

Rolston John vs Central Government Industrial ... on 28 January, 1992

Equivalent citations: AIR1994SC131, 1995SUPP(4)SCC549, AIR 1994 SUPREME COURT 131, 1993 AIR SCW 4073, 1994 LAB. I. C. 973, 1995 (4) SCC(SUPP) 549, (1999) 3 LABLJ 86, 1995 SCC (L&S) 142

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Bench: S.C. Agrawal

JUDGMENT

1. This appeal is directed against the Award dated 19th December, 1977 of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur (MP). The appellant at the age of 26 was appointed at Mechanic-cum-Operator by the respondent-Management. His services stood terminated with effect from July 30, 1974 when he was drawing a monthly pay of Rs.475/-. The dispute that arose on such termination was referred for adjudication. The Tribunal in the final Award dated 19-12-77 held that the termination of the services of the appellant was under Clause 24(e) of the certified standing Orders and being an automatic termination it did not attract Section 2(A) of the Industrial Disputes Act. In that view of the matter, no relief was granted to the appellant.

2. The appellant is aggrieved that the interpretation placed and conclusion drawn by the Tribunal are faulty. According to the appellant, termination of service for whatsoever reason amounts to retrenchment and where it is not followed by the procedure under law, it is illegal and the appellant is therefore, entitled to be reinstated and given all other consequential benefits. In support of the contention, the learned Counsel also relied on decisions of this Court in *State Bank of India v. N. Sundara Money* ; *L. Robert D'Souza v. Executive Engr., Southern Rlys* ; *Mohan Lai v. Management of Ms Bharat Electronics Ltd.* ; *H.D. Singh v. RBI* ; *Punjab Land Dev. & Reclamation Corporation Ltd. Chandigarh v. Presiding Officer, Labour Court, Chandigarh* .

The appellant had availed of leave from 23-7-74 to 29-7-74 and was to report for duty on 30-7-74. He actually joined duty on 7-8-74. Clause 24(e) of the Standing Orders reads:

If a workman remains absent beyond the period of leave originally granted or subsequently extended he shall lose lien on his appointment unless:

- i) he returns within 10 days of expiry of his leave;
- ii) explains to the satisfaction of the management and his inability to return on the expiry of his leave;

According to the respondent-management, there was no satisfactory explanation for the absence without leave from 30-7-74 and, therefore, the appellant though joined duty on 7-8-74 lost the lien on his appointment resulting in termination of service under the aforesaid Clause.

3. We have considered the argument of the Counsel on both sides on the question of law raised. In the light of the decisions, which have been referred to above, we have to hold that the termination of the services of the appellant under Clause 24(e) of the Standing Orders constitutes 'retrenchment' Under Section 2(oo) of the Industrial Disputes Act and the Tribunal was wrong in concluding that the termination in the instant case does not attract Section 2(A) of the Industrial Disputes Act. The position being so, we have to accept the contention of the appellant that the Award is not in accordance with law.

4. The Tribunal has not proceeded with the merits of the claim in the light of finding recorded by it. The view we have taken may require the matter to be remitted back to the Tribunal for fresh decision. However, having considered the facts and circumstances of the case and the long lapse of time that has intervened between the date of the Award and the hearing of the appeal we suggested to the Counsel on both sides that on the facts and circumstances of the case we will decide the matter finally. As there cannot be any valid objection to that course being adopted, we dispose of the matter as hereunder.

5. As indicated earlier the termination of the service of the appellant by virtue of Clause 24(e) of the Standing Order constitutes retrenchment under Section 2(oo) of the Industrial Disputes Act. It is not the case of the respondent that the requirements of Section 25F of the Industrial Disputes Act have been complied with in this case. The said retrenchment being in contravention of the mandatory provisions of Section 25F was void and ineffective. Keeping in view the facts and circumstances of the case we do not consider it appropriate to give the relief of reinstatement.

6. We accordingly direct that in full and final settlement of all the claims of the appellant and in lieu of reinstatement and consequential benefits, if any, the respondent shall pay the appellant a lump sum of Rs.50,000/-within a period of six weeks from today. On such the matter shall stand concluded between the parties. In the facts and circumstances of the case, we make no Order as to costs.