Ramesh Kumar vs State Of Haryana on 13 January, 2010

Equivalent citations: AIR 2010 SUPREME COURT 683, 2010 (2) SCC 543, 2010 AIR SCW 897, 2010 LAB. I. C. 1039, (2010) 126 FACLR 55, (2010) 1 LAB LN 831, (2010) 4 ALL WC 4202, (2010) 3 MAH LJ 537, (2010) 2 RAJ LW 1213, (2010) 2 JCR 144 (SC), (2010) 1 CAL LJ 195, (2010) 2 MPLJ 585, (2010) 2 MAD LJ 408, (2010) 3 SERVLR 248, (2010) 1 SCT 675, 2010 (1) SCALE 432, (2010) 1 CURLR 549, (2010) 1 SCALE 432

Author: P. Sathasivam

Bench: H.L. Dattu, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 229 OF 2010
(Arising out of S.L.P. (C) No. 14078 of 2009)

Ramesh Kumar .... Appellant(s)

Versus

State of Haryana .... Respondent(s)

JUDGMENT

P. Sathasivam, J.

1) Leave granted.

2) This appeal is directed against the judgment and final order dated 23.12.2008 passed by the High Court of Punjab and Haryana at Chandigarh in CWP No. 575 of 2004 whereby the High Court allowed the writ petition filed by the State of Haryana.

3) According to the appellant, in December, 1991, he was appointed as Mali on casual basis in Public Works Department (B & R) Haryana and worked at the Chief Minister's residence. On 31.01.1993, his service was terminated without any notice or retrenchment compensation as provided in the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). After knowing that persons similarly appointed were either allowed to continue or regularized by the Department, the appellant sent a notice to the respondent. Since the Department declined to accede to his request, appellant

made a Reference No. 81 of 1999 before the Labour Court, Union Territory, Chandigarh. He pleaded before the Labour Court that he had completed more than 240 days of service and all along he was performing his duties at the residence of the Chief Minister, Haryana. The Government has made a policy that persons who have completed 240 days of service may be regularized, however, instead of regularization of his services, he was terminated w.e.f. 31.01.1993. He prayed before the Labour Court for setting the order of termination of his service and for an award for reinstatement with full back- wages.

4) It is the case of the Department that the workman has not completed 240 days of service except in the year 1992. He has not fulfilled the circular dated 27th May, 1993 entitling him for regularization of his service. Further, the Government has not framed any policy to regularize the service of persons who have completed 240 days as claimed.

5) Before the Labour Court, the workman himself was examined as AW-1. On the side of the Department, one Junior Engineer was examined as MW-1. On consideration of the materials placed, the Labour Court, by award dated 10.02.2003, has arrived at a conclusion that the workman has worked with the Department for a period of more than 240 days within 12 calendar months preceding the date of termination i.e. 31.01.1993, and in view of non-compliance of Section 25F of the Act, he is entitled to reinstatement. The Labour Court has also directed reinstatement with continuity of service with 50 per cent back-wages from the date of termination. With the above direction, reference was accepted and answered in the affirmative.

6) Aggrieved by the said award of the Labour Court, the State of Haryana challenged the same in CWP No. 575 of 2004 before the Punjab and Haryana High Court. By the impugned order dated 23.12.2008, the High Court set aside the award of the Labour Court granting reinstatement and back-wages, consequently allowed the writ petition.

7) Questioning the said decision of the High Court, the workman has filed the present appeal by way of special leave.

8) Heard learned counsel for the appellant-workman as well as learned counsel for the respondent-State of Haryana.

9) The only point for consideration in this appeal is whether the High Court was justified in setting aside the award of the Labour Court when the appellant had established that he was in continuous service for a period of 240 days in a calendar year, particularly, when similarly placed workmen were regularized by the Government.

10) It is not in dispute that the appellant was appointed as a Mali and posted at the residence of the Chief Minister in the year 1991. The materials placed by the appellant before the Labour Court clearly show that he had worked for three years and there was no break during his service tenure. He was issued identity card to work in the residence of the Chief Minister and no reason was given for his termination. It is also his case that there was no show cause notice and no inquiry was conducted. The perusal of the order of the Labour Court clearly shows that one Shri Nasib Singh,

Junior Engineer, who deposed as MW-1 on behalf of the Department has categorically stated that the workman was engaged by the Department on muster rolls as Mali in December, 1991 and he worked up to 31.01.1993. He also stated that there was no break from December, 1991 to January, 1993 during which the workman was engaged. The Labour Court as per the materials placed rightly found that the workman has continuously worked from December 1991 to 31.01.1993. It also found that the workman worked for 240 days with the Department within 12 calendar months preceding his date of termination i.e. 31.01.1993. It is useful to refer the definition of "retrenchment" and "workman" in the Act which reads thus:

> "2 (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....."

2 (s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person... ....."

25F. Conditions precedent to retrenchment of workmen.

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

It is not in dispute that the appellant is a "workman" as defined under Section 2 (s) and "retrenchment" if any it should be in accordance with Section 25F of the Act. Admittedly, in the case on hand, the workman was not given any notice or pay in lieu of notice or retrenchment compensation at the time of his retrenchment. In view of the same, the Labour Court has correctly concluded that his termination is in contravention of the provisions of Section 25 F of the Act. Though the Department has relied on a circular, the Labour Court on going through the same rightly concluded that the same is not applicable to the case of the retrenchment.

11) In addition to the factual conclusion by the Labour Court, namely, continuance for a period of 240 days in a calendar year preceding his termination, the appellant has also placed relevant materials to show that persons similarly situated have already been reinstated and their services have been regularized. It is his grievance that appellant alone has been meted out with the hostile discrimination by the Department. He also highlighted that in respect of some of the workmen who were appointed and terminated, after similar awards passed by the Labour Court, the Management did not challenge the same before the High Court by filing writ petitions. He also pointed out that in some cases where a challenge was made before the High Court by filing writ petitions however, after dismissal of the writ petitions those persons were reinstated. In fact, according to the appellant some of them were even regularized. The details of other identically situated persons are as follows:-

S.No. Name Labour High Court Supreme Court Present Court Status

1. Gurbax Singh Claim No writ petition No SLP filed Reinstated allowed filed on 19.06.2004.

Service regularized w.e.f.

01.07.2004

2. Mast Ram Claim Writ petition filed SLP filed by the Reinstated on allowed by respondents, respondents, 19.06.2004.

			dismissed	also dismissed.	Service regularized
3.	Rajesh Kumar	Claim allowed	Writ petition filed by respondents, dismissed	SLP filed by the respondents, also dismissed.	Reinstated. Service regularized.
4.	Paramjit Kumar	Claim allowed	Writ petition filed by respondents, dismissed	SLP filed by the respondents, also dismissed.	Reinstated. Service regularized.
5.	Ramesh Kumar (Petitioner)	Claim allowed	In 1st round Writ petition filed by respondents, dismissed In 2nd round writ petition was allowed.	SLP filed by the respondents, matter remitted back. Now petitioner has filed the present writ petition.	Reinstated on 18.06.2004 but service not regularized.

12) The perusal of all these details clearly shows that the appellant alone was singled out and discriminated. We have already noted the specific finding of the Labour Court that the appellant had fulfilled 240 days in a calendar year before the order of termination. The appellant has also

highlighted that he is the sole bread earner of his family and his family consists of his old mother, wife and two minor sons and a minor daughter. The above- mentioned chart also shows that identical awards passed in the case of Mast Ram, Rajesh, Paramjit and Amarjit was upheld by the High Court and the award in favour of the appellant alone was quashed by the High Court in the second round of litigation. Though, it was contended that the initial appointment of the appellant was contrary to the recruitment rules and constitutional scheme of employment, admittedly, the said objection was not raised by the Department either before the Labour Court or before the High Court at the first instance. It was only for the first time that they raised the said issue before the High Court when the matter was remitted to it that too the same was raised only during the arguments. In such circumstances, the High Court ought not to have interfered with the factual finding rendered by the Labour Court and in view of the different treatment to other similarly placed workmen the Department ought not to have challenged the order of the Labour Court. In addition to the above infirmities, the appellant has also pointed out that one Gurbax Singh who was engaged subsequent to the appellant on casual basis has challenged his termination order, which was quashed by the Labour Court; interestingly the Department did not challenge the award of the Labour Court by filing writ petition. It was also highlighted by the appellant that on the basis of the award, Gurbax singh was not only taken back in service but his services were regularized w.e.f. 01.07.2004.

13) We are conscious of the fact that an appointment on public post cannot be made in contravention of recruitment rules and constitutional scheme of employment. However, in view of the materials placed before the Labour Court and in this Court, we are satisfied that the said principle would not apply in the case on hand. As rightly pointed out, the appellant has not prayed for regularization but only for reinstatement with continuity of service for which he is legally entitled to. It is to be noted in the case of termination of casual employee what is required to be seen is whether a workman has completed 240 days in the preceding 12 months or not. If sufficient materials are shown that workman has completed 240 days then his service cannot be terminated without giving notice or compensation in lieu of it in terms of Section 25F. The High Court failed to appreciate that in the present case appellant has completed 240 days in the preceding 12 months and no notice or compensation in lieu of it was given to him, in such circumstances his termination was illegal. All the decisions relied on by the High Court are not applicable to the case on hand more particularly, in view of the specific factual finding by the Labour Court.

14) Under these circumstances, the impugned order of the High Court dated 23.12.2008 passed in CWP No. 575 of 2004 is set aside. It is not in dispute that the appellant-workman is continuing in service and learned counsel representing him fairly stated that he is willing to forego back-wages as awarded by the Labour court, the same is recorded. Consequently, the civil appeal filed by the workman is allowed to the extent mentioned above. No costs.

.....J. (P. SATHASIVAM) .....J. (H.L. DATTU) NEW DELHI;

JANUARY 13, 2010.