Khushalbhai Hirabhai Patel Vs National General Kamgar Union and Another

Court: Bombay High Court

Date of Decision: Dec. 15, 1978

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

Hon'ble Judges: S.K. Desai, J

Bench: Single Bench

Advocate: N.B. Shetye and L.V. Talavlikar, for the Appellant; M.N. Morje and N.S. Khavle for 1st respondent, for the Respondent

Judgement

S.K. Desai, J.
This is a petition by the employer and in this petition he has impugned the order dated 30th March, 1973 passed by the

Industrial Tribunal, Bombay in Reference (IT) No. 212 of 1969. A few facts may be stated. :

2. The petitioner is the proprietor of a concern called Chemical Development and Construction Corporation, which has a small factory at

Ghodbunder Road, Thane. At the relevant time he employed about 22 workmen in his factory. By a notice dated 14th August, 1968 the petitioner

retrenched 7 workmen out of 22. The retrenchment was to be effective from 14th September, 1968. The petitioner claims that on and from 3rd

September, 1968 all the 22 workmen in the establishment, including the 7 who had been served with a notice of retrenchment, went on a strike. By

a notice dated 17th September, 1968 the employer called upon the striking workmen to resume work. This was not done, and a charge sheet and

a show cause notice were issued on 19th September, 1968 to all the workmen who were on strike. According to the petitioner, the show-cause

notice and the charge-sheet was served on 15 workmen (who had obviously not been served with the retrenchment notice and who are described

in the petition as the remaining 15 workmen").

3. The workmen did not attend the inquiry proceedings. The Inquiry Officer recorded the evidence ex parte and gave his findings, and by an order

dated 25th September, 1968 these workmen were dismissed.

4. The 1st respondent to this petition is the union which represented the workmen at the relevant period and by its letter dated 13th November,

1968 the union served a charter of demands. It is alleged that in the charter of demands a claim was made for re-employment of the 7 workmen

who had been served with the retrenchment notice. Ultimate by an order dated 26th June, 1969 the Government of Maharashtra made a reference

regarding the said demands to the Industrial Tribunal consisting of Shri F.M. Lala. A copy of the said order of reference is annexed as Exhibit "C"

to the petition. Although the demand was a simple one and although not many fact were required to be considered, the Tribunal took more than

three years to give its award, which was given on 4th April, 1973. A copy of the said award is annexed as Exhibit "D" to the petition.

5. Before the Tribunal it had been contended on behalf of the workmen that the demand for re-employment had been inadvertently made and that

in fact the workmen should be reinstated. This argument has been considered and negatived by the Tribunal in paragraph 8 of the impugned order.

In paragraph 9 of its order the Tribunal upheld the claim of the 7 workmen for re-employment with immediate effect and in paragraph 10 Tribunal

proceeded to award back wages to 3 out of the 7 workmen. As far as two of them viz. G.V. Mathais and Ramavtar Jaiswal were concerned, the

tribunal directed the employer to give back wages to these two persons for the period of 1st January, 1969 to 31st August, 1971. As far as the

third workmen viz. Durbali Durjan was concerned, the Tribunal awarded back wages to him from 1st January, 1969 to the date of re-employment

except for a year from 16th March, 1970 to 28th February, 1971. The award to these back wages was made on the statement made by the three

workmen as to the alternative employment which they has secured during this period. I am informed by Mr. Shetye and I am proceeding to accept

these figures that the back wages as awarded by the Tribunal would come to the following figures.

1. Ramavtar Jaiswal ... Rs. 2,660/-.

2. G.V. Mathais ... Rs. 1,580/-.

3. Durbali Durjan ... Rs. 2,470/-.

6. Now, in the petition the petitioner has impugned both the direction as to re-employment and the award of back wages. But at the hearing only

the latter question has been pressed in view of what has subsequently transpired and in respect of which the petitioner has filed an affidavit dated

24th November, 1978. As far as the award of back wages for the 3 out of the 7 workmen was concerned Mr. Shetye submitted that the Tribunal

had fallen into error in awarding back wages after holding that this was not a case for re-instatement but for re-employment only. As a matter of

fact the direction for immediate re-employment was given by the Tribunal on the footing that when fresh workmen has been employed by the

petitioner in January 1969, the 7 retrenched workmen were required to be given preference over the other persons under the statutory provisions

contained in section 25-H of the Industrial Disputes Act, 1947; and apart from the fact that the petitioner has not pressed the challenge, it appears

that the challenge to the direction for re-employment is not well founded. At any rate it is not a challenge which ought to be entertained in the

limited jurisdiction of the High Court under Article 226 of the Constitution of India. I must, therefore, proceeded on the footing that the Tribunal

had properly appraised the evidence before it and on that evidence held that the employer had act in violation of section 25-H, that he had not

given preference to the retrenched workmen, and that thereby it had become incumbent upon the tribunal to upheld the claim for re-employment, in

respect of which claim the reference had been made to the Tribunal by the Government of Maharashtra.

7. Mr. Shetye, however, is on firmer ground when he submits that the award of back wages is in the first place beyond the term of reference and in

the second place inconsistent with the direction for re-employment. He finally submitted that in any case the Tribunal on the evidence should not

have awarded back wages for the period, and my attention was drawn in this connection to the evidence given in the proceedings before the

Tribunal.

8. The reference made by the Government of Maharashtra is only regarding immediate re-employment of these 7 persons and there is no

mentioned of any claim for back wages.

9. As for as the second branch of this argument was concerned, Mr. Shetye drew my attention to the difference, which is very material, between

''re-instatement'' of an employee and ''re-employment''. My attention in this connection was drawn to two decision of this Court in which these

concepts had been considered. As far as re-instatement was concerned, the point was considered by a Division Bench of this Court (to which I

was a party) in its decision in Sadanand Patankar v. M/s. New Prabhat Silk Mills (No. 2) Bombay 76 Bom.L.R. 437. It has been, inter alia,

observed in the above decision that the effect of re-instatement is to restore an employee to his former capacity, status and emoluments as if his

services had never been terminated and that the employee in such a case should normally and in the absence of congent reasons be entitled to full

wages which he would have received had he continued in service but for the order of termination of his service by the employer. Certain

deductions will be required to be made, according to this decision, but we are not concerned with the principle on which such deductions are to be

made or the manner in which the same are to be proved.

10. As contrasted with "re-instatement" and the natural and normal consequence thereof expounded in Sadanand Patankar"s case, we have the

earlier Division Bench decision in Indian Hume Pipe Co. Ltd. v. Bhimarao Baliram Gajabhiya, 1965 (II) L.L.J. 402. The Court in that case was

considering what was implied in the term "re-employment" and accepted the dictionary meaning of the term which connoted that the employee is

taken back in employment. There is obvious distinction between being deemed to be in employment throughout and being taken back. In the first

case, as observed in Sadanand Patankar"s case, there is continuity of service with the natural corolla that the employee being deemed to be in

continuous service would ordinarily and normally be entitled to his full wages; there would be no such deeming nor any corollary of the nature

above mentioned in the case of a re-employment.

11. Reference may also be made to a recent decision of the Supreme Court in Hindustan Tin Works Pvt. Ltd. v. Its Employees 1978 F.L.R. 240,

where it has been observed (though in connection with re-instatement) that if an employer is found to be in the wrong, he cannot shirk his

responsibility of paying the wages which the workmen had been deprived of by his illegal or invalid action.

12. On both the grounds, therefore, there is considerable substance in Mr. Shetye"s submission. There is, however, one aspect of the matter which

has given me anxious moments. We have here a statutory provision compelling the employer to give a reference to his retrenched workmen when

he makes re-employment. If despite the protection afforded by the legislature there is an employer, a disobedient one, who chooses not to give this

preference to the employees, the only remedy open to the employees is to demand a reference, which their union did in this case, which demand

was conceded by the Government and a reference made as far as back as 26th June, 1969. But the dockets of the Labour Courts and the

Industrial Tribunal are heavy as are the dockets of the ordinary Civil Courts, with the result that the employees had to remain without four

adjudication of their rights and vindication of their claim for well-nigh four years. Is the Tribunal powerless to afford pecuniary relief in such cases?

Can an employer be permitted to reap the fruits of his intrasgance? Ultimately any action of the Tribunal and any monetary award made by it will

have to be judged in the background of its decision on the merits and the conduct of the employees and the employer. In this case on the factual

findings the Tribunal has found total demerit in the employ"s stand as far as these 7 workmen are concerned and considerable merit in the claim of

the 7 workmen.

13. It is true that the tribunal awarded back wages presumably on the implied footing of reinstatement. But in my opinion such statutory provisions

are flexible enough to permit award of certain monetary benefits to the aggrieved workmen although not specifically provided by a statute. The

Supreme Court has recently laid down new principles of interpretation and has suggested that as far as legislation for social welfare and protection

of the weaker sections is concerned, such legislation for social welfare and protection of the weaker sections is concerned, such legislation must be

liberally and broadly interpreted to secure protection of those for whose benefit the legislation is enacted. Reference may be made in that

connection to the observation of Krishna Iyer, J. in Captain Ramesh Chander Kaushal Vs. Mrs. Veena Kaushal and Others,

14. In this view of the matter I would hold that although the Tribunal was not competent to award back wages to the 3 workmen in the manner that

it did, it could have awarded some monetary recompense to the workmen for their agony, for their bearing without employment and for being

denied their statutory preference u/s 25-H. I propose to remedy this lacuna in the approach by substituting a proper monetary award for the award

of back wages made by the tribunal for these workmen earlier indicated. In my view the monetary award which may be substituted will be required

to be made for all the 7 workmen and not 3. Further, in my opinion, if these 3 workmen have been given additional amounts by the tribunal, that

may be reflected in the substituted award that I propose to make. Finally, I will observe by saying that I will make the substitution conditional upon

the petitioners deposition the amounts under the substituted award in this Court by a specified date. If the employer fails to deposit the aggregate

amount as proposed by me in this Court by the specified date, the award made by the tribunal, whether proper or improper, must stand and will

be enforced against the employer by the ordinary means.

15. In the result, I pass the following order :---

16. I have ascertained from Mr. Shetye that the daily wages of these 3 persons viz. Ramavatar Jaiswal, G.V. Mathais and Durbali Durjan after

because their capacities were distinct. They vary from Rs. 2.50 per day to Rs. 4.00 per day. The award to these persons under the decision of the

Tribunal also differs and varies from Rs. 1,580/- in the case of G.V. Mathais to Rs. 2,660/- for Ramavatar Jaiswal. However, as far as these three

are concerned, who have suffered the rigour of the inquiry for full 3 1/2 years and have been made to give evidence and be cross-examined, I think

it will be fair to treat them as equals and to grant recompense equally to them. They must further be given a higher amount each than awarded to

the other 4 workmen. Ultimately this may result in some pecuniary benefit to the employer; but this will be on condition that the amount due will be

deposited in this Court.

17. Accordingly I am of opinion that the employer i.e. the petitioner should deposit in this Court the following amounts for the 7 workmen :

1. Ramavatar Jaiswal)

) Rs. 1,000/- (one

2. G.K. Mathais)

)

3. Durbali Durjan) thousand) each.

)

4. Ramnaresh Harijan)

) Rs. 250/- (two hundred

5. Shyammilan Biswakarma)

)

6. A.D. Patel) and fifty each)

)

7. Katwarau Yadav.)

This makes the aggregate figure of Rs. 4,000/- which I direct the petitioner to deposit in this Court on or 5:26 PM 8/11/04 before 15th February,

1979. The petitioner will also deposit in this Court as and by way of costs of the petition a sum of Rs. 200/- (two hundred) also on or before 15th

February, 1979.

18. If the amounts under this order viz. Rs. 4,000/- for the 7 employees and Rs. 200/- as and by way of costs are deposited by the specified date,

then the direction for payment of back wages given in the impugned award made by the 2nd respondent (F.M. Lala) is set aside and will stand

quashed but without affecting the direction to re-employment. On failure of the petitioner to deposit both the amounts by the specified date, the

impugned award will remain in its entirety and can be executed after 15th February, 1979 in any appropriate manner. If the petitioner fails to

deposit the aforesaid amounts and the award of the Tribunal stands, the petitioner will also pay to the 1st respondent the costs of the petitioner

quantified at Rs. 200/- (two hundred).

19. The Prothonotary to make payment of costs to the Advocate for the 1st respondent and of amounts to the workmen on the minutes on the

usual undertaking given by the 1st respondent''s Advocate to draw up the order. It is further ordered that the amounts payable by way of costs and

as damages and/or compensation to the workmen under this order, if deposited, will remain deposited in this Court upto 30th April, 1960, and if

by that date any part thereof is not claimed by the persons entitled to the same, the same is directed to be refunded to the petitioner/employer. In

case of such refund the petitioner will be deemed to have complied with this order and will be entitled to take advantage of the writ quashing the

direction for payment of back wages.

20. The rule is made absolute to the extent indicated above.

21. Parties to have liberty to apply in case of any difficulty.