Ranbir Singh vs Executive Eng.P.W.D. on 2 September, 2021

Equivalent citations: AIRONLINE 2021 SC 794

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Bench: Pamidighantam Sri Narasimha, K.M. Joseph

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4483 OF 2010

RANBIR SINGH APPELLANT(S)

VERSUS

EXECUTIVE ENG.P.W.D. RESPONDENT(S)

J U D G M E N T

K.M. JOSEPH, J.

1.Heard Shri Manjeet Singh, learned Senior Counsel for the appellant and also Shri Samar Vijay Singh, learned AAG for the respondent. By the impugned judgment the High Court has interfered with the award passed by the Labour Court, Hisar dated 13th October, 2006 and directed that appellant would be entitled to lump sum compensation of Rs. 25,000/- (Rupees Twenty Five Thousand Only) which was to be paid within three months of the order. The High Court notes the claim of the appellant to be that he was appointed verbally in June, 1983, and that, his service was terminated on verbal orders on 01.04.1991, after he had worked for eight years.

2. The case of the appellant was that he was working with the respondent for a period of nearly eight years and service was terminated without complying with Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as, 'the Act'). The Labour Court rejected the contention of the respondent that the appellant had not worked for 240 days and found that appellant had indeed worked for 240 days. It is found that there is non- compliance of Section 25F of the Act and the Labour Court awarded reinstatement of the appellant with 25 per cent back wages. As already noticed, it is this award which is set aside by the High Court.

3.Shri Manjeet Singh, learned Senior Counsel for the appellant would seek to rely upon the judgment of this Court in Ajaypal Singh v. Haryana Warehousing Corporation1. He would further submit that some of persons juniors to him were also dealt with in a different fashion, and in their case, they are working and they have, in fact, been regularised also. Learned counsel submits that the appellant should be reinstated in terms of the order of the Labour Court. Per Contra, Shri Samar Vijay Singh, learned AAG for the respondent pointed out that the acceptance of the contention of the appellant involved violation of the law laid down by this court in Secretary, State of Karnataka and others v. Umadevi (3) and others2. He still further drew out 1 (2015) 6 SCC 321 2 (2006) 4 SCC 1 attention to the decision of this Court in State of Uttarakhand and another v. Raj Kumar3 and points out that, in such circumstances, an order of reinstatement may not be justified.

4. It is true that in the Ajay Pal Singh (supra), the Bench of this Court, by judgment rendered in the year 2015, took the view that, when the termination is effected of service of a daily wager, there must be compliance of Section 25F. This Court, in fact, went on also to note that unlike a private body, in the case of a public body, while it may be open to resort to retrenchment of the workmen on the score that there is non-compliance of Articles 14 and 16 in the appointment, in which case, in the order terminating the services, this must be alluded to, it would still not absolve the public authority from complying with the provisions of Section 25F of the Act and, should it contravene Section 25F, it would amount to an unfair trade practice. We do notice, this judgment has been reiterated in a subsequent judgment also in Durgapur Casual Workers Union and others v. Food Corporation of India and others4.

5. However, we notice that there is another line of decisions, and the latest of the same, which is brought to our notice by Shri Samar Vijay Singh, learned AAG, is 3 (2019) 14 SCC 353 4 (2015) 5 SCC 786 Raj Kumar (supra). We may refer only to paragraphs-9 and 10:

> "9.In our opinion, the case at hand is covered by the two decisions of this Court rendered in BSNL v.Bhurumal [BSNL v. Bhurumal, (2014) 7 SCC 177 : (2014) 2 SCC (L&S) 373] and Distt. Development Officer v. Satish Kantilal Amrelia [Distt. Development Officer v. Satish Kantilal Amrelia, (2018) 12 SCC 298 : (2018) 2 SCC (L&S) 276] .
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> 10. It is apposite to reproduce what this Court has held in BSNL [BSNL v. Bhurumal, (2014) 7 SCC 177 : (2014) 2 SCC (L&S) 373] :
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> (SCC p. 189, paras 33-35) "33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the

> workman should be given monetary compensation which will meet the ends of justice.
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> Rationale for shifting in this direction is obvious.
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> 34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]].

Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz.

while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.""

6. In the light of the state of the law, which we take note of, we notice certain facts which are not in dispute. This is a case where it is found that, though the appellant had worked for 240 days, appellant's service was terminated, violating the mandatory provisions of Section 25F of the Act. The authority involved in this case, apparently, is a public authority. At the same time, it is common case that the appellant was a daily wager and the appellant was not a permanent employee. It is relevant to note that, in the award answering Issue No.1, which was, whether the termination of the appellant's service was justified and in order, and if not, what was the amount of back wages he was entitled to, it was found, inter alia, that the appellant could not adduce convincing evidence to establish retention of junior workers. There is no finding of unfair trade practice, as such. In such circumstances, we think that the principle, which is enunciated by this Court, in the decision, which is referred to in Raj Kumar (supra), which we have referred to, would be more appropriate to follow.

In other words, we find that reinstatement cannot be automatic, and the transgression of Section 25F being established, suitable compensation would be the appropriate remedy.

7. In such circumstance, noticing that, though the appellant was reinstated after the award of the Labour Court in 2006, the appellant has not been working since 2009 following the impugned order, and also taking note of the fact that the appellant was, in all likelihood, employed otherwise, also the interest of justice would be best subserved with modifying the impugned order and directing that in place of Rs. 25000/- (Rupees Twenty Five Thousand), as lumpsum compensation, appellant be paid Rs.3.25 lakhs (Rupees Three Lakhs and Twenty Five Thousand), as compensation, taking into consideration also the fact that the appellant had already been paid Rs. 25000/- (Rupees Twenty Five Thousand) as compensation.

8. Accordingly, the appeal is partly allowed. We modify the impugned judgment by directing that over and above, compensation directed of Rs. 3.25 lakhs (Rupees Three Lakhs and Twenty Five Thousand), shall be paid to the appellant.

9. This will be done within a period of eight weeks from today.

10. The appeal is partly allowed as above. The aforesaid payment shall effectuate a full and final settlement of all claims of the appellant.

... ... J . [K . M . J O S E P H]
.....J. [PAMIDIGHANTAM SRI NARASIMHA] NEW DELHI;

SEPTEMBER 2, 2021.