Ccs Haryana Agricultural University vs The Presiding Officer, ... on 9 February, 1999

Equivalent citations: (1999)122PLR188

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Bench: V.S. Aggarwal

ORDER

V.S. Aggarwal, J.

1. CCS Haryana Agricultural University, Hisar seeks quashing of the award of the Labour Court, Hisar dated 12.9.1997.

2. The relevant facts are that respondent No. 2 Om Parkash had been engaged as daily paid labourer in sugarcane section, Department of Plant Breeding, Haryana Agricultural University, Hisar. The said respondent had raised an industrial dispute that he had worked with the petitioner as daily paid labourer from 1971 to 13.12.1992 on the rates fixed by the Deputy Commissioner, Hisar in different departments of the petitioner-University such as Animal Breeding, Directorate of Farm and Sugarcane etc. His services were terminated without any notice of retrenchment compensation. Persons Juniors to him were retained in service. The termination order was challenged to be in violation of Section 25F and 25G of the Industrial Disputes Act. Respondent No. 2 prayed for reinstatement with full back wages and continuity of service.

3. The petitioner contested the claim and in the reply it was pointed that before 1986, respondent No. 2 had worked as daily paid labourer. He restarted working w.e.f. 20.2.1992 in the Sugarcane Section of the petitioner as daily paid labourer. He only worked there for 178 days, during the period from 20.2.1992 to 16.12.1992. At the time of said joining in Sugarcane Section, the respondent No. 2 had filed an affidavit that he had never worked in any other department of the petitioner-University. He had also worked as daily paid labourer for 20 days in May, 1992 and 11 days in September, 1992 to November, 1992. On 1.5.1992 before joining the L.P.M. Department, he filed another affidavit that he had never worked prior to that in any other department of the University. No letter of appointment had been issued to him. There was no question of issuance of any termination order.

4. The learned Labour Court framed the issues and held that the order terminating the services of respondent No. 2 were invalid. He had worked for 240 days in a year preceding the same. As regards the alleged affidavits, the findings were:-

> "These seem to have been obtained by the respondent to give employment to Om Parkash and workman is always interested to get employment. He cannot be blamed for it, especially when he is illiterate. It seems that respondent University has been getting such like affidavits from the employees, so that the employee may not be allowed to complete 240 days. Otherwise, there was no purposes or use of getting these affidavits. It also seems that respondent was taking work from Om Parkash in fictitious name, which too for the reason that D.P.L. may not complete 240 days. These are nothing but 'Unfair Labour Practices', so the respondent cannot be allowed to take benefit of its own wrong."

Accordingly, it was held that the order terminating the services of respondent No. 2 is not valid. He was held entitled to reinstatement with full back wages and continuity of service.

5. The petitioner-University challenged the said award of the Labour Court contending that respondent No. 2 has been filing false affidavits that he had not worked in any other department. He can not reap the benefit of the same. It was further asserted that the Labour Court has wrongly calculated the number of days in which the respondent No. 2 had worked. The writ petition as such had been contested.

6. During the course of arguments, the sole argument thought of and pressed by the petitioner's learned counsel was that as per the practice and procedure prevalent in the petitioner-University every new entrant is required to give an affidavit stating as to if prior to his engagement, he has worked in any other department of the University or not. He filed false affidavits in order to get employment in various departments. The University requires the services of labourers in different departments such as sowing of seeds, upkeeing watering, ploughing and harvesting of crops etc.

7. In support of his argument, the learned counsel for the petitioner relied on the decision of the Supreme Court in the case of Sanjay Kumar Bajpai v. Union of India and Ors., (1997)10 Supreme Court Cases 312. The Supreme Court held that furnishing of wrong information in the form required to be filled up for verification, would entail termination of services after the procedure is followed. But the cited decision indeed will not come in the rescue of the petitioner. This was not a decision where findings returned are that obtaining of wrong affidavits would be an unfair labour practice. As referred to above, the learned Labour Court held that this procedure is an unfair labour practice.

8. In that event, attention of the Court was drawn towards the Division Bench decision of this Court in the case of the Gurdaspur Central Cooperative Bank Ltd., v. The Presiding Officer, Labour Court, Gurdaspur and Ors., 1998(2) Recent Services Judgments 275. In the cited cases appointments of Peons and Clerks had been made on ad hoc basis for 89 days. Thsir services were terminated after 230 days of service. No plea of unfair labour practice had been taken in the statement of claim. There was no record to that effect in the form of evidence. The Division Bench held that such a plea should specifically be taken to be considered. In paragraph 6 the findings returned were:~ "It is pertinent to add that the charge of unfair labour practice should be specifically levelled so that the employer is able to meet it. It should also be proved by clear evidence. It is undoubtedly correct that sometimes the facts may speak by themselves and it may be possible to infer that the employer was

acting unfairly but there should be some evidence which should indicate an improper motive so as to enable the Court to arrive at a finding of unfair labour practice. In the present case, Counsel for the respondents are unable to refer to any evidence on the record. The only document to which a reference has been made, is said to be a letter sent by the Registrar in which it had been conveyed that no workman should be allowed to complete more than 230 days. The obvious purpose of this letter was to prompt the Bank to make regular selections speedily so that the rights of the workmen who had been appointed on ad hoc basis did not crystallise and the Bank was not faced with an avoidable liability. Such a communication cannot by itself constitute an unfair labour practice."

Once again the cited decision indeed has little application. Herein a specific issue had been framed as to what is the effect of said affidavits in the form of issue No. 4 as to if spondent No. 2 was estopped by his act and conduct. While discussing the same, the necessary findings flowed. Therefore, the facts of the present case are totally different.

9. As already pointed out above, the respondent No. 2 had been filing certain affidavits that he has not been working in any other department of the University. In fact he was. It is admitted that petitioner-University requires the services of the labourers at different stages. But it is strange as to why when a person is working in the University and the work is available and record is available, such affidavit is required from the serving persons. This could only be to use it as a tool whenever the occasion arises. It was in this backdrop that Labour Court held that it was an unfair labour practice.

10. In this regard the Division Bench decision in the case of Bhikku Ram, v. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak, 1998(1) Recent Services Judgment 703 deserves a mention. While referring to paras 1 to 16 of Part I of the Fifth Schedule, the Division Bench held:-

> "16. Proposing or continuing a lock-out-deemed to be illegal under this Act."

Paragraphs 5 to 10 of the fifth schedule show that termination of service of workman by way of discharge or dismissal will be treated as unfair labour practice if it is established that the same has been brought about by way of victimization or where the employer's action is not in good faith but is in the colourable exercise of the employer's rights, or where termination is for patently false reasons or where there is an utter disregard of principles of natural justice in the conduct of enquiry or where the misconduct is of minor or technical nature. Similarly, where the employer engages workmen as "badli", casual or temporary and continues them in the same capacity for years together with the object of depriving them of the status and privileges of permanent workmen, the employer's action would be termed as unfair labour practice."

There upon the Division Bench elucidated and held that employer is always in a position to dictate the terms and impose oppressive and unreasonable conditions. The precise findings are:-

> "Therefore, while interpreting and applying various parts of Section 2(oo), the competent Court/Tribunal shall have to keep in mind the provisions of Section 2(ra) read with Section 25T and 25U and various paragraphs of the Fifth Schedule and if it

is found that the action of the employer to engage a workman on causal basis or as a daily-wages or even on temporary basis for long periods of time with intermittent breaks and subsequent termination of service of such workman on the pretext of non-renewal of contract of employment or termination of contract of employment on the basis of a stipulation contained therein is an act of unfair labour practice, such an action of the employer will have to be nullified and the Court will be fully justified in rejecting the plea of the employer that termination of service of the workman does not amount to retrenchment but is covered by Clause (bb). In the context of various paragraphs of the Fifth Schedule, Clause (bb) which is an exception to the principal section will have to be given a narrow interpretation. This clause has the effect of taking away a right which was vesting in the workman prior to its insertion. Therefore, the same cannot be allowed to be used as a tool of exploitation by the employer who, as already observed above, enjoys a position of dominance as against the workman. The employer is always in a position to dictate the terms of service vis-a-yis the workman or to be workman. impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions. The employee cannot possibly protest against the incorporation of arbitrary unreasonable and even unconscionable conditions of service in the contract of employment. Any such protest by the employee or to be an employee will cost him job or a chance to enter employment. In respect of a work of permanent or continuing nature, the employer can always give an employment of fixed term or incorporate a condition in the contract of employment/appointment letter that the employment will come to an end automatically after a particular period or on the happening of a particular event. In such a situation, if the Court finds that the conditions are arbitrary and unreasonable and the employer has forced these conditions upon a workman with the sole object of avoiding his obligation under the Industrial Disputes Act, a bald plea of the employer that the termination of service is covered by Clause (bb) will be liable to rejected."

11. When such is the situation and the University was insisting for such conditions pertaining to daily wagers who are already working and knew that they were working, the findings of the Labour Court that there was unfair labour practice necessarily must be approved and calls for no interference. Otherwise also the findings arrived at by the learned Labour Court are after proper appreciation of evidence. It is not, absurd. This Court in its extra ordinary jurisdiction ordinarily will not interfere.

12. For these reasons, the writ petition being without merit must fail and is dismissed. There will be no order as to costs.