

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

O R D E R

Prithvi Raj v. Labour Court, Jodhpur & Ors.

S.B.CIVIL WRIT PETITION NO.4387/1998
under Article 226 of the
Constitution of India.

Date of Order : 31st August, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Vijay Mehta, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.
Mr. G.M.Bhandari, for the respondents.

BY THE COURT :

By this petition for writ the petitioner workman has given challenge to the award dated 23.10.1998 passed by Labour Court, Jodhpur in Labour Case No.168/1995 to the extent it denies the relief of reinstatement and allows a compensation in lieu of reinstatement.

The facts required to be noticed for effective adjudication of present petition for writ are as follows:-

The appropriate government under a notification dated 8.8.1995 referred an industrial

dispute for its adjudication to Labour Court, Jodhpur in following terms:-

“क्या श्रमिक श्री पृथ्वीराज पुत्र श्री भीकाराम (जिसका प्रतिनिधित्व सचिव पी.डब्लु.डी. एम्पलाईज यूनियन जोधपुर ने किया है) को उसके नियोजकगण (1) सहायक अभियन्ता, सा.नि.विभाग नगर उपखण्ड चतुर्थ जोधपुर (2) सहायक अभियन्ता, सा.नि.वि. नगर उपखण्ड जोधपुर (3) अधिशाषी अभियन्ता, सा.नि.विभाग नगर खण्ड द्वितीय जोधपुर द्वारा दिनांक 1-12-92 से मौखिक सेवा मुक्ति उचित एवं वैध है ? यदि नहीं तो श्रमिक किस राहत को पाने का अधिकारी है ?”

The Labour Court found that the termination of petitioner workman from service amounts retrenchment as defined under Section 2(oo) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act of 1947”) and the same was effected in violation of mandatory provisions of Section 25-F of the Act of 1947. The Labour Court accordingly declared the retrenchment illegal and improper. The Labour Court while deciding the issue with regard to entitlement of relief allowed a lump sum compensation in a tune of Rs.41,000/- in lieu of reinstatement. The Labour Court while substituting the relief of reinstatement by compensation relied upon various judgments of Hon'ble Supreme Court and upon two judgments of Hon'ble Punjab and Haryana High Court. The judgments so relied are:-

- (1) 1995 SCC (L&S) 529, Surjit Ghosh v. Chairman & Managing Director, United Commercial Bank & Ors.
- (2) 1995 SCC (L&S) 142, Rolston John v. Central Government Industrial Tribunal-cum-Labour Court & Ors.
- (3) 1995 SCC (L&S) 141, Gujarat State Road Transport Corpn. & Anr. v. Mulu Amra
- (4) 1995 SCC (L&S) 573, Syed Azam Hussaini v. Andhra Bank Limited
- (5) LLJ 1996(1) 637, Rajwant Singh Rewat v. The District Food and Supplies Controller, Ferozpur & Ors.
- (6) LLJ 1996(1) 644, Gidderbaha Co-operative Marketing-cum-Processing Society Ltd. v. Presiding Officer, Labour Court & Anr.

The contention of counsel for the petitioner is that the learned court erred while denying the relief of reinstatement with full back wages as the retrenchment effected by the employer was held void being in violation of provisions of Section 25-F of the Act of 1947. It is contended by counsel for the petitioner that a retrenchment effected in violation of mandatory condition precedent prescribed under Section 25-F of the Act of 1947 is inoperative and, therefore, the workman is required to be treated in service, the declaration of reinstatement is notional and the workman is supposed to be in continuous employment from the date of his initial appointment. It is also contended by counsel for the petitioner that the judgments relied upon by the Labour Court for denying reinstatement in service and to allow a lump

sum compensation in lieu of reinstatement are having no application in present controversy.

Counsel for the petitioner substantiated his contention by judgment of this Court in the case of Nanji v. Vikas Adhikari, Panchayat Samiti, Dungarpur & Anr., reported in 2005(8) RDD 2846 (Raj). In the case of Nanji(supra) this Court held that where there is an ineffective order of retrenchment there is neither termination nor cessation of service, therefore, the reinstatement is notional and the workman for all purposes is required to be deemed in service from the date of his initial appointment.

Per contra, counsel for the respondents vehemently urged that the Labour Court is having ample power to decide the question of relief even in the case the retrenchment is found void ab-initio. Counsel for the respondents while relying upon the judgments referred in the award impugned also substantiated his contention by judgment of Hon'ble Supreme Court in the case of Manager, Reserve Bank of India, Bangalore v. S.Mani & Ors., reported in (2005)5 SCC 100.

Heard counsel for the parties.

There is no dispute between the parties that the Labour Court held the termination of the petitioner as a retrenchment as defined under Section 2

(oo) of the Act of 1947 and the same was found effected in violation of provisions of Section 25-F of the said Act. The same as such is void ab-initio. Precisely the question required to be decided by the Court is the effect of an order which is void ab-initio.

Hon'ble Supreme Court in the case of Mohanlal v. The Management of M/s Bharat Electronics Ltd., reported in AIR 1981 SC 1253, while dealing with an order of retrenchment made in violation of provisions of Section 25-F of the Act of 1947 held as under:-

“The last submission was that looking to the record of the appellant this Court should not grant reinstatement but award compensation. If the termination of service is ab initio void and inoperative, there is no question of granting reinstatement because there is no cessation of service and a mere declaration follows that he continues to be in service with all consequential benefits. Undoubtedly, in some decisions of this Court such as Ruby General Insurance Co. Ltd. v. P.P. Chopra, (1970)1 Lab LJ 63 and Hindustan Steel Ltd., Rourkela v. A.K. Roy, (1970)3 SCR 343: (AIR 1970 SC 1401) it was held that the Court before granting reinstatement must weigh all the facts and exercise discretion properly whether to grant reinstatement or to award compensation. But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment,

there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the Courts in the field of social justice and we do not propose to depart in this case."

In view of the law laid down by Hon'ble Supreme Court in the case of Mohanlal (supra) the retrenchment effected in violation of provisions of Section 25-F of the Act of 1947 is non est and non existent. In view of it in usual course the workman is to be treated in employment during the period he faced cessation of service due to illegal retrenchment.

In the present case learned Labour Court deviated from usual consequence of declaration of a retrenchment bad relying upon the judgments of Hon'ble Supreme Court referred in preceding paras and discussed hereinafter.

In the case of Gujarat State Road Transport Corporation (supra) Hon'ble Supreme Court was dealing with a case of illegal dismissal from service and not of the case of retrenchment. In the aforesaid case Hon'ble Supreme Court allowed a compensation of Rs.75,000/- in lieu of reinstatement for the reason that the employee concerned was dismissed from services much back in the year 1967 and the Court was

adjudicating the dispute with regard to illegal dismissal in the year 1992. The court allowed compensation as a period of about 24 years elapsed from the date of dismissal and by a flux of time, there was great change in the circumstances. It is also relevant to note that the aforesaid matter was not arising out of an industrial dispute.

In the case of Rolston John v. Central Government Industrial Tribunal-cum-Labour Court & Ors. (supra) Hon'ble Supreme Court allowed a lump sum compensation in a tune of Rs.50,000/- in lieu of reinstatement while holding that the retrenchment of workman was void and ineffective being in violation of provisions of Section 25-F of the Act of 1947. In the case of Rolston John v. Central Government Industrial Tribunal-cum-Labour Court & Ors. (supra) Hon'ble Supreme Court though allowed compensation in lieu of reinstatement but has not dealt with the powers of Labour Court while granting relief after holding the retrenchment void and ineffective.

In the case of Surjit Ghosh v. Chairman & Managing Director, United Commercial Bank & Ors. (supra) Hon'ble Supreme Court allowed a compensation of Rs.50,000/- in lieu of total back wages and not in lieu of reinstatement. An order of reinstatement was maintained by the Supreme Court, however, in lieu of full back wages a compensation of Rs.50,000/- was

allowed to employee Surjit Ghosh. It is also pertinent to note that aforesaid case was also pertaining to dismissal of employee from bank services and that too was not arising out of an industrial dispute.

In the case of Syed Azam Hussaini v. Andhra Bank Limited (supra) Hon'ble Supreme Court allowed a compensation in a tune of Rs.75,000/- instead of reinstatement with back wages as the termination of employee concerned was in violation of provisions of Andhra Pradesh Shops and Establishments Act, 1966. It is true that in the case of Syed Azam Hussaini v. Andhra Bank Limited (supra) Hon'ble Supreme Court also considered the provisions of Industrial Disputes Act while holding the termination of the employee bad in eye of law being in violation of provisions of Section 25-F of the Act of 1947, however, in the said case too the Court nowhere considered the powers of Labour Court while granting relief in the event of a retrenchment found void ab initio. It is also pertinent to note that in the case of Syed Azam Hussaini v. Andhra Bank Limited (supra) the dispute was arising out under the Andhra Pradesh Shops and Establishments Act and not under the Industrial Disputes Act. The issue with regard to violation of provisions of Industrial Disputes Act was dealt with by Hon'ble Supreme Court at its own and not by inferior courts including the original court adjudicating the dispute.

In all the cases referred above Hon'ble Supreme Court either allowed compensation in the cases of termination effected by way of punishment or while exercising powers under Article 142 of the Constitution of India for doing complete justice in the cause or matter before it. Not a single case referred above deals with the powers of Labour Court while granting relief after holding the retrenchment void ab initio.

Learned Labour Court also relied upon the Single Bench judgments of Hon'ble Punjab and Haryana High Court in the case of Rajwant Singh Rewat v. The District Food and Supplies Controller, Ferozpur & Ors. (supra) and Gidderbaha Co-operative Marketing-cum-Processing Society Ltd. v. Presiding Officer, Labour Court & Anr. (supra).

The Rajwant Singh Rewat's case (supra) is having no application in present controversy as in that case Hon'ble Punjab & Haryana High Court allowed a compensation in lieu of back wages while holding that the workman is entitled to reinstatement as he was not retrenched validly.

In the case of Gidderbaha Co-operative Marketing-cum-Processing Society Ltd. v. Presiding Officer, Labour Court & Anr. (supra) Hon'ble Punjab &

Haryana High Court permitted the Labour Court to award a compensation of Rs.50,000/- in lieu of reinstatement for the reason that the post held by the workman was not in existence.

The judgment cited by learned Dy.Govt. Advocate rendered by Hon'ble Supreme Court in the case of Manager, Reserve Bank of India, Bangalore v. S.Mani & Ors. (supra) also nowhere deals with the controversy involved in present writ petition. In the above case Hon'ble Supreme Court certainly observed that the industrial adjudicator cannot be held to be bound to grant some relief only because it will be lawful to do so and the tribunal have discretion with regard to grant of relief and it depends upon the facts and situation obtaining in particular case. The observation is made by Hon'ble Supreme Court while dealing with the powers of Labour Court under Section 11-A of the Act of 1947. The powers under Section 11-A of the Act of 1947 are with regard to grant of appropriate relief in the case of discharge or dismissal of workman.

A Labour Court is equipped with ample power under Section 11-A of the Act of 1947 to mold the relief if it is satisfied that the order of discharge or dismissal was not justified. The Labour Court is empowered to allow lump sum compensation instead of reinstatement if the dismissal or discharge is not

justified, however, these powers are confined to dismissal and discharge and is having no application in the case of retrenchment.

Hon'ble Supreme Court in the case of Mohanlal (supra) in unequivocal terms held that an order of retrenchment in violation of provisions of Section 25-F of the Act of 1947 is inoperative, ineffective and it does not seize the employment.

In view of it in event of an illegal retrenchment continuity in service is a natural consequence. The reinstatement in service is notional. The workman is required to be deemed in service during the period he faced retrenchment, however, it is open for the Labour Court to determine the issue with regard to grant of back wages if the workman remained in gainful employment somewhere else in the period concerned.

In view of discussion above the Labour Court erred while not declaring the petitioner workman in continuous service of the respondent employer from the date of his initial appointment and by granting a notional reinstatement with back wages. The Labour Court erred while substituting the relief mentioned above by ordering to make the payment of compensation.

Accordingly, this petition for writ is allowed. The award impugned dated 23.10.1998 passed by Labour Court, Jodhpur is modified to the extent it allows lump sum compensation in lieu of reinstatement and continuity in service by directing the employer to treat the workman in continuous employment from the date of his initial appointment and also to reinstate the petitioner in service with back wages for the period the workman remained out of employment as a consequence of his illegal retrenchment.

(GOVIND MATHUR),J.

kkm/ps.