M/S Haryana State F.C.C.W. Store Ltd. & ... vs Ram Niwas & Anr on 8 July, 2002

Equivalent citations: AIR 2002 SUPREME COURT 2495, 2002 (5) SCC 654, 2002 AIR SCW 2804, 2002 LAB. I. C. 2624, 2002 (7) SRJ 381, (2002) 5 JT 106 (SC), 2002 (5) SCALE 16, 2002 LAB LR 865, 2002 (2) UJ (SC) 1144, 2002 (3) LRI 268, 2002 (4) SLT 227, 2002 (5) JT 106, (2002) 101 FJR 197, (2002) 94 FACLR 618, (2002) 2 LABLJ 1153, (2002) 3 LAB LN 746, (2002) 3 PAT LJR 253, (2002) 4 RAJ LW 511, (2002) 3 SCT 789, (2002) 5 SERVLR 277, (2002) 4 SUPREME 485, (2002) 5 SCALE 16, (2002) 3 ESC 80, (2002) 3 JLJR 73, (2002) 2 CURLR 1009, 2002 SCC (L&S) 801

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Bench: D.P.Mohapatra, K.G. Balakrishnan

CASE NO.:
Appeal (civil) 3645-3646 of 2002

PETITIONER:
M/S HARYANA STATE F.C.C.W. STORE LTD. & ANR.

Vs.

RESPONDENT:
RAM NIWAS & ANR.

DATE OF JUDGMENT: 08/07/2002

BENCH:
D.P.MOHAPATRA, K.G. BALAKRISHNAN.

JUDGMENT:

D.P.MOHAPATRA,J.

Leave is granted.

The question that arises for determination in these appeals is whether on the facts and circumstances of the case the termination of service of the respondents is 'retrenchment' in terms of

section 2(oo) of the Industrial Disputes Act, 1947 (for short 'the ID Act') ? The further question that arises for consideration in this connection is whether section 2(oo)(bb) of the ID Act has any application in the case ?

The factual matrix of the case relevant for considering the questions raised may be stated thus :

> In the year 1993 the appellants have been entrusted with the responsibility of procuring wheat and supply the same to Haryana Warehousing Corporation. On account of non-availability of godowns heavy stock of grain had to be stored in the open area at Hasanpur Mandi. For watching and keeping care of the stock lying in the open area necessity of watchman/chowkidar was felt and sanction was sought by the District Manager of the appellant Society. The Managing Director having sanctioned the engagement of watchman/chowkidar the respondents were appointed on contract basis on payment of daily wages till the stocks are disposed of or for a period of three months. It was made clear in the order of the Managing Director that the number of chowkidars/Labourers kept by the District Manager should come down with the clearance of stock lying in the open. The respondents continued. The respondent Ram Niwas was engaged on 25.5.1993 whereas respondent Shiv Kumar was engaged on 2.6.93. The engagement of both the respondents was terminated with effect from 26.4.1994, after the stock lying in the open was cleared.

Undisputedly, the provisions of section 25(f) of the ID Act were not complied with before disengagement /termination of the respondents.

The Industrial Dispute raised by the respondents was referred by the State Government under section 10(1) of the Act to the Labour Court, Faridabad for adjudication. The term of reference was "Whether the termination of service of Shri Shiv Kumar is legal and justified? If not to what relief he is entitled to"? Similar order of reference was passed in the case of the other respondent. Before the Labour Court the workmen concerned took the stand that the disengagement/termination of their service was per se invalid as the order of disengagement was passed without complying with the mandatory condition prescribed under section 25 (f) of the ID Act. Therefore they claimed reinstatement in service with all the consequential benefits.

Reviewing the claim the appellant society pleaded the case that the workmen concerned were appointed on ad hoc basis for a specific purpose and for a specified period; as such their disengagement/termination of service after the stock of wheat lying in open area in the mandi was cleared and the period specified in the appointment order had expired, did not amount to termination within the meaning of section 2(oo) of the ID Act, and therefore section 25(f) of the Act was not applicable in the case.

Both the parties led oral and documentary evidence in support of their case.

The Labour Court on consideration of the evidence on record held that it is evident from Exh.MW 1/ 2 - the order issued by the Managing Director, that the workmen were engaged by the management

for specific purpose and for specified period. Referring to certain decisions of this Court the Labour Court came to the conclusion that the workmen were entitled to no relief in the case. The Labour Court decided the Award accordingly.

The workmen filed writ petitions before the High Court assailing the Award of the Labour Court. The High Court as evident from the discussions by its judgment dated 22nd September, 2000 allowed the writ petitions, set aside the Award passed by the Labour Court and ordered reinstatement of the writ petitioners in the service with all the consequential benefits and with full wages from the date of demand notice. From the discussions in the judgment it is clear that the High Court while taking the decision has placed reliance mainly on the fact that no contract of service between the management and the workmen was produced by the Management and there was no material to show that at the time of appointment the workmen had been told that their appointment was for a specified period and for a specific work. The said judgment is under challenge in these appeals.

Since the case turns on the interpretation of section 2(oo)(bb) of the ID Act it will be convenient to quote the said section before proceeding to consider merits of the case:

> "2. In this Act, unless there is anything repugnant in the subject or context (oo) retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or (bb)termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or termination of the service of a workman on the ground of continued ill-health."

On a plain reading of the statutory provision it is clear that any termination of service of a workman by the employer for any reason whatsoever comes within the meaning of the expression 'retrenchment' as defined in section 2(oo) of the Act. Further the section further provides certain exceptions to the wide and comprehensive definition of the term 'retrenchment'. The exceptions are :

> "1)Termination of appointment inflicted by way of disciplinary action
>
> 2) Voluntary retirement of the workman

> 3) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> 4) termination of the service of the workman as a result of the non-

renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

5) termination of the service of a workman on the ground of continued ill-health."

It follows therefore that if the case of termination of the workman comes within any of the exceptions enumerated in the section then the said termination will not be a case of 'retrenchment' within the meaning of section 2(oo).

In the case of Uptron India Ltd. vs. Shammi Bhan and anr. 1998 (6) SCC 538 this Court considering the definition of 'retrenchment' in section 2(oo) observed:

> "The definition of "retrenchment" was introduced in the Act by Act 43 of 1953 with effect from 24.10.1953. Clause (bb) was inserted in the definition by Act 49 of 1984 with effect from 18.8.1984.

The definition is conclusive in the sense that "retrenchment" has been defined to mean the termination of the service of a workman by the employer for any reason whatsoever. If the termination was by way of punishment as a consequence of disciplinary action, it would not amount to "retrenchment". Originally, there were two other exceptions, namely,

(i) voluntary retirement of the workman and

(ii) retirement of the workman on reaching the age of superannuation if the contract of employment contained a stipulation to that effect.

By the Amending Act 49 of 1984, two further exceptions were introduced in the definition by inserting clause (bb) with effect from 18.8.1984; one was the termination of service on the ground of continued ill-health of the workman and the other was termination of service on account of non-renewal of the contract of employment on the expiry of the term of that contract. If such contract of employment contained a stipulation for termination of service and the services of the workman are terminated in accordance with that stipulation, such termination, according to clause (bb) would also not amount to "retrenchment".

The position was reiterated in Harmohinder Singh vs. Kharga Canteen, Ambala Cantt. (2001) 5 SCC 540.

In such a case the question of complying with the conditions precedent to retrenchment of workman provided in section 25(f) of the Act will not arise. In the present case the Labour Court relying on the oral and documentary evidence cited on behalf of the management, particularly the order of the Managing Director sanctioning the engagement of the workmen concerned held that the engagement/appointment of the workmen concerned was for a specific purpose and for a particular period and since the purpose for their engagement/appointment was over and the period of appointment had expired their disengagement was in terms of the contract of service, and therefore, not a 'retrenchment' within the meaning of section 2(oo) of the Act. The High Court has not recorded a finding that there was no contract of service between the management and the workmen concerned. In view of the evidence on record the High Court could not and indeed has not recorded any finding that there was no contract of service between the management and the workmen concerned. Since there exists a contract of service with the terms and conditions as noted earlier the position is inescapable that the case of disengagement/termination of the workman concerned did not amount to retrenchment. In particular facts and circumstances of the case the Labour Court rightly came to the conclusion that the workmen were entitled to no relief in the case. The High Court was clearly in error in interfering with the Award passed by the Labour Court. Accordingly, the appeals are allowed. The Judgments of the High Court in CWP No.9471/99 and CWP No. 9472/99 dated 22.9.2000 allowing the writ petitions filed by the respondent workmen are set aside and the Award of the Tribunal is restored. There will, however, be no order for costs.