

Sudhir Pandit, Employers in Relation to the Management of the Senior Superintendent, G.P.O. Vs. Employees in Relation to the Management Through Senior Superintendent of Post Office, Ranchi Division,

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Court : Jharkhand

Decided On : Feb-25-2010

Judge : D.G.R. Patnaik, J.

Appellant : Sudhir Pandit, Employers in Relation to the Management of the Senior Superintendent, G.P.O.

Respondent : Employees in Relation to the Management Through Senior Superintendent of Post Office, Ranchi Divisio

Disposition : Application dismissed

Judgement :

D.G.R. Patnaik, J.

1. Both these writ applications arise out of the common impugned Award dated-31.12.2002, passed by the learned Presiding Officer, Central Government Industrial Tribunal No. 2, Dhanbad in Reference Case No. 162 of 1999.

2. The Central Government in the concerned Department, had referred the Industrial dispute raised under Section 10(1)(d) of the Industrial Disputes Act,

1947, for adjudication to the Industrial Tribunal vide its letter of reference dated-16th March, 1999.

3. The terms of the reference was as follows:

Whether the termination of services of the workman, Shri Sudhir Pandit by the Management of the G.P.O. Post Office, Doranda, Ranchi is legal and justified? If not, to what relief, the workman is entitled?

4. Heard the learned Counsel for the parties.

5. From the rival submissions, the admitted facts of the case, which emerge are as follows:

The concerned workman, was engaged as daily rated casual Mazdoor by the Management of the G.P.O., Post Officer, Doranda, Ranchi for doing certain works including stamping of letter collecting of Speed Post articles etc. at Doranda Post Office and such other works. His engagement was made with effect from 29.11.1994 on a wage of Rs.25/- per day. The claim of the workman is that the nature of work performed, was of regular and perennial nature and ever since the date of his initial engagement on 29 11.1994, he had continuously worked up to 31.12.1994.

The grievance of the workman was that after having taken his services continuously for a period of more than 25 months, the Management had abruptly terminated his services by an oral order with effect from 01.01.1997 without issuing any notice or assigning any reasons.

The workman's further grievance was that another workman, who was junior to him, had not only been retained in service but he was given temporary status with minimum wages of Grade IV in Category D while another workman, namely, Lal Mohan Pandit, who was also initially engaged as a casual Mazdoor, was regularized in service.

6. Being aggrieved with the order of his termination, the workman submitted his representation before the Chief Post Master General, praying for his reinstatement

in service. It is stated that despite the favourable recommendation made in his favour by the Chief Post Master General, the Director of the Postal services did not reinstate the workman in service. Consequently the workman raised an industrial dispute, which was initially referred for conciliation and after the conciliation proceedings had failed, was ultimately referred to the Tribunal for adjudication in terms of the reference.

7. Before the Tribunal, the stand taken by the Management was that the workman was not engaged as a regular Mazdoor against any regular vacancy His engagement was only as a daily rated Mazdoor intermittently during the year 1995-96, by the Post Master, Doranda and he was never engaged continuously even as a casual labourer. The Management has also denied the workman's assertion that other similarly situated employee were given any preferential treatment. The Management has also denied the receipt of any instructions/recommendations from the Chief Post Master General for the reinstatement of the workman.

8. It appeals from the Award that while the workman had availed the opportunity to adduce evidence in support of his claim, the Management, though had submitted its written statement but had thereafter, abstained from participating in the proceedings before the Tribunal and thereby had, neither adduced any evidence not challenged the evidence adduced on behalf of the workman.

9. Upon considering the evidences, the Tribunal had recorded its finding that the workman had sufficiently established by evidences brought on record, that he had worked continuously under the Management for more than 240 days in a year in between 29.11.1994 to 31.12.1996 and he had performed the job of casual worker, the Tribunal has observed that upon such findings, it was mandatory on the part of the Management to issue a notice of termination to the workman in accordance with the provisions of Section 25F of the I.D. Act, holding that the termination of the services of the workman was illegal, improper and in violation of the principles of natural justice, the Tribunal had based its Award answering the reference in favour of the workman and had also recorded its observation the the concerned workman is entitled for reinstatement in his service.

10. Assailing the impugned Award on the ground that the learned Tribunal, while passing the impugned Award, had acted with great material irregularly and has erred both in law as well as on facts in passing the Award, learned Counsel for the Management would submit that the Tribunal has failed to consider that the appointment of the concerned workman was admittedly, not made after following the due procedure of law and of the relevant Rules and Regulations for appointment. In view of this aspect of the matter, the direction to instate the workman in service would amount to allowing entry through back door of a person, whose appointment itself was irregular. Learned counsel argues further that the learned Tribunal has failed to consider that the workman himself has not produced any letter of appointment, if issued to him at any point of time and that even the evidences adduced by the workman do not confirm that he was continuously engaged for 240 days in a year. Learned counsel explains that even otherwise, merely on the ground that the workman having worked for 240 days in a year, cannot give any right to the workman to be regularized in service.

11. Learned counsel on behalf of the concerned workman would submit arguments in support of the impugned Award on the ground that the findings as recorded in the Award is based on the materials available on record and there being no perversity or impropriety in the findings the same cannot be interfered with.

Referring to the grounds taken in the writ application filed by the workman, learned Counsel would submit that having recorded its finding that the termination of the workman's services was illegal and on such grounds having directed the Management to reinstate the workman in service, the Tribunal ought also to have considered for a direction to pay the back wages of which the workman was illegally deprived, since after the date of illegal termination of his service.

12. I have gone through the impugned Award and find that except submitting its written statements, the Management did not bother to adduce any evidence or even to contradict the evidences adduced by the workman. The Tribunal has considered the evidences on record and has recorded its findings that the workman was engaged continuously for 240 days in a year in between 29.11.1994

to 31.12.1996 and under such circumstances, the termination of the services of the workman without issuing the mandatory notice, as stipulated under Section 25F of the Industrial Disputes Act, was illegal. I find no illegality or impropriety in the findings, as recorded in the Award by the Tribunal.

13. Having quashed the order of the workman's termination, the logical consequence was a direction for his reinstatement. The direction for reinstatement in service is qualified by a statement that his reinstatement shall be in his original position. The interpretation of the direction for reinstatement as sought to be made by the management that the direction is for regularization of the services of the workman, therefore, appears to be misconceived.

14. In the light of the above facts and circumstances, I do not find any merit in the writ application [W.P (C) No. 280 of 2004] preferred by the Management. Accordingly, the same is dismissed.

15. As regards the claim of the workman in the other writ application [W.P. (L) No. 4019 of 2004] for payment of back wages, the facts no doubt declare that the termination of the workman service, was not by way of any punishment imposed upon him. Rather, the terminator was found to be illegal and contrary to the provisions of law. It also appears that while passing the impugned Award, the Tribunal has confined its attention only to the terms of reference to decide as to whether the termination of the services of the workman was legal and justified and if not to what relief, the workman is entitled? Thus, while confining the relief to which the workman was entitled upon the termination of his service, being declared as illegal, the Tribunal has considered and extended the relief of reinstatement only and has not gone to decide as to whether the workman was entitled to back wages and if so to what extent.

16. The issue relating to payment of back wages is by now well settled. In the case of Nagar Panchayat Kharkhauda v. Yogendra Singh reported in (2005) 13 SCC 428, the Supreme Court has held that back wages are not to be paid as a matter of course. Various factors are to be considered and pleading and proof is necessary in making the Award of back wages. Amongst the various factors, the nature of such service of the employee, namely, whether the service was

permanent or on daily wages, is also to be considered.

17. In the instant case, the workman has not claimed before the Tribunal for payment of back wages nor has he adduced any evidence, declaring that he was not gainfully employed during, the period after the date of termination of his service and till the date of passing of the impugned Award. The Tribunal was, therefore, not called upon to address by the reference to any additional issue and record any finding thereon.

18. It appears from the submissions of the learned Counsel for the Management, that even after the termination of the services, the workman had engaged himself as a Post Office Agent and used to earn commissions. This fact has not been denied or disputed on behalf of the workman.

19. In the light of the above facts, the impugned Award cannot be faulted merely because it has not recorded any finding on any additional issue regarding payment of back wages to the workman upon his reinstatement.

20. In the light of the above facts and circumstances, I do not find any merit in the claim of the workman, as raised in this writ application (W.P. (L) No. 4019 of 2004). Accordingly, the same is dismissed.

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