Management Of Willcox Buckwell India ... vs Jagannath And Ors. on 28 March, 1973

Equivalent citations: AIR1974SC1166, [1974(29)FLR173], 1974LABLC706, (1974)4SCC850

Author: A.N. Grover

Bench: A.N. Grover, S.N. Dwivedi

JUDGMENT

A.N. Grover, J.

1. This is an appeal by special leave from an award of the Labour Court, Delhi, on a reference the terms of which are as follows:

> Whether Sarvashri Jagan Nath, Naunit Lal and S. K. Blaggan should be reinstated in service with continuity of past service and with full back wages for the intervening period and what directions are necessary in this respect?
>
> In the award, the Labour Court came to the conclusion that although the three workmen concerned were temporary employees, they had been retrenched due to there being surplusage of labour. For that reason, the Labour Court held that as no retrenchment compensation had been given to them, they were entitled to reinstatement, and the reinstatement was, accordingly, directed.

2. The letters of appointment clearly show that the concerned workmen were appointed temporarily and it was stated in the letters of appointment that the remuneration would be on daily wage basis. It was further stated that during the period of temporary employment, the workmen would not be entitled to any kind of leave or to any benefits extended to the confirmed employees. The other matter, which is material in the letters related to the termination of services by giving 24 hours' notice in writing.

3. The services of these workmen, namely, Naunit Lal, S. K. Blaggan and Jagan Nath, were terminated on August 11, 1968, September 1, 1966 and September 6, 1968, respectively. Although in the statement of claims filed by the workmen, allegations of unfair labour practice and victimisation were made, in the reply, which was filed by the management, it was stated, inter alia that the services of these workmen had been terminated according to the terms and conditions of the letters of appointment as "the company did not have enough work to continue the employment of these two

temporary work-men".

4. Shri J. K. Nayar, Personnel Officer of the appellant before us, gave evidence before the tribunal. According to him, the work was comparatively better in August,1965, but it became dull in the year 1968. S. K. Blaggan, who had been employed in the construction division of the parts department, had to be asked to go, because there was not much work for him. Naunit Lal was appointed in the parts store as "temporary labour". His services were terminated in October, 1966, due to shortage of work. About Jagan Nath also, it was stated that in February, 1965, some consignments were to be painted and there was sufficient work, but in September, 1966, the work was over for which Jagan Nath was engaged; so his services were terminated.

5. The main contention of learned Counsel for the appellant is that the services of the concerned workmen were terminated in terms of the contract or the letters of appointment issued to them. They were, therefore, not entitled to get the benefit of the provisions relating to the workmen who are retrenched. In Hariprasad Shivshankar Shukla v. A. D. Divikar it was laid down that the word 'retrenchment' as defined in Section 2(oo) and the word 'retrenched', in Section 25F of the Industrial Disputes Act, 1947, as amended by Act XLIII of 1953, had no wider meaning than the ordinary accepted connotation of those words and meant the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and did not include termination of services of all workmen on a bona fide closure of industry or on change of ownership or management thereof.

6. The question which arises in the present case is whether the services of the concerned workmen were terminated on the grounds of surplus labour. If they were asked to go because of that reason, there seems to be little doubt that the provisions contained in the Industrial Disputes Act, relating to the payment of retrenchment compensation would be attracted.

7. Mr. Pal laid a great deal of emphasis on the fact that these temporary workmen had been employed only for the purpose of doing a particular work and as soon as that work was finished, it was no longer necessary to keep them in employment and, therefore, it was legitimate for the management to terminate their employment, in terms of the letters of appointment, by giving them the requisite notice. We find it difficult to accede to the contention of Mr. Pal that the concerned workmen were asked to go in the circumstances mentioned by him. It is quite clear from the admission made in the written statement filed before the Industrial Tribunal and the evidence of Shri J. K. Nayar, that these workmen were served with notices of termination of service, because there was not enough work for them, which apparently meant that they had become surplus so far as their services were concerned the tribunal came to the same conclusion and we have not been persuaded to take a different view in the matter. We may also refer to a decision of this Court in Employers in relation to Digwadih Colliery v. Their Workmen in which a badli workman had worked as employee for more than 240 days, etc. He was retrenched in 1961, and the Court apparently proceeded on the basis that even a person, who was working as badli was entitled to the benefit of the provisions relating to retrenchment if he fulfilled the requisite conditions. We can find no distinction between the case of a badli worker and that of a temporary employee. If the reason, which the management itself gave, was that the termination of the services was on account of

surplus labour, there is no escape from the conclusion that the concerned workmen were retrenched and that could not have been done without giving them the benefits provided by the relevant provisions of the Act. As that was not done, the Labour court was fully justified in ordering their reinstatement.