

State and ors. Vs. Vinay Kumar and ors.

State and ors. Vs. Vinay Kumar and ors.

SooperKanoon Citation : sooperkanoon.com/756799

Court : Rajasthan

Decided On : Jul-29-1978

Reported in : 1978WLN(UC)223

Judge : M.L. Joshi and; M.C. Jain, JJ.

Appeal No. : D.B. Civil Special Appeal No. 6 of 1968

Appellant : State and ors.

Respondent : Vinay Kumar and ors.

Disposition : Appeal dismissed

Judgement :

M.L. Joshi, J.

1. This is a group of seventeen special appeals under Section 18 of the Rajasthan High Court Ordinance. All these: appeals involve common question of law in regard to the interpretation of Sections 25B, 25F and 25G of the Industrial Disputes Article, 1917 hereinafter called the Act. They are therefore, being disposed of by a common judgment.

2. In order to appreciate the questions of law involved in these various writ petitions it will be sufficient to give facts from the D.B. Civil special appeal No. 16 of 1968 State and Ors. v. Vinnay Kumar as the facts in ail the appeals are almost

similar.

3. The material facts relevant for disposal of these appeals stated in brief are as under: The respondent Vinaykumar is an Engineering graduate. He came to be appointed as Junior Engineer in Public Works Department Project Organization under the order of the Chief Engineer P.W.D dated 25-7-66. He, however, joined the service on 23-10-66. Later on he was retrenched by the impugned order dated 8-9-67.

4. Being aggrieved, the respondent challenged the validity of the order of retrenchment by a petition under Article 226 of the Constitution of India. In the petition the respondent contended that the impugned order was bad as it contravened Sections 25F and 25G of the Act. In support of his contentions, the respondent averred in his petition that he was a workman and had put in one year's continuous service within the meaning of Section 25B of the Act, but as he was not paid any compensation nor any wages in lieu of notice as required by Section 25F of the Act, the order of retrenchment was invalid. The respondent further contended that the impugned order was bad as persons junior to him had been retained whereas he came to be retrenched on 8-9-67 and so the impugned order being violative of provisions of Section 25G of the Act was invalid. It is not disputed that at all material times when the respondent was retrenched Sarv Shri M.G. Singhvi, M.C. Tyagi, R.L. Chauhan and some others were junior to him but they were retained whereas the respondent was retrenched against the provisions of Section 25G of the Act.

5. The writ petition was opposed by the State. In the reply it was denied that the respondent was a workman within the meaning of Section 2(s) of the Act and so there is no question of invoking the provisions of Section 25F of the Act. In the reply it was further pleaded by the appellant State that the notice as required under Section 25F was duly given and further that the respondent has not served for 12 months with the application he could not claim the benefit of Section 25F of the Act.

6. The fact that respondent being workman within the meaning of Section 2(s) of the Act has not been seriously disputed before us and that too rightly. The reason

is that at the relevant time the respondent was getting salary of Rs. 255/- per month His duties as per Standing Order No. 158 of 12-12-62 were those of Overseer. The duty of the Overseer was to collect data required for preparation of cornet estimates. He had to prepare rough drawings and site plan on the basis of survey conducted by him. He was also required to prepare estimates for all works in bas section. He has further to remain at the site of the work and had to attend the office of the Assistant Engineer only when he is called upon to do so. From the perusal of the Standing Order No. 158 it is evident that the duties of the junior Engineer and the Overseer are of technical nature and they are both supervisor and clerical for certain jobs. Looking to the nature of the duties to be discharged by the respondent, we have no hesitation to hold that the respondent at all relevant time was a workman within the meaning of Section 2(s) of the Act.

7. It has been strongly contended by the learned Government Advocate that the learned Judge was in error in holding that the respondent was in continuous service for a period of one year although in fact he was not in employment for or 5 year. It has been submitted that the respondent joined service on 28th of October, 1966 and was retrenched with effect from 8-9-67. In the background of such facts it has been maintained by the Government Advocate that the respondent cannot be taken to be in continuous employment as envisaged in Section 25B and there could be no question of contravention of Section 25F the Act.

8. We have given our earnest consideration to the contentions put forth by the learned Government Advocate Section 25F of the Act reads as under:

25.F Condition precedent to retrenchment of workman: No workman employed in any industry who has been in continuous service for not less than one year under an employer 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 Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service.

(b) the workman has been paid at the time of retrenchment compensation which shall be equivalent to fifteen days average pay 'for every completed year of continuous service' (a) 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).

From a perusal of Section 25F it is evident that benefit of Section 25F of the Act can only be available to workman employed in any industry who has been in continuous service for not less-than one year under an employer as defined in Section 25B. In Section 25B of the Act a workman shall be said to be in continuous set vice if he is for that period in uninterrupted service including service which may be interrupted on account of sickness or authorized eave or an accident or a striate which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workman. The learned single while interpreting the expression continuous service has observed that Sub-section (2) creates a fiction in as much as it lays down that a workmen shall be deemed to be in continuous service for a period of one year if he has actually worked under the employer for not less than 190 days in a case of workmen and 240 days in any other case The learned single Judge has given the analysis of Section 25B which it will be profitable to extract in his own terms as follows:

In my view, the analysis of Section 25B is like this : Sub-section (1) provides that definition of continuous service contained therein has been taken for the purpose of the Chapter and in this chapter Section 25F occurs Sub-section (1) then defines what is taken to be continuous service for a period. It is bid down that the uninterrupted service would include period of the service which would be interrupted on account of sickness or authorised leave or an accident or strike which is not illegal or lock out or a cessation of work which is not due to any fault on the part of the workman Sub-section (2) contemplates a case where a workman is not in continuous service within the meaning of Clause (1) for a period of one year and it thus provides an alternative by way of fiction when a certain period shall still be treated as continuous service for one year. Rendering of Sub-section

(2), in my view, is that the workman shall be deemed to be in continuous service under an employer for a period of one year, if he satisfies the stated condition namely that if during a period of 12 calendar months preceding the date with reference to which calculation is to be made he had actually worked under the employment for not less than 240 days in the cases of employment other than those requiring a workman to work below ground in a mine. The words 'has actually worked for the stated period' are in my view, important and furnish the cue to the correct interpretation of the Sub-section. The use of the expression 'during a period of 12 calendar months preceding the date with reference to which calculation is to be made' is with a view to ensuring that the period of 240 days has been in relation to a certain unit of measure of time which is provided to be one year. In other words, if a person renders service for not less than 240 days in a span of one year, then he is still entitled to be considered as one who had put in continuous service for a period of one year.

9. From the passage extracted above it will appear that according to the learned single Judge one year's period contemplated by Sub-section (2) only furnishes a unit of measure and if during that unit of measure a period of service actually rendered by a workman other than a mine workman is 240 days then the workman by legal fiction shall be considered to have rendered one year's continuous service for the purposes of the Act. According to the learned single Judge it is not necessary that the employee must be actually in service for the statutory period of one year provided even in a unit period of one year an employee had put in actual 240 days service. We find ourselves unable to subscribe to the view taken by the learned Judge. In our view the principle enunciated by the learned single Judge that it is sufficient that during the unit period of one year workman should have actually worked for 240 days irrespective of the fact that he had not been actually in employment for one year is not correct. Section 25 of the Act contemplates continuous and uninterrupted service for complete one year. The legal fiction which has been imported by the learned single Judge in our opinion is not warranted in view of the clear and plain terms of Section 25B as on the plain terms of that section only a workman who has been in continuous service for not less than one year in employment is entitled to benefit of section 25F of the Act. We are fortified in our view by the decision reported in AIR 1963 Supreme Court 1914 Sir Enamel

and Sampling Works Ltd. v. Their workmen The Supreme Court has very lucidly explained the term continuous employment for not less than 240 days in that case. It will be profitable to extract the relevant portion of that judgment as under:

Continuous service' is defined in Section 2(eee) includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal or a lockout or a cessation of work which is not due to any fault on the part of the workman. What is meant by one year of continuous service has been defined in Section 25B. Under this section a workman who during a period of 12 calendar months has actually worked in an industry for not less than 240 days shall be deemed to have completed one year of completed service in the industry. Nagen Bora and Monoharan were both reappointed on 10th March, 1959. Their services were terminated on 15th January, 1960 Thus their total period of employment was less than 11 months The position therefore is that during a period of employment for less than 11 calendar months these two persons worked for more than 240 days. In our opinion that would not satisfy the requirement of Section 25B. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a period of not less than 12 calendar months and next that during those 12 calendar months he had worked for no less than 240 days Where, as in the present case, the workmen have not at all been employed for a period of 12 calendar months it becomes necessary to examine whether the actual days of work numbered 240 days or more. For, in any case, the requirement of Section 25B would not be satisfied by the mere fact of the number of working days being not less than 240 days.

10. From the above passage of the Supreme Court, it is borne out that in order to fulfil the requirements of Section 25B the workmen should have remained in employment at least for period of 12 calendar months. It is immaterial that the workmen had actually worked for 240 days until it is established that he had remained in actual employment of the same employer at least for a period of one year. In view of the statement of laws enunciated by the Supreme Court we are definitely of opinion that the view taken by the learned single Judge is not correct and the decision on this point does not embody correct law in the case the

respondent did not remain in the uninterrupted employment of the appellant for a completed period of one year. So, he cannot legitimately claim the benefit of Section 25F, as for claiming the benefit on that section, it is condition precedent that the workmen would have been in continuous employment of the employer for at least one year. We are, therefore, of the opinion that respondent cannot legitimately claim the benefit under Section 25F of the Act on the ground that the conditions precedent in that section have not been satisfied.

11. This brings us to the next contention put forth by the learned Government Advocate.

12. It was contended that the respondent was not entitled to the benefit of Section 25G of the Act as the benefit can be only available to the persons to whom Section 25F is application. He further contended that omission to record reasons will not vitiate the retrenchment order. These contentions are stated only to rejected Section 25G provides the prescribed procedure for effecting retrenchment This provision requires that in the absence of any agreement between the employer and the workmen in effecting retrenchment on related to any category of workman the employer shall ordinarily retrench the workmen who was the last person to be employed in that category. It is true that he may depart from this statutorily embodied rule but for that it is obligatory on the employer to record the reasons as to why he had departed from the well established industrial principle generally known as the last come, first go or the time come last go In order to justify the departure from the move rule, it is obligatory on the employer to record reasons and which must be also sound,

13 Coming to the case before us we may state that the respondent was retrenched whereas the persons junior to him were retained in the employment without recording any reasons. Obviously in the present case the provisions of Section 25G of the Act have not been complied with and so we have no hesitation to state that failure to comply with a Section 25G will make the retrenchment of the respondent invalid The learned single Judge has rightly held that the provisions of Section 25G were not complied with and so the retrenchment order of the respondent was invalid. The learned single judge has rightly held that the

provisions of Section 25G were not complied with and so the retrenchment order of the respondent was invalid & we agree with the view taken by him. We are, therefore, of the opinion that the retrenchment of the respondent was bad due to noncompliance of provisions of Section 25G. There is, therefore no justification for us to interfere with the conclusion arrived at by the learned single Judge.

14. In the result, the appeals are dismissed. There shall be no order as to costs. The judgment in this case shall also govern the rest of the appeals.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com