

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.1789/1994
(Navnirman Sangh Vs. Judge, Industrial Tribunal Cum
Labour Court, Udaipur & Ors.)

Date of order : 30.11.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Sandeep Shah, for the petitioner.
Mr. S.N. Tiwari, Dy. Govt. Advocate with
Mr. O.P. Rathi, Dy. Govt. Advocate.
Mr. C.P. Trivedi, for respondent No.2.

By way of filing the present writ petition, the petitioner has challenged the award dated 7.8.1993 passed by Judge, Labour Court, Udaipur whereby the Judge, Labour Court while quashing the termination order of the respondent No.2 passed an order for reinstatement of respondent No.2 in service with full back-wages.

According to the facts of the case, the respondent No.2 was appointed in the year 1984 and he continued on the post upon which he was appointed till

3.4.1987. The respondent No.2 raised an industrial dispute before the conciliation officer and after failure of the conciliation proceedings, the appropriate Government referred the matter for adjudication to the Judge, Labour Court, Udaipur.

Before the Judge, Labour Court, Udaipur, a claim petition was filed by the respondent No.2 in which it was specifically stated that he worked for more than three years with the petitioner Sangh but his services were terminated without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereafter "the Act" only). The petitioner herein filed reply to the claim petition before the Judge, Labour Court, Udaipur wherein it was specifically stated that services of the respondent No.2 workman was dispensed with due to absence from duty, so also on the ground that workman has misappropriated the money of the petitioner-Sangh and the said money was deposited by him. In the reply, it was specifically stated that the respondent No.2 was responsible for misappropriation and at the time of terminating his services, he was paid all his dues for which he was entitled. It is mentioned in para No.9 of this writ petition that the respondent No.2 was not at all retrenched from service but his services were discontinued as a disciplinary measure. Therefore, as per petitioner, the award passed by Judge, Labour Court is totally erroneous because there is no

question of following the provisions of the Act because services of the respondent No.2 were dispensed with on the ground of misappropriation of money and he was discontinued as a disciplinary measure. While inviting attention of this Court towards reply, it is contended by the learned counsel for the petitioner that Judge, Labour Court, Udaipur has committed an error while holding that no notice under Section 25 F of the Act was given to the respondent No.2 before terminating his services. In fact before holding guilty for non-compliance of the mandatory condition precedent for a valid retrenchment as prescribed under Section 25 F amounts to retrenchment or not was the question before the Judge, Labour Court, Udaipur. In the present case, the services of the respondent No.2 was discontinued as disciplinary measure as he has misappropriated the funds of the Society, so also, he remained absent from duty unauthorizedly. This ground was taken even before the conciliation officer also as well as before the Judge, Industrial Tribunal Cum Labour Court, Udaipur. However, the Judge, Labour Court, Udaipur failed to appreciate that the termination of the petitioner was not at all retrenchment but discontinuation of service as disciplinary measure as such the petitioner-Sangh was not required to comply with the mandatory condition precedent for a valid retrenchment as prescribed under Section 25 F of the Act. Therefore, as per the learned counsel for the petitioner, the Judge, Labour

Court has committed an error while holding that the termination of the respondent No.2 was in violation of provisions of Section 25 F of the Act.

Learned counsel for the petitioner further argued that it is well settled that the Labour Court has no authority to interfere in the punishment imposed by the competent authority and it would have conducted the enquiry under Section 11-A of the Act, if termination is on the basis of disciplinary measure without holding any enquiry. Therefore, the Labour Court instead of exercising its power under Section 11-A of the Act reached at the conclusion which is not at all applicable in the present controversy. Lastly, it is contended by the learned counsel for the petitioner that before the Judge, Labour Court, the respondent No.2 though was well within his knowledge that his services were terminated as a disciplinary measure as he has misappropriated the funds of the society and also remained absent from duties without any sanction of leave but he kept silence in this regard and filed his claim while concealing all these facts, therefore, this conduct of the respondent No.2 dis-entitles him to get any relief from any legal forum. Without prejudice to the above grounds, it is prayed that now after lapse of 20 years, it is not proper to maintain the order of reinstatement of the respondent-workman and if this Court comes to the conclusion that there is violation of provisions of

Section 25-F of the Act, then as per the judgment of Hon'ble Supreme Court reported in (1997) 11 SCC 396 (Ratan Singh vs. UOI & Anr.), 2006 (4) RLW 2884 (State of Rajasthan & Anr. vs. Ramniwas & Anr.) and (2003) 12 SCC 1 (Engineering Laghu Udyog Employees' Union vs. Judge, Labour Court & Industrial Tribunal & Anr.), in lieu of reinstatement, compensation can be awarded.

On the other hand, the case of the respondent-workman is that his services were terminated in violation of provisions of Section 25-F of the Act and the Judge, Labour Court has considered this aspect of the matter and rightly arrived at with the finding that there is complete violation of provisions of Section 25-F of the Act and the Judge, Labour Court has rightly adjudicated the matter and passed the award of reinstatement of respondent workman. There is no illegality in it. Further, it is submitted that if services of the respondent-workman were terminated on the basis of misconduct then obviously enquiry was to be conducted for the said purpose. It is further contended by the respondent that the allegations levelled against the respondent No.2 are very serious in nature and for the same enquiry was to be conducted but the petitioner has completely failed to conduct any enquiry and no while accepting that no enquiry was conducted, the petitioner is taking the plea that it is the duty of the Labour Court to hold an enquiry under Section 11-A

of the Act but in fact if the services of the respondent-workman was terminated on the ground of misconduct then obviously enquiry was to be conducted but it has not been conducted, which is admitted position of the case. Therefore, the Judge, Labour Court, Udaipur has rightly arrived at with the finding that if the respondent workman remained absent from duties then for retrenchment/terminating his services, provisions of section 25-F of the Act was to be complied with. Admittedly according to the petitioner also, no compliance of provisions of Section 25-F of the Act was made, so also, no enquiry was conducted for alleged misconduct. Therefore, there is no scope for interference in the impugned award while exercising power under Section 226 of the Constitution of India.

With regard to the judgment cited by the learned counsel for the petitioner, it is argued that these judgments have no applicability to the facts of the present case. On one hand, the petitioner is arguing that there is no question of compliance of provisions of Section 25-F of the act as the services of the respondent-workman cannot be termed as retrenchment and on the other hand, it is argued that instead of reinstatement, compensation may be awarded, therefore, such a plea cannot be accepted, which is totally contrary to their own arguments and grounds.

I have considered the rival submissions made by both the parties and perused the record of the case.

Admittedly, as per the petitioner, the services of the respondent workman were dispensed with on the ground of misappropriation of funds so also for absence from duty. Therefore, if such allegations were levelled by the employer then for the same regular enquiry for taking disciplinary action was to be taken but admittedly, no enquiry was conducted before terminating the services of the respondent No.2. Likewise, no compliance of provisions of Section 25-F of the Act was made. Obviously, the allegations levelled against the respondent workman cast stigma upon his career, therefore, regular enquiry was to be conducted before taking such disciplinary action against him. In the writ petition also, it is specifically stated that no enquiry was conducted prior to discontinuing the services of the respondent no.2, if such plea is taken by the petitioner and petitioner is throwing his duties upon the Labour Court while arguing that it is the duty of the Labour Court to hold an enquiry under Section 11-A of the Act, in my opinion, such plea cannot be accepted because the petitioner-employer himself is not making compliance of any of the Rules or bylaws if any framed by them for the purpose of discontinuing the services of workmen as such the finding of Judge, Labour Court does not require any interference by this

Court while exercising power under Section 227 of the Constitution of India. With regard to the judgments cited by the learned counsel for the petitioner, admittedly the services of the respondent-workman were terminated on the basis of serious allegations of misappropriation of funds of the society and such stigma is labeled upon the head of workman forever and now by way of citing above judgments, it is submitted by the learned counsel for the petitioner-employer that respondent-workman may be given compensation in lieu of reinstatement, such plea cannot be accepted because while terminating the services of the workman, no rule, regulations or bylaws were followed by the petitioner-employer and for such conduct of the petitioner-employer, it is not proper to interfere with the finding of the Judge, Labour Court, Udaipur.

The Judge, Labour Court has rightly passed an order for reinstatement of workman because for allegations levelled against the respondent workman, no disciplinary action was taken by the petitioner-employer, which is totally against the principles of natural justice and in violation of provisions of Industrial Disputes Act.

For the aforesaid discussions, this writ petition fails and is hereby dismissed.

(GOPAL KRISHAN VYAS), J.

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