Madhukar Vs. Bhilai Steel Project (by General Manager) and anr.

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Court : Madhya Pradesh

Decided On : Aug-18-1966

Reported in : (1966)IILLJ745MP

Judge : P.V. Dixit, C.J. and; R.J. Bhave, J.

Appellant : Madhukar

Respondent : Bhilai Steel Project (by General Manager) and anr.

Judgement :
ORDER

P.V. Dixit, C.J.

1. The petitioner in this case was employed as an assistant heater in the Tolling mills of the Bhilai Steel Project, Bhilai. In November 1960 he went on 22 days' leave. He, however, did not resume duties on the expiry of his leave on 17 December 1960, Instead, he sent an application for extension of leave up to 30 December 1960 on the ground that he was ill. It appears that this extension' of leave was not granted. On 5 January 1961 the petitioner received a notice from the General Manager of the Bhilai Steel Project asking him to explain his unauthorized absence from duty. The applicant says that he replied to this notice on 7 January 1961, In the meantime, respondent 1 passed an order on 19 December 1960 terminating the petitioner's service. The order simply mentioned that the petitioner's services were terminated with effect from the date of the

service of the order on him, without prejudice to the right of the Hindustan Steel, Ltd., to recover the expenditure incurred In connexion with his training under the agreement executed by him.

2. Thereafter the petitioner filed an application under Section 31 (3) of the Madhya Pradesh Industrial Relations Act, 1960, in the labour court, Raipur, challenging the validity of the order terminating his services and praying for his reinstatement In service end for an order with regard to payment of back-wages. The labour court upheld the order of respondent 1 terminating the applicant's services and rejected the petitioner's prayer for reinstatement. It, however, held that under Clause 44 of the standing orders framed by the Hindustan Steel, Ltd., the management could at any time terminate the services of a regular employee by giving him three months' notice and that as this notice had not been given to the applicant, the petitioner was entitled to get three months' wages in lieu of notice. Accordingly, the labour court made an order for payment of three months' wages to the petitioner.

3. The petitioner then preferred a revision petition before the industrial court. The industrial court took the view that the order terminating the applicant's services was not mala fide but that it could not be upheld as the applicant was at no time informed by respondent 1 of the reasons for terminating his services, and the ground which the management advanced before the labour court for terminating his services, namely, ' security reasons,' was not mentioned even in the written statement which the management filed in the labour court. The Industrial court, therefore, set aside the order of the lower Court upholding the order of the management terminating the petitioner's services. It, however, further held that as the applicant's services were terminated bona fide for ' security reasons,' it would not be proper to make an order directing reinstatement of the applicant In service. On this view, the Industrial court rejected the petitioner's prayer for reinstatement and granted him compensation of Rs. 1,500 in lieu of reinstatement.

4. By this application under Articles 226 and 227 of the Constitution, the applicant prays for the issue of a writ of certiorari for quashing the order dated 24 July 1965 of the industrial court in so far as it rejected his prayer for reinstatement and also prays for a direction to the management for reinstating him In service. The

petitioner also claims a direction for payment of all the back-wages due to him up to the date of the order of the industrial court, namely, 24 July 1965.

5. The industrial court having set aside the order of respondent 1 terminating the applicant's services and the labour court upholding that order, it is not necessary to consider In this petition filed by the employee whether under Clauses 44 of the standing orders respondent 1 could claim a right to terminate the services of the petitioner at any time by just giving him three months' notice. The order of respondent 1 terminating the petitioner's services has been held to be invalid by the industrial court and set aside. On that position, the first question that arises for determination is whether the petitioner can as of right claim reinstatement In service. It has been held by the Supreme Court in Assam Oil Co. v. its workers 1960--1 L.L.J. 587 that the normal rule is that in oases of wrongful dismissal the dismissed employee Is entitled to reinstatement; but there can be cases where it would not be expedient to follow this normal rule and to direct reinstatement; and that where the dismissed employee occupies a position of some confidence and the employer has lost confidence in the employee, then in the circumstances of the case It would not be fair either to the employer or to the employee to direct reinstatement, and in such a case compensation would be the proper relief. Again, it has been ruled in Punjab National Bank v. All India Punjab National Bank Employees' Federation 1959--II L.L.J. 666 that whether or not reinstatement should be ordered In cases of wrongful or Illegal dismissal is normally a question of fact which has to be decided by the tribunal after taking into consideration several relevant factors. In Utkal Machinery -v. Santi Patnaik (Miss) 1966--1 L.L.J. 398 also, while upholding the labour court's order holding that an order passed by the management of the Utkal Machinery, Ltd., discharging the services of Santi Patnaik was mala fide, the Supreme Court reduced the amount of compensation awarded by the labour court in lieu of reinstatement. All these authorities show that if the facts and circumstances of a case justify, then the prayer for reinstatement can be refused even if the termination of the employee's services is held to be wrongful.

6. Now, here, In refusing reinstatement the industrial court was influenced by the consideration that the petitioner's services were terminated by the management for

' security reasons.' It accepted the satisfaction formed by the labour court that for 'security reasons' the applicant's continuance in service was not desirable. It cannot be denied that in the projects run by the Hindustan Steel, Ltd., 'security reasons' must play a prominent part while taking a person in employment or while considering the question of his continuance in employment. In such concerns, sabotage or activities subversive of security cannot be tolerated. It cannot, therefore, be contended that the industrial court rejected the petitioner's prayer for reinstatement on an irrelevant consideration when it said that for security reasons it was not desirable to force the services of the applicant on the management.

7. Learned Counsel for the applicant referred us to the Calcutta Dock Labour Board v. Jaffar Imam 1965--11 L.L.J. 112, and contended that the prayer for reinstatement could not be refused merely on a suspicion that the petitioner's activities were prejudicial to security, and that there was no material before the labour court or the industrial court for holding that the applicant's activities were prejudicial to security. There is no substance in this contention. The judgment of the employer whether the activities of a particular employee are prejudicial to the maintenance of security is a subjective judgment which is not open to challenge or scrutiny. It is not that the management had no report of any kind about the petitioner's activities. A report about his activities was placed before the labour court and the learned Judge presiding over the labour court was satisfied on a perusal of that report that it was not desirable to continue the applicant's services on security grounds. This satisfaction reached by the labour court was accepted by the industrial court. The decision relied upon by the learned Counsel for the applicant is distinguishable by the fact that in that case the Deputy Chairman of the Calcutta Dock Labour Board terminated the services of certain labourers merely on the ground that the labourers had been detained under the Preventive Detention Act, 1950, and the Advisory Board had expressed the opinion that their detention was justified. The Supreme Court took the view that the orders terminating the services of the workers were illegal inasmuch as the management of the Calcutta Dock Labour Board did not itself investigate into the allegations made against the labourers after holding an enquiry prescribed by Clause 36(3) of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1951. The Supreme Court observed that the Deputy Chairman was not Justified in treating

the opinion expressed by the Advisory Board as amounting to a Judgment of a criminal Court. In the present case, the order terminating the applicant's services has been set aside by the industrial court and, therefore, the question whether 'security reasons' formed the basis of the management's order terminating the applicant's services does not arise. The matter of 'security reasons' is material only in so far as it is concerned with the petitioner's reinstatement in service. As the applicant's prayer for reinstatement was refuse on a valid ground and, as held by the Supreme Court, the question of reinstatement is normally a question of fact, the direction made by the industrial court refusing the applicant's reinstatement in service cannot be interfered with in this petition.

8. The petitioner's prayer for payment of back-wages up to the date of the decision of the industrial court must, however, be accepted. The legal effect of the industrial court's order setting aside the order of respondent 1 terminating the petitioner's services and of the labour court upholding that order, is that the petitioner continued to be in service up to the date of the decision of the industrial court as if there never was any termination of his employment. The effect of the order of the industrial court setting aside respondent l's order of termination and refusing reinstatement is to set at naught the order of termination passed by the employer and to reinstate him in service from the date the order of termination was passed till the date of decision of the industrial court, but to refuse him employment thereafter. If the applicant was thus in service up to the date of decision of the industrial court, then it follows that he is clearly entitled to get all the back-pay and allowances. The compensation that has been awarded by the industrial court is for refusal of employment after 24 July 1965, that is, the date on which the industrial court pronounced its decision.

9. For these reasons, this petition is allowed in part; and it is declared that the applicant is entitled to back-wages and allowances from 19 December 1960 to 24 July 1965. Respondent X is directed to pay on or before 30 October 1966 back-wages and allowances for this period to the petitioner. In the circumstances of the case, we leave the parties to bear their own costs. The outstanding amount of security deposit shall be refunded to the petitioner.