

MANAGEMENT, HINDUSTAN MACHINE TOOLS LTD. A

v.

GHANSHYAM SHARMA

(Civil Appeal No. 856 of 2012)

OCTOBER 30, 2018 B

[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]

Industrial Disputes Act, 1947:

s. 11A – Termination of services of casual worker, who had worked for just 240 days – Labour Court set aside the termination order holding it as illegal and directed reinstatement of the workman with continuity in service – Single Judge of High Court set aside the award of Labour Court – Division Bench of High Court restored the award of Labour Court – On appeal, held: In view of the facts that the workman was a casual worker and had rendered service for a very short duration and that there was no evidence as to whether he was gainfully employed, order of reinstatement alongwith payment of back wages and continuity of service was wrong – Labour Court in exercise of powers u/s. 11A should have awarded lump sum compensation – The award is modified to the extent that in lieu of right to claim reinstatement, compensation of Rs. 50,000/- in lump sum is granted – Labour Laws. C D E

Partly allowing the appeal, the Court

HELD: 1. The respondent was a casual worker and hardly worked for one year (10.6.1976 to 30.7.1977). Having regard to the fact that many decades had passed in between with no evidence adduced by the respondent that whether he was gainfully employed from 1977 onwards or not, the Labour Court should have awarded lump sum money compensation to the respondent in lieu of the relief of reinstatement along with payment of back wages and continuity of service by taking recourse to the powers under Section 11-A of the Act, rather than to direct his reinstatement with all consequential benefits. [Paras 13 and 14][1196-A-C] F G

2. The impugned order and the award of the Labour Court is modified. The appellant is directed to pay a sum of Rs. 50,000/ H

- A - in lump sum to the respondent (employee) by way of compensation in lieu of respondent's right to claim reinstatement in service. The amount of compensation is fixed by this Court after taking into account all facts and circumstances of the case including the fact of making payment to the respondent by way of monthly salary during pendency of the writ petition/intra court appeal by the appellant under Section 17-B of the Act. [Paras 16, 17][1198-F-H]

- C *Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal & Ors. (2010) 6 SCC 773; Assistant Engineer, Rajasthan Development Corporation & Ors. v. Gitam Singh (2013) 5 SCC 136 : [2013] 1 SCR 679 – relied on.*

Case Law Reference

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|---|------------------|-----------|---------|
| | (2010) 6 SCC 773 | relied on | Para 15 |
| D | [2013] 1 SCR 679 | relied on | Para 15 |

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 856 of 2012

- E From the Judgment and Order dated 18.12.2007 of the High Court of Judicature for Rajasthan, Bench at Jaipur in D.B. Civil Special Appeal (Writ) No. 1417 of 1997.

Sushil Kumar Jain, Sr. Adv., Ankita Gupta, Ms. Pratibha Jain, Advs. for the Appellant.

Ms. Chandan Ramamurthi, Adv. for the Respondent.

- F The Judgment of the Court was delivered by

- G **ABHAY MANOHAR SAPRE, J.** 1. This appeal is filed against the final judgment and order dated 18.12.2007 passed by the High Court of Judicature of Rajasthan in D.B. Civil Special Appeal (Writ) No.1417 of 1997 whereby the High Court allowed the appeal filed by the respondent.

2. Facts of the case lie in a narrow compass. They are stated *infra*.

- H 3. The appellant is a Government company engaged in manufacture of certain items. It is now declared as a sick company.

4. The respondent (workman) claimed that he worked with the appellant Company as a casual helper in its manufacturing plant from 10.06.1976 to 30.07.1977. He complained that by an oral order, the appellant on 31.07.1977 terminated his services and, therefore, since 31.07.1977 he is no longer in the employment of the appellant. A

5. The termination of the respondent, therefore, gave rise to the industrial dispute between the parties. The State, on the prayer made by the respondent (workman), referred the dispute under Section 10 of the Industrial Disputes Act (for short “the Act”) to the Labour Court, Jaipur on 03.11.1983, for its adjudication. B

6. The parties contested the Reference on merits before the Labour Court. By award dated 21.09.1988, the Labour Court answered the Reference in respondent’s favour. C

7. It was held that termination of the respondent was not legal and proper and, therefore, it was liable to be set aside. It was accordingly set aside. It was also held that the respondent be reinstated in service by the appellant and he be given continuity in service, also. D

8. The appellant (employer-company) felt aggrieved and filed writ petition in the High Court. By an order dated 17.09.1997, the High Court (Single Judge) allowed the writ petition and set aside the award of the Labour Court. E

9. The respondent (employee) felt aggrieved and filed intra court appeal before the Division Bench. By impugned order, the Division Bench allowed the appeal, set aside the order of the learned Single Judge and restored the award of the Labour Court which has given rise to filing of this special leave to appeal by the Employer in this court. F

10. Heard Shri Sushil Kumar Jain, learned senior counsel for the appellant. None appeared for the respondent though served.

11. So the short question, which arises for consideration in this appeal, is whether the Division Bench was justified in allowing the respondent’s appeal and was, therefore, justified in restoring the award of the Labour Court. G

12. Having heard the learned counsel for the appellant and on perusal of the record of the case, we are of the considered opinion that the appeal deserves to be partly allowed by modifying the award of the Labour Court to the extent indicated *infra*. H

A 13. It is not in dispute that the respondent was a casual worker and hardly worked for one year (10.6.1976 to 30.7.1977). It is also not in dispute that his appointment was casual.

B 14. In a case of this nature, and having regard to the fact that many decades had passed in between with no evidence adduced by the respondent that whether he was gainfully employed from 1977 onwards or not, the Labour Court should have awarded lump sum money compensation to the respondent in lieu of the relief of reinstatement along with payment of back wages and continuity of service by taking recourse to the powers under Section 11-A of the Act, rather than to direct his reinstatement with all consequential benefits.

C 15. In other words, having regard to the peculiar nature of the respondent's appointment and rendering of services by him for a very short duration (just 240 days only) and with no evidence as to whether he worked for gains or not after his services came to an end in 1977, this was a fit case where the Labour Court should have awarded lump sum compensation to the respondent instead of directing his reinstatement in service with consequential benefits. The Labour Court was empowered to pass such order by taking recourse to the powers under Section 11-A of the Act. This has also been the view of this Court in such type of cases. (See- **Senior Superintendent Telegraph (Traffic) Bhopal vs. Santosh Kumar Seal** (2010) 6 SCC 773 and **Assistant Engineer, Rajasthan Development Corporation & Ors. vs. Gitam Singh** (2013) 5 SCC 136).

F 16. In view of the foregoing discussion, we allow this appeal in part and while modifying the impugned order and the award of the Labour Court, direct the appellant to pay a sum of Rs. 50,000/- in lump sum to the respondent (employee) by way of compensation in lieu of respondent's right to claim reinstatement in service.

G 17. The amount of compensation is fixed by this Court after taking into account all facts and circumstances of the case including the fact of making payment to the respondent by way of monthly salary during pendency of the writ petition/intra court appeal by the appellant under Section 17-B of the Act. In our view, it is a reasonable compensation in the facts of this case.

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18. Let the amount of Rs.50,000/- be paid to the respondent by A
the appellant within three months from the date of this order.

19. Pending application(s), if any, stand disposed of.

Kalpna K. Tripathy

Appeal partly allowed.