

WRIT PETITION NO. 353 OF 1999

Sarovar Park Plaza Resort,
(formally Oberoi Bogmallo
Beach Resort), Trade Wings
Hotels Pvt. Ltd., Bogmalio,
Goa, represented by their
General Manager, Shri
Saznjay Sethi.

...Petitioner.

Versus

1. The Presiding Officer,
Labour Court, Junta
House, Panaji, Goa, and

2. Mr. Francisco D'Cruz,
Bogmalo, Mormugao, Goa.

...Respondents.

Shri S. G. Bhobe, advocate for the petitioner.

Shri A. V. Nigalye, advocate for respondent no..2.

CORAM : D. G. KARNIK, J.

DATE : 31st March, 2004.

ORAL JUDGMENT

Heard learned counsel for the parties. Respondent no.2 was employed under the petitioner somewhere in 1986. An enquiry was held against the respondent no.2 and another co-workman for alleged incidents which took place on 12th November, 1986 and 4th January, 1987. The services of the respondent no.2 and his co-workman were terminated after enquiry. On reference made under Clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Industrial Tribunal by an Award dated 6th November, 1995, held that the termination of services of respondent no.2 by the petitioner was illegal and unjustified and, accordingly, ordered his reinstatement. Writ Petition filed against the

judgment of the Industrial Tribunal was dismissed by a Single Judge of this Court. The Letters Patent Appeal as well as the Appeal before the Supreme Court failed and the Judgment of the Industrial Tribunal has become final.

2. Thereafter, the respondent no.2 filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947, before the Labour Court for payment of back wages and other consequential benefits as ordered by the Industrial Tribunal. By an Order dated 7th September, 1999, the Labour Court directed the petitioner to pay to the respondent no.2 a sum of Rs.2,32,46.55 p. together with interest at the rate of 12% per annum, from the date of application till payment. This Judgment of the Labour Court is impugned in this Writ Petition.

3. Learned counsel for the petitioner submits that the respondent no.2 was not a workman. At the relevant time, the respondent no.2 was only a probationer and, therefore, the order of reinstatement passed by the Industrial Tribunal would only mean that the respondent no.2 was reinstated as a probationer and not as a workman. Therefore, the computation of the salary of the respondent no.2 would have to be made on the basis that he was and continued to be a probationer and not a workman. Learned counsel further submitted that as the petitioner had disputed the status of respondent no.2 as a workman, the Labour Court could not have decided the

application made by the respondent no.2 for recovery of arrears on the basis that the respondent no.2 was a workman; the Labour Court had no jurisdiction to decide whether the respondent no.2 was a workman or only a probationer and that issue could be decided only by the Industrial Tribunal and not by the Labour Court and, therefore, the Labour Court should have dismissed the application made by the respondent no.2. I am unable to accept the submissions made by the learned counsel for the petitioner for the reasons mentioned below.

4. In the original reference made under Section 10 of the Industrial Disputes Act, 1947, the petitioner had never disputed that respondent no.2 was not a workman. No contention was raised before the Industrial Tribunal that respondent no.2 was only a probationer and, therefore, he was not entitled to an order of reinstatement. It was also not contended before the Industrial Tribunal that the order of reinstatement could only be made as a probationer and not as a workman. By its Order dated 6th November, 1995, the Industrial Tribunal held:-

"However, it is held that the action of the management of M/s. Hotel Oberoi, Bogmalo Beach, Bogmalo, in terminating the services of Assistant Steward Mr. Francisco D'Cruz is illegal and unjustified. The Asst. Steward Mr. Francisco D'Cruz is ordered to be reinstated with full back wages and all other consequential benefits."

It is thus not open to the petitioner now to contend that the

respondent no.2 was only a probationer. The Industrial Tribunal held that the respondent no.2 was an Assistant Steward and ordered his reinstatement as such with full back wages. In an enquiry under Section 33-C (2) of the Industrial Disputes Act, 1947, the Labour Court cannot go behind the order of the Industrial Tribunal and is bound by it. All that was required to be done was to compute the arrears of back wages and other consequential benefits to which the respondent no.2 was entitled to.

5. On merits, it was not shown that the computation made by the Labour Court was in any way erroneous.

6. In the circumstances, the Writ Petition is dismissed with costs. Rule discharged. The amount which has been deposited by the petitioner in this Court at the time of admission of the petition be paid to the respondent no.2 towards part of the dues.

D. G. KARNIK, J.

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