

Devi Prasad Vs. the Sub-divisional Officer (Land Conversion) and ors.

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Court : Rajasthan

Decided On : Aug-04-2003

Reported in : [2004(101)FLR121]; RLW2004(3)Raj1583; 2004(1)WLC446

Judge : H.R. Panwar, J.

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

Appeal No. : S.B. Civil Writ Petition No. 3308 of 2002

Appellant : Devi Prasad

Respondent : The Sub-divisional Officer (Land Conversion) and ors.

Advocate for Def. : R.K. Soni, Addl. Govt. Adv.

Advocate for Pet/Ap. : Ravi Bhansali, Adv.

Judgement :

Panwar, J.

1. This writ petition has been filed for modifying the Award dated 22-2-2002 (Annx.4) by way of granting the relief of reinstatement to the petitioner on the post Chairman with back wages and consequential benefits.

2. The facts and circumstances giving rise to this case are that on 14-12-1989, the petitioner was appointed on daily wages basis on the post of Chain man by the

verbal order of the respondent Authority but his services were put to an end w.e.f. 31-12-1993 without complying with the mandatory provisions of Section 25F of the [Industrial Disputes Act, 1947](#) (for short, 'the I.D. Act'). On being reference made by the State Government, the petitioner filed a claim petition before the Industrial Tribunal cum Labour Court, Udaipur. The respondents filed reply denying the averments made in the claim petition. The Labour Court, vide its Award dated 22-2-2002 (Annx.4), held the retrenchment illegal but instead of granting relief of reinstatement, awarded a compensation to the tune of Rs. 25,000/- in lieu of reinstatement and back wages. Hence this writ petition.

3. I have heard learned counsel for the parties and perused the impugned Award as well as the record of the case.

4. It has been contended by the learned counsel for the petitioner that there was no justification with the Labour Court in denying reinstatement and back wages to the petitioner when it had come to the conclusion that the retrenchment was illegal; the learned Labour Court has not assigned any reason for denying reinstatement and back wages though it is well settled that whenever the Court finds that retrenchment was in violation of the provisions of Section 25F of the I.D. Act, the relief of reinstatement with back wages should be allowed.

5. Learned counsel for the respondents, on the other hand, has supported the award impugned made by the Labour Court.

6. The Labour Court, however, considering the fact that the appellant had worked for a period of four years on daily wages basis and his services were terminated in the year 1993, awarded a sum of Rs. 25,000/- in favour of the petitioner as compensation in lieu of reinstatement.

7. Indisputably petitioner worked only for a short period as casual labour on daily wages. He was not regularly selected for the job. The gap from date of termination, i.e. 31-12-1993 to the date of passing of the award was a substantial one. Again between the date of the termination of the petitioner and filing of this petition, more than nine years have gone by. The petitioner has not been in touch with the job for about a period of ten years. It will not be appropriate to thrust the

petitioner on the respondent employer after such a long time. In case the reinstatement is directed then the petitioner's position and status would remain that of casual labour on daily wages basis and if he claims regularisation then the questions of seniority, emoluments and promotion would arise. It may effect the seniority, and chances of promotions of employees who have been working in absence of the petitioner. Though the normal rule is to direct reinstatement of a workman whose services have been terminated in violation of Section 25F of the Industrial Disputes Act, reinstatement is not a must in every case. In a fit case it may not be expedient to order reinstatement on setting aside of the order of termination. In such a case compensation in lieu of reinstatement may be more desirable. I am fortified with the view by the decisions of the Supreme Court in Rolston John v. Central Government Industrial Tribunal-cum-Labour Court and Ors. (1), Gujrat State Road Transport Corporation and Anr. v. Malu Amra (2), Rattan Singh v. Union of India and Anr. (3), O.P. Bhandari v. Indian Tourism Development Corporation Ltd. and Ors. (4), and Sain Steel Products v. Naipal Singh and Ors. (5).

8. In Murari Lal Sharma v. Nehru Yuva Kendra Sangathan (6), a Division Bench of the Delhi High Court considered the same questions as has arisen in the instant case. While declining reinstatement of the workman, the division bench observed as under:-

'We find from the decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh, [1990 (4) SLR 154] seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since we are bound to follow the decision of the Constitution Bench, we, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination, compensation can be awarded in lieu of reinstatement and back wages. Learned counsel for the appellant, however, referred us to the judgments of the Supreme Court in Vikramaditya Pandey v. State of U.P. (AIR 2001 (2) SCC, 423) and (AIR 2000 SC, 454). The

aforesaid decisions of the Supreme Court turn on its own facts and has no application in the instant case.'

9. In *Rattan Singh v. Union of India and Anr.* (supra), the Hon'ble Apex Court, while considering the case where termination of services of the workman was made without complying with the provisions of Section 25F of the Industrial Disputes Act, the Supreme Court instead ordered payment of Rs. 25,000/- in lieu of reinstatement and back wages, observed as follows:

'We find merit in the said submission of Shri Ashri. From the dates mentioned in the Judgment of the First Appellate Court dated 22.1.1985, it appears that the appellant had continuously worked for more than 240 days in a year. Since he was a workman, he was entitled to the protection of Section 25F of the Act and the said protection could not be denied to him on the ground that he was a daily-rated worker. It is not the case of the respondents that the provisions of Section 25F of the Act were complied with while terminating the services of the appellant. In these circumstances, the termination of services of the appellant cannot be upheld and has to be set aside. The services of the appellant were terminated in the year 1976. Nearly 20 years have elapsed since then. In these circumstances, we are not inclined to direct reinstatement of the appellant. But having regard to the facts and circumstances of the case, we direct that a consolidated sum of Rs. 25,000/- be paid to the appellant in lieu of compensation for back wages as well as reinstatement. This amount is being paid in full and final settlement of all the claims of the appellant.'

10. Learned counsel for the petitioner however, referred to the judgments of the Supreme Court in *Vikramaditya Pandey v. State of U.P.* (7), but the aforesaid decision of the Supreme Court turns on its own facts and has no application to the instant case.

11. A Constitution Bench of the Hon'ble Supreme Court, in *Punjab Land Development Corporation's case* (supra), held that compensation in lieu of reinstatement and back wages is, now, the norms and reinstatement is not the inevitable consequence of quashing an order of termination and compensation can be awarded in lieu of reinstatement and back wages.

12. The Division Bench of this Court, in *State of Rajasthan v. Rashid Mohammed (8)*, and *Ram Niwas v. The Mining Engineer and Ors. (9)*, and held that compensation in lieu of reinstatement is the adequate relief in such cases.

13. However, the sum of Rs. 25,000/- awarded as compensation in lieu of reinstatement and back wages appears to be on lower side. Keeping all the facts and circumstances of the case in view and the fact that the order of retrenchment is as back was December 1993, in my considered opinion, a sum of Rs. 40,000/- is the just and proper amount of compensation.

14. In view of the aforesaid discussion, the writ petition is partly allowed. The order of Labour Court is modified to the extent that the compensation is enhanced to Rs. 40,000/- (Rs. forty thousand). The enhanced amount shall be paid within three months from today, else it shall carry interest @ 9% per annum. There shall be no order as to costs.

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