

State Bank Of Bikaner & Jaipur vs Om Prakash Sharma on 12 May, 2006

Equivalent citations: AIRONLINE 2006 SC 274

Author: S.B. Sinha

Bench: S.B. Sinha, P.K. Balasubramanyan

CASE NO.:

Appeal (civil) 2636 of 2006

PETITIONER:

State Bank of Bikaner & Jaipur

RESPONDENT:

Om Prakash Sharma

DATE OF JUDGMENT: 12/05/2006

BENCH:

S.B. Sinha & P.K. Balasubramanyan

JUDGMENT:

J U D G M E N T (Arising out of SLP (C) No. 18897 of 2004) S.B. SINHA, J.

Leave granted.

This appeal is directed against a judgment and order dated 3.6.2004 passed by a Division Bench of the Rajasthan High court, whereby and whereunder an intra-court appeal filed by the appellant herein from a judgment and order dated 23.4.2004 passed by a learned Single Judge affirming an Award of the Central Government Industrial Tribunal-cum- Labour Court (CGIT) dated 13.9.1999 was dismissed.

The respondent herein was a casual workman. He had worked with the appellant-Bank from 6.8.1994 till 17.11.1994. His services were terminated. An industrial dispute was raised by him culminating in a reference made by the Appropriate Government to the Industrial Tribunal which reads as under:

"Whether the action of the management of SBBJ, Jaipur is justified in terminating the services of Wrokmn Shri Om Prakash Sharma S/o Shri Sita Ram Sharma w.e.f. 19/11/94 and employing another junior workman Shri Vijay Kumar in his place without giving any opportunity of employment in violation of section 25H of ID Act, 1947? If not, what relief the workman is entitled?"

Before the Labour Court, a contention was raised as to whether the provisions Section 25H of the Industrial Disputes Act, 1947 ('the Act', for short) and Rule 77 of the Industrial disputes (Central) Rules, 1957 (ID Rules) have been violated, as one Vijay Kumar was said to be junior to him and was said to have been appointed in his place. A finding of fact was arrived at that the respondent failed to prove that after his termination of services Vijay Kumar was employed in his place in violation of Section 25H of the Act or otherwise. A finding, however, was arrived at that, no seniority record was maintained, as is required under the Rules. The appellant was, thus, found to have violated Rule 77 of the ID Rules. A further finding was arrived at that Rule 77 being mandatory in nature, the respondent was entitled to be reinstated in service with 50% of back wages.

Aggrieved by and dissatisfied with the said Award, a writ petition was filed by the appellant herein before the Rajasthan High Court which was numbered as S.B. Civil Writ Petition No.1474 of 2000.

A learned Single Judge of the High Court in dismissing the said writ petition opined that if the reference in question referred only to Section 25H of the Act, the same would not mean that the tribunal was debarred from going into the other illegalities committed under the Act or the amended Rules.

An intra-court appeal preferred by the appellant herein thereagainst was dismissed by a Division Bench stating:

"Learned Single Judge while relying upon the judgment of the Supreme Court in *Sadhna vs. National Insurance Co.* (2003 (3) SCC 526) found that it was not a fit case to exercise jurisdiction under Article 227 of the Constitution of India.

We do not find any error or illegality in the impugned order passed by the learned Single Judge. The Labour Court by its award dated September 13, 1999 set aside the oral order of the appellant terminating the services of the respondent workman as the appellant failed to publish the seniority list of workmen in accordance with Rule 77 of the Industrial Disputes (Central) Rules.

Accordingly, the appeal fails and is hereby dismissed."

The Industrial Court, it is well settled, derives its jurisdiction from the reference. {See *Mukand Ltd. vs. Mukand Staff & Officers' Association*, [(2004) 10 SCC 460].} The reference made to the CGIT specifically refers to only one question, i.e., "Whether any illegality was committed by the management in giving appointment to one Vijay Kumar in place of the respondent in violation of Section 25H of ID Act, 1947?" Non-maintenance of any register in terms of Rule 77 of the ID Rules was, thus, not in issue. Before the Industrial Court, the parties adduced evidence. An attempt was made by the respondent herein to show that one Vijay Singh was appointed, although the name of one Vijay Kumar appeared in the reference. An attempt was also made by the respondent to show that Vijay Kumar and Vijay Singh are one and the same person. In fact, one voucher was produced which was allegedly issued in the name of one Vijay Sharma. The said contentions of the respondent were denied and disputed by the appellant herein.

In that context, the Industrial Court held that the appellant was not guilty of violation of provisions of Section 25H of the Act. Section 25H reads thus:

"25H. Where any workmen are retrenched, and the employer proposes to take into his employment any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-

employment shall have preference over other persons."

It is no doubt true, as was contended by Mr. M.P. Calla, learned Senior Counsel appearing on behalf of the respondent herein, that the Labour Court formulated four different issues and one of the issues was the purported non-compliance of Rule 77 of the ID Rules. But the Labour Court even could not have framed any such issue. Rule 77 reads thus:

"Maintenance of seniority list of workman: -

The employer shall prepare a list of all workman in the particular category from which retrenchment is contemplated arranged accordingly to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial before the actual date of retrenchment."

By reason of the said Rule, the employer has been enjoined with a duty to prepare a list of all workmen in the particular category from which retrenchment is contemplated. Such a list was not prepared. The consequence of non-maintenance of the said document has been provided in Rule 79 of the ID Rules, being imposition of penalty. In case of violation on the part of the management to comply with the statutory provisions, thus, it could have been subjected to penalty. Rule 77 may be mandatory in character as was urged by Mr. Calla, but, only because the appellant herein did not maintain the prescribed register, the same by itself would not mean that the respondent herein would be entitled to be reinstated in service with back wages without establishing that the provision of Section 25H was violated. The termination of the workman was not in issue. In any event, the Labour Court did not arrive at a finding that the termination of services of the appellant was illegal. He had not completed 240 days of service. In that view of the matter, the provisions of Section 25F of the Industrial Disputes Act, 1947 was not required to be complied with.

The specific issue which was, therefore, referred for determination by the Labour Court, related to the dispute as regards violation of Section 25H of the Act. If the said provisions had not been found to be violated, the question of setting aside the order of termination by the Labour Court did not and could not arise. The learned Single Judge proceeded on the premise that the High Court, in exercise of its writ jurisdiction, cannot sit in appeal over the Award of the Labour Court. The learned Single Judge was right, but then, only because the jurisdiction of the High Court, while exercising of its power of judicial review was limited, it would not mean that even a jurisdictional error could not have been corrected. The provisions of Article 226 and 227 of the Constitution of India would be

attracted if the inferior Tribunal has, inter alia, committed a jurisdictional error. What would be the ground for judicial review, in regard to the orders passed by an inferior Tribunal is no longer a res integra.

In *Sadhna Lodh vs. National Insurance Co. Ltd.* [(2003) 3 SCC 524], the issue which came for consideration before this Court was as to whether in the face of the provision for an appeal, the High Court could exercise its power of judicial review. It was held that when an appeal power is vested in the High Court, ordinarily the writ jurisdiction could not be taken recourse to. Even in such a case, the court was held to have limited jurisdiction.

In the instant case, the Award of the Labour Court suffers from an illegality, which appears on the face of the record. The jurisdiction of the Labour Court emanated from the order of the reference. It could not have passed an order going beyond the terms of the reference. While passing the Award, if the Labour Court exceeds its jurisdiction, the Award must be held to be suffering from a jurisdictional error. It was capable of being corrected by the High Court in exercise of its power of judicial review. The High Court, therefore, clearly fell in error in refusing to exercise its jurisdiction. The Award and the judgment of the High Court, therefore, cannot be sustained. Consequently, the appeal is allowed and the judgment of the High Court is set aside. The award is set aside to the extent of order of reinstatement with back wages. The writ petition filed by the appellant in the High Court is, thus, allowed.