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Court : Chennai

Decided On : Aug-23-2007

Reported in : (2007)IIILLJ907Mad

Judge : F.M. Ibrahim Kalifulla, J.

Acts : Uttar Pradesh Industrial Disputes Act, 1947 - Sections 2, 6N, 25B(2) and 25F

Appeal No. : W.P.No. 12174 of 1995

Appellant : R. Bhaskar

Respondent : The Presiding Officer, Ist Additional Labour Court and the Management, Madras Radiators and Pressing

Advocate for Def. : D. Veda, Adv. for Meenakshi Sundaram, Adv.

Advocate for Pet/Ap. : R. Jaikumar, Adv. for P. Saravanan, Adv.

Disposition : Petition dismissed

Judgement :

F.M. Ibrahim Kalifulla, J.

1. The petitioner who was a workman under the second respondent-Management, is aggrieved by the Award of the first respondent-Labour Court, dated 28.5.1993, passed in I.D.No. 345 of 1988.

2. The petitioner-workman was admittedly working as a casual labourer under the second respondent-Management from 5.5.1984. Such casual engagement was stopped with effect from 19.9.1987. The petitioner, along with 53 others, raised an industrial dispute in I.D.No. 345 of 1988, which came to be referred for adjudication by G.O.Ms.No. 1450, Labour and Employment Department, dated 1.7.1988. The issue referred for adjudication was whether the non-employment of 54 workmen was justified. However, before the first respondent-Labour Court, only 18 workmen filed their claim statement. Therefore, the first respondent-Labour Court dealt with the issue relating to the non-employment of those 18 workmen only. The claim of 18 workmen including the petitioner was resisted by the second respondent-Management by filing a counter statement. According to the petitioner-workman, the termination of his services on and from 19.9.1987, was in violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'I.D. Act'), inasmuch as he was not paid the retrenchment compensation as stipulated under the said provision. The claim petition insofar as the petitioner herein was resisted by the second respondent-Management contending that the petitioner-workman not having completed 240 days of continuous service as contemplated under Section 25-F of the I.D. Act, there was no question of non-compliance of Section 25-F of the I.D. Act.

3. The first respondent-Labour Court, by the Award impugned in the Writ Petition dated 28.5.1993, held that out of 18 workmen, the documents produced by the Management disclose that only 8 workmen had satisfied the requirement of 240 days of continuous working and therefore, the relief could be granted only in respect of those 8 workmen only. The first respondent-Labour Court therefore granted the relief of reinstatement only for those 8 workmen with 50% back wages. As regards the remaining 10 workmen including the petitioner herein, since there was no violation of Section 25-F of the I.D. Act, no relief was granted by the first respondent-Labour Court.

4. Assailing the impugned Award of the first respondent-Labour Court, learned Counsel appearing for the petitioner-workman strenuously contended that as per the service particulars furnished by the second respondent-Management itself in its counter statement filed before the Labour Court, the petitioner-workman had worked for 197 days in 1984, 245 days in 1985, 231 days in 1986 and 133 days in 1987, that since in the year 1985, the petitioner-workman had worked for more than 240 days (i.e. 245 days), it should be held that the mandatory requirement of payment of retrenchment compensation under Section 25-F of the I.D. Act ought to have been complied with by the second respondent-Management on the date of his termination, namely 19.9.1987. The learned Counsel appearing for the petitioner-workman placed reliance upon the decision of the Supreme Court reported in 2003 (4) L.L.N. 425 (U.P. Drugs and Pharmaceutical Co. Ltd. v. R. Yadav) and a Division Bench decision of the Bombay High Court reported in 2005 (4) L.L.N. 537 (J.N. Shetty v. Union of India).

5. As against the above submissions, learned Counsel appearing for the second respondent-Management contended that the above decisions relied on by the learned Counsel appearing for the petitioner-workman are not applicable to the facts of this case and that by virtue of the specific provisions contained in Section 25-B(2)(a)(ii) of the I.D. Act read along with Section 25-F of the I.D. Act in order to seek compliance of Section 25-F of the I.D. Act, the concerned workman should have put in continuous service as defined under the above referred to the provision, namely Section 25-B(2)(a)(ii) by putting 240 days of continuous working in a period of 12 calendar months immediately preceding the date of termination. The learned Counsel appearing for the second respondent-Management also contended that since the working of the petitioner-workman during the relevant period discloses that he had not satisfied the said statutory requirement, there was no statutory compulsion for the second respondent-Management to pay the retrenchment compensation to the petitioner-workman on the date of his termination. The learned Counsel appearing for the second respondent-Management therefore contended that the conclusion of the first respondent-Labour Court in the impugned Award insofar as it related to the petitioner-workman does not call for any interference. The learned Counsel for the second respondent-Management brought to my notice the recent decision of the Supreme

Court reported in : (2007)2LLJ393SC (Sriram Industrial Enterprises Ltd. v. Mahak Singh) to show as to how the decisions relied on by the learned Counsel appearing for the petitioner-workman are distinguishable.

6. Having heard the learned Counsel appearing for the respective parties, I find force in the submission of the learned Counsel appearing for the second respondent-Management. As rightly pointed out by the learned Counsel for the second respondent-Management, there is a clear cut distinction as between the provisions contained in Section 2(g) read along with Section 6-N of the U.P. Industrial Disputes Act, 1947 and Section 25-B(2)(a)(ii) of the Central Act, namely the Industrial Disputes Act, 1947. The said distinction has been dearly noted by the Supreme Court in the recent decision reported in (cited supra) and paragraph 29 of the said judgment is relevant for our present purpose, where such a distinction has been specifically mentioned, which reads as under:

29. Having carefully considered the submissions made on behalf of the respective parties and the statutory provisions, we are of the view that a decision in this matter will depend on the understanding of the expression 'continuous service' as used in Section 6-N read with Section 2(g) of the U.P. Act as against its usage in Section 25-B(2)(a)(ii) of the Central Act. In order to appreciate the difference between the two provisions, Sections 6-N and 2(g) of the U.P. Act and Section 25-B(2)(a)(ii) of the Central Act are reproduced hereinbelow:

6-N. 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:

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 service or any

part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the State Government.

2.(g) 'continuous service' means uninterrupted service, and 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 lock-out or a cessation of work which is not due to any fault on the part of the workman, and a workman, who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry.

Explanation - In computing the number of days on which a workman has actually worked in an industry, the days on which -

(i) he has been laid off under the agreement or as permitted by Standing Order made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or under any other law applicable to the industrial establishment, the largest number of days during which he has been so laid off being taken into account for the purposes of this clause,

(ii) he has been on leave with full wages, earned in the previous year, and

(iii) in the case of a female, she has been on maternity leave; so however that the total period of such maternity leave shall not exceed twelve weeks, shall be included.

25-B. Definition of continuous service--For the purposes of this Chapter,--

(2) where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than --

* * *(ii) two hundred and forty days, in any other case;

7. In the light of the above stated legal background as between the above said two enactments, namely the U.P. Act and the Central Act of the Industrial Disputes Act, when the case on hand is considered, the appropriate decision which is applicable is the one which had been reported In 1981 (H) L.L.J. 70 (SC) (Mohan Lal v. Bharat Electronics Ltd). While dealing with an identical argument raised, the Supreme Court has stated as to in what manner the compliance of Section 25-F read along with Section 25-B(2)(a)(ii) of the I.D. Act is to be made and the relevant passage has been set out in paragraph 12 of the judgment which reads as under:

12. ...In other words, in order to invoke the fictions enacted in Sub-section (2)(a) it is necessary to determine first the relevant date, i.e, the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favour of the workman pursuant to the deeming fiction enacted in Sub-section (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25 F....

8. In the light of the above said pronouncement of the Supreme Court in the decision reported in on Section 25-F and Section 25-B(2)(a)(ii) of the I.D. Act, as distinguished from Section 2(g) and Section 6-N of the U.P. Industrial Disputes Act in the decision reported in (cited supra), the interpretation placed by the first respondent-Labour Court in the impugned Award in regard to the number of days of continuous service rendered by the petitioner-workman for the purpose of granting the relief, is perfectly in order. In the light of the said decision of the Supreme Court reported in (cited supra) and the decision relied on by the learned Counsel appearing for the Second Respondent in : (2007)2LLJ393SC (cited supra), the decision of the Division Bench of the Bombay High Court reported in 2005 (4) LLN 537 (in which 2003 (4) LLN 425 (SC) (cited supra) was followed) which are wholly based on the interpretation of Section 2(g) and 6-N of the U.P.

Industrial Disputes Act, 1947, will have no application to the facts of this case.

9. Therefore, for the reasons stated above, I do not find any irregularity or illegality in the impugned Award of the first respondent-Labour Court in order to interfere with the same in this Writ Petition.

10. The Writ Petition fails and the same is accordingly dismissed. No costs.

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