Narayan Das and Others Vs. State of M.P. and Others

Narayan Das and Others Vs. State of M.P. and Others

SooperKanoon Citation : sooperkanoon.com/1182233

Court : Madhya Pradesh

Decided On : Jul-15-2015

Judge : Sujoy Paul

Appeal No. : Writ Petition Nos. 5132, 1734, 1900, 1899, 1777 & 1741 of 2012

Appellant : Narayan Das and Others

Respondent : State of M.P. and Others

Judgement :

1. In view of commonality of issues involved, with the consent of parties, matters were finally heard and decided by this common order.

Facts are taken from W.P.No.5132/12.

2. The petitioner was employed as a daily rated employee on 4.7.1989. He worked till 30.11.1990. Thereafter, pursuant to policy of State Government to terminate the daily rated employees who were engaged after 31.12.1988, the petitioner was terminated on 30.11.1990. The Government lateron decided to reinstate such employees. Accordingly, w.e.f. 28.2.2004 the petitioner was reinstated in service. He was again terminated on 15.5.2005. The petitioner approached the Labour Court against this termination dated 15.5.2005. The Labour Court allowed his application in part and directed his reinstatement with back wages. In obedience of this order, the petitioner was reinstated by order dated 26.6.2012. Thereafter, by impugned order dated 4.7.2012, the petitioner is directed to be terminated.

3. Shri K.N.Gupta, learned senior counsel assisted by Shri M.S.Rana, Advocate, criticized this order. He submits that this kind of termination amounts to unfair labour practice. It is alleged that the termination of petitioner is violative of Section 25F and G of the Industrial Disputes Act, 1947 (ID Act). To elaborate, it is contended that since petitioner was directed to be reinstated by the Labour Court, the respondents have adopted the device to terminate him by impugned order. As per the rules made under the ID Act, the employer is required to prepare seniority list. The termination can be made by applying the principle of first come last go . There are many employees who are junior to the petitioner and are still working and they have not been served with orders like impugned herein. In addition, it is contended that the impugned order is liable to be interferred with because Section 25F(c) has not been complied with. Learned senior counsel submits that before taking steps to retrench the petitioner, permission from appropriate Government has not been obtained. The mandatory provisions of Section 25N of ID Act are grossly violated. Hence, interference is warranted. In support of his contention, he relied on the judgment of Supreme Court in Central Bank of India Ltd. Vs. Satyam (AIR 1996 SC 2526). He also relied on the judgment of Supreme Court in Durgapur Casual Workers Union and ors. Vs. Food Corpo.ration of In dia and ors. (Civil Appeal No. 10856/14) Lastly, he relied on the rules namely, M.P. Daily Wage Employees (Conditions of Service) Rules, 2003. Rules are relied upon to submit that the protections flowing from said rules needs to be extended in favour of the petitioners.

4. Mrs. Sangeeta Pachori, learned Govt. Advocate, for the respondents supported the order. She submits that earlier termination was interferred with by the Labour Court because Section 25F was not complied with. Now, the respondents are fulfilling the said requirement. Hence, no interference is warranted. She submits that the petitioner's services are no longer required. She relied on various paragraphs of the return.

5. No other point is pressed by learned counsel for the parties.

6. I have heard the learned counsel for the parties and perused the record.

7. The petitioner's termination order was interferred with by the Labour Court by award dated 14.2.2012 (Annexure P-4). A plain reading of this order shows that the employer has not followed the requirement of Section 25F of the ID Act. For this singular reason, the termination was interferred with and petitioner was directed to be reinstated. Thereafter, the respondents have passed the impugned order. It is mentioned in the order that at present there is no vacant and sanctioned post for the petitioner. He was not appointed against any sanctioned and vacant post. His continuance is violative of Article 14 and 16 of the Constitution. Services of daily wagers are not required. Thus, it is directed that by way of notice (Annexure P-1) the services of the petitioner will be terminated after giving him retrenchment compensation in accordance with law. Section 25F reads as under:-

25F. Conditions 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 day's 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].

8. A plain reading of this provision makes it clear that as per 25F (a) and (b), the employer may give one month's notice in writing indicting the reasons for retrenchment. The workman at the time of retrenchment is required to be paid the compensation as described in the said provision. The impugned order shows that it is one month's notice as per Section 25F(a). The retrenchment compensation is required to be paid at the time of retrenchment, i.e., after one month from the date

of issuance of notice. In other words, on expiry of notice period, retrenchment compensation is to be paid. The respondents made it clear in the impugned order that retrenchment compensation will be paid according to rules on expiry of period. Thus, the notice fulfills the requirement of Section 25F (a) and (b). However, it is made clear that if on expiry of period petitioners' services are terminated, without paying retrenchment compensation, interference can be made. However, pursuant to interim order, petitioners are continuing and, therefore, that stage has not come and retrenchment compensation could not have been paid to the petitioner.

9. So far Section 25F(c) is concerned, the Apex Court in catina of judgments has held that this clause is directory in nature (see (2003) 4 SCC 619 (Pramod Jha Vs. State of Bihar and others). In this case the Apex Court noticed that there is notice by employer directing retrenched employees to collect retrenchment compensation from Divisional Office and employees are failing to do so which shows that employer has made sufficient compliance of Clause (b) of Section 25F. Thus, I am unable to hold that impugned notice is not in accordance with Section 25F of the ID Act. Violation of sub clause (c) will not render the impugned notice as illegal.

10. So far Section 25G is concerned, the petitioner has not mentioned as to who are the junior employees who have been retained in service and petitioner is picked up and chosen for the impugned action. Putting it differently, the petitioner has not mentioned the names of junior employees, their date of engagement etc. to establish that principle of first come last go needs to be followed. In absence thereof, it cannot be held that Section 25G of ID Act is violated. The petitioner should have specifically pleaded the necessary facts in relation to retention of juniors so that the department is put to notice on this aspect. In turn, department could have met this point in the return.

11. In W.P. No. 1734/12 also, the petitioner has made a bald allegation regarding juniors that no action has been taken. No doubt, as per Rule 76 the respondents are required to prepare a seniority list. The petitioner himself has filed such seniority list dated 25.8.2009 along with IA No. 2631/15 in W.P. No. 1734/12. However, in absence of any pleadings in this regard which shows that juniors have been retained, no decision can be taken in this petition.

12. So far violation of Section 25N is concerned, in my view the contention is misconceived. Section 25N finds place in Chapter VB of the ID Act. Section 25N in no uncertain terms makes it clear that it is applicable to the workman employed in any industrial establishment to which Chapter VB applies. Industrial Establishment is defined in Section 25L, which reads as under:-

25L. Definitions.--For the purposes of this Chapter,--

(a) industrial establishment means--

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mind as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);

or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause of clause (a) of section 2,-

(i) in relation to any company in which not less than fifty-one percent, of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation [not being a corporation referred to in sub-clause (1) of clause (a) of section 2] established by or under any law made by Parliament.

13. Learned counsel for the petitioner is unable to show that respondent department is either a factory, mine or a plantation as per the said section. The petitioners have miserably failed to show that respondent department is an 'industrial establishment' as per Chapter VB of the ID Act. Hence, section 25N has no application on the department. The contention is accordingly rejected.

14. From the aforesaid discussion, it is clear that the action of department is in accordance with provisions of ID Act. If they are following the requirement of

Section 25F, it cannot be said that it amounts to unfair labour practice. The only thing which is required to be ensured by the respondents is that no retrenchment take place in violation of section 25G read with Rule 76 of Rules. In view of Central Bank of India Limited (supra), it is clear that section 25G and H are applicable to workmen, whether or not they have completed 240 days of service. Thus, the respondents are required to apply their mind whether any juniors or similarly situated persons is retained and impugned action is taken against the petitioners.

15. Learned senior counsel also relied on the judgment of Durgapur Casual Workers (supra). In the opinion of this Court, the factual backdrop of the said matter is totally different than that of the present one. In the present case, the employer has assigned reason in the impugned order.

16. In view of aforesaid discussion, this petition is disposed of by following directions:-

ii) The petitioners may submit a representation along with seniority list to established/demonstrate that the principle of first come last go has not been followed.

ii) If such representation is preferred, it will be lawful for the respondents to decide the said representation before implementing the impugned order Annexure P-1. If the respondents come to the conclusion that the said principle is violated, needless to mention that respondents are required to see whether petitioners are still required to be retrenched.

iii) The respondents may consider the representation, take a decision on it and then only may implement the impugned order Annexure P-1.

17. With these directions, the petitions are disposed of. The interim order passed by this Court shall continue till decision is taken by the respondents on the said representation. Representation as aforesaid be filed within three weeks.

18. The petitions are partly allowed to the extent indicated above.

19. Registry is directed to keep a true copy of this order in the record of connected matters.