

Anand Kumar Sharma Vs. the Executive Engineer and anr.

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Court : Rajasthan

Decided On : Jul-28-2003

Reported in : RLW2004(1)Raj230; 2004(1)WLC168

Judge : Sunil Kumar Garg, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 25F

Appeal No. : S.B. Civil Writ Petition No. 4561 of 2002

Appellant : Anand Kumar Sharma

Respondent : The Executive Engineer and anr.

Advocate for Def. : Anil Upadhyaya, Adv.

Advocate for Pet/Ap. : Sanjeet Purohit, Adv.

Disposition : Petition allowed

Judgement :

Garg, J.

1. This writ petition under Article 226/227 of the Constitution of India has been filed by the petitioner against the respondents on 13.7.2001 with a prayer that impugned award dtd. 13.2.2001 (Annex. 5) passed by the Industrial Tribunal, Udaipur by which the Industrial Tribunal, Udaipur (respondent No. 2) instead of

order of reinstatement, only awarded Rs. 31,000/- as compensation to the petitioner be modified with a direction to the respondents to reinstate the petitioner in the service.

(2). The facts as put forward by the petitioner are as under:

i) That the State Government vide its notification dtd. 1.9.94 referred the following dispute to the Labour Court (respondent No. 2):

'Whether the termination of services of the petitioner by respondents No. 1 on 30.11.92 was valid and justified and if so what relief the workman was entitled to?'

ii) That on the basis of aforesaid reference, a case was registered by the Labour Court (respondent No. 2) and the petitioner submitted his claim (Annex. 1) stating that he was initially appointed on the post of Store munshi with effect from 15.12.87 in the respondent-Department on daily wage basis and he discharged the duties of typist also during his service period. It was further submitted by the petitioner-workman in his statement of claim that the petitioner was transferred to Division III to Division II in October 1991 and was again transferred to Division II in June, 1992, but he has worked for more than 240 days in a calendar year in the employment of respondent No. 1. It was further submitted by the petitioner that his services were terminated illegally by respondent No. 1 by an oral order dtd. 30.11.92 without compliance of Section 25F of the [Industrial Disputes Act, 1947](#) (hereinafter referred to as the Act of 1947) and it was prayed that the termination order dtd. 30.11.92 should be quashed and set aside.

iii) That the respondent No. 1 filed reply (Annex. 2) to the statement of claim stating that since the petitioner had worked in different sub-divisions of respondent No. 1, therefore, services rendered by him could not be counted for the purpose of Act of 1947. It was further stated by the respondent No. 1 that from 1.12.92, the State Government stopped issuing muster rolls for daily wages employees and, therefore, all the employees stopped coming on duty. It was further submitted by the respondent No. 1 that the petitioner had not worked for 240 days in a calendar year and, therefore, the provisions of Act of 1947 were not applicable in this case and the claim petition filed by the petitioner should be dismissed.

iv) That the learned Labour Court (respondent No. 2) vide judgment and award dtd. 13.2.2001 (Annex. 5) came to the conclusion that termination order dtd. 30.12.92 by which services of the petitioner were terminated was illegal inter alia holding:

i) That the petitioner worked in the employment of respondents for more then 1 and 1/2 years.

ii) That the petitioner worked under the employment of respondent No. 1 from Dec., 1987 to November, 1992 i.e. for more than 60 months.

iii) That after Dec., 1992, muster-rolls were not issued, meaning thereby that services of the petitioner were terminated by the respondent No. 1.

iv) That services of the petitioner were terminated without complying with the provisions of Section 25F of the Industrial Disputes Act.

v) The Learned Tribunal came to the conclusion that the termination order of the petitioner was illegal and since the petitioner had not worked in the employment of the respondent No. 1 for five years, therefore in place of reinstatement and back wages, the learned Labour Court awarded Rs. 31,000/- as compensation.

Aggrieved by the impugned judgment and award dtd. 13.2.2001 (Annex. 5), this writ petition has been preferred with the abovementioned prayed.

3. In this writ petition, the main submission of the learned counsel for the petitioner is that when the Labour Court finds that termination order of a workman is illegal, normal rule is to grant reinstatement and in exceptional circumstances, the compensation in lieu of reinstatement should be awarded. Since in the present case the termination order dtd. 30.11.92 was found invalid and reference was made in the year 1994, therefore, it cannot be said that there was delay and thus, order of reinstatement should have been passed and the exceptional circumstances in which in place of reinstatement, compensation should be awarded are missing in this case. Thus, the impugned award dtd. 13.2.2001 (Annex. 5) should be modified to the extent that the order of reinstatement should be passed in favour of the petitioner.

4. On the other hand, the learned counsel for the respondents has supported the judgment and award dtd. 13.2.2001 (Annex. 5). The learned counsel for the respondent has submitted that this Court should not interfere with the findings of facts recorded by the Labour Court under Article 227 of the Constitution of India.

5. Heard and perused the record.

6. It may be stated here that so far as findings of the learned Labour Court (respondent no, 2) that the order of termination of services of the petitioner was illegal is concerned, the same has become final as the respondent No. 1 has not challenged there findings.

7. The Hon'ble Supreme Court in number of cases has held that when the order of termination is found to be illegal, the general rule is to grant reinstatement and compensation should be awarded in exceptional circumstances. In this connections reference may be made to the cases of *Tulsi Das Paul v. The 2nd Labour Court (1)* and *Vikramaditya Pandey v. Industrial Tribunal (2)*.

8. The Hon'ble Supreme Court in the case of *Vikramaditya Pandey (Supra)* has held that once termination of a workman is found to be illegal, normal rule is to grant reinstatement with full back wages. However, it is open to the employer to specifically plead and establish that there were special circumstances, which warrant non-grant of such relief.

9. During the course of arguments, the learned counsel for the petitioner has submitted that in case the order of reinstatement is passed, he would not press for back wages.

10. Since in the present case, special exceptional circumstances which do not warrant reinstatement, do not exist and, therefore, the findings of the learned Labour Court (respondent No. 2) by which the petitioner was awarded compensation only in lieu of reinstatement cannot be sustained.

11. Had there been a delay of more than 10 years, between passing of order of termination and making of reference, the position would have been different one. In the present case, the termination order was passed on 30.11.92, reference was

made on 1.9.94 and the award too was passed on 13.2.2001. Therefore, from this point of view also, it cannot be said that special circumstances were available in the present case for not passing the order of reinstatement.

12. Thus, it is held that the petitioner is entitled to reinstatement in place of compensation, but on reinstatement, he would not be entitled to back wages.

13. For the reasons mentioned above, the writ petition is liable to be partly allowed.

Accordingly, the present writ petition is partly allowed in the manner that the respondent No. 1 is directed to reinstate the petitioner in service forthwith, but he will not get any back wages. The order of compensation to the tune of Rs. 31,000/- passed by the Labour Court, Udaipur (respondent No. 2) is quashed and set aside.

The judgment and award dtd. 13.2.2001 (Annex. 5) passed by the Industrial Tribunal cum Labour Court, Udaipur (respondent No. 2) is modified to the above extent.

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