GAHC010023602016

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5069/2016

AIR INDIA LIMITED
A GOVT. COMPANY WITHIN THE MEANING OF THE COMPANIES ACT, 1956
HAVING ITS REGD. OFFICE AT 113, GURUDWARA, REKABGANJ ROAD,
NEW DELHI-1, AND ALSO INTER ALIA HAVING A REGIONAL OFFICE AT 39,
CHITTARANJAN AVENUE, KOLKATA-12

VERSUS

THE UNION OF INDIA and 3 ORS
THROUGH THE SECY., MINISTRY OF LABOUR AND EMPLOYMENT,
SHRAM SHAKTI BHAWAN, RAFI MARG, NEW DELHI

2:THE PRESIDING OFFICER
CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM LABOUR COURT
GUWAHATI
KENDRIYA SHRAM SADAN
2ND FLOOR
R.K. MISSION ROAD
BIRUBARI
GHY-16

3:SURESH BASFORE
S/O SRI INDRA DEO BASFORE
R/O GUWAHATI AIRPORT
QRS. NO. M-119
BORJHAR
GHY-15

4:ASSTT. LABOUR COMMISSIONER CENTRAL
GOVT. OF INDIA
MINISTRY OF LABOUR and EMPLOYMENT
GUWAHATI
KENDRIYA SHRAM SADAN

2ND FLOOR
R.K. MISSION ROAD
BIRUBARI
GHY-1

Advocate for the Petitioner : MR.T K BORA, MR. K R PATGIRI,MR.A K SARKAR,MR.R N MAJUMDAR

Advocate for the Respondent : MRJ K KARR-3, C.G.C.,MR.K K PARASAR(R-1,2&4),ASSTT.S.G.I.,MR.S DASGUPTA(R-3)

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri KR Patgiri, Advocate.

For the Respondents : Shri S Dasgupta, Advocate.

Date of Hearing : 12.09.2024.

Date of Judgment : 12.09.2024.

JUDGMENT & ORDER

The instant petition, preferred under Article 226 of the Constitution of India, is against an Award dated 30.10.2015 passed by the Central Government Industrial Tribunal-cum-Labour Court, Guwahati (CGIT) in Reference No. 05/2011. The petitioner herein is the Management.

2. As per the facts projected, the respondent no. 3 was working as a casual worker/Sweeper with the Management from 1981. On 08.05.1989, an incident of theft

had occurred wherein an amount of Rs.46,405/- was found missing from the cash box of the Management. In the connected police case which was registered as Azara PS Case No.50/1989, the respondent no. 3 was arrested and was subsequently granted bail. On such arrest and detention, the service of the respondent no. 3 was discontinued. Though the charge sheet was filed in this case, vide an order dated 09.11.1990 passed by the learned CJM, Kamrup, the respondent no. 3 was discharged in the criminal case.

3. Since the respondent no. 3 was not allowed to rejoin his service after such discharge, the respondent no. 3 had lodged a complaint which was ultimately referred by the appropriate Government to the learned CGIT, Guwahati in Reference Case No. 05/2011. The terms of the reference were as follows:

> "*Whether the action of the management of Indian Airlines Corporation and in not re-employing Shri S Basfore after his acquittal from the Court (not finding him guilty of the charge of theft) is justified? If not, to what relief the workman is entitled to?*"

4. The learned Tribunal, vide the impugned Award dated 30.10.2015 had answered the issue in favour of the workman and against the petitioner-Management. The action of the Management in not re-employing the respondent no. 3 was held to be illegal and so far as the back wages are concerned, since there was no material on the aspect of lack of gainful employment, a lump sum compensation of Rs. 2 lakhs was granted along with a direction for reinstatement. It is the validity and legality of the aforesaid Award which is the subject matter of challenge.

5. I have heard Shri KR Patgiri, learned counsel for the petitioner. I have also heard Shri KK Parasar, learned CGC for the respondent nos. 1, 2 and 4 as well as Shri S

Dasgupta, learned counsel for the respondent no. 3-the workman.

6. Shri Patgiri, learned counsel for the petitioner has submitted that the Reference was in the name of the Management of Indian Airlines which was subsequently taken over by the Air India Ltd. He has informed that as on 01.01.2023, the TATA Group has taken over the Management.

7. By referring to the provision of Section 25F of the Industrial Disputes Act, 1947 (hereafter called as the Act of 1947), the learned counsel for the petitioner has submitted that the nature of the employment of the respondent no. 3 was casual and therefore, the said respondent no. 3 could have been retrenched. He has also submitted that from the date of his arrest which was in the year 1989, a considerable time has elapsed and therefore, re-engagement may not be possible and these aspects were overlooked by the learned Tribunal. He has also submitted that a casual worker may not be entitled to raise a dispute under the Act of 1947. In support of his submissions, Shri Patgiri, learned counsel has relied upon the following case laws:

i) ***Secretary, State of Karnataka & Ors. Vs. Umadevi (3) & Ors.***, **(2006) 4 SCC 1**;

ii) ***Indian Drugs and Pharmaceuticals Ltd. Vs. Workman***, **(2007) 1 SCC 408**;

(iii) ***Dhampur Sugar Mills Ltd. Vs. Bhola Singh***, **(2005) 2 SCC 470**;

(iv) ***Municipal Corporation, Jabalpur Vs. Om Prakash Dubey***, **(2007) 1 SCC 373**.

8. The case of ***Uma Devi (3)*** (supra) is on the aspect of the principles to be followed for regularization of service. In the case of Indian Drugs (*supra*), it has been laid down that regularization of service cannot be a mode of appointment and regularization cannot be directed *de hors* the rules. In the case of ***Dhampur Sugar Mills Ltd.*** (*supra*), the aspect of termination of service of workmen who are working under the scheme in which direction for reinstatement should not be ordinarily issued has been highlighted. The case of ***Municipal Corporation, Jabalpur*** (*supra*) is on the aspect of irregular and illegal appointments and the distinction thereof.

9. *Per contra*, Shri Dasgupta, learned counsel for the respondent no.3, at the outset has submitted that the Management had adopted unfair labour practice by which his client has been treated in an unreasonable, unfair and irrational manner. He submits that though the petitioner had termed his client to be a casual labour, the mere fact that the respondent no. 3 has been discharging his duties for a long period of 9 years would show that the nature of service rendered by him is permanent. He submits that irrespective of the said issue, the respondent no. 3 was not allowed to discharge his duties without any reason. It is submitted that the respondent no. 3 was falsely implicated in a criminal case and it is a matter of surprise that the amount of Rs.46,405/- which was found missing on 08.05.1989 was recovered in the same cash box of the Management at a time when the respondent no. 3 was in custody. It is submitted that the respondent no. 3 was rightly discharged in the criminal case whereafter, he ought to have been allowed to rejoin his service. It is also highlighted that there was no letter of termination of service at any point of time and the respondent no. 3 has been dealt in a very casual manner. By drawing the attention of this Court to the pleadings made in the affidavit-in-opposition filed on 25.08.2017, reliance has been made to the averments made in paragraph 8 wherein, it has been averred that on the very next date of the arrest of the petitioner, the money was recovered. It is submitted that the Management had failed to adduce any evidence by

producing any documents before the learned Tribunal to justify the discontinuation of the respondent no. 3. In support of his submissions, Shri Dasgupta, learned counsel has relied upon the following case laws:

(i) ***Maharashtra State Road Transport Corpn. Vs. Casteribe Rajya Parivahan Karmachari Sangathana***, **(2009) 8 SCC 556**;

(ii) ***Director, Fisheries Terminal Division Vs. Bhikubhai Meghajibai Chavda***, **AIR 2010 SC 1236**;

(iii) ***Ramesh Kumar Vs. State of Haryana***, **(2010) 2 SCC 543**.

10. In the case of ***Maharashtra State Road Transport Corpn.*** (*supra*), the powers to be exercised by the Industrial Tribunal/Labour Court under the Unfair Labour Practices Act have been held to be not affected by the judgment of ***Uma Devi (3)***.

In the case of ***Director, Fisheries Terminal Division*** (*supra*), the aspect of retrenchment under Section 25F of the ID Act has been dealt with wherein, it has been held that the burden of proof shifts to the employer to prove that the workman did not complete 240 days of continuous service. Similarly, in the case of ***Ramesh Kumar*** (supra), Section 25F of the ID Act and its applicability to casual employee have been discussed.

11. Shri Parasar, learned CGC submits that the dispute is between the petitioner and the respondent no. 3 and his client would not have much role.

12. The rival submissions have been duly considered and the materials placed before this Court have been carefully perused.

13. The term of reference is apparently under Section 2A of the Act of 1947 which has already been extracted above. At the outset, this Court remind itself that in exercise of the extra-ordinary powers under Article 226 of the Constitution of India, it is the decision making process which would be the subject matter of scrutiny and not the decision, *per se*.

14. In the instant case, the materials on record would show that though the service of the respondent no. 3 has been termed by the Management as casual, it is admitted that such service was a continuous one for 9 years. On the incident of 08.05.1989 regarding missing of certain cash from the cash box of the office, the petitioner was arrested on 09.05.1989 and surprisingly on the very next date, the money was found to be intact in the cash box while the petitioner was in the custody. The said aspect has been duly noted by the learned Tribunal. The criminal case arising from the Azara Police Station case had culminated in an order of discharge of the respondent no. 3 on 09.11.1990. Though mere acquittal in a criminal case may not be the sole factor for directing reinstatement, in the instant case, the facts are slightly different wherein the implication of the respondent no. 3 itself appears to be without any basis.

15. Be that as it may, so far as the grounds of challenge by referring to Section 25F of the Act of 1947 is concerned, the said provision lays down the conditions precedent to retrenchment of workmen. In the instant case, there is no order of retrenchment and rather, it is the pleaded case of the petitioner that no orders of even discontinuation was passed and simply the respondent no. 3 was not allowed to discharge his duties even after the order dated 09.11.1990 passed in the criminal case. In the considered opinion of this Court, there is no application of the provisions of Section 25F. As regards the aspect of the application of the Act of 1947 to the

instant case, the definition of "workman" is given in Section 2(s) which reads as follows:

> "*[(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 –*
>
> *(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
>
> *(ii) who is employed in the police service or as an officer or other employee of a prison; or*
>
> *(iii) who is employed mainly in a managerial or administrative capacity; or*
>
> *(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]*"

16. This Court has also noted that the dispute which was raised by the respondent no. 3 in his individual capacity was taken cognizance by the appropriate Government

which had made the reference on 30.03.1992. On going through the definition of workman and the aspect that the reference was made by the appropriate Government, this Court is unable to accede to the argument that the respondent no. 3 would not come within the meaning of workman under the Act of 1947.

17. The learned Tribunal vide the impugned Award dated 30.10.2015 has taken into consideration all the relevant aspects. In paragraph 14 of the said Award, the long period of service rendered by the respondent no. 3 as Loader/Sweeper, his acquittal by the learned CJM, Kamrup as there was no material, the aspect that there was no inquiry before such disengagement and the refusal to re-engage the respondent no. 3 have been taken into consideration. The learned Tribunal has accordingly held that such action of the petitioner-Management was not legal and justified. The learned Tribunal has also dealt with the aspect that since there was no evidence from the workman-respondent no. 3 that he was not gainfully employed in the meantime, the back wages has not been directed and only for the aspect that the workman was fighting for his cause since a long period of time, a lump sum compensation of Rs. 2 lakhs has been granted.

18. The approach of the learned Tribunal in directing reinstatement/re-engagement of the respondent no. 3 along with payment of compensation as aforesaid appears to have been reached after taking into consideration the relevant factors and by examining the materials on record. The decision making process does not appear to be unreasonable, arbitrary or based on any extraneous or irrelevant factors.

19. In view of the above, this Court does not find any merits in this case requiring interference and accordingly, the writ petition is dismissed.

JUDGE

Comparing Assistant