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Judgment reserved on: 13.04.2015

Judgement pronounced on: 22.04.2015

OM PRAKASH

..... Petitioner

Through: Ms.Mumtaz Ahmad and Mr.Brij Lal,
Advs. along with Petitioner in person.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms.Santosh Kohli, Advocate for R-1.
Mr.R.K. Gupta and Mr.M.K. Singh, Advocates
for AIIMS.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide the present writ petition, the petitioner has challenged the award dated 27th March, 2014 whereby the court has given its findings against the petitioner and held that the claim of the petitioner was suffering with delay and laches and that it was not a case of retrenchment of the worker but a case of non-renewal of the contract of the worker on its expiry and also held that since the workman had not completed 240 days in the year prior to his termination, he was not entitled for any retrenchment compensation and had rejected the claim of the worker for reinstatement

with full back wages and continuity in service.

2. The workman has assailed the said award on the grounds that the learned Presiding Officer has failed to consider the fact that the workman had worked with the management for 880 days from 01.07.90 to 31.03.95 and hence termination without advance notice was unjust, unfair and arbitrary.

3. It was further contented that the learned Presiding Officer had failed to consider the fact that the respondent had intentionally not informed the petitioner about the interview held in the year 1997 and also rejected him with the remarks of “over-age” in the year 1999. It is further contented that learned Presiding Officer has failed to consider the fact that the petitioner belong to weaker section having responsibilities of four unmarried daughters. On these grounds, it is prayed that the award be set aside. No notice of the writ petition has been issued to the respondents however counsel for the respondent had attended the proceedings and arguments are being heard on behalf of both the parties.

4. It is apparent that the adjudication before the Labour Court was the second round of litigation by the petitioner. As per petitioner, the respondent no.2 i.e. the management on 09.06.99 had held interviews for the said post

and his name was at serial no.11 but he was not selected. Again on 17th August, 99, the respondent no.2 issued the vacancies of the same post but did not call the petitioner. He, however, attended the interview but was disqualified with remarks of “over-age”. In the first round of litigation, the petitioner filed the writ petition W.P.(C) No. 40/2002 before this court whereby he had challenged the dismissal of his application for re-engagement being over-age. The said writ petition, however, was dismissed by this court vide order dated 7th January, 2005.

5. Observing “I find no reason to exercise my extraordinary jurisdiction under Article 226 of the Constitution since the petitioner had been given employment against leave vacancies on daily wage basis”.

6. It was thereafter that the workman had raised the dispute before the Labour Court and the Labour Commissioner made a reference to the Labour Court. The reference is reproduced as under:-

“Whether Shri. Omprakash S/o Sh. Bihari Lal abandoned his job on his own or his services have been terminated illegally and/or unjustifiably by the management; and if yes, to what relief is he entitled and what directions are necessary in this respect?”

7. It is this reference which the Labour Court had answered vide impugned award.

8. It is argued on behalf of the petitioner that the said award is bad in law because the petitioner had worked for 880 days from 01.07.90 to 31st March, 95 as per the chart given in the writ petition. The chart given in the writ petition by the petitioner is reproduced as under:-

Sr.No	Date of engagement	Date of disengagement	Total Working days
1.	01.07.1990	30.09.1990	92 days
2.	04.10.1990	31.12.1990	89 days
3.	01.01.1991	31.03.1991	90 days
4.	04.04.1991	30.06.1991	84 days
5.	01.08.1991	30.06.1991	61 days
6.	11.01.1992	30.03.1992	79 days
7.	10.04.1992	31.07.1992	113 days
8.	01.10.1992	31.12.1992	91 days
9.	01.10.1993	31.12.1993	91 days
10.	01.01.1995	31.03.1995	90 days
	Total working days of employment		885 days

9. This chart has been relied upon by the petitioner in his writ petition no. 40/2002 before this court and also before the Labour Court.

10. It is argued that this chart clearly shows that the workman had worked for 880 days and since no notice pay and retrenchment compensation was paid to him, his termination w.e.f 01.04.95 was illegal. During the course of arguments, the attention is drawn to the provisions of Section 25(F) of the Industrial Disputes Act.

11. Under Section 25(F) of the Act, the termination of the services of a person who has been in continuous service of not less than one year can be done only (a) after one month's notice (stating reasons for retrenchment) or payment of wages in lieu of one month's notice, (b) Compensation equivalent to 15 days at the time of retrenchment.

12. Section 25 (B) of the Act defines the expression "continuous service" used in Section 25(F). Section 25(B)(2) clearly held that continuous service of one year means that a person had worked for 240 days during the period of " 12 calendar months" preceding the date with reference to which calculation is to be made.

13. Thus, the requirement of law is that the person must have worked for

240 days during the preceding year from the date of his termination. The petitioner has alleged his termination w.e.f. 01.04.95, therefore the requirement of law is that he must have worked for 240 days during the period of 12 months preceeding 31st March, 95.

14. As per the chart submitted by the petitioner himself during the period, preceding his termination i.e. 31.03.95 he had only worked for 90 days. He has thus not worked for 240 days and therefore as per provisions of Section 25(B) (2), he could not be deemed to have worked for continuous period of one year and thus was not entitled for retrenchment compensation or one months notice or notice pay in lieu of one months notice under Section 25(F) of Industrial Disputes Act. The Labour Court thus has rightly held he was not entitled for any retrenchment compensation, in case his termination is considered as the retrenchment.

15. The Labour Court has however concluded that the services of the workman were not retrenched and that his case was covered under the exceptions of Section 2(oo)(bb) of the Industrial Disputes Act. There is no challenge to the findings of fact by the Labour Court that the services of workman were not retrenched but his appointment was for specific period and he was simply disengaged from work.

16. It is pertinent that this court while disposing of the writ petition no.40/2002 of the petitioner has also held that petitioner was given employment against leave vacancies on daily wage basis.

17. Even otherwise, the learned Presiding Officer of the Labour Court has correctly applied the law and on the basis of the evidences before it had reached to the conclusion that the services of the petitioner were not retrenched but came to an end on expiry of its contract.

18. The impugned award is also challenged by the petitioner on the ground that he was not informed about the interview held in the year 1997 and that he was wrongly and intentionally rejected with a remark of “over-age” in the year 1999. However, these contentions had no relevancy to the impugned award as these contentions were raised by the petitioner in his writ petition no. 40/2002 before this court and this court vide its order dated 07.01.2005 had determined the issues and given its findings against petitioner. Also because the reference before Labour Court relates to the termination of services of the petitioner and not refusal of his re-engagement due to “over-age”.

19. The impugned award is also challenged on the ground that the Presiding Officer has failed to give due consideration to the social status of

the petitioner as he belongs to a weaker section of the society, having responsibility of the four unmarried daughters.

20. I have given due consideration to this situation. The learned Presiding Officer was bound to decide the matter as per the law of the land and the material before it. The petitioner has failed to show that simply because he belongs to weaker section and has responsibility of four daughters, the award which otherwise does not suffer with any illegality, is liable to be set aside. If this argument is accepted as just and fair argument, then no order can be passed against weaker section, no matter what they do. Can such a situation be accepted? Answer is: certainly not.

21. It is a settled principle of law that the court in exercise of its jurisdiction under Sections 226 and 227 of the Constitution of India has the limited power, which power is to be exercised only when there is an illegality, irrationality and procedural impropriety in the award (Reliance is placed on the case titled as **Heinz India (P) Vtd. Vs. State of U.P.**, (2012) 5 SCC 443).

22. Also the Supreme Court in the case of **Surya Dev Rai Vs. Ram Chander Rai**, (2003) 6 SCC 675, after considering large number of judicial pronouncement has held as under:-

(3) *Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction- by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction-by overstepping or crossing the limits of jurisdiction ,or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.*

(4) xxx xxx xxx

(5) *Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.*

(6) *A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.*

(7) xxx xxx xxxx

(8) *The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct error in drawing inferences or correct errors of mere formal or technical character.”*

23. In view of this settled principle of law, it is apparent that in this case there is no scope of interfering with the impugned award as the petitioner

has failed to point out any illegality, irrationality or impropriety in the award. It has also failed to show that the court had exceeded its jurisdiction or has acted in violation of law or Rules of Procedures or against the principle of natural justice. Also, there is no error apparent in the award.

The writ petition has no merit and is hereby dismissed. No order as to costs.

**DEEPA SHARMA
(JUDGE)**

APRIL 22, 2015
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