From the material on record and the submission of the learned counsel for the appellant it is clear

that the employee has not joined duty as directed by the Industrial Tribunal probably because she is otherwise settled in some other job.

8. Be that as it may, non-compliance of the requirement of Chapter 5A of the Standing Orders by the appellant cannot be condoned. Therefore in substitution of the order of reinstatement directed by the Industrial Tribunal as confirmed by the High Court below we order that the appellant pay a sum of Rs.25,000 as compensation to the said employee Miss Aleyamma Samuel. This sum shall be personally paid to her and to nobody else. The appellant herein within 30 days from today will issue a paper publication in the abovementioned two newspapers giving the gist of this order calling upon said Miss Aleyamma Samuel to come and collect the abovementioned sum of Rs.25,000 personally. The notice so issued will also contain a clause that if she fails to collect the same within 1 year from the date of publication of such notification, she will be disentitled to claim it thereafter. The appellant shall file in this Court copies of the newspaper publications directed to be issued hereinabove.

9. With the above modifications this appeal is disposed of.