

The Superintending Engineer, and ors. Vs. Narayan Prasad Vishwakarma S/O Uadi Chand Vishwakarma, and anr.

The Superintending Engineer, and ors. Vs. Narayan Prasad Vishwakarma S/O Uadi Chand Vishwakarma, and anr.

SooperKanoon Citation : sooperkanoon.com/911720

Court : Madhya Pradesh

Decided On : Jun-22-2010

Judge : Madhya Pradesh ; J.K.Maheshwari, J.J.

Acts : [Industrial Disputes Act, 1947](#) ; Madhya Pradesh Industrial Relations Act ; [Constitution of India](#) - Articles 226, 227 ;

Appeal No. : WRIT PETITION NO. 11741 OF 2006(S).

Appellant : The Superintending Engineer, and ors.

Respondent : Narayan Prasad Vishwakarma S/O Uadi Chand Vishwakarma, and anr.

Advocate for Def. : Ms Sheetal Dubey, Adv.

Judgement :

1. This petition has been filed under Article 226/227 of the [Constitution of India](#) against the award dated 27.2.2006 passed by the Presiding Officer, Labour Court, Jabalpur in Case No.5/2004 ID Reference, reinstating the respondent No.1 without back wages.

2. Respondent No.1 filed a dispute under Industrial Disputes Act stating that he was engaged as Helper on daily wages with the petitioners with effect from January, 1982 and continued till 14.6.1986. It is said, the work performed by him

was satisfactory, and he had continuously worked for more than 240 days in a calendar year, however, acquired the status of permanent employee. It is further stated that he has not been classified as a permanent, on the post of Helper, and paid him i.e. the daily wages. In June, 1986 he was terminated without issuing any notice, furnishing an opportunity of hearing and paying any compensation, however, such an act is amounting to illegal retrenchment. The respondent No.1 cannot file a dispute directly, however an application was filed by him under the Madhya Pradesh Industrial Relations Act. Later on it was found not entertainable, therefore, withdrawn and the dispute was raised before the Labour Commissioner, which was referred to the Labour Court for answer, however there is no delay in raising the dispute.

3. Petitioners have filed their reply to the statement of claim and it is admitted that he was engaged as Helper on daily wages with effect from 1982 till 14.6.1986. It is further stated that he was working as daily wage employee and not against a vacant post, however, he is not entitled to be classified. It was also contended that initially a case was filed under MPIR Act which was withdrawn, however, the subsequent dispute is not entertainable. It is also stated that the dispute filed by him is time barred. In addition to the said objections, it is averred that a complaint was received regarding commission of theft by the respondent No.1 while working as helper, however under the fear of proposed disciplinary action, he himself has not come forward to work in the department. Therefore, the services of respondent No.1 has not been terminated but he himself has not come forward to work there and, therefore, he is not entitled for reinstatement.

4. The Labour Court recorded a finding that the petition filed by the respondent No.1 (applicant therein) under MPIR Act was withdrawn because it was not entertainable, however, subsequent dispute filed by the respondent No.1 has been adjudicated on merit. It has further been held that the petitioners have not filed any document to demonstrate a theft committed by respondent No.1 or he to show his involvement in such incident. The Labour Court also recorded a finding that no material has been produced that the respondent No.1 has left the job on his own though such burden lies on them. No evidence has been brought to prove the alleged misconduct committed by the respondent No.1. In addition to the aforesaid

finding, it is further held that prior to discontinuing the respondent No.1, neither any notice has been issued nor an opportunity of hearing has been given to him and no retrenchment compensation was paid, therefore, respondent No.1 has been illegally retrenched. In the facts and circumstances of the case, the Labour Court has directed for reinstatement without back wages.

5. Ms Sheetal Dubey, learned Government Advocate appearing on behalf of the petitioners has made a solitary contention that the dispute has been filed by the inordinate delay of 11 years before the Labour Court though it ought to have been filed within a reasonable time, therefore, the award as passed by the Labour Court reinstating the respondent No.1 is not justifiable in the facts and circumstances of the present case. Reliance has been placed on a judgment of the Apex Court in the Case of U.P. State Road Transport Corporation v. Babu Ram (2006) 5 SCC 433 and submitted that because the dispute has been raised by inordinate delay, therefore the award as passed by the Labour Court may be ordered to be set aside.

6. On the other hand, Shri Manoj Chandurkar, learned counsel appearing on behalf of respondent No.1 submitted that undisputedly the respondent No.1 has worked from January, 1982 to 14.6.1986. Thereafter, he was discontinued without issuing any notice, furnishing an opportunity of hearing and paying any retrenchment compensation. Being uneducated person, he was not aware regarding the niceties of the law, however a case was filed under the provisions of M.P. Industrial Relations Act which was withdrawn because it was not entertainable, later on raised this dispute. Though there is some delay on his part, but because the Labour Court has reinstated him without back wages holding that his termination was illegal, therefore in the facts and circumstances of the present case interference is not warranted. Reliance has been placed on the judgment of the Apex Court in the case of Ajaib Singh V. Sirhind Co-op. Marketing-Cum-Processing Society Ltd., AIR 1999 SC 1351 and of Shahaji Vs Executive Engineer, P.W.D., reported in [2007 (115) FLR 675] wherein the Apex Court has held that the judgment of Ajaib Singh (supra) lays down the correct law and once the termination was found illegal, the Labour Court ought not to have refused to entertain the dispute on the ground of delay. In view of aforesaid, it is contended

by him that the petition filed by the petitioners may be ordered to be dismissed.

7. After having heard learned counsel appearing for the parties and on perusal of the pleadings of the parties and evidence as adduced, it is undisputed that the respondent No.1 was engaged on daily wage in January, 1982 and discontinued with effect from 14.6.1986. No evidence has been brought on record that respondent No.1 himself has not turned up to discharge the duties. The plea as advanced with respect to misconduct or of alleged theft has also not been proved by producing any document or by adducing any evidence. Thus a finding has been recorded by the Labour Court that discontinuation of respondent No.1 is amounting to illegal retrenchment without issuing any show cause notice, furnishing an opportunity of hearing and making any payment of compensation. Thus the Labour Court directed for reinstatement of respondent No.1 without back wages, as there was some delay in raising dispute. In the facts and circumstances of the case and in view of the judgment of the Apex Court in the case of Ajaib Singh (supra), we are of the opinion that the delay is not fatal particularly when the termination has been found illegal and the findings as recorded by the Labour Court are based on due appreciation of evidence. The judgment relied upon by the petitioners is on different facts as in the said case it was not shown why the dispute was raised belatedly while in the present case it is said that initially a dispute was filed under the provisions of M.P. Industrial Relations Act which was withdrawn and later on the present dispute has been raised. In our opinion, being uneducated person such explanation given by respondent No.1 seems to be plausible particularly when his termination has been held to be illegal by the Labour Court. More so, the judicial notice can be taken note of the fact that the State Government by issuing circulars have taken decision to take back the daily wages employees who were engaged prior to 1988 and discontinued later on. Thus reinstatement of respondent No.1, without back wages, as directed by the Labour Court is in consonance to the circulars of State Government.

8. In view of the foregoing, we are of the opinion that the impugned award passed by the Labour Court reinstating the respondent No.1 without back wages does not warrant any interference as it is in accordance with law. Accordingly, the petition filed by the petitioners being devoid of merits and is hereby dismissed with no

order as to costs.

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