

Incharge Officer And Anr vs Shankar Shetty on 31 August, 2010

Equivalent citations: AIRONLINE 2010 SC 319

Author: R.M. Lodha

Bench: R.M. Lodha, Aftab Alam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7213 OF 2010
(Arising out of SLP (C) No. 6668 of 2006)

Incharge Officer and Anr.

.... Appellants

Versus

Shankar Shetty

.... Respondent

JUDGMENT

R.M. Lodha, J.

Leave granted.

2. The only question to be considered in this appeal by special leave is with regard to the relief of reinstatement granted to the respondent by the Single Judge of the High Court of Karnataka in his judgment and order dated August 13, 2001 and affirmed by the Division Bench vide its judgment and order dated December 9, 2004 in the writ appeal. Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25 F of the Industrial Disputes Act, 1947 (for short `ID Act')? The course of decisions of this Court in recent years has been uniform on the above question. In the case of Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr.¹, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court - namely, U.P.

State Brassware Corporation Ltd. & Anr. v. Uday Narain Pandey²; Uttranchal Forest Development Corporation vs. M.C. Joshi³ ; State of M.P. & Ors. v. Lalit Kumar Verma⁴; Madhya Pradesh Admn v. Tribhuban⁵; Sita Ram & Ors. v. Motil Lal Nehru Farmers Training Institute⁶; Jaipur Development Authority v. Ramasahai & Anr.⁷; Ghaziabad Development Authority & Anr. v. Ashok Kumar & Anr.⁸ and (2009) 15 SCC 327 (2006) 1 SCC 479 (2007) 9 SCC 353 (2007) 1 SCC 575 (2007) 9 SCC 748 (2008) 5 SCC 75 (2006) 11 SCC 684 (2008) 4 SCC 261 Mahboob Deepak v. Nagar Panchayat, Gajraula & Anr.⁹ and stated as follows:

"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

* * * * * It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee".

3. Jagbir Singh¹ has been applied very recently in the case of Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh (2008) 1 SCC 575 Kumar Seal & Ors. (Civil Appeal No. 3815 of 2010) decided on April 26, 2010 wherein this Court stated:

"In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice".

4. Shankar Shetty - the respondent was initially engaged as daily wager by the appellants in 1978. He worked for 57 days in that year. The respondent had also worked for 316= days in 1979, 335= days in 1980, 242= days in 1981, 33= days in 1982, 10= days in 1983, 103 days in 1984 and 50 days in 1985. According to him he was terminated from service on September 6, 1985 without following the procedure prescribed in Section 25 F of the ID Act . He raised industrial dispute relating to his retrenchment which was referred for adjudication to the Labour Court, Mysore but later on the dispute was transferred to the Labour Court, Chickmagalur. The Labour Court, Chickmagalur by its award on December 21, 1994 rejected the respondent's claim. The Labour Court held that Section 25

F of the ID Act was not attracted since the workman failed to prove that he had worked continuously for 240 days in the calendar year preceding his termination on September 6, 1985. The respondent challenged the award passed by the Labour Court by filing a writ petition before the Karnataka High Court. The Single Judge of the High Court overturned the finding of the Labour Court about non-applicability of Section 25 F and held that Section 25 F of the ID Act was attracted and the procedure provided therein having not been followed, the termination of respondent (petitioner therein) was illegal. The Single Judge, accordingly, vide his judgment and order dated August 13, 2001 directed reinstatement of the respondent into service but without back wages and continuity of service. The present appellants challenged the judgment and order of the Single Judge in writ appeal before Division Bench but without any success. On December 9, 2004, the writ appeal preferred by the present appellants was dismissed by the Division Bench.

5. We think that if the principles stated in Jagbir Singh¹ and the decisions of this Court referred to therein are kept in mind, it will be found that the High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 years intermittently upto September 6, 1985 i.e. about 25 years back. In a case such as the present one, it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion, the compensation of Rs. 1,00,000/- (Rupees One lac) in lieu of reinstatement shall be appropriate, just and equitable. We order accordingly. Such payment shall be made within 6 weeks from today failing which the same shall carry interest at the rate of 9 per cent per annum.

6. The appeal is allowed to the above extent. Since the respondent has not chosen to appear despite service of notice, there will be no order as to costs.

.....J. (Aftab Alam) J.

(R.M. Lodha) NEW DELHI, AUGUST 31, 2010