

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2016

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.A.No.1749 of 2015
and
M.P.No.1 of 2015

The Chief General Manager,
State Bank of India,
Local Head Office,
No.6, College Lane,
Chennai-600 006. ... Appellant

Vs.

1.The Central Government
Industrial Tribunal-cum-Labour Court,
No.6, Haddows Road,
Shastri Bhavan,
Chennai-600 006.
2.S.Chinnapponnu. ... Respondents

This writ appeal is preferred under Clause 15 of Letters Patent against the order dated 12.12.2014 made in W.P.No.12988 of 2006 Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records from the 1st respondent relating to the I.D.NO.31/2003 and the Award dated 17.6.2005 on the file of the Central Government Industrial Tribunal cum Labour Court the 1st respondent and quash the Award dated 17.6.2005 made in I.D.NO.31 of 2003

For Appellant : Mr.V.Karthik
for M/s.T.S.Gopalan & Co.

For Respondents : Mr.T.Ramkumar for R-2

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal arises from the order dated 12.12.2014 made in W.P.No.12988 of 2006.

2 The services of the second respondent, working as Sweeper from 1982 was discontinued on 9th June, 2001. A dispute was raised before the Central Government Industrial Tribunal-cum-Labour Court, Chennai in I.D.No.31 of 2003. The Presiding Officer of the Labour Court came to the conclusion that the respondent employee has established continuous working for more than 240 days in 12 calendar months preceding her termination. It was also held that mandatory requirement of the provision of Section 25-F of the Industrial Disputes Act, 1947 (for short "I.D. Act"), giving one month notice or payment in lieu thereof, was not complied with before termination. Thus, the termination was held as void ab initio. Accordingly, an Award was passed on 17th June, 2005, directing reinstatement in service with consequential benefits of seniority and backwages.

3 Feeling aggrieved, the management-appellant preferred the writ petition. The learned Single Judge, relying on the decision of the Supreme Court in D.K.Yadav Vs. J.M.A.Industries Ltd.¹, held that no employee can be terminated without complying with the provisions of Section 25-F of the I.D. Act, if the employee has established that he had worked for more than 240 days in the calendar year preceding his retrenchment / termination. It was also held that the second respondent employee has rendered about 20 years of service and was thrown out on account of the fact that the work was outsourced. The learned Single Judge, in the interest of justice, settled the dispute as full and final, by awarding a sum of Rs.5,00,000/- to the employee in lieu of reinstatement, backwages and other benefits. Thus, the second respondent employee stands satisfied.

4 Thereagainst, the management has come up with the instant appeal, questioning the amount of Rs,5,00,000/-, inter-alia, on the ground that the second respondent was a daily wager and as such, provisions of Section 25-F of the I.D. Act would not be applicable.

5 Needless to state that provisions of Section 25-F of the I.D. Act contemplates working for a period of 240 days before retrenchment or termination of service. The nature of service is not relevant. Even if an employee is temporary or daily wager, if he has successfully worked for 240 days in the preceding calendar year, the employee is entitled to the benefit of the provisions of Section 25-F of the I.D. Act. It is not controverted that the second respondent employee has been working from 1982 till the date of her termination / retrenchment from service.

6 The question as to whether violation of Section 25-F of the I.D. Act would entail automatic reinstatement with backwages

1 (1993) 3 SCC 259.

came into consideration in catena of decisions. Lately, in Vice-Chancellor, Lucknow University, Lucknow, U.P. Vs. Akhilesh Kumar Khare and another², the Supreme Court has examined the issue afresh in the light of the various decisions rendered earlier and held as under :

"16. In considering the violation of Section 25F of the Industrial Disputes Act, 1947 in Incharge Officer & Anr. vs. Shankar Shetty (2010) 9 SCC 126 and after referring to the various decisions, this Court held that the relief by way of back wages is not automatic and compensation instead of reinstatement has been held to meet the ends of justice and it reads as under:-

"2. Should an order of reinstatement automatically follow in a case where the engagement of a daily wagger has been brought to end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short "the ID Act")? The course of the decisions of this Court in recent years has been uniform on the above question.

3. In Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, (2006) 1 SCC 479, Uttaranchal Forest Development Corpn. v. M.C. Joshi, (2007) 9 SCC 353, State of M.P. v. Lalit Kumar Verma (2007) 1 SCC 575, M.P. Admn. v. Tribhuban (2007) 9 SCC 748, Sita Ram v. Moti Lal Nehru Farmers Training Institute (2008) 5 SCC 75, Jaipur Development Authority v. Ramsahai (2006) 11 SCC 684, GDA v. Ashok Kumar (2008) 4 SCC 261 and Mahboob Deepak v. Nagar Panchayat, Gajraula (2008) 1 SCC 575 and stated as follows: (Jagbir Singh case (2009) 15 SCC 327, SCC pp. 330 & 335, paras 7 & 14)

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the

2 2015 SCC Online SC 797, Civil Appeal No.5731 of 2011.

termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

4. Jagbir Singh (2009) 15 SCC 327 has been applied very recently in Telegraph Deptt. v. Santosh Kumar Seal (2010) 6 SCC 773, wherein this Court stated: (SCC p. 777, para 11)

"11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice."

7 Thus, deducing from the ratio laid down by the Supreme Court, it is well settled that reinstatement is not automatic, but the infringement of mandatory provision of Section 25-F of

the I.D. Act may be compensated by payment of a lump sum amount. The learned Single Judge has granted compensation to the tune of Rs.5,00,000/-. We do not find any infirmity in the said order and no interference is warranted.

8 Resultantly, the writ appeal stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Central Government
Industrial Tribunal-cum-Labour Court,
No.6, Haddows Road,
Shastri Bhavan,
Chennai-600 006.

+1cc to Mr.T.S.Gopalan, Advocate, S.R.No.4348

W.A.No.1749 of 2015

ad(CO)
srg(12/02/2016)

सत्यमेव जयते

WEB COPY