

HON'BLE SRI JUSTICE S.V.BHATT

W.P.Nos.24524, 24633 AND 25282 OF 2003

COMMON ORDER:

The writ petitions are directed against Awards dated 30.12.2002 in I.D. Nos.248 of 2000, 690 of 2000 and 260 of 2000 respectively.

The petitioners are different but respondents 2 and 3 are common in the writ petitions as well as in the Labour Court. Hence disposed by common order.

The petitioners pray for Certiorari to call for the record leading up to and inclusive of Awards dated 30.12.2002, and quash the Awards as illegal.

The counsel have made their submissions basing on the averments and evidence in writ petition No.24633 of 2003 filed against I.D. No.690 of 2000. Hence, for convenience and with the consent of learned counsel, the averments in writ petition No.24633 of 2003 are referred for disposing of the writ petitions.

The petitioner filed an application under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the I.D. Act') for relief of reinstatement into service together with back wages and other attendant benefits by setting aside the oral termination order dated 30.12.1998 by management/respondent No.3.

The case of petitioner is that the petitioner joined as 'casual labour' in the Dai-Ichi Laboratories, IDA, Nacharam, Hyderabad/3rd

respondent. The petitioner claims to have continuously worked till 30.12.1998. According to petitioner, the respondent management terminated the services of petitioner w.e.f. 31.12.1998 without notice or complying with the requirement of Section 25-F of the I.D. Act. It is further complained that the respondent management after terminating the services of petitioner is getting the very same work executed through a contractor by engaging contractor labour. The work carried out by the petitioner is perennial in nature and there was no occasion for discontinuation or termination. According to petitioner, the petitioner has completed 240 days in a year and is entitled to notice or pay in lieu of notice under Section 25-F of the I.D. Act. The complained termination since is carried out without complying with the statutory requirement, the petitioner prays for reinstatement by setting aside the oral termination, back wages etc.

The case of the management is that the I.D. is not maintainable. On 06.05.1998, the petitioner joined as casual worker for construction of R & D building of respondent factory. The engagement of petitioner was on day-to-day basis. Further, the petitioner was engaged depending on the availability of work. The petitioner being a casual labour engaged for a purpose, the respondent management claims to have discontinued engaging petitioner from 20.02.1999 for want of work in the R& D building or the construction undertaken was completed. It is stated that the petitioner since refused to receive the termination letter, the same

was forwarded to petitioner by registered post with acknowledgement due. The amount sent to petitioner by Money Order towards retrenchment compensation etc. was not received. The respondent management denies that the job in which the petitioner was engaged is not perennial in nature. Therefore, the respondent management prayed for dismissing the I.D. The Labour Court has framed the following points for consideration:

- i. Whether the petitioner worked for 240 days within 12 months prior to the date of alleged termination?
- ii. What is the date of termination?
- iii. Whether the petitioner worked in the factory or in the construction of R & D building?
- iv. Whether the petitioner was casual labour?
- v. Whether the petitioner was gainfully employed after retrenchment?
- vi. Whether the petitioner is entitled to the reliefs of reinstatement and other benefits as prayed for?
- vii. If so, to what relief?

The petitioner examined himself as W.W.1 and one V. Satyanarayana as W.W.2. The petitioner marked Exs.W.1 to W.7. On the other hand, on behalf of respondent management, M.W.1 to M.W.4 were examined and Exs.M1 to M15 were marked and Ex.X.1 was marked through W.W.2.

The Tribunal has taken up point No.4 namely whether the petitioner was a casual labour and held that the petitioner was working as casual labour in respondent management. On point Nos. 5 and 3, it held that the petitioner was gainfully employed after

retrenchment and on the nature of employment, it is held that neither has proved the actual work for which the petitioner was engaged. On Point No.2 namely date of termination, the 1st respondent recorded a finding that the petitioner was terminated with effect from 30.12.1998. Now the crucial aspect on the prayer made by the petitioner is whether the petitioner has completed 240 days to complain violation of Section 25-F of the I.D. Act. The finding reads thus:

“Petitioner alleged in his petition that he joined in May,1997. But the respondent alleged that the respondent joined only as 6-5-98. W.W.1 stated that E.S.I. Card is available with him. He pleaded ignorance regarding mention of date of joining in E.S.I. card. Despite denial of his work for 240 days, petitioner did not file the said E.S.I. Card. Admittedly he did not file any document to show that he worked since May,1997. Burden lies on him to show that he worked for 240 days as held by the Hon’ble Apex Court on the land. But petitioner did not place any documentary evidence to show that he worked for 240 days. Therefore, I hold that the petitioner failed to prove the date of joining as alleged by him. He failed to prove that he worked for 240 days in the preceding year prior to his termination. This point is accordingly answered.”

Mr.A.K.Jayaprakash Rao contends that the interpretation and application of Section 25-F read with Section 25-H of the I.D. Act by the 1st respondent is illegal, erroneous and liable to be set aside. According to him, even assuming that the finding recorded by the Labour Court on point No.1 namely whether petitioner worked for 240 days is to be accepted, still once the engagement of petitioner as casual labour is accepted, the petitioner is entitled for

reinstatement under Section 25-H of the I.D. Act. He places reliance on Central Bank of India v. S.Satyam¹. Therefore, though not for reinstatement, he prays for appropriate directions for re-employment of petitioner by respondent management.

Mr.K.Lakshman appearing for respondent management contends that no ground is made out to attract the jurisdiction of this Court under Article 226 of the Constitution of India. On the limited contention of Mr.A.K.Jayaprakash Rao, he replies that the contention now put forward by petitioner is contrary to the definite case on which parties have joined issue before the Labour Court and once respondent management is successful in proving its case, the alternative prayer for consideration of re-employment under Section 25-H does not arise. He stoutly contends that the premise on which the I.D. was raised is that the petitioner is entitled to protection under Section 25-F and retrenchment without notice or following the procedure under Section 25-F is illegal and liable to be set aside. Even on the limited plea of showing that the petitioner has completed 240 days, he contends that there is no evidence and the 1st respondent has rightly held that the petitioner herein has not completed 240 days of continuous service. The alternative prayer does not arise for the simple reason that the same is beyond the scope of the scheme of Sections 25-F and 25-H of the I.D. Act. He submits that Dai-ichi Laboratories is closed with effect from 14.10.2005 and therefore, the eventuality of operating Section 25-H by the respondent does not arise.

¹ (1996) 5 SCC 419

I have perused the Award impugned in the writ petition and the submissions of learned counsel for parties.

Now the point for consideration is whether the Awards dated 30.12.2002 impugned in the writ petitions warrant interference or that the petitioners have made out a case for issuing appropriate directions under Section 25-H of the I.D. Act or not?

There are two limbs to the point framed by this Court. The first limb relates to exercising jurisdiction of this Court, on the petitioners establishing illegality or 1st respondent acted in excess of conferred jurisdiction or findings are perverse as a result of failure to exercise jurisdiction. Further the jurisdiction of this Court under Article 226 of the Constitution of India is attracted only when sufficient grounds are raised both on the findings of fact recorded by the 1st respondent and the illegalities or improprieties pointed out thereunder. Mr.A.K.Jayaprakash Rao does not dispute that the scope of judicial review of this Court against the Awards of the Labour Court is well settled. Therefore, after going through the awards impugned in the writ petitions, particularly after taking note of exhibits marked on both sides, this Court is of the view that none of the grounds available for judicial review in exercise of the jurisdiction under writ of Certiorari is made and the point is answered accordingly. The 2nd limb is whether the petitioners are entitled for consideration under Section 25-H of the I.D. Act. The contention of petitioners is already noted. Briefly stated the contention pre-supposes that there is no difference whether a

workman retrenched after following the procedure under Section 25-F or not. In the case on hand, the parties have not joined issue on the entitlement of petitioners for any relief under Section 25-H of the I.D. Act. In other words, if the petitioners are successful in establishing that they have worked for 240 days, the respondent management without following procedure stipulated under Section 25-F retrenched their services, they would have got the relief of reinstatement with all the benefits. As already noted, the petitioners are unsuccessful in discharging the burden of working for 240 days. Once the petitioners failed on this crucial aspect of the matter, the discontinuation of services cannot be complained by reference to Section 25-F. Therefore, the comprehensive prayers made in the I.Ds. are rightly considered by the Labour Court. Now the petitioners cannot convert the relief of reinstatement into re-employment under Section 25-H. For issuing directions under Section 25-H different circumstances are pleaded and proved and further the undisputed fact is that Dai-Ichi Laboratories is closed with effect from 14.10.2005. Once the company is closed, any direction for consideration under Section 25-H cannot and could not also be considered. Writ petitions fail and accordingly dismissed. No order as to costs.

Miscellaneous petitions, if any pending, stand closed.

S.V.BHATT,J

Date:12.04.2017
Sp