M/S Essen Deinki vs Rajiv Kumar on 29 October, 2002

Equivalent citations: AIR 2003 SUPREME COURT 38, 2002 (8) SCC 400, 2002 AIR SCW 4428, 2002 LAB. I. C. 3563, 2003 LAB LR 113, 2002 (10) SRJ 276, 2002 (6) SLT 235, (2002) 8 JT 471 (SC), (2003) 1 ALLMR 361 (SC), (2003) 1 CGLJ 44, (2003) 1 JCR 4 (SC), 2003 (1) ALL CJ 219, 2003 ALL CJ 1 219, 2002 (8) SCALE 188, 2003 (1) UPLBEC 302, (2002) 95 FACLR 859, (2003) 1 ALL WC 224, 2003 SCC (L&S) 13, (2002) 3 LABLJ 1111, (2002) 4 LAB LN 1176, (2002) 95 FACLR 949, (2003) 1 MAD LW 295, (2002) 4 SCT 900, (2002) 6 SERVLR 538, (2003) 1 UPLBEC 302, (2002) 7 SUPREME 393, (2002) 8 SCALE 188, (2002) 5 ESC 266, (2003) 1 ANDH LT 4, (2003) 1 ALL WC 240, (2002) 3 CURLR 943

Author: Umesh C. Banerjee

Bench: Umesh C. Banerjee

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           CASE NO.:
Appeal (civil)  7038 of 2002

PETITIONER:
M/s Essen Deinki

RESPONDENT:
Rajiv Kumar

DATE OF JUDGMENT: 29/10/2002

BENCH:
Umesh C. Banerjee & Y.K. Sabharwal.

JUDGMENT:
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JUDGMENT BANERJEE, J.

Leave granted.

Generally speaking, exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature. It is so exercised in the normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the Courts below. The finding of fact being within the domain of the inferior Tribunal, except where it is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the Article is not called for:

> The observations above however, find affirmance in the decision of this Court in Nibaran Chandra Bag v. Mahendra Nath Ghughu (AIR 1963 SC 1895). In Nibaran (supra) this Court has been rather categorical in recording that the jurisdiction so conferred is by no means appellate in nature for correcting errors in the decision of the subordinate Courts or Tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority. More recently, in Mani Nariman Daruwala and Bharucha (deceased) through LRs & Ors. v. Phiroz N. Bhatena & Ors. (AIR 1991 SC 1494), this Court in the similar vein stated :
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> "In the exercise of this jurisdiction the High Court can set aside or ignore the findings of fact of an inferior Court or tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the Court or tribunal who has come or in other words it is a finding which was perverse in law. Except to the limited extent indicated above the High Court has no jurisdiction to interfere with the findings of fact."

Needless to record that there is total unanimity of judicial precedents on the score that error must be that of law and patently on record committed by the inferior Tribunal so as to warrant intervention it ought not to act as a Court of appeal and there is no dissention or even a contra note being sounded at any point of time till date. Incidentally, the illegality, if there be any, in an order of an inferior Tribunal, it would however be a plain exercise of jurisdiction under the Article to correct the same as otherwise the law Courts would fail to subserve the needs of the society since illegality cannot even be countenanced under any circumstances. In this context reference may also be made to a still later decision of this Court in the case of Savita Chemicals (P) Ltd. v. Dyes & Chemical Workers' Union & Anr. (1999 (2) SCC 143), wherein this Court in paragraph 19 of the Report observed :

> ". Under Article 227 of the Constitution of India, the High Court could not have set aside any finding reached by the lower authorities where two views were possible and unless those findings were found to be patently bad and suffering from clear errors of law. .."

Adverting however, to the factual score at this juncture, it appears that the Respondent-workman joined the services of the Appellant as a helper on 1st July, 1990 and continued till 26th February, 1991. The service was terminated however, on the ground that in his short stay with the Appellant his work was not found to be of desired standard. The Appellant did not feel it expedient, however, to comply with the provisions of Section 25-F by reason of non-completion of 240 days in the preceding 12 calendar months. As a matter of fact it has been the contention of the Appellant at all stages that the Respondent-workman worked for a total period of 219 days in totality within the preceding 12 months period thereby falling short of statutory requirements noticed above.

Mr. Ranjit Kumar, learned Senior Advocate appearing in support of the Appeal, however, incidentally contended that the calculation of 219 days stands out to be inclusive of Sundays and paid holidays excepting the working days on which the Respondent was unauthorisedly absent since

there was a strike on 25th February, 1991.

The factual score depict that the Respondent-workman raised an industrial dispute which was referred to by the Appropriate Government for adjudication to the Labour Court vide Reference No.129 of 1995. Significantly, Mr. Ranjit Kumar with his usual eloquence emphasised the stand of the Respondent-workman himself in his statement recorded on 25th November, 1997 in the proceedings before the Labour Court to the effect that he had not completed 240 days of service. Subsequently, upon consideration on the factual score, the Labour Court passed an Award in favour of the Appellant herein and returned a finding on fact that the concerned workman had not completed 240 days and, therefore, the termination was held to be valid and compliance of Section 25-F was not required in terms of the provisions of the Industrial Disputes Act.

To continue with the factual backdrop, the Respondent- workman however, filed a Civil Writ Petition being C.W.P. No.15275 of 1999 against the said Award passed by the learned Labour Court, wherein the workman stated that there was some amount of miscalculation of the number of working days since Respondent-workman had in fact worked for exactly 240 days. Needless to record however that on 25th February, 1991, there was a strike and the Respondent-workman did also participate therein and this aspect of the matter stands highlighted by Mr. Ranjit Kumar in his submissions that the High Court in exercising jurisdiction under Article 227 of the Constitution reappreciated the evidence on record and was pleased to take a different view from the finding arrived at by the learned Labour Court on the basis of Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation (1985 (4) SCC 71), inter alia, recording that while calculating the actual working days, Sundays and other paid holidays can be taken into account. Mr. Ranjit Kumar has been rather vocal in the context that the High Court failed to consider that even if the calculation of the Respondent- workman was taken on the face value, the workman had completed only 239 days as on 25th February, 1991, when admittedly the workers went on strike and the Respondent-workman thus had not completed 240 days. Mr. Ranjit Kumar contended that in exercise of jurisdiction under Article 227 of the Constitution, the High Court has not only exceeded its jurisdiction but clearly erred in interfering with the finding of fact. Aggrieved by the order, the Appellant herein thus moved this Court under Article 136 of the Constitution.

The principal issue thus appears to be as to whether the Respondent-workman had completed 240 days of service in terms of the statutory provisions. The evidence in support of the concerned workman himself however answers the issue in the negative, since it has been categorically stated: "it is correct that I have not completed 240 days of serviceI proceeded on strike on 25.2.91". Admittedly the Respondent-workman's service was terminated on 26.2.91 due to non-satisfactory work and it has been Mr. Ranjit Kumar's definite and emphatic submission that the respondent had worked not more than 219 days as noticed herein before and question thus of having an answer in the affirmative to the issue posed herein before would not arise.

Incidentally, be it noted that the Labour Court upon perusal of the evidence and on a thorough probe into the matter came to a definite conclusion that worker has failed to prove that his services had been terminated in an illegal manner by the respondent (the Appellant herein) and thereby

recorded an answer in the negative for the issue as posed. In the final analysis upon consideration of all relevant facts the Labour Court recorded: "In the final analysis, the view of my above findings, I see no merit in this reference and the same is hereby declined. Appropriate Government be informed."

It is against this order of the Labour Court that the High Court was approached under Article 227 of the Constitution and the latter relying upon the decision of this Court in American Express (supra) came to a conclusion that the workman in fact have completed 240 days of service and as such allowed writ petition and did set aside the award of the Labour Court with a direction that the petitioner be reinstated in service with full back wages. It is this finding which is under challenge before this Court with the grant of leave under Article 136 of the Constitution. The record of proceedings referred to thus depict that the Labour Court while rejected the Reference on appreciation of facts, the High Court thought it fit to reverse it on the basis of the law laid down by this Court in American Express (supra). It would thus be convenient to note the opinion expressed by this Court in American Express at this juncture. This Court in paragraph 5 of the Report has stated as below :

> "5. Section 25-F of the Industrial Disputes Act is plainly intended to give relief to retrenched workmen. The qualification for relief under Section 25-F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Section 25-B of the Industrial Disputes Act. In the present case, the provision which is of relevance is Section 25-B(2)
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> (a)(ii) which to the extent that it concerns us, provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service for a period of one year if the workman, during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. The expression which we are required to construe is "actually worked under the employer".

This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The learned counsel for the Management would urge that only those days which are mentioned in the Explanation to Section 25-B(2) should be taken into account for the purpose of calculating the number of days on which the workmen had actually worked though he had not so worked and no other days. We do not think that we are entitled to so constrain the construction of the expression "actually worked under the employer". The explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. If the expression "actually worked under the employer" is capable of comprehending the days during which the workman was in employment and was paid wages and we see no impediment to so construe the expression there is no reason why the expression should be limited by the explanation. To give it any other meaning than what we have done would bring the

object of Section 25-F very close to frustration. It is not necessary to give examples of how Section 25-F may be frustrated as they are too obvious to be stated."

Whilst it is true that the law seems to be rather well settled as regards the 'bread and butter' statutes and the welfare legislation introduced in the Statute Book for the purposes of eradication of social malady, it is a duty incumbent on to the law Courts to offer a much broader interpretation since the legislation is otherwise designed to perpetration of any arbitrary action and no contra view thus is plausible. American Express affirms such a view.

Significantly, the appellant's contention does not run counter to the opinion expressed in American Express. It has been the definite contention of Mr. Ranjit Kumar that even the test laid down under American Express does not stand to acceptance of the workman's case. The requirement of the Statute of 240 days cannot be disputed and it is for the employee concerned to prove that he has in fact completed 240 days in the last preceding 12 months' period. As noticed hereinbefore, it has been the definite case of the workman concerned whilst at the stage of evidence that he has not worked for 240 days, as noticed hereinbefore in this judgment more fully. And it is on this score Mr. Ranjit Kumar has been rather emphatic that the High Court has thus fallen into a grave error in reversing the order of the Labour Court. It is a finding of fact which the High Court cannot possibly overturn without assailing the order of the Labour Court as otherwise perverse. The High Court unfortunately has not dealt with the matter in that perspective.

The proof of working for 240 days is stated to be on the employee in the event of any denial of such a factum and it is on this score that this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) was pleased to state as below :

> " In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. ."

Having regard to the opinion of this Court in the last noted decision, question of affirmance of the impugned judgment cannot and does not arise more so by reason of the fact that even this Court searched in vain in regard to the availability of such an evidence. The High Court, in our view, has thus committed a manifest error in reversing the order of the Labour Court.

The appeal, therefore, succeeds. The impugned order stands set aside and quashed and the order of the Labour Court stands restored. No costs.